

Measures in support of the retail market in light of the current pandemic

31 May 2021

The ongoing coronavirus (COVID-19) outbreak is presenting unprecedented challenges to businesses and the wider economy in Scotland. Mindful of its statutory duties to promote the interests of customers, the Commission has consulted on measures in support of non-household customers affected by the pandemic and to ensure that licensed providers are financially robust.

This document summarises responses received to the Commission's consultation on new Directions to support the implementation of the measures and sets out the final Directions. These Directions will come into effect on 01 June 2021.

This document has been sent to:

- All Licensed Providers;
- Scottish Water;
- The Central Market Agency Limited;
- The Scottish Government; and
- Citizens Advice Scotland.

This document is also available on the Commission's website: www.watercommission.co.uk

1. Background

In April 2021, the Commission published a [consultation](#) on the introduction of a new deferral scheme in support of customers affected by the pandemic and new measures to ensure licensed providers are financially resilient.

In May 2021, the Commission issued a response [document](#) setting out the Commission’s decision relating to the implementation of these measures. As part of this document the Commission decided to introduce new voluntary licence conditions that would require licensed providers to:

- Support customers affected by the pandemic through a new deferral scheme; and
- Demonstrate their financial resilience to Scottish Water and the Commission.

The decision document set out specific changes to the level of wholesale pre-payment due to Scottish Water by licensed providers depending on whether licensed providers commit to the new voluntary licence conditions or not.

At the same time the Commission also consulted on Directions in support of these measures and invited stakeholders to provide responses by Friday 28 May.

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. These Directions (made under s.11(2) and other relevant provisions) allow all Wholesale Services Agreements in place between Scottish Water and licensed providers to be modified in line with the published [decision](#) document.

The next section summarises the comments received and sets out the Commission’s response.

2. Representations received

The Commission has received four responses to the consultation. The Commission would like to thank stakeholders for responding to the consultation.

The table below summarises the comments received by stakeholders and sets out the Commission’s response.

Issue	Issues	The Commission’s response
Non-engaged customers	Raised concerns that the draft Directions would appear to allow Licensed Providers (LPs) to auto-enrol in the deferral scheme only customers who have not been engaging with, and have not been paying their LP since 24 March 2020 to date i.e. for the entirety of the period (see paragraph a and b under Part B of the definition of ‘non-engaged customer’ of the draft Directions). This would greatly reduce the number of customers auto-enrolled in the scheme.	The Commission wishes to clarify that non-engaged customers can be auto-enrolled into the new deferral scheme regardless of when payment and communication ceased (as long as this occurred after 24 March 2020).
	Raised concerns on the requirement to initiate legal proceedings for any non-paying disengaged customer before a LP can auto-enrol these customers in the deferral scheme (see paragraph c under Part B of the definition of ‘non-engaged customer’ of the draft Directions). This could be disproportionate.	Initiating legal proceedings for non-paying and non-engaging customers was never intended to be a prerequisite for auto-enrolling these customers in the scheme. For clarity we have removed paragraph c under Part B (of the definition of ‘non-engaged customer’) of the final Directions.

Issue	Issues	The Commission's response
Interest payments	Clarification on whether LPs would be allowed to pass the interest costs for deferred charges to their customers.	LPs should not recharge interest costs paid to Scottish Water on deferred charges to its customers. This requirement is consistent with paragraph 3.2.3 of the 2020 Directions, the arrangements put in place for the previous deferral scheme and with the Commission's published operating principles for the scheme.
Other	Clarification about what would happen if a LP committed to the new voluntary licence conditions and defers a portion of wholesale charges, but then fails to sign up formally to the additional licence requirements.	In this scenario, any deferral of wholesale charge would end and customers who were receiving a deferral should be allow to to switch to a new LP.

The new Direction will come into force on 1 June 2021. The Appendix to this document contains a tracked changed version of the Directions in light of the comments raised and a clean version of the final Directions.

The Commission will continue to work alongside Scottish Water and the Central Market Agency on the implementation of the measures set out in this document.

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

31 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 (as sub-paragraph 2.5.2, with the subsequent sub-paragraphs renumbered accordingly):

“**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 on 1 June 2021 and will remain in force until varied or revoked by the Commission.

Done at Stirling, 31 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) ~~SW~~ 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 ~~SW~~ 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.”; and*
- 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; and

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

"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, which are the subject of a WCDS Approval;

"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 2021 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 20202021.”

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, Scottish Water 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 Scottish Water 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 Scottish Water 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(4) or in*”, after the words, “*specified in*”.

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

 31 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 [\(as sub-paragraph 2.5.2, with the subsequent sub-paragraphs renumbered accordingly\)](#):

“**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 on 1 June 2021 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, ~~{#}~~31 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) *SW 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 SW 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; and*
- (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; and

(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, which are the subject of a WCDS Approval;

"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 **2021** 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~~ Scottish Water 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~~ Scottish Water 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~~ Scottish Water 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(4) or in”*, after the words, *“specified in”*.