

Appendix 1 – Draft Standard Licence Conditions

Standard Licence Conditions – proposed modifications

To assist stakeholders in assessing the proposed modifications to the Standard Licence Conditions in this consultation document, the Commission has prepared a colour-coded guide.

This document sets out a number of consolidations, and previously consulted on (but not implemented) modifications to the Standard Licence Conditions. A number of further modifications to the Standard Licence Conditions, which the Commission is now consulting on, are also included.

The guide adopts the following format:

1. The text identified in **yellow highlight** are consolidations which incorporate operative conditions from previous decisions, notably the [Commission's decision](#) to introduce Standard Condition A12. Note that this condition has been in force since 3 February 2017.
2. The text identified in **green highlight** are housekeeping provisions which the Commission previously consulted on (see Appendix 3 of the [Commission's consultation](#)), but which have not yet been formally implemented. The Commission now intends for these to come into force.
3. The text identified in **purple highlight** are provisions on which the Commission issued [a consultation](#), and a [policy decision](#) in 2020 but did not formally implement. The Commission is now proposing to proceed with their implementation, subject to some further proposed modifications.
4. The text identified in **blue highlight** are new proposed modifications and further refinements to the previously proposed modifications The Commission is now consulting on these provisions.

The text shown in the relevant colour of highlight shows the licence condition as it has effect (in the case of **yellow highlight**) or would have effect (in the case of the other highlight colours) following modification.

STANDARD CONDITIONS OF
WATER AND SEWERAGE SERVICES LICENCES¹

determined by

THE WATER INDUSTRY COMMISSION
FOR SCOTLAND

17 May 2007

¹ As amended on 26 September 2007 and 18 January 2008, 4 May 2016, 22 July 2016, 3 February 2017, 28 November 2017 and [?? July 2020]. Copies of the original standard licence conditions and the amending instruments are available on request from the Water Industry Commission for Scotland on 01786 430 200 or enquiries@watercommission.co.uk.

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These conditions are the standard conditions determined by the Water Industry Commission for Scotland under paragraph 2(2) of schedule 2 to the Water Services etc (Scotland) Act 2005.

The standard conditions set out in Part A (standard conditions applying to all water services and sewerage services licences) shall apply to all water services and sewerage services licences granted under sections 6(1) and 6(3) of the 2005 Act.

As well as the standard conditions set out in Part A, each water services or sewerage services licence granted under section 6(1) or 6(3) of the 2005 Act shall include one of the following sets of standard conditions:

1. the standard conditions set out in Part B (standard conditions applying to general water services and sewerage services licences); or
2. the standard conditions set out in Part C (standard conditions applying to self-supply water services and sewerage services licences); or
3. the standard conditions set out in Part D (standard conditions applying to specialist water services and sewerage services licences).

These standard conditions shall not, except to the extent that the Commission may otherwise direct, apply to the water services licence or to the sewerage services licence granted to Scottish Water Business Stream Limited on 31 October 2006.

For and on behalf of the Water Industry Commission for Scotland

.....
Chief Executive

.....
Date: 17 May 2007

PART A (STANDARD CONDITIONS APPLYING TO ALL WATER SERVICES AND SEWERAGE SERVICES LICENCES)

Standard Condition A1, Definitions and interpretation

1. In this licence, unless the context otherwise requires:

Term	Meaning
2002 Act	means the Water Industry (Scotland) Act 2002;
2005 Act	means the Water Services etc (Scotland) Act 2005;
agreement	includes any legally binding contract or arrangement (whether or not constituted or evidenced by any written document);
amendment	in relation to an agreement, shall (without limiting the generality) include the making, entering into and granting of: (a) any agreement which terminates, extends the duration of, varies or has the effect of affecting in any other way any right and/or obligation (or the enforceability of any right and/or obligation) of any person under the first mentioned agreement; and (b) any waiver or purported waiver (whether or not constituted or evidenced by any written document, and whether express, implied or otherwise) of any right of any person under that agreement and cognate expressions shall be construed accordingly;

Term	Meaning
business day	any day other than a Saturday or Sunday or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971;
central market agency	a body established by or under any directions made by the Commission inter alia for that purpose to exercise certain central market functions in relation to the participation of licensed providers in the provision of water and sewerage services;
Control	shall, together with the expression, "change of control", be construed in accordance with section 26 of the Enterprise Act 2002;
eligible customer	means an occupier of eligible premises within the meaning of section 6 of the 2005 Act;
go live date	means 1 April 2008 or such other date as may be determined by or under a direction given by the Commission;
licensed provider	means a water services provider or a sewerage services provider;
licensed service	means any service which a licensed provider (including the licensee) is authorised by its licence to provide;
market code	means the code designated as such by or under any directions made by the Commission inter alia for that purpose (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as those directions) and to be complied with by

Term	Meaning
	the licensee in terms of standard condition A4 (Compliance with market code);
material change in circumstances	means (a) any event or state of affairs which adversely affects or may reasonably be expected to adversely affect the licensee's ability to perform adequately the activities authorised by this licence and (b), except as directed otherwise by the Commission, any change to the information (including, but not limited to, the identity of the licensee's directors, the location of its business premises and its ownership structure) (i) provided in writing by the licensee to the Commission in connection with its application for this licence or (ii) subsequently notified to the Commission under paragraph 6 of standard condition A3 (Provision of information);
operational code	means the code designated as such by or under any directions made by the Commission inter alia for that purpose (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as those directions), and to be complied with by the licensee in terms of standard condition A5 (Compliance with operational code);
relevant statutory requirement	has the meaning ascribed to it by standard condition A2 (Compliance with statutory requirements);

Term	Meaning
section 29E departure	means a departure from a charges scheme made by Scottish Water with the consent of the Commission under section 29E of the 2002 Act in respect of something done, or agreed to, by a customer of the licensee; and
wholesale services agreement	means any agreement entered into pursuant to section 16 of the 2005 Act.

2. Any words or expressions used in the 2005 Act or the 2002 Act shall, unless the contrary intention appears, have the same meaning when used in this licence.
3. Except where the context otherwise requires, any reference to a numbered condition (with or without a letter) or schedule is a reference to the condition or schedule (with or without a letter) bearing that number in this licence, and any reference to a numbered paragraph (with or without a letter) is a reference to the paragraph bearing that number in the condition or schedule in which the reference occurs, and reference to a part is a reference to that part in this licence.
4. This licence shall have effect as if, in relation to a licensee who is a natural person, for the words “it”, “its” and “which” there were substituted the words “he”, “him”, “his”, and “whom”, and similar expressions shall be construed accordingly.
5. Except where the context otherwise requires, a reference in a condition to a paragraph is a reference to a paragraph of that condition and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.
6. Any reference in this licence to:
 - (a) a provision (including any term or condition) thereof,
 - (b) a provision of the standard conditions of water services licences,
 - (c) a provision of the standard conditions of sewerage services licences,

shall, if any such provision or the standard conditions in question come to be modified, be construed, so far as the context permits, as a reference to the corresponding provision of this licence or the other standard conditions in question as modified.

7. In construing this licence, the heading or title of any condition or paragraph shall be disregarded.
8. Where any obligation placed on the licensee under this licence is required to be performed by a specified date or time, or within a specified period, and where the licensee has failed so to perform by such date or time, or within such period, such obligation shall continue to be binding and enforceable after the specified date or time, or after the expiry of the specified period (but without prejudice to all rights and remedies available against the licensee by reason of the licensee's failure to perform by that date or time, or within that period).
9. Anything required by or under this licence to be done in writing may be done by facsimile transmission of the instrument in question or by other electronic means and, in such case:
 - (a) the original instrument or other confirmation in writing shall be delivered or sent by pre-paid post as soon as is reasonably practicable, and
 - (b) where the means of transmission had been agreed in advance between the parties concerned, in the absence of and pending such confirmation, there shall be a rebuttable presumption that what was received duly represented the original instrument.
10. References in this licence to an approval or consent given by the Commission shall be construed (except as the Commission otherwise directs) as references to an approval or consent given (a) prior to the occurrence or bringing about of the event or state of affairs to which it relates, (b) in response to a written request by the licensee and after proper disclosure by the licensee to the Commission of the circumstances giving rise to the request and (c) subject to such conditions as the Commission may impose. References in this licence to a decision of the Commission (including, but not limited to, a consent, approval, requirement or direction) shall be construed as references to a decision in written form.

Standard Condition A2, Compliance with statutory requirements

1. The licensee shall comply with all relevant statutory requirements, except in so far as expressly permitted otherwise by the 2002 Act or the 2005 Act.

2. In this condition, the expression "relevant statutory requirement" means:
 - (a) a condition imposed by the Commission in relation to the licensee under section 29E(3) of the 2002 Act;
 - (b) a direction issued to the licensee under section 8(2) of the 2005 Act for the purpose of ensuring compliance with the terms and conditions of this licence;
 - (c) any obligation imposed on the licensee pursuant to section 9 of the 2005 Act to pay fees to the Commission;
 - (d) a requirement imposed upon the licensee under section 10(1) of the 2005 Act to provide information to the Commission;
 - (e) a direction issued to the licensee under section 11(2) of the 2005 Act to take steps for the purposes mentioned in section 11(1) of the 2005 Act;
 - (f) a requirement imposed upon the licensee under paragraph 5(5) of schedule 2 to the 2005 Act to provide assistance or information;
 - (g) a notice issued to the licensee under paragraph 8(1) of schedule 2 to the 2005 Act and which is in effect; and
 - (h) the terms and conditions of any arrangement deemed by section 20A(4) of the 2005 Act to have been made, as such terms and conditions are set out in a scheme made by the Commission from time to time under section 20B of the 2005 Act.

3. For the purposes of paragraph 2 above, a direction or notice shall be taken to be issued to, and a requirement or obligation shall be taken to be imposed upon, the licensee whether or not such direction, requirement or obligation is issued or, as the case may be, imposed upon, the licensee individually or as part of a larger class or group.

Standard Condition A3, Provision of information

1. Subject to paragraph 3 below, the licensee shall furnish to the Commission, in such a manner and at such times as the Commission may require, such information and shall procure and furnish to it such reports, as the Commission may require for the purpose of performing its functions under the 2005 Act, the 1968 Act, the 1980 Act or the 2002 Act.
2. The licensee shall, if so requested by the Commission, give reasoned comments on the accuracy and text of any information and advice (so far as relating to the licensed services) which the Commission proposes to publish.
3. This condition shall not require the licensee to produce any documents or give any information that it could not be compelled to produce or give in evidence in civil proceedings before a court. To the fullest extent possible, the licensee shall take all steps necessary to redact those parts of such documents that it could not be compelled to produce.
4. The power of the Commission to call for information under paragraph 1 above is in addition to the power of the Commission to call for information under or pursuant to any other provision of this licence or of the 2005 Act.
5. The licensee shall (except with the Commission's approval or consent) promptly provide the Commission with full details of any investigation or proceedings relating directly or indirectly to the licensed services and instituted in respect of the licensee by or before any court, governmental or regulatory agency.
6. The licensee shall notify the Commission of any change of control of the licensee or any material change in circumstances of the licensee as soon as practicable after the licensee has become (or should reasonably have been) aware that the change has occurred, or, if earlier, as soon as practicable after the licensee has become aware that the change is likely to occur.

7. The licensee shall provide to the Commission such reports in such form and at such times as the Commission may require detailing all transactions that it has entered into with Scottish Water (and any entity controlled by Scottish Water) during the period covered by the reports.

Standard Condition A4, Compliance with market code

1. From the market code effective date, the licensee shall be a party to, and comply with, the market code that is in force at any time, including any requirement thereunder (a) for the Commission's approval or consent, (b) for compliance with directions issued by the Commission, (c) relating to determinations made by the Commission and (d) for compliance with any directions issued by the Commission under paragraph 2 below.
2. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving the licensee of its obligations under paragraph 1 above in respect of such parts of the market code and to such extent as may be specified in those directions and/or providing that the market code in force for the time being shall have effect with or subject to such modifications as are specified in those directions.
3. The licensee shall not make or agree to the making of any amendment to the market code except where such amendment is made in accordance with the specified requirements. The licensee shall also exercise all powers available to it to procure that those requirements are complied with in all respects.
4. For the purposes of this condition:

market code effective date	means such date as may be specified for the purpose of paragraph 1 above by a direction made by the Commission for that purpose; and
specified requirements	means such requirements regarding the manner in which the market code may be amended as may be specified from time to time in directions made by the Commission.

Standard Condition A5, Compliance with operational code

1. From the operational code effective date, the licensee shall be a party to, and comply with, the operational code that is in force at any time, including any requirement thereunder (a) for the Commission's approval or consent, (b) for compliance with directions issued by the Commission, (c) relating to determinations made by the Commission and (d) for compliance with any directions issued by the Commission under paragraph 2 below.
2. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving the licensee of its obligations under paragraph 1 above in respect of such parts of the operational code and to such extent as may be specified in those directions and/or providing that the operational code in force for the time being shall have effect with or subject to such modifications as are specified in those directions.
3. The licensee shall not make or agree to the making of any amendment to the operational code except where such amendment is made in accordance with the specified requirements. The licensee shall also exercise all powers available to it to procure that those requirements are complied with in all respects.
4. For the purposes of this condition:

operational code effective date	means such date as may be specified for the purpose of paragraph 1 above by a direction made by the Commission for that purpose; and
specified requirements	means such requirements regarding the manner in which the operational code may be amended as may be specified from time to time in directions made by the Commission.

Standard Condition A6, Water Environment and Water Services (Scotland) Act 2003

1. The licensee shall provide full written details to the Scottish Environment Protection Agency of any breach or any anticipated or threatened breach of Part 1 of the Water Environment and Water Services (Scotland) Act 2003 (whether on the part of Scottish Water or any eligible customer) forthwith upon becoming aware of the same in connection with the provision of any licensed service and shall cooperate with any subsequent investigation.

2. This condition shall not require the licensee to produce any documents or give any information that it could not be compelled to produce or give in evidence in civil proceedings before a court. To the fullest extent possible, the licensee shall take all steps necessary to redact those parts of such documents that it could not be compelled to produce.

3. In this condition, "Scottish Environment Protection Agency" means the body established under Section 20 of the Environment Act 1995 or any successor thereof.

Standard Condition A7, Wholesale services agreement

1. The licensee shall not enter into a wholesale services agreement without the approval or consent of the Commission, unless the terms and conditions of the wholesale services agreement are determined by the Commission under section 16(7) of the 2005 Act.
2. The licensee shall not make or agree to the making of any amendment to a wholesale services agreement to which it is party except where such amendment is made in accordance with the specified requirements. The licensee shall also exercise all powers available to it to procure that those requirements are complied with in all respects.
3. The Commission's approval or consent under paragraph 1 above may include requirements as to provisions to be included in the relevant agreement (a) for the Commission's approval or consent, (b) for compliance with directions issued by the Commission, (c) relating to determinations made by the Commission and (d) for compliance with any directions issued by the Commission under paragraph 6 below.
4. The licensee shall supply to the Commission, in connection with any request for approval or consent made pursuant to paragraph 1 above, with such information as the Commission may require.
5. The licensee shall comply with the provisions of any wholesale services agreement to which it is party, including any requirements thereunder (a) for the Commission's approval or consent, (b) for compliance with directions issued by the Commission, (c) relating to determinations made by the Commission and (d) for compliance with any directions issued by the Commission under paragraph 6 below.
6. The Commission may (following such consultation as the Commission may consider appropriate) issue directions providing that any wholesale services agreement to which the licensee is party shall have effect with or subject to such modifications as are specified in such directions.

7. For the purposes of this condition 'specified requirements' means such requirements regarding the manner in which any wholesale services agreement may be amended as may be specified from time to time in directions made by the Commission.

Standard Condition A8, Charges and related matters

1. The licensee shall comply with any direction given to it by the Commission under this paragraph as to any change to be made to the charges to be fixed, demanded or recovered by the licensee in connection with a section 29E departure.
2. Where the licensee makes arrangements for the provision of licensed services to which paragraph 2(5) of schedule 3 of the 2005 Act applies, it shall fix its charges in accordance with paragraph 2(6) of that schedule 3.

Standard Condition A9, Constraints on certain arrangements

1. The licensee shall not, without the approval or consent of the Commission, provide any licensed services to which paragraph 2 below applies.
2. This paragraph applies to the making of arrangements for the supply of water to, or (as the case may be) the provision of sewerage to or the disposal of sewage from, eligible premises in circumstances in which the central market agency, or Scottish Water, would not be able under the respective terms of the market code or a charges scheme made by Scottish Water under section 29A of the 2002 Act to calculate the charges payable by the licensee to Scottish Water in respect of such supply, provision or disposal.
3. Subject to paragraph 4 below, the licensee shall not;
 - a. receive, or procure the receipt of, financial support from another market participant;
 - or,
 - b. receive, or procure the receipt of, financial support from a related undertaking,nor shall it enter into any arrangement for the purpose of receiving or procuring the receipt of such support.
4. The following shall not be regarded as financial support for the purposes of paragraph 3 above:
 - a. trade credit or other arrangements provided on arms-length, commercial terms;
 - b. any sum which a market participant is obliged to pay to the licensee under the market code, the operational code or a wholesale services agreement; and
 - c. any other arrangement which the Commission may from time to time specify by direction.
5. The licensee shall, if it (or any of its related undertakings) engages in WIA activities, conduct its affairs so as to ensure that its customers are not unfairly disadvantaged by such activities, including by ensuring that:
 - a. it operates independently of, and on an arms-length basis from, any related undertaking and does not give (or receive) any cross-subsidy to (or from) the related undertaking whether financial or non-financial;

- b. it has sufficient financial resources and facilities, and has an appropriate financial structure, to provide any licensed services; and
- c. it does not engage in any specified transaction.

6. In each calendar year (commencing in 2017), by such date as the Commission may specify, the licensee shall provide to the Commission two written statements (on such terms and in such form as the Commission may approve), one signed on behalf of its board and one signed by (or, if a body corporate, on behalf of the board of) its ultimate controller as to:

- a. the licensee's compliance with paragraphs 1 to 5 above;
- b. the arrangements established by the licensee to ensure compliance with paragraphs 5(a), 5(b) and 5(c) above; and
- c. the licensee's participation in any specified transaction.

7. The licensee accepts that the arrangements to be known as the market health check (when introduced) may be used to verify its compliance with paragraph 5 above.

8. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving the licensee of its obligations under paragraph 6 above to such extent and subject to such conditions as may be specified in those directions.

9. For the purposes of this condition:

WIA activities	means activities in England which are regulated under the Water Industry Act 1991;
market participant	means (a) a licensed provider or (b) Scottish Water or (c) any entity controlled by a licensed provider or Scottish Water;
financial support	means the provision of support to the licensee, or in respect of its liabilities or commitments, through financial means, including but not limited to by means of grants, loans, subsidies or guarantees;
specified transaction	means any transaction which amounts to or facilitates a contravention by the licensee or any

	<p>related undertaking of any obligation or requirement imposed on it by or under:</p> <p>(a) any of articles 101, 102, 106 and 107 of the Treaty on the Functioning of the European Union (or any analogous provision forming part of the law of the United Kingdom);</p> <p>(b) either of the prohibitions contained in section 2 and section 18 of the Competition Act 1998; and/or</p> <p>(c) the Water Act 1989 or the Water Industry Act 1991, including by virtue of</p> <p>(i) any of the conditions included in its instrument of appointment, or (ii) any determination made under such conditions;</p>
related undertaking	<p>in relation to the licensee, means (a) the appointed business of any person holding an appointment under the Water Act 1989 or Water Industry Act 1991 who is under the Control of the same person(s) as the licensee and (b) any other undertaking (including any related supplier) under such common Control;</p>
appointed business	<p>means the business of carrying out the functions of a water undertaker or, as the case may be, a sewerage undertaker and, for the avoidance of doubt, references to the functions of a water undertaker or, as the case may be, a sewerage undertaker, shall include references to the duties imposed on a water undertaker or, as the case may be, a sewerage undertaker;</p>

related supplier	means an undertaking holding a water supply licence issued under section 17A of the Water Industry Act 1991 and/or a sewerage licence issued under 17BA of the Water Industry Act 1991 who is under the Control of the same person(s) as the licensee; and
ultimate controller	means (unless the Commission otherwise agrees) a person who has Control over the licensee, but is not itself subject to the Control of any other person(s).

Standard Condition A10, Market implementation arrangements

1. The licensee shall be party to, and shall comply with all relevant provisions of, the market implementation arrangements.
2. In this condition:

market implementation arrangements	means arrangements made by or under directions issued by the Commission for the purpose of: (a) the establishment and operation of the central market agency; (b) facilitating the making by licensed providers of arrangements with eligible customers in anticipation of the go live date; and (c) related transitional, supplemental and ancillary matters; and
relevant provisions	means any provisions contained in the market implementation arrangements which are expressed as applying to licensed providers, a class or group of licensed providers, or any particular licensed provider.

Standard Condition A11, Compliance with disconnections document

1. The licensee shall comply with the disconnections document, including any requirement thereunder (a) for the Commission's approval or consent, (b) for compliance with directions issued by the Commission, (c) relating to determinations made by the Commission and (d) for compliance with any directions issued by the Commission under paragraph 2 below.
2. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving the licensee of its obligations under paragraph 1 above in respect of such parts of the disconnections document as do not form part of the disconnections code and to such extent as may be specified in those directions and/or providing that the disconnections document shall have effect with or subject to such modifications as are specified in those directions.
3. For the purpose of this condition:

disconnections document	means the document designated as such by or under directions made for that purpose (or any other direction which amends, replaces or supplements, or is made in respect of substantially the same subject matter as those directions); and
disconnections code	means the code made from time to time by the Commission under section 19 of the 2005 Act.

Standard Condition A12, Directions in light of notifiable changes

1. The licensee shall comply with any direction given to it by the Commission under paragraph 2 below.
2. The Commission may, subject to paragraph 4 below, give the licensee one or more directions which require it to take such steps as the Commission considers appropriate.
3. The steps which the licensee may be required to take by directions given under paragraph 2 above may include (but shall not be limited to) steps as regards (a) the exercise of control in relation to the licensee, (b) the direction or management of the licensee's affairs and (c) the scope and conduct of the licensed services.
4. The Commission may only give a direction under this condition in circumstances where, in light of any notifiable change relating to the licensee or its affairs, it considers that it is or may be the case that the licensee no longer satisfies, or is unlikely to continue to satisfy, the adequacy requirement.
5. For the purposes of this condition:

adequacy requirement	means the requirement that, having special regard to the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7 of the 2005 Act and to any other matters specified under that subsection, the licensee is able to perform adequately the activities authorised by its licence; and
notifiable change	means a change, or anticipated change, which the licensee is required to notify to the Commission pursuant to paragraph 6 of standard condition A3.

PART B (STANDARD CONDITIONS APPLYING TO GENERAL WATER SERVICES AND SEWERAGE SERVICES LICENCES)

Standard Condition B1, Duty to provide default services

1. Subject to paragraph 4 below and in accordance with paragraph 2 below, the licensee shall offer terms and conditions for the provision of default services at the default standard to any eligible customer who requests them in respect of any eligible premises. In the event that an eligible customer accepts the terms and conditions so offered, the licensee shall also be obliged to provide the licensed services offered.
2. The licensee shall, in fixing, demanding or recovering charges for the provision of default services at the default standard ensure that such charges do not exceed the default maximum tariff.
3. The licensee shall take appropriate steps to ensure that its customers are, at all relevant times, made aware of its duties to provide default services pursuant to this condition B1. The Commission may (following such consultation as it may consider appropriate) issue directions as to any particular steps to be taken by the licensee at any particular time for the purposes of this paragraph.
4. The licensee shall not be bound by paragraph 1 above where offering terms and conditions for the provision of licensed services to the eligible customer would cause the licensee to be in breach of:
 - (a) the operational code;
 - (b) the market code;
 - (c) the conditions of this licence; or
 - (d) the 2005 Act or any regulations, orders or directions made under the 2005 Act applicable in respect of the provision of licensed services;or where the provision of licensed services to the eligible customer would amount to the making of arrangements for the provision of services to which relevant charges apply, within the meaning of paragraph 2(5) of schedule 3 to the 2005 Act.

5. If, after such period as may be specified by the Commission, the licensee has failed to enter into an agreement with an eligible customer who has made (or is deemed pursuant to paragraph 7 below to have made) a request for an offer of services under paragraph 1 above, the Commission may, on the application of the eligible customer or the licensee, determine any terms and conditions of the agreement in dispute between the licensee and the eligible customer in such manner as the Commission may direct.

6. Insofar as the eligible customer wishes to proceed on the basis determined by the Commission pursuant to paragraph 5 above, the licensee shall forthwith enter into and implement such agreement in accordance with the Commission's determination.

7. The Commission may make a direction specifying that this condition shall cease to have effect from a specified date. In such an instance, this condition shall be suspended and shall cease to have effect in this licence from the date specified in the notice.

8. For the purposes of this condition:

default maximum tariff	means such maximum tariff as the Commission may (following such consultation as the Commission may consider appropriate) by direction designate as applicable to a particular default service or group or class of default services, which direction may be replaced or amended from time to time;
default services	means such relevant services as the Commission may (following such consultation as the Commission may consider appropriate), by direction, designate as such (including but not limited to, by

	reference to scope and/or subject matter), which direction may be replaced or amended from time to time;
default standard	means such standard of performance as the Commission may (following such consultation as the Commission may consider appropriate), by direction, designate as applicable to a particular default service, or group or class of default services, or all of the default services, which direction may, be replaced or amended from time to time; and
relevant services	means licensed services other than services provided by the licensee in connection with a section 29E departure.

Standard Condition B2, Further obligations on charges and related matters

1. The licensee shall:
 - (a) in fixing, demanding or recovering charges for relevant services, and
 - (b) in choosing whether, or on what terms and conditions, to provide relevant services, ensure that no undue preference is shown to, and that there is no undue discrimination against, any eligible customer(s) or any potential eligible customer(s).
2. The licensee shall ensure that, except with the Commission's consent, any relevant arrangements may be terminated by the customer without payment of any penalty on giving not more than twenty business days prior written notice.
3. The licensee shall ensure that, except with the Commission's consent, it is not party at any time from and after 31 July 2021 to any prepayment arrangements.
4. The Commission may, following such consultation as it may consider appropriate, issue directions prescribing circumstances which do or do not amount to undue preference or undue discrimination in any particular case or class of cases for the purposes of paragraph 1 above.
5. The Commission may make a direction specifying that this condition shall cease to have effect from a specified date. In such an instance, this condition shall be suspended and shall cease to have effect in this licence from the date specified in the notice.
6. For the purposes of this condition:

licensee charges	means charges fixed by the licensee pursuant to section 6(1)(a)(ii) or, as the case may be, section 6(3)(a)(ii) of the 2005 Act;
penalty	means any sum payable to, or at the instance of, a licensee or any person designated by it in circumstances where a customer gives notice

	terminating relevant arrangements, in addition to permitted termination charges;
permitted termination charges	means licensee charges accruing in the ordinary course (and not, in whole or in part, as a consequence of, or in connection with, termination of the relevant arrangements) up to the date of termination together with any interest payable under the relevant arrangements in that respect;
prepayment arrangements	means arrangements (made as part of or in connection with relevant arrangements) under which a customer is entitled or bound to pay charges for licensed services (in whole or in part) in advance of the date of delivery of such services;
relevant arrangements	means any arrangements for the provision of licensed services to which the licensee may from time to time be party, including any such arrangements as may be established by or under a transfer made in accordance with section 15 of the 2005 Act; and
relevant services	means licensed services other than services provided by the licensee in connection with a section 29E departure.

Standard licence condition B3, Transition to 'Live' Rateable Values

- 1) The Commission may issue (and may, from time to time, revise) directions making such provision in relation to:
 - (a) the terms and conditions (including as to price) upon which the licensee conducts business with its customers;
 - (b) customer communication activities of the licensee; and
 - (c) the provision (or receipt) of information by the licensee to (or from) other persons, including other licensed providers, Scottish Water, the Central Market Agency and the Commission;as it considers requisite for the purpose of achieving the objective set out in paragraph 2. The Commission shall consult the licensee before issuing (or, as the case may be, revising) any such directions.

- 2) The objective referred to in paragraph 1 is that all RV transition changes occurring during the RV Transition Period in the RV-based charges payable by the licensee to Scottish Water for the provision of services in respect of any particular premises are promptly and fully reflected in the RV-based charges paid by customers during the RV Transition Period for licensed services provided by the licensee in respect of those premises.

- 3) The licensee shall, in fixing, demanding or recovering charges for licensed services or otherwise in carrying on activities related to any of the matters described in paragraph 1, comply with any directions issued by the Commission from time to time under that paragraph. The licensee shall not (alone or in conjunction with any other person) take any steps which are calculated to frustrate or impede the operation of such directions or the achievement of the objective set out in paragraph 2.

- 4) The Commission may (following such consultation as it may consider appropriate) issue directions relieving the licensee of its obligations under paragraph 3 above to such extent, and

subject to such conditions, as may be specified in those directions and/or providing that the provisions of paragraph 3 shall have effect in relation to the licensee with or subject to such modifications as are specified in those directions.

- 5) This condition shall cease to have effect on 31 October 2021, without prejudice to the continuing enforceability of any rights or obligations which may have accrued or otherwise fallen due for performance prior to that date (including any requirement to comply with any direction of the Commission issued prior to that date).

- 6) The Commission may make a direction specifying that this condition shall cease to have effect from a specified date. In such an instance, this condition shall be suspended and shall cease to have effect in this licence from the date specified in the notice.

- 7) For the purposes of this condition:

RV-based charge	means (a) any charge (or component of any charge) for the supply of water to, or (as the case may be) the provision of sewerage services to or the disposal of sewage from, eligible premises which is calculated by reference to the rateable value of the premises and (b) any formula or method (or any component of any formula or method) used to perform such calculation;
RV transition change	means any change made by Scottish Water during the RV Transition Period to any RV-based charge (or to the amount of any such charge) in respect of any eligible premises in order to reflect a change (or expected change) in the rateable value by reference

	to which such charge is calculated (or in the method used by Scottish Water to determine such rateable value); and
RV Transition Period	means the period from 1 February 2018 until 31 March 2021.

Standard licence condition B4, Financial resilience

1. The licensee shall provide to Scottish Water such evidence as it may from time to time require in order to assess the licensee's financial resilience with reference to the financial resilience statement.
2. For the purpose of this condition, the "financial resilience statement" means the statement published from time to time by Scottish Water with reference to this condition and approved by the Commission.
3. This condition shall not have effect in this licence unless (with the licensee's consent) the Commission directs otherwise, in which case it shall have effect in this licence from such date and to such extent as may be specified in such direction.

Standard licence condition B5, Wholesale relief scheme support

1. The licensee shall take all reasonable steps to participate in any relevant wholesale charge deferral scheme in respect of all of its customers while such scheme remains in effect.

2. Except where paragraph 1 of this condition is in effect, the licensee shall:

(a) communicate to its customers in plain and simple terms to explain why it has not consented to that paragraph having effect; and

(b) facilitate any such customer's decision to change its licensed provider (in particular by ensuring no penalty or cost is imposed on such customer as a consequence of such decision);

during the period in which any such relevant wholesale charge deferral scheme remains in effect.

3. For the purpose of this condition:

2021 Wholesale Charge Deferral Scheme	has the meaning ascribed to that expression in the Water Services (Wholesale Charges Relief Schemes) Directions 2020 (as amended and in force from time to time); and
relevant wholesale charge deferral scheme	means 2021 Wholesale Charge Deferral Scheme and any replacement and/or modification thereof.

4. Paragraph 1 of this condition shall not have effect in this licence unless (with the licensee's consent) the Commission directs otherwise, in which case it shall have effect in this licence and from such date and to such extent as may be specified in such direction.

PART C (STANDARD CONDITIONS APPLYING TO SELF-SUPPLY WATER SERVICES AND SEWERAGE SERVICES LICENCES)

Standard Condition C1, Self-supply obligations

1. Subject to paragraph 2 below, the licensee:

- (a) shall ensure that no member of its self-supply group is provided with relevant licensed services by any other licensed provider; and
- (b) shall not provide relevant licensed services to an eligible customer which is not a member of its self-supply group;

and for the purposes of this paragraph 1, "relevant licensed services" means the licensed services which the licensee is authorised to provide by this licence.

2. In relation to paragraph 1 above:

- (a) when an eligible customer joins the licensee's self-supply group, the licensee must commence licensed services to that eligible customer within 20 business days; and
- (b) when an eligible customer leaves the licensee's self-supply group, the licensee may continue to supply licensed services to that eligible customer for a period of 20 business days only, by the end of which time that eligible customer must have switched to a new licensed provider.

3. For the purposes of this condition, "self-supply group" means, in relation to the licensee:
 - (a). the subsidiary undertaking(s) of the licensee (within the meaning of section 258 of the Companies Act 1985), the parent undertaking(s) of the licensee (within the meaning of that section) and the subsidiary undertaking(s) of such parent undertaking(s); or
 - (b). such persons as may be specified (whether by category or otherwise) in directions published by the Commission from time to time.

4. To the extent that Commission has specified the members of a self-supply group in accordance with paragraph 3(b) above, the licensee shall notify the Commission of any change in membership of the self-supply group as soon as practicable after the licensee has become (or should have reasonably become) aware that the change has occurred, or, if earlier, as soon as practicable after the licensee has become aware that the change is likely to occur.

5. This condition shall not have effect in this licence unless the Commission directs otherwise, in which case it shall have effect in this licence from such date and to such extent as may be specified in such direction.

PART D (STANDARD CONDITIONS APPLYING TO SPECIALIST WATER SERVICES AND SEWERAGE SERVICES LICENCES)

Standard Condition D1, Specialist obligations

1. Subject to paragraphs 2 and 3 below, the licensee may only provide licensed services to eligible customers at premises in relation to which a section 29E departure is in effect.

2. Subject to paragraph 3 below, the licensee may, with a view to satisfying paragraph 1 above as soon as reasonably practicable, offer services to an eligible customer in relation to whom a section 29E departure is not in effect (to the extent required by paragraph 1) if:
 - (a) a relevant application in relation to that eligible customer is received by the Commission within 3 months (or such longer period as the Commission may direct) of the date (the "start date") which is the later of (i) the date on which the licensee commenced services to that eligible customer and (ii) the date on which any section 29E departure has ceased to have effect; and
 - (b) such application is granted by the Commission within 12 months (or such longer period as the Commission may direct) of the start date;and, for the purpose of this paragraph 2, a "relevant application" means one or more applications for a section 29E departure which, taken together with any section 29E departure(s) otherwise in effect, would, if granted, allow the licensee to satisfy the requirements of paragraph 1 above.

3. The licensee shall be entitled to continue to provide licensed services in circumstances otherwise prohibited by paragraphs 1 and 2 above for such period (which shall not, except with the Commission's consent, exceed twenty business days) as may be required to terminate the provision of those services. In such circumstances, the licensee shall promptly inform the relevant eligible customer that it should seek the provision of licensed services from another licensed provider.

4. This condition shall not have effect in this licence unless the Commission directs otherwise, in which case it shall have effect in this licence from such date and to such extent as may be specified in such direction.

Standard Condition D2, Further obligations on charges and related matters

1. The licensee shall ensure that, except with the Commission's consent, any relevant arrangements may be terminated by the customer without payment of any penalty on giving not more than twenty business days prior written notice.
2. This condition shall not have effect in this licence unless the Commission directs otherwise, in which case it shall have effect in this licence from such date and to such extent as may be specified in such direction.
3. For the purposes of this condition:

licensee charges	means charges fixed by the licensee pursuant to section 6(1)(a)(ii) or, as the case may be, section 6(3)(a)(ii) of the 2005 Act;
penalty	means any sum payable to, or at the instance of, a licensee or any person designated by it in circumstances where a customer gives notice terminating relevant arrangements, in addition to permitted termination charges;
permitted termination charges	means licensee charges accruing in the ordinary course (and not, in whole or in part, as a consequence of, or in connection with, termination of the relevant arrangements) up to the date of termination together with any interest payable under the relevant arrangements in that respect;
relevant arrangements	means any arrangements for the provision of licensed services to which the licensee may from time to time be party, including any such arrangements as may be established by or under

	a transfer made in accordance with section 15 of the 2005 Act; and
relevant services	means licensed services other than services provided by the licensee in connection with a section 29E departure.

Appendix 2 - Operational principles of the new deferral scheme

The Commission sets out below the guiding principles to support the implementation of the new measures:

Eligibility to the scheme

- Support measures should be targeted at small and medium-sized businesses which are likely to be the most affected customers. The new wholesale deferral scheme should allow licensed providers to apply to Scottish Water for a deferral of future wholesale charges for any non-household premises with a meter size of 25mm or smaller, any unmeasured premises and those premises with surface drainage only.
- The arrangements for the new scheme should allow licensed providers to defer a portion (or all) of the primary wholesale charges for a given customer, depending on the specific support offered at a retail level by each licensed provider to that customer. This scheme should allow licensed providers to provide a like-for-like support to their customers and pass on the benefits from the deferral of wholesale charges to their customers.
- Licensed providers should be able to auto enrol customers on the scheme where they have not paid retail charges or engaged with the licenced provider during COVID, deferring wholesale charges for up to 6 months from the start of the scheme whilst the licensed provider initiates debt recovery processes. Licensed providers should also be able to target customers in greater need. Any customer who is seeking a full deferral of charges from their licensed provider but cannot access it would be able to switch to a new licensed provider (if there is outstanding debt¹ the customer should be allowed to switch only if the incoming licensed provider has agreed to take on the historic debt of the customer).

Ensuring there is no detriment to Scottish Water

- The scheme should only allow for a deferral of charges due from the opening date of the new deferral scheme (which should be the end of May 2021 at the latest) or at a later date depending on the specific circumstances of the customer. Deferrals of charge, however, should not pre-date the start of the new deferral scheme. This will ensure that the scheme is fully auditable and that Scottish Water is not exposed to an unquantified risk.
- Deferrals of charges should be managed by the central market systems to ensure transparency and certainty of settlement. To ensure transparency and clarity of the arrangements, Scottish Water has published its guidance around the new wholesale deferral scheme.
- Customers should not be worse off as a result of the new scheme. Licensed providers should not levy any fees or penalties on any customers in relation to the implementation, exit from and/or operation of the new scheme.
- No detriment to the core business of Scottish Water is made. Scottish Water will charge an annual interest of 3.5% on any deferred charges and may cap the amount that each licensed provider is allowed to defer based on the licensed providers' financial position.

Encouraging transparency and open and honest behaviours

- It is important that all customers can receive the support made available. Licensed providers should, therefore, evidence that they have taken all reasonable and appropriate steps to inform customers pro-actively of the support made available. Notwithstanding the tailored support that each licensed provider will offer its customers, a full deferral of charges should be made available on request by the customer.
- In the event that a licensed provider does not commit to support their customers affected by the pandemic and demonstrate their financial resilience, the Commission plans to take appropriate steps to support customers and protect the core business of Scottish Water.
- To ensure transparency and consistency of approach, Scottish Water will set out its approach to assessing licensed providers' creditworthiness. Credit terms negotiated between Scottish Water and

¹ In line with the Market Code definition of 'outstanding debt'.

licensed providers will be a function of the financial resilience that can be evidenced (on an on-going basis) by a licensed provider.

- The new measures should be transparent and auditable. For licensed providers within the scheme, the Market Health Check (MHC) will be used to audit the operation of the new scheme and licensed providers' financial strength in line with the new arrangements.

Appendix 3 – Draft Directions

The Water Services (Wholesale Charges Relief Schemes) (Amendment) Directions 2021

DIRECTIONS

ISSUED TO SCOTTISH WATER AND TO ALL WATER SERVICES PROVIDERS
AND SEWERAGE SERVICES PROVIDERS

PURSUANT TO

SECTION 11(2) OF THE WATER SERVICES ETC (SCOTLAND) ACT 2005, THE WATER SERVICES
(CODES AND SERVICES) DIRECTIONS 2007 AND THE STANDARD CONDITIONS DETERMINED
UNDER PARAGRAPH 2(2) OF SCHEDULE 2 OF THAT ACT

BY

THE WATER INDUSTRY COMMISSION FOR SCOTLAND

[#] MAY 2021

1. Legal context for these directions

- 1.1. Section 11(2) of the 2005 Act authorises the Commission to give directions of a specific or general nature to Scottish Water or licensed providers in order to secure the participation of licensed providers in the provision of water and sewerage services in an orderly manner and in a manner that is not detrimental to the exercise of Scottish Water's core functions.
- 1.2. Paragraph 8B of the 2007 Directions authorises the Commission (following such consultation as the Commission may consider appropriate) to issue directions providing that any wholesale services agreement to which Scottish Water is party shall have effect with, or subject to, such modifications as are specified in those directions.
- 1.3. Standard condition A7(6) of the standard conditions authorises the Commission (following such consultation as the Commission may consider appropriate) to issue directions providing that any wholesale services agreement to which a licensed provider (in whose license that standard condition is in effect) is party shall have effect with, or subject to, such modifications as are specified in such directions.

- 1.4. These directions are made by the Commission pursuant to the authorities conferred upon it as mentioned above having consulted with Scottish Water, all licensed providers and such other parties as the Commission considers appropriate.
- 1.5. In issuing these directions the Commission is not prevented from issuing further directions, of a general or specific nature, to any person specified above on the same subject matter as these directions or on any other matter which the Commission considers appropriate in accordance with its powers.

2. Citation and interpretation

- 2.1. These directions may be cited as the Water Services (Wholesale Charges Relief Schemes) (Amendment) Directions 2021.
- 2.2. Except as otherwise provided in these directions, words and expressions used in these directions shall have the same meaning as defined for the purposes of the standard conditions or, where appropriate, the wholesale services agreements.
- 2.3. References in these directions to written or in writing include communications by email or other digital or electronic form.
- 2.4. In these directions, unless the context otherwise requires, words and expressions defined in the Water Services (Wholesale Charges Relief Schemes) Directions 2020 (the “**2020 Directions**”) shall have the same meaning when used in these directions.

3. SW Prepayment Suspension

- 3.1. Part 1 of the annex to the 2020 Directions shall be amended in the manner (with deletions shown by way of strike out and additions shown by way of underlining) shown in part A of the annex to these directions.

4. 2021 Wholesale Charge Deferral Scheme

- 4.1. The 2020 Directions shall be amended as provided for in this paragraph 4 in order to reflect the introduction of the new scheme for the deferral of wholesale charges described or referred to in the decision document entitled, “Measures in support of the retail market in light of the current pandemic”, and published by the Commission on 21 May 2021 (the “**2021 Decision Document**”).

Amendment to main body of 2020 Directions

- 4.2. There shall be inserted after the definition of “**2007 Directions**” in sub-paragraph 2.5.1 of the 2020 Directions the following definition:

““**2021 WCDS Amendments**” means, in relation to part 2 of the annex to these directions, the amendments applicable to the 2021 WCDS (with deletions shown by way of strike out and additions shown by way of underlining) in that part of the annex;”.

- 4.3. The definition of **“Schemes”** in sub-paragraph 2.5.7 of the 2020 Directions shall be amended by replacing the word, “the”, where it first appears with the word, “each”, and replacing the word, “either”, with the word, “any”.
- 4.4. The definition of **“SW Charge Deferral”** in sub-paragraph 2.5.10 of the 2020 Directions shall be amended by inserting the word, “(a)”, before the words, “the temporary”, and by replacing the words, “and reflected in the WCDS”, with the words, “(the **“2020 Deferral”**) and (b) the further temporary such deferral (the **“2021 Deferral”**) announced by the Commission on 21 May 2021 (as modified from time to time) and reflected in each WCDS”.
- 4.5. The definition of “Term” in sub-paragraph 2.5.13 of the 2020 Directions shall be amended by replacing the words, “in relation to each Scheme, the period commencing on 24 March 2020”, with the words, “in relation to the PRS and the 2020 WCDS, the period commencing on 24 March 2020 and, in relation to the 2021 WCDS, the period commencing on 1 May 2021”.
- 4.6. The definition of **“WCDS Charges”** in sub-paragraph 2.5.14 of the 2020 Directions shall be amended by adding the words, “without the 2021 WCDS Amendments (in the case of the 2020 Wholesale Charge Deferral Scheme)” after the word, “expression”, and adding at the end of the definition the words, “or with the 2021 WCDS Amendments (in the case of the 2021 Wholesale Charge Deferral Scheme)”.
- 4.7. The definition of **“WCDS Customers”** in sub-paragraph 2.5.15 of the 2020 Directions shall be amended by adding the words, “without the 2021 WCDS Amendments (in the case of the 2020 Wholesale Charge Deferral Scheme)” after the word, “expression”, and adding at the end of the definition the words, “or with the 2021 WCDS Amendments (in the case of the 2021 Wholesale Charge Deferral Scheme)”.
- 4.8. The definition of **“Wholesale Charge Deferral Scheme”** or **“WCDS”** in sub-paragraph 2.5.16 of the 2020 Directions shall be amended by replacing the words, “the scheme, reflecting the SW Charge Deferral”, with the words, “each of (a) the scheme, reflecting the 2020 Deferral (the **“2020 Wholesale Charge Deferral Scheme”** or **“2020 WCDS”**) and (b) the scheme, reflecting the 2021 Deferral (the **“2021 Wholesale Charge Deferral Scheme”** or **“2021 WCDS”**)”.
- 4.9. In paragraph 3 of the 2020 Directions, the words, “the WCDS”, shall be replaced by the words, “a WCDS”, wherever they appear.
- 4.10. The heading to paragraph 5 of the 2020 Directions shall be changed to **“Wholesale Charge Deferral Schemes”** and the heading to sub-paragraph 5.2 thereof shall be changed to **“Overall aim of each WCDS”**.
- 4.11. In sub-paragraph 5.2 of the 2020 Directions, the words, “the WCDS”, shall be replaced with the words, “each WCDS” and the words “without the 2021 WCDS Amendments (in respect of the 2020 Deferral) and in part 2 of the annex to these directions with the 2021 WCDS Amendments (in respect of the 2021 Deferral)” shall be inserted at the end of the sub-paragraph.

4.12. In sub-paragraph 5.3 of the 2020 Directions, the words, “without the 2021 WCDS Amendments (in respect of the 2020 Deferral) and in part 2 of the annex to these directions with the WCDS 2021 Amendments (in respect of the 2021 Deferral)” shall be inserted after the word, “directions”.

Amendment of the annex to the 2020 Directions

4.13. Part 2 of the annex to the 2020 Directions shall be replaced as shown in part B of the annex to these directions.

5. Final provisions

5.1. [These directions will come into force the date on which they are made by the Commission] and will remain in force until varied or revoked by the Commission.

Done at Stirling, [#] May 2020

For and on behalf of the Water Industry Commission for Scotland

..... Alan Sutherland, Chief Executive

ANNEX

Part A: modifications to part 1 of the annex to the 2020 Directions

Part 1 of the annex to the 2020 Directions shall be amended as follows:

“Part 1: Modifications to wholesale services agreements relating to PRS

1. The following new definitions shall be added into Schedule 1 to the wholesale services agreements:

“Term” has the meaning given to that term for the purposes of the PRS in the Water Services (Wholesale Charges Relief Schemes) Directions 2020, as amended by the Water Services (Wholesale Charges Relief Schemes) (Amendment) Directions 2021;

“Wholesale Charge Deferral Schemes” has the meaning given to that expression in the Water Services (Wholesale Charges Relief Schemes) Directions 2020, as amended by the Water Services (Wholesale Charges Relief Schemes) (Amendment) Directions 2021;

“PRS Charges” means all sums prepaid by a Customer to the Licensee in respect of any date during the Term;

2. The following provisions shall be added as a new Clause 8.11 at the end of Clause 8.10 of the wholesale services agreements.

“8.11 Clause 3, Clause 8A and Clause 8 of this Agreement shall be read as amended by the following provisions during the Term and subject always to any reduction in Charges that applies under the Wholesale Charge Deferral Schemes:

- (i) the suspensive condition in Clause 3.4 shall not apply;*
- (ii) Scottish Water shall invoice the Licensee for the Provisional Monthly Charge for each Month not later than the fourteenth Business Day prior to the start of the following Month, to take effect in respect of June 2020 and every Month thereafter during the Term;*
- (iii) the Licensee shall pay Scottish Water such Provisional Monthly Charge by the tenth Business Day prior to the start of the following Month;*
- (iv) interest will accrue under Clause 8.8.2 on Provisional Monthly Charges due and paid under Clauses 8.11 (ii) and (iii) above in respect of the period from the date in Month X when the sums are paid until the end of Month X;*
- (v) interest will also accrue under Clause 8.8.2 on the Provisional Monthly Charges prepaid under Clause 8.2 for the Months of March, April and May 2020; and*
- (vi) late payment interest will not accrue under Clause 8.8.1 on a Provisional Monthly Charge invoiced in accordance with Clause 8.11 (ii) above.”*
- (vii) Scottish Water may, by notification to the Licensee (issued with the approval of the Commission), modify the foregoing provisions of this Part 1, in their application*

to the invoicing and payment of the Provisional Monthly Charge for the Month of [August] 2021 onwards, by (a) deleting the word “following” in sub-paragraphs (ii) and (iii) above, (b) deleting the words “in Month X” where they first occur in sub-paragraph (iv) above, and (c) making such consequential amendment (if any) to the definition of the “Term” in Schedule 1 as Scottish Water may consider necessary in respect of the other modifications in this paragraph (vii).

Part B: replacement of part 2 of the annex to the 2020 Directions

Part 2 of the annex to the 2020 Directions shall be replaced with the following (with the inclusion therein of the revision marking shown on the replacement text):

“Part 2: Modifications to wholesale services agreements relating to WCDS

1. The modifications to the wholesale services agreements set out in this Part 2 shall apply, in respect of any wholesale services agreement, with effect from the date on which the Commission notifies Scottish Water that this should be the case in respect of that wholesale services agreement.
2. The following new definitions shall be added into Schedule 1 to the wholesale services agreements:

“Deferrals Cap” means, at any time during the Term:

- (a) an amount equal to 10% of the aggregate amount of (1) the WCDS Charges in respect of Small and SWD-Only Customers (including Deferred Sums) which are shown in the then-most-recent Settlement Report sent to Scottish Water and the Licensee by the Central Market Agency in respect of the Month X (as defined in Clause 8.3.1) nearest to but preceding the relevant time, and (2) the Deemed Charge for such Month X, or
- (b) such higher amount as Scottish Water may, on the application of the Licensee, approve in writing from time to time in exchange for such credit security as Scottish Water may (with the approval of the Commission) require;

“Deferred Sums” means the amount of WCDS Charges that are deferred under Clause 7.5;

“Deemed Charge” means such amount as Scottish Water shall deem to be appropriate to be invoiced to the Licensee under Clause 7.5 of this Agreement in respect of the Deferred Sums for all WCDS Customers of the Licensee;

“Non-Engaged Customer” means a Customer who, at the time when the Licensee applies for WCDS Approval in respect thereof (the “**application date**”), meets the following requirements:

(a) the Customer is in default in payment to the Licensee of any sum for provision of Services (excluding Trade Effluent Services) at the Non-Engaged Customer's Eligible Premises;

(b) throughout the period since 24 March 2020, the Customer has not engaged with the Licensee in respect of the default;

(c) legal proceedings for recovery of the unpaid sum have been initiated by the Licensee not more than six months prior to the application date and are not yet concluded; and

"Small and SWD-Only ~~WCDS~~ Customers" means all ~~WCDS~~ Customers whose Eligible Premises are (i) metered with a 25mm or smaller chargeable meter size and no chargeable meter size above 25mm on the premises or (ii) unmeasured or (iii) receiving Surface Water Drainage Services only;

"Specified Rate" means interest on the amount of the Deferred Sums in respect of each day falling after the day to which the relevant amount of the Deferred Sums applies until payment of such amount in full at the rate of ~~2.5%~~ 3.5% nominal per annum, such interest to be calculated on a daily basis and compounded annually;

"Term" has the meaning given to that term for the purposes of the 2021 Wholesale Charge Deferral Scheme in the Water Services (Wholesale Charges Relief Schemes) Amendment Directions 2020 2021;

"Undertaking" means a written undertaking (in such form as Scottish Water shall (with the approval of the Commission) specify) from the Licensee to any Customer committing to provide the Customer with benefits through the Licensee's participation in the 2021 Wholesale Charge Deferral Scheme in relation to such day or days falling during the Term as have been applied for by the Customer (or by the Licensee on its behalf);

"WCDS Charges" means all Charges other than Charges for Trade Effluent Services;

"WCDS Customers" means ~~all~~:

(a) all Small and SWD-Only Customers of the Licensee wishing (or who (excluding Non-Engaged Customers) whose payments for supplies under their Customer Contracts are, in as at the Licensee's opinion, would wish) to receive benefits through the Licensee's participation in the Wholesale Charge Deferral Scheme, to whom Undertakings have been provided time when the Licensee applies for WCDS Approval in respect thereof, deferred pursuant to an Undertaking; and

(b) all Non-Engaged Customers,

in each case for so long as such Customers are the subject of WCDS Approvals;

"WCDS Approval" means, in respect of any Customer of the Licensee, such determination as Scottish Water may, pursuant to an application made by the Licensee, make approving such

Customer's entitlement to receive benefits through the Licensee's participation in the Wholesale Charge Deferral Scheme;

"2021 Wholesale Charge Deferral Scheme" has the meaning given to that expression in the Water Services (Wholesale Charges Relief Schemes) (Amendment) Directions ~~2020~~2021;"

3. The following provisions shall be added as a new Clause 7.5 at the end of Clause 7.4 of the wholesale services agreements.

"7.5 To the extent that the Licensee has WCDS Customers during the Term and in respect of such Customers' WCDS Charges only, the payment of the amount of the Charges under this Agreement shall ~~(in exchange for such assignation of rights and/or security as Scottish Water may (with the approval of the Commission) require)~~ be deferred during the Term as follows:

~~(i) for all WCDS Customers, all WCDS Charges levied on a volumetric basis;~~

~~(ii) for Small and SWD-Only WCDS Customers only, 60% of all other WCDS Charges;~~

~~(iii) (i) late payment interest will not accrue under Clause 8.8.1 of this Agreement on any Deferred Sums until the Deferred Sums become due and payable in accordance with Clause 7.6 ~~and~~ or (as the case may be) 7.7;~~

~~(iv) (ii) the deferral shall apply to each day during the Term applied for by the Customer whether falling before, on or after the date of the Undertaking;~~

~~(v) (iii) it shall not be a Licensee Default for the Licensee to fail to pay any Deferred Sums during the period of such deferral; and~~

~~(vi) (iv) notwithstanding the deferral of payment of the Deferred Sums, SW shall in respect of all WCDS Customers, invoice the Licensee for the Deemed Charge for every Month during the Term not later than the fourteenth Business Day prior to the start of the following Month; and~~

~~(v) the amount of Deferred Sums shall not at any time exceed the Deferrals Cap; declaring that, notwithstanding the deferral of the payment of such Deferred Sums, such Deferred Sums shall become due (up to the extent of the Deemed Charge) on the date of the relevant invoice and shall be payable in accordance with Clause 7.6 or, as the case may be, Clause 7.7."~~

4. The following provisions shall be added as a new Clause 7.6 at the end of the new Clause 7.5 of the wholesale services agreements.

"7.6 The Deferred Sums shall (subject to Clause 7.7) become payable by the Licensee to SW for each WCDS Customer together with interest at the Specified Rate no earlier than the date on which the Term ends:

~~(i) in accordance with a payment schedule specified by SW following consultation with the Licensee and approved by the Commission~~

~~(ii) in the case of WCDS Charges levied on a volumetric basis, using no fewer than two meter reads taken after the beginning of the Term at the WCDS Customer's Eligible Premises and submitted to the Central Market Agency in accordance with the Market Code."~~

5. The following provisions shall be added as a new Clause 7.7 at the end of the new Clause 7.6 of the wholesale services agreements:

~~"7.7 In the event that two meter reads are taken at the Eligible Premises of a WCDS Customer (other than a Small and SWD-Only WCDS Customer) after the beginning of the Term and are submitted to the Central Market Agency in accordance with the Market Code:~~

~~(i) such Customer shall no longer be regarded as being the subject of a WCDS Approval for the purpose of this Agreement;~~

~~(ii) the Deferred Sums shall become payable by the Licensee to SW for such Customer together with interest at the Specified Rate in accordance with Clause 8.3 and Clause 8.11(iii)".~~

"7.7 Deferral of Deferred Sums during the Term pursuant to Clause 7.5 shall be subject to the following further provisions:

(a) If a WCDS Customer (excluding a Non-Engaged Customer) agrees with the Licensee that no further charges payable by it to the Licensee under its Customer Contract ("retail charges") should be deferred, such Customer shall, in relation to any further retail charges, no longer be regarded as being the subject of a WCDS Approval for the purpose of this Agreement;

(b) If a WCDS Customer has paid deferred retail charges, or a Non-Engaged Customer has paid the retail charges due by it, such Customer shall no longer be regarded as being the subject of a WCDS Approval for the purpose of this Agreement; and the Deferred Sums shall become payable by the Licensee to Scottish Water for such Customer together with interest at the Specified Rate in accordance with Clause 8.3 and Clause 8.11(iii);

(c) If a Non-Engaged Customer has engaged with the Licensee and agreed extended payment terms in respect of the outstanding retail charges, such Customer shall cease to be a Non-Engaged Customer and shall be re-designated as a WCDS Customer falling within paragraph (a) of the definition of that term;

(d) If, within a period of six months commencing at the start of the Term, the Licensee does not notify Scottish Water under sub-paragraph (e) below that it has agreed extended terms falling within sub-paragraph (c) above with that Customer, such Customer shall no longer be regarded as being the subject of a WCDS Approval for the purpose of this Agreement; and the Deferred Sums shall become payable by the Licensee to Scottish Water for such Customer together with interest at the Specified Rate in accordance with Clause 8.3 and Clause 8.11(iii); and

(e) the Licensee shall promptly notify Scottish Water of the occurrence of any of the events or circumstances referred to in sub-paragraphs (a) to (d) above."

6. The following provisions shall be added as a new Clause 7.8 at the end of the new Clause 7.7 of the wholesale services agreements:

“7.8 Where any Deferred Sums are not paid in accordance with Clause 7.6 or Clause 7.7 and to avoid doubt:

- (i) late payment interest will accrue under Clause 8.8.1 of this Agreement at the rate of 5% per annum rather than 4% per annum; and*
- (ii) failure to pay such amount by the date specified under the payment schedule shall be capable of constituting a Licensee Default.”*

7. The following provisions shall be added as a new Clause 7.9 at the end of the new Clause 7.8 of the wholesale services agreements:

“7.9 Following the occurrence of a Licensee Default under this Agreement, and notwithstanding Clause 8.6.1 thereof:

(a) Scottish Water may, at any time, without notice to the Licensee, set off any liability of the Licensee to Scottish Water under Clause 7.6, 7.7 or 7.8 in respect of Deferred Sums or interest (“Deferred Sums Liabilities”) against any liability of Scottish Water to the Licensee in respect of prepaid wholesale charges; and

(b) the Licensee may at any time, without notice to Scottish Water, set off any liability of Scottish Water to the Licensee in respect of prepaid wholesale charges against any liability of the Licensee to Scottish Water in respect of Deferred Sums Liabilities,

whether either liability is present or future, liquidated or unliquidated. Any exercise by either party of its rights under this Clause 7.9 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

For the avoidance of doubt, termination of this Agreement shall be without prejudice to the Deferred Sums Liabilities.”

8. Paragraph 1 of Schedule 3 to the wholesale services agreements shall be amended by inserting the words, “*the payment schedule referred to in Clause 7.6(i) or in*”, after the words, “*specified in*”.