

The Water Services (Codes and Services) Directions 2007

DIRECTIONS ISSUED TO SCOTTISH WATER

PURSUANT TO SECTION 11(2) OF THE
WATER SERVICES ETC (SCOTLAND) ACT 2005

BY

THE WATER INDUSTRY COMMISSION
FOR SCOTLAND

26 September 2007¹

1. Statutory background to the directions

- A. In exercise of its functions under section 11(2) of the 2005 Act, and having consulted Scottish Water, the Commission hereby issues these directions of a general nature to Scottish Water for the purposes of securing the participation in an orderly manner and in a manner that is not detrimental to the exercise of Scottish Water's core functions, of licensed providers in the provision of licensed services.
- B. In issuing these directions the Commission is not prevented from issuing further directions, of a general or specific nature, to Scottish Water, or any other person, 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

¹ As amended by the Water Services (Codes and Services) Amendment Directions 2007 (6 December 2007) and as amended by the Water Services (Codes and Services) Amendment Directions 2009 (12 March 2009).

- A. These directions may be cited as the Water Services (Codes and Services) Directions 2007.
- B. These directions will come into force on the date on which they are made and will remain in force until varied or revoked by the Commission.
- C. 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.
- D. In these directions, unless the context otherwise requires:

Term	Meaning
core functions	means Scottish Water's core functions as defined in section 70(2) of the 2002 Act;
core industry document	means any of the market code, the operational code and each wholesale services agreement;
licence compliance functions	means the functions of the Commission under section 8 of the 2005 Act, together with the powers conferred on the Commission under paragraphs 5 to 11 of schedule 2 to the 2005 Act;
prospective licensed provider	means a person who has made an application to the Commission for a water services or sewerage services licence;
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.

3. Directions in respect of the market code

- A. The document entitled "Market Code" and signed on behalf of the Commission as relative to these directions is hereby designated for the purposes of these directions as the market code in force for the time being. The market code so designated shall enter into full force and effect, subject to and in accordance with its terms, on the date of these directions (which date shall be the 'market code effective date' for the purposes of the standard conditions.
- B. The purpose of the market code is to secure the achievement of the objectives set out in paragraph 1 of the schedule to these directions having regard to the relevant principles as set out in paragraph 3 of the schedule to these directions.

4. Directions to comply with the market code

- A. Scottish Water 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 4B below.
- B. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving Scottish Water of its obligations under paragraph 4A 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.

5. Directions in respect of the operational code

- A. The operational code designated as being the operational code in force by paragraph C of direction 3 of the Water Services (Codes and Services) Directions 2006 is hereby repealed and shall, subject to the preservation of any rights and/or liabilities accrued in respect of that operational code, cease to have effect on the date of these directions.

- B. The document entitled "Operational Code" and signed on behalf of the Commission as relative to these directions is hereby designated for the purposes of these directions as the operational code in force for the time being. The operational code so designated shall enter into full force and effect, subject to and in accordance with its terms, on the date of these directions (which date shall be the 'operational code effective date' for the purposes of the standard conditions).
- C. The purpose of the operational code is to secure the achievement of the objectives set out in paragraph 2 of the schedule to these directions having regard to the relevant principles as set out in paragraph 3 of the schedule to these directions.
- D. Scottish Water shall:
- (a) send a copy of the operational code and each revision of it to the Commission and all licensed providers;
 - (b) promptly publish the operational code and each revision of it in such manner as shall be best calculated to bring the relevant information to the attention of all eligible customers and otherwise as the Commission may direct; and
 - (c) give or send a copy of the operational code and each revision of it to any person who requests the same, subject only to payment of such reasonable fee as the licensee may require (not exceeding such amount (if any) as the Commission may specify).

6. Direction to comply with the operational code

- A. Scottish Water 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 6B below.

- B. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving Scottish Water of its obligations under paragraph 6A 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.

7. Directions in respect of wholesale services agreements

- A. Scottish Water shall enter into negotiations with any prospective licensed provider who is in contemplation of entering into a wholesale services agreement when requested by that person. In so doing, Scottish Water shall have regard to any guidance or statement of policy issued by the Commission.
- B. Scottish Water 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.
- C. The Commission's approval or consent under paragraph 7B above may include requirements as to provisions to be included in the relevant wholesale services 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 8B below.
- D. Scottish Water shall supply to the Commission, in connection with any request for approval or consent made pursuant to paragraph 7B above, with such information as the Commission may require.

8. Direction to comply with wholesale services agreements

- A. Scottish Water shall comply with each 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 8B below.

- B. The Commission may (following such consultation as the Commission may consider appropriate) 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.

9. Directions in respect of review and amendment of, and taking of action under, core industry documents etc

- A. Scottish Water shall not make or agree to the making of any amendment to a core industry document except where such amendment is made in accordance with the requirements set out in paragraph 4 of the schedule to these directions. Scottish Water shall also exercise all powers available to it to procure that those requirements are implemented and complied with in all respects.
- B. Scottish Water shall act promptly when taking any action it is required to take under the core industry documents, these or any other directions issued (or to be issued) by the Commission under section 11 of the 2005 Act or the disconnections document (as hereinafter defined).

10. Directions in respect of designated services

- A. Scottish Water shall take all such steps within its power as are necessary to facilitate the provision by licensed providers of designated services (within the meaning of the standard conditions).
- B. Without prejudice to the generality of paragraph 10A above, Scottish Water shall supply water, provide sewerage or dispose of sewage, in each case to the extent required to permit the provision of designated services, on the terms and conditions included in the wholesale services agreement between it and the provider of such services (or on such other terms and conditions as Scottish Water may, with the approval of the Commission, agree for that purpose).

11. Directions to comply with conditions of section 29E departure

- A. Scottish Water shall comply with any condition imposed by the Commission in relation to it under section 29E(3) of the 2002 Act.

12. Directions in respect of the disconnections document

- A. The document entitled "Disconnections Document", published by the Commission on 6 December 2007, is hereby designated for the purposes of these directions as the disconnections document for the time being.

13. Directions to comply with the disconnections document

- A. Scottish Water 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 13B below.
- B. The Commission may (following such consultation as the Commission may consider appropriate) issue directions relieving Scottish Water of its obligations under paragraph 13A 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.

13A. Directions in relation to licence compliance functions

- A. Scottish Water shall co-operate with the Commission in relation to the exercise of the Commission's licence compliance functions and shall, without prejudice to the foregoing generality, furnish 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 it may require) in relation to the exercise of such functions.

14. Revocation, savings and transitional provisions

- A. The Water Services (Codes and Services) Directions 2006 are hereby revoked.

- B. The revocation under paragraph 14A above is without prejudice to any rights or obligations which may have accrued in respect of any period prior to revocation.

Done at Stirling, 26 September 2007

For and on behalf of the Water Industry Commission for Scotland

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Alan Sutherland, Chief Executive

SCHEDULE

1. Objectives of the market code

The objectives of the market code shall be:

- a. To enable the registration of data concerning eligible customers or eligible premises which is or may be relevant to the provision of licensed services;
- b. To enable the transfer of eligible customers from one licensed provider to another;
- c. To enable the calculation of charges to be recovered by Scottish Water from licensed providers;
- d. To make provision in respect of the amendment of the operational code; and
- e. To make provision for any related transitional, supplemental and ancillary matters.

2. Objectives of the operational code

The objectives of the operational code shall be:

- a. To establish operational processes which facilitate the performance by Scottish Water and licensed providers of their respective functions in relation to the provision of licensed services; and
- b. To make provision for any related transitional, supplemental and ancillary matters.

3. The principles

These are the principles which have been established by the Commission in relation to the core industry documents:-

- a. **proportionality** – the rules and arrangements established by or under each core industry document should be proportionate within the context of their respective objectives; in particular, those established by the market code should be proportionate to the size of the market for the provision of licensed services and the anticipated number and frequency of transfers of eligible customers for the provision of licensed services from one licensed provider to another;
- b. **transparency** – the rules and arrangements established by or under each core industry document should be concise, clearly expressed, well structured and readily accessible to both existing and prospective licensed providers;
- c. **simplicity, cost effectiveness and security** – the systems and processes established by or under the market code and operational code should be as straight forward and as economical as possible (whilst being capable of development over time) and should contain appropriate data integrity and security controls;
- d. **non-exclusivity** – the rules and arrangements established by or under the market code should be sufficiently clear, simple and cost effective, to support the majority of trading activity in the market for the provision of licensed services whilst allowing for relevant identified activities to be carried out, on a bilateral basis, outwith the scope of the market code;
- e. **barriers to entry** – the rules and/or arrangements established by or under each core industry document should not create barriers to entry in respect of the market for the provision of licensed services.

- f. **customer contact** – the rules and arrangements established by or under the operational code should ensure that, save in exceptional circumstances, the primary contact with each eligible customer should be interfaced through the relevant licensed provider;
- g. **non-discrimination** – the rules and/or arrangements established by or under each core industry document should not unduly discriminate, or create undue discrimination, between licensed providers; and
- h. **core functions** – the rules and/or arrangements established by or under each core industry document should not be detrimental to the exercise of Scottish Water's core functions;

and (for the purpose of paragraph 3a above) the objective of each wholesale services agreement shall be taken to be the establishment of terms and conditions that are to apply as between Scottish Water and a licensed provider for the supply of water, or, as the case may be, the provision of sewerage to, or disposal of sewage from, premises in accordance with section 16 of the 2005 Act.

4. **Requirements for amendments**

- a. None of the core industry documents may be amended so as to (i) make provision for a matter not falling within the scope of the objectives (if any) specified for such document by these directions or (ii) prevent or restrict the application of the requirements of this paragraph 4.
- b. Subject to paragraph 4d below, no core industry document may be amended unless (i) a written proposal to make such amendment has been provided to the Commission and (ii) the Commission has given its written consent to such proposal.
- c. The Commission shall be deemed to have given its consent under paragraph 4b above if it fails, within such period after receipt of the proposed amendment

(being not less than thirty days) as may be specified in the core industry document, to object to the making of such amendment (i) as inconsistent with one or more of the principles established in relation to such document by paragraph 3 of this schedule or (ii) as not being permitted in terms of paragraph 4(a) above.

- d. The Commission shall be entitled to require, at any time prior to the relevant date, the amendment of any core industry document to the extent that it considers that the making of such amendment (i) is necessary in the interests of securing the orderly participation of licensed providers in the provision of licensed services and (ii) would be consistent with the principles set out in paragraph 3 of this schedule in respect of such document.

- e. For the purposes of paragraph 4d above, the expression "relevant date" means, in relation to any core industry document, 1 April 2009 or such other date as may (following such consultation as the Commission may consider appropriate) be determined in relation to such document by or under a direction issued by the Commission.