

The Water Services (Wholesale Charges Relief Schemes) Directions 2020

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

13 MAY 2020

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:
 - 1.4.1. as regards paragraph 3, pursuant to the powers conferred on it by s.11(2) of the 2005 Act;

- 1.4.2. as regards paragraphs 4, 5 and 6 in so far as applicable to Scottish Water, pursuant to the powers conferred on it by paragraph 8B of the 2007 Directions;
- 1.4.3. as regards paragraphs 4, 5 and 6 in so far as applicable to licensed providers, pursuant to the powers conferred on it by standard condition A7(6) of the standard conditions;
- 1.4.4. otherwise, in the exercise of each of those powers;

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, commencement and interpretation

- 2.1. These directions may be cited as the Water Services (Wholesale Charges Relief Schemes) Directions 2020.
- 2.2. These directions will come into force on 14 May 2020 and will remain in force until varied or revoked by the Commission.
- 2.3. 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.
- 2.4. References in these directions to written or in writing include communications by email or other digital or electronic form.
- 2.5. In these directions, unless the context otherwise requires:
 - 2.5.1. “**2007 Directions**” means The Water Services (Codes and Services) Directions 2007, made pursuant to s.11(2) of the 2005 Act, as amended from time to time;
 - 2.5.2. “**core functions**” means Scottish Water's core functions as defined in section 70(2) of the 2002 Act;
 - 2.5.3. “**Deferred Sums**” has the meaning given to that expression in paragraph 1 of part 2 of the annex to these directions;
 - 2.5.4. “**market code**” means the code designated by the Commission as the market code in force from time to time;
 - 2.5.5. “**Prepayment Refund Scheme**” or “**PRS**” means the scheme for licensed providers to extend the benefit of the SW Prepayment Suspension to their customers pursuant to paragraphs 3 and 4 below;
 - 2.5.6. “**PRS Charges**” has the meaning given to that expression in paragraph 1 of part 1 of the annex to these directions;

- 2.5.7. “**Schemes**” means the Wholesale Charge Deferral Scheme and the Prepayment Refund Scheme and “**Scheme**” shall be construed as a reference to either of them as the context requires;
- 2.5.8. “**SPID**” has the meaning given to that expression in the market code;
- 2.5.9. “**standard conditions**” means the standard conditions determined by the Commission under paragraph 2(2) of schedule 2 to the 2005 Act and as in force from time to time;
- 2.5.10. “**SW Charge Deferral**” means the temporary deferral by Scottish Water of the obligation to pay certain charges falling due under the wholesale services agreements initially announced by the Commission on 4 May 2020 (as modified from time to time) and reflected in the WCDS;
- 2.5.11. “**SW Commitments**” means the SW Charge Deferral and the SW Prepayment Suspension;
- 2.5.12. “**SW Prepayment Suspension**” means the temporary suspension by Scottish Water of the requirement to prepay charges under the wholesale services agreements initially announced by Scottish Water on 20 March 2020 (as modified from time to time);
- 2.5.13. “**Term**” means, in relation to each Scheme, the period commencing on 24 March 2020 and ending on such date as shall be notified by the Commission (which may be different in relation to each Scheme);
- 2.5.14. “**WCDS Charges**” has the meaning given to that expression in paragraph 1 of part 2 of the annex to these directions;
- 2.5.15. “**WCDS Customers**” has the meaning given to that expression in paragraph 1 of part 2 of the annex to these directions; and
- 2.5.16. “**Wholesale Charge Deferral Scheme**” or “**WCDS**” means the scheme, reflecting the SW Charge Deferral, providing for licensed providers to extend the benefit of the SW Charge Deferral to their customers established pursuant to paragraphs 3 and 5 below.

3. Directions in respect of the Schemes

- 3.1. Scottish Water and licensed providers shall use all reasonable endeavours:
- 3.1.1. to facilitate the effective operation of the Schemes; and
- 3.1.2. to ensure that customers’ ability to change their licensed provider is not impeded by virtue of them receiving benefits under either of the Schemes.
- 3.2. Without prejudice to paragraph 3.1, licensed providers:
- 3.2.1. shall take all reasonable steps to publicise the benefits available to customers under the SW Commitments and the Schemes;
- 3.2.2. shall ensure that customers promptly receive the full enjoyment of the benefits available to them under the SW Commitments and the Schemes;

- 3.2.3. shall not render or apply any fee, charge or levy (including any requirement to pay interest) to or on any of their customers in relation to the implementation, operation and/or winding down of (or any withdrawal or removal from) the Schemes;
 - 3.2.4. shall, to the extent that they continue to hold any PRS Charges, refund them to the relevant customers or (save to the extent not reasonably practicable) provide the Commission with satisfactory evidence that such customers (having been made aware of the benefits available under the PRS) do not wish those amounts returned to them;
 - 3.2.5. shall ensure all applications by customers to receive benefits under the WCDS are promptly processed by them;
 - 3.2.6. may participate in the WCDS in respect of customers who have not applied to them to receive benefits under the WCDS where this would not cause detriment to such customers;
 - 3.2.7. shall ensure that any customer payments deferred by them during the operation of the WCDS are subsequently collected according to a timetable consistent with that for the collection by Scottish Water of sums deferred under the WCDS;
 - 3.2.8. shall, in relation to any withdrawal or removal from the WCDS in respect of a customer, promptly submit the required data item under the market code to revert the vacant status of the customer's SPID to "false" (unless such SPID has, in fact, fallen vacant); and
 - 3.2.9. shall promptly provide to Scottish Water all information reasonably required by it in relation to the implementation and/or operation of the Schemes.
- 3.3. Without prejudice to paragraph 3.1, Scottish Water shall, whilst the Schemes (or either of them) remain in effect, consult with the Commission before amending, withdrawing or extending the SW Commitments.
- 3.4. Scottish Water and licensed providers shall promptly provide to the Commission and any person specified by it any information requested by it (or such person) for any purpose connected with the effective operation of the Schemes.

4. Prepayment Refund Scheme

- 4.1. The Prepayment Refund Scheme shall operate as set out in paragraph 3 above and this paragraph 4, or as otherwise directed by the Commission pursuant to paragraph 1.5 of these directions.

Overall aim of the PRS

- 4.2. The Commission hereby notifies Scottish Water and licensed providers that the aim of the PRS is to ensure that licensed providers extend the benefit of the SW Prepayment Suspension to their customers on the basis envisaged in these directions including in part 1 of the annex to these directions.

Directions to modify wholesale services agreements

- 4.3. Each wholesale services agreement shall be deemed to include, and be read as amended by, the provisions contained in part 1 of the annex to these directions in relation to each licensed provider

subject always to any reduction in wholesale charges that applies under the Wholesale Charge Deferral Scheme.

Reinstatement of existing terms under wholesale services agreements

- 4.4. Scottish Water shall provide each licensed provider with advance notice in writing that the amendments to the wholesale services agreement set out in part 1 of the annex to these directions shall cease to apply for that licensed provider in respect of its Customers from the date on which the Term ends.

5. Wholesale Charge Deferral Scheme

- 5.1. The Wholesale Charge Deferral Scheme shall operate as set out in paragraph 3 above and this paragraph 5, or as otherwise directed by the Commission pursuant to paragraph 1.5 of these directions.

Overall aim of the WCDS

- 5.2. The Commission hereby notifies Scottish Water and licensed providers that the aim of the WCDS is to ensure that licensed providers extend the benefit of the SW Charge Deferral to their customers on the basis envisaged in these directions including in part 2 of the annex to these directions.

Directions to modify wholesale services agreements

- 5.3. Each wholesale services agreement shall be deemed to include, and be read as amended by, the provisions contained in part 2 of the annex to these directions in relation to each licensed provider:
- 5.3.1. if and to the extent that it has WCDS Customers during the term;
- 5.3.2. in respect of WCDS Charges only.

Reinstatement of existing terms under wholesale services agreements

- 5.4. Scottish Water shall provide each licensed provider with advance notice in writing that the amendments to the wholesale services agreement set out in part 2 of the annex to these directions shall cease to apply for that licensed provider in respect of its WCDS Customers from the date on which the Terms ends.

6. Other directions in respect of wholesale services agreements

- 6.1. Save as otherwise directed by the Commission, every wholesale services agreement shall have effect subject to any further modifications which are consequential on the modifications made under paragraphs 4 and/or 5.

Done at Stirling, 13 May 2020

For and on behalf of the Water Industry Commission for Scotland

..... Alan Sutherland, Chief Executive

ANNEX**Preliminary**

References in this Annex to Clauses are to be construed as references to clauses in a wholesale services agreement.

Part 1: Modifications to wholesale services agreements relating to PRS

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

“Term” has the meaning given to that term in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;

“Wholesale Charge Deferral Scheme” has the meaning given to that expression in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;

“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 Scheme:

- (i) the suspensive condition in Clause 3.4 shall not apply;*
- (ii) SW 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 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.*

Part 2: Modifications to wholesale services agreements relating to WCDS

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

“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;

“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% nominal per annum, such interest to be calculated on a daily basis and compounded annually;

“Term” has the meaning given to that term in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;

“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 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 Customers of the Licensee wishing (or who, in 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 and 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;

“Wholesale Charge Deferral Scheme” has the meaning given to that expression in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;”

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

“7.5 To the extent that the Licensee has WCDS Customers during the Term and in respect of 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) *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 7.7;*
- (iv) *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) *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) *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;*

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 Clauses 7.6 or, as the case may be, Clause 7.7."

3. 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; and*
- (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."*

4. 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)".*

5. 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.”*

6. 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”*.