

Market Review: Improving the Market Framework

April 2020

In September 2018 the Commission published a notice setting out its intention to carry out a comprehensive review of the non-household retail market and providing an indicative timeline and scope for the review.

As part of that review, this document sets out the Commission's policy decisions on certain measures to improve the market framework. This document includes policy decisions on:

- Changes to the licence application policy guidance;
- Measures in support of a level playing field in the market;
- Measures to implement Market Health Checks; and
- Measures on mergers and acquisitions between licensed providers.

In order to give effect to this policy decision, the Commission is proposing to:

- Amend Standard Licence Condition A9 to introduce measures in support of a level playing field in the market
- Promote a Commission Change to the Market Code to introduce measures relating to mergers and acquisitions to facilitate the transfer of customer books.

The appendix to this document sets out the detailed drafting of all the market documents.

The Commission will also share an updated Licence Application Guidance Policy amended to take account of the decisions in this paper with stakeholders separately.

The Commission has also identified a small administrative amendment to the Standard Licence Conditions to take account of the exit of the UK from the European Union and is now consulting on this change.

Under paragraph 2(5) of Schedule 2 to the Water Services etc. (Scotland) Act 2005, the Commission may modify Standard Licence Conditions. Before making any modifications, the Commission must give notice of the proposal and give stakeholders an opportunity to comment. This document serves as notice under the 2005 Act.

The Commission invites comments on each of the implementing documents including the changes to the Standard Licence Conditions. Comments should be sent by 1 June 2020 to competition@watercommission.co.uk

This document has been sent to:

- All Licensed Providers participating in the Scottish water market;
- 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. Licence application process

1.1 Consultation

When assessing a licence application for the competitive market in Scotland under the Water Services etc. Scotland Act 2005 (the Act), the Commission must be satisfied that any applicant has the ability to perform adequately the activities authorised by the licences¹. The Commission also wishes to ensure that its information requirements are proportionate and continue to be useful in carrying out the assessment of a licence applicant against the requirements in the Act.

To ensure it can make a proper and robust assessment of a licence application, the Commission has [consulted](#) on and [published](#) an initial decision that required licensed providers to:

- undertake a certification as part of the CMA Assurance Process which will be funded on a cost-reflective basis by the applicant;
- undertake a Market Health Check (MHC) within twelve months of commencing trading;
- cease to require a business plan and financial forecasts in support of an applicant's business plan; and
- provide a written statement of compliance with all relevant regulations and licence conditions.

1.2 Policy decision

The Commission has now reviewed its initial decision in light of the other changes being considered within the scope of its market review. The Commission now confirms its policy decision as follows:

- All new applicants will be required to provide a written statement to the Commission explaining how they plan to actively participate in the market and how they will live by the principles of Ethical Business Practice in the way they interact with customers, the Commission and other stakeholders.
- The CMA Assurance Process will be amended to ensure that any new licence applicants can evidence that they have a good understanding of all relevant market code obligations by undertaking a formal certification at the licence application stage. This certification will form part of the CMA Assurance Process and will have to be completed successfully by the applicant prior to any licence being granted. Appendix 1 to this paper contains an amended version of the Market Code (Part 2, 2.1.3). The Commission will work with the CMA on any further necessary change to Market Code Subsidiary Documents.
- The certification will be funded on a cost-reflective basis by the applicant.
- The Commission will update the information requirements at the licence application stage and cease to require a business plan in support of an applicant's business plan. Instead, the Commission will request additional information on the licensed provider's plans to serve new customers. The Commission will share with licensed providers an updated version of the licence application guidance document in line with this policy decision.

¹ Section 7(1) of the Act.

- New licensees will be required to participate in a MHC within twelve months of the later of the date of granting the licence or the date of appointment of the Reporter responsible for undertaking the MHC.
- The Commission may impose transitional requirements on the licensed provider's trading activity, capping the number of new Supply Points they can register, where the licensed provider failed to undertake a MHC or to address the issues identified at the MHC within the agreed timescales. The Commission will exercise its judgement in a proportionate manner and on a case-by-case basis.
- Licensed providers will be charged for the additional costs that will be incurred in carrying out a MHC. The costs of the MHC will vary depending on the resources required, which will be a function of the size of the business and the number of customers served at the time of the MHC. The Commission will consult further on the required steps of the MHC in due course.

2. Measures to implement Market Health Checks in the retail market

2.1 Consultation and Initial Decision

In line with the principles of Ethical Business Regulation and its primary duties to promote the interests of customers and an orderly functioning of the market, the Commission consulted on initial proposals in its July 2019 [consultation](#). In order to support an effective market that continues to deliver benefits to customers and to incentivise the right behaviours by market participants the Commission proposed to implement annual Market Health Checks (MHC), which would be carried out by an independent reporter.

Following receipt and consideration of feedback received from stakeholders, the Commission [published](#) an initial decision in September 2019 confirming its intention that there will be a MHC instead of a more traditional market audit.

Since the publication of its consultation response the Commission has engaged with market participants through a workshop and has further developed its thinking.

2.2 Policy decision and implementation

The Commission now confirms that it does not intend to undertake a Market Audit and proposes to rely on the MHC process instead of implementing a traditional auditing approach. This approach is in line with the principles of Ethical Business Regulation and will facilitate ethical and fair behaviour in the market and support an open culture amongst market participants.

The Commission has also given further thought to this approach and has decided that for current licensees the MHC should not be compulsory. Licensed providers should rather, be given the option to take part in a MHC. This is in line with the principles of EBR² - these proposals are aimed at reducing enforcement actions and encouraging market participants to take pro-active steps that support a well-functioning market.

The Commission has, therefore, decided that the Market Health Check (MHC) for current licensees should be undertaken on the basis of the following principles:

1. Any licensed provider will have the option to subject itself to a MHC the outcome of which should help it to build the trust of customers and other stakeholders in its business.
2. The costs incurred as part of the MHC will be recovered from each licensed provider that opts to participate in a MHC.
3. As noted above, licensed providers who obtain a water and/or sewerage licence after October 2020 will be required to take part in a MHC within 12 months from the date of granting the licence (or if later from the date of appointment of the Reporter responsible for undertaking the MHC). This requirement applies even if the licenced provider has no registered Supply Point in the market.
4. The MHC will be carried out by a reporter, a professional individual appointed by the Commission on the basis of his/her expertise and experience. The Reporter will operate independently and have a duty of care towards the licensed providers and the Commission.
5. The Reporter will be selected through public tender and offer its services for a period of three years with the possibility of a further extension. Given the innovative nature of this MHC the tender will invite participants to develop a detailed methodology and work plan for the MHC.
6. The Reporter will review the service standards offered by licensed providers against their service commitments, including for example their terms and conditions, the Code of Practice or other form of service or price commitment. The Reporter will also review licensed providers' compliance with the licence conditions.
7. At completion of the MHC, participants will obtain a 'kitemark' from the Reporter. This will be published on the Commission's website and on Scotland on Tap.
8. The Reporter will provide a set of recommendations to each participant, who could then use the findings to target improvements in their systems and processes. This would allow market participants to identify and correct weaknesses and could reduce the need for the Commission to pursue enforcement action.
9. Licensed providers will be required to take appropriate steps to rectify any identified weakness depending on the materiality of the issue that is identified during the MHC.
10. The Reporter will not disclose to the Commission information provided by the licensed provider during the MHC. The Reporter will, however, be obliged to disclose to the Commission relevant information in relation to:
 - A licensed provider's behaviour that constitutes (or could constitute) a potential breach of its licence; or
 - A licensed provider's failure to implement remedial actions within reasonable timescales as agreed with the Reporter.
11. In line with the principles of EBP, the Commission encourages an environment of openness and transparency and encourages licensed providers to report pro-actively any irregularities

(both their own and those of other market participants) or any issue (or potential issue) of non-compliance to the Reporter. When setting a timeline for any corrective actions, the Reporter will take into account whether a licensed provider has reported any issue pro-actively to the Reporter at the beginning of the MHC.

12. EBR establishes a supportive and open culture but carries a proportionate and substantial sanction when behaviour is inconsistent with the principles of openness and honesty. The Commission, therefore, could publish the results of the Market Health Check and consider taking enforcement action in cases where licensed providers have not acted in a transparent manner with the Reporter and failed to address the issues identified within the agreed timescales.

The Commission has sought wherever possible to identify further areas where regulation can be optimised in the spirit of EBR. Further details on the Commission's decision in this area can be found at section 3.3. below.

The Commission plans to engage further with licensed providers on the implementation of the MHC process with a view to introducing MHCs in 2021.

3. Measures in support of a level playing field

3.1 Background

As part of its July 2019 market review [consultation](#), the Commission proposed a number of changes to the market framework designed to ensure that licensed providers in Scotland compete on a level playing field.

The Commission also proposed to amend the Standard Licence Conditions, by introducing a set of principles that licensed providers should comply with, designed to ensure that customers are not unfairly disadvantaged by the activities of licensed providers (or their affiliates) in the English market.

3.2 Initial decision

Following receipt and consideration of feedback received from stakeholders, the Commission published its initial [decision](#) document in September 2019. In that initial decision, the Commission indicated that it intended to proceed with implementing its proposals.

The Commission also set out its intention to amend Standard Licence Condition A9 with a requirement for licensed providers to comply with a set of principles designed to ensure that customers are not unfairly disadvantaged by the activities of licensed providers (or their affiliates) in the English market. These principles would be designed to ensure that:

- the business of each licensed provider is operated independently of, and at arms' length from, a related undertaking in the market in England and does not give (or receive) any cross-subsidy to (or from) them;
- the business is financially viable and has an appropriate financial structure having regard to the nature of the Scottish market; and
- the business is operated in such a way as to avoid participating in, or facilitating, any breach of competition law or other similar requirements imposed in relation to those other activities.

3.3 Policy decision and implementation

The Commission has carefully considered the feedback received throughout the consultation process of the market review as a whole. Consistent with the principles of EBR, the Commission has sought wherever possible to identify further areas where regulation can be optimised in the spirit of EBR. For example, this could be done by allowing licensed providers to comply with certain regulatory requirements in a different way, should they be able to demonstrate that they operate their business consistent with EBR principles.

With this in mind, the Commission intends to permit licensed providers to apply for relief from certain regulatory reporting requirements under Standard Licence Condition (SLC) A9 – specifically, the annual compliance statements - provided that they can demonstrate no detriment to customers and consistency with EBR principles. The Commission would expect that licensed providers could justify such applications through high performance in the Market Health Checks. The Commission will issue communications to licensed providers as to the implementation of this policy in due course.

The Commission now confirms its policy decision to implement this change and has prepared a draft amendment to SLCA9. Appendix 2 to this document contains an amendment in track change format to the SLC A9.

The Commission now invites comments on this proposed licence modification. Stakeholders who wish to make representations should do so in line with the instructions set out on the cover page of this decision document.

4. Mergers and acquisitions

4.1 Licensing arrangements

As part of its July 2019 market review [consultation](#), the Commission also proposed changes designed to address the risks to customers associated with a single parent company or companies controlling several licensed providers. The Commission noted that this was a situation that was arising with increasing frequency as a result of market activity across the UK.

The Commission proposed prohibiting licensed providers who are controlled by the same parent company (or companies) from retaining separate licences in the market and suggested that a period of 6 months was allowed from the date of the change of control (or the date of publication of the Commission's policy decision if later) for the consolidation of licences to occur. The Commission also recognised that a complete prohibition may limit customer choice and therefore consulted on an opt in process to allow licensed providers controlled by the same ultimate controller(s) to retain separate licences provided that they are able to demonstrate to the Commission:

1. a clear and sound rationale for retaining separate licences in the market; and
2. that customers (as a whole) would not be worse off as a result of retaining separate licences in the market.

4.2 Bulk transfer of customers

In addition to the above proposals, the Commission also commented on the process that it currently has in place to cater for the bulk transfer of Supply Points. At present that process always requires licensed providers to apply for a licence transfer. Whilst the Commission is satisfied that process

continues to work well, the Commission noted that the Market Code does not currently set out a process for a bulk assignation of Supply Points if a licensed provider wants to transfer its customers in bulk without also transferring its licence. Such a process would clearly be helpful as part of the implementation steps supporting the consolidation of licensed providers referred to above.

The Commission therefore proposed to extend the use of a bulk transfer process to allow a licensed provider who has, for example, sold its customer base to another licensed provider, to transfer these Supply Point in bulk. This process would still require the transferee to take on all rights and obligations relating to the Supply Points, including historic obligations prior to the transfer date. The Commission noted that it wished to ensure that customers are not worse off as a result of a transfer and therefore proposed that:

- the transferor and transferee write to the Commission to request a bulk assignation of Supply Points in advance of transferring the customer book;
- the transferor provides the Commission with a written assurance, signed by its board, that it will write to all affected customers and inform them about the transfer in advance of the transfer date; and
- the transferee provides the Commission with a written assurance signed by its board, that it will offer all transferred customers equivalent terms to those in place prior to the transfer and that the transferee takes on all rights and obligations with respect to the Supply Points, including historic obligations, prior to the transfer date, wherever possible.

Following receipt and consideration of feedback received by stakeholders, the Commission published its initial [decision](#) document in September 2019. In that initial decision, the Commission responded to that feedback, and indicated that it intended to proceed with implementing its proposals.

4.3 Policy decision and implementation

The Commission now confirms its policy decision is to implement these changes and, accordingly, it is proposing amendments to the Market Code (see Appendix 1) which include the following elements:

- a prohibition on holding multiple licences within a single corporate group without express Commission consent; and
- a bulk assignation process requiring Board comfort regarding the information given to customers and the terms they are offered.

Accordingly, the Commission gives notice to all licensed providers that are owned by the same ultimate controller(s):

- that they should now move to consolidate their customer book such that it is served by a single licensed provider with effect from a date no later than 1 April 2021 or 6 months after the relevant change of control occurs which gives rise to two or more licensed providers being controlled by the same ultimate controller (whichever is later); or
- write to the Commission setting out a clear and sound rationale for retaining separate licences in the market and how they consider that customers (as a whole) would not be worse off as a result of retaining separate licences in the market.

5. Ancillary points

The Commission has also been carefully monitoring potential impacts of the UK's withdrawal from the European Union on the market framework. The Commission is, therefore, consulting on a minor amendment to the Standard Licence Conditions in order to cater for this.

The proposed amendment can be found at Appendix 3.

6. Next steps

The Commission plans to implement the policy changes from 1 October 2020 and is seeking stakeholders' views on the drafting of the various policy documents included in the appendix to this document.

Appendix 1 Market Code

1.1 Transfer of Licence(s) and bulk assignation process for Supply Points by a Licensed Provider

1.1.1 Transfer of Licence(s) by a Licensed ProviderGeneral:

Where the Commission has issued notice that it is proposing to consent to the transfer of a Licence from a Licensed Provider (“the LP Transferor”) to another entity (“the LP Transferee”) (“the Proposal to Grant Notice”) then the ~~remaining~~ provisions of ~~this~~ Section 1.54 shall apply and shall supersede and take priority over any conflicting provisions of the Market Code. A copy of the Proposal to Grant Notice shall be sent by the Commission to the CMA.

1.4.2 Admission:

~~Following publication, including but not limited to the sending of notice to the CMA, of the Proposal to Grant Notice and prior to the date specified by the Commission in that Notice as the date on which the Licence transfer is anticipated to take effect (“the Initial Transfer Date”), the CMA shall prepare to admit the LP Transferee as an additional party to the Market Code in accordance with Section 1.3 save that:-~~

- ~~(i) the LP Transferee shall be required to complete the Training Process prior to admission unless the Commission has agreed (in its discretion) to waive the requirement for the LP Transferee to comply with all or any part of the Training Process (save any requirement for self certification which must always remain) such waiver being set out in the Proposal to Grant Notice;~~
- ~~(ii) the LP Transferee shall be required to provide written confirmation to the CMA that it agrees that it shall exercise all of the rights and be responsible and perform all of the duties and obligations of the LP Transferor under the Market Code, including without limitation all accruals and debits arising from the Market Code, with effect from the Transfer Date and whether relating to a date or dates prior to or after the Transfer Date;~~
- ~~(iii) the CMA shall be required to provide the Commission with notice specifying (a) any amounts due and outstanding by the LP Transferor under the Market Code; (b) whether or not the LP Transferee has completed the Training Process (subject to any waiver of all or part of the Training Process by the Commission under Section 1.4.2 (i) above) and (c) whether there are any reasons that the CMA is aware of why the transfer of the Licence should not take effect on the Transfer Date including without limitation any failure to provide the written confirmation required by Section 1.4.2(ii) or a failure to complete the Training Process (including any necessary self certification); such notice to be provided no earlier than two Business Days prior to the end of the period of consultation specified by the Commission in the Proposal to Grant Notice; and~~

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(iv) the CMA and the LP Transferor shall be required to execute a Suspensive Accession Agreement in the form set out in Schedule 4 hereto.

(v) In this section 1.4.2 of the Market Code, "Transfer Date" shall mean the date specified by the Commission when consenting to a Licence transfer as the date on which such Licence transfer shall take effect.

1.4.3 Resignation:

Prior to the Transfer Date, the LP Transferor shall submit a Resignation Notice provided that such notice will not be effective unless and until

(i) the requirements set out in Section 1.3.6 are complied with; and

(iii) all necessary Transfers of Supply Points shall be performed in accordance with Section 1.4.4 below.

1.4.4 Licence Transfer and Bulk Transfer of Supply Points:

At 23.59 hours on the day immediately prior to the Transfer Date, the following provisions shall apply to admit the LP Transferee as an additional party to the Market Code, to effect the resignation of the LP Transferor and to effect the Transfer of all Supply Points Registered to the LP Transferor to the LP Transferee with effect on, from and after the Transfer Date:

(i) the CMA shall admit the LP Transferee as an additional party to the Market Code and shall effect the resignation of the LP Transferor as a party to the Market Code

(iii) Subject to Section 1.4.4(ii), the CMA shall allocate all of the Supply Points that are Registered to the LP Transferor at 23.59 hours on the day immediately prior to the Transfer Date to the LP Transferee with effect on, from and after the Transfer Date, shall Register those Supply Points as so allocated and on the Transfer Date shall provide written confirmation by the end of the day of the Transfer Date that such Transfer has been effected to the LP Transferee, the LP Transferor and Scottish Water;

(iii) In relation to a Transfer under Section 1.4.4(ii), the LP Transferee shall not be required to submit any Transfer Application to the CMA and the CMA, the LP Transferor and the LP Transferee shall not be required to comply with the provisions of CSD 0102 in relation to the Transfer; and

(iv) subject to Section 1.4.4(v) below, the LP Transferee shall become the Licensed Provider for the purposes of the Market Code and the CMA and all Trading Parties shall treat the LP Transferee as the Licensed Provider, ceasing communication with the LP Transferor and directing all communications and processes without interruption to the LP Transferee.

(v) The CMA shall be entitled to continue to communicate with the LP Transferor throughout the day of the Transfer Date as necessary in order to ensure the effective transfer of the Licence.

1.1.2 Consolidation of multiple Licences in the same Group

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Subject to Section 1.4.3, no more than one member of a Licensed Provider's Group may hold a Licence at any time. In the event that more than one member of a Licensed Provider's Group holds a Licence, the relevant Licensed Providers shall procure that their ultimate Parent Undertaking shall elect which member of the Licensed Provider's Group shall continue to hold a Licence ("the continuing LP"). All other Licensed Providers in such Licensed Provider's Group shall transfer all of their Supply Points to the continuing LP, using the process in Sections 1.4.4 and 1.5, by the date six (6) months after the later of:

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- (a) the date that this Section 1.4.2 comes into effect; and
- (b) the date of the event that caused there to be more than one member of such Licensed Provider's Group holding a Licence, which includes but is not limited to a change of control, a sale, a merger, a joint venture or other transfer.

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1.1.3 Exception for retaining multiple Licences in the same Group

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More than one member of a Licensed Provider's Group may hold a Licence at any time where:

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- (a) the ultimate Parent Undertaking of the Licensed Provider's Group gives written notice to the Commission of their wish to retain multiple Licences within the Licensed Provider's Group setting out a clear and robust rationale for retaining multiple Licences and explaining the material benefits to Customers (as a whole) as a result of retaining multiple Licences within the Licensed Provider's Group; and
- (b) this is approved by the Commission (acting in its discretion and subject to any conditions that the Commission considers appropriate).

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1.1.4 Bulk assignation process for all or some of a Licensed Provider's Supply Points

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Any Licensed Provider ("the LP Transferor") may, subject to the remainder of this Section 1.4.4, Transfer to another entity ("the LP Transferee") the registration of all or some of its Supply Points ("the Transferring Supply Points") and all historic obligations and data in relation to the Transferring Supply Points, in the following circumstances:

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(a) the LP Transferor intends to sell or otherwise transfer ownership of all or part of its business and assets;

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(b) the LP Transferor is subject to an Insolvency Event, provided that the relevant insolvency practitioner has agreed to adopt the LP Transferor's contracts with its Customers and the Wholesale Services Agreement, and to transfer such Customer contracts to one or more identified LP Transferees in an orderly manner; or

(c) consolidation of multiple Licenses in the same Licensed Provider's Group is required pursuant to Section 1.4.2.

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but this shall not apply to a Transfer pursuant to Section 5.3 where the Customer has chosen to change Licensed Provider.

In each of the above circumstances:

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(i) the LP Transferor and the LP Transferee shall each provide

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the Commission with a notice requesting the Transfer of the Transferring Supply Points from the LP Transferor to the LP Transferee. The notice shall contain an anticipated date for the Transfer to take place ("the Proposed Transfer Date") and shall be provided to the Commission not less than ~~ix~~130 days in advance of the Proposed Transfer Date.

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- (ii) the LP Transferor shall provide the Commission with written assurance signed by its board that it has or will write to all Customers who have a Transferring Supply Point to inform those Customers about the Transfer.
- (iii) the LP Transferee shall provide the Commission with written assurance signed by its board that it has or will
- (iv) offer all Customers who have a Transferring Supply Point terms and conditions that are the same as, or the equivalent to, those in place prior to the Transfer; and
 - a. assume all rights and obligations with respect to the Transferring Supply Points, including liability for all historic obligations that originated prior to the Transfer Date. Historic obligations that originated prior to the Transfer Date do not require to be assumed by an LP Transferee where the Transfer is carried out pursuant to Section 1.4.4(ii).
 - b. A Transfer under Section 1.4.4, is not valid unless the Commission consents to the Transfer.
 - c. The Commission will only consent to a Transfer under this Section 1.4.4, if it is satisfied that all the requirements of this Section 1.4.4 have been complied with and the LP Transferee has the ability to adequately perform the activities of a Licensed Provider in respect of the Transferring Supply Points.
 - d. As soon as practicable after deciding whether to consent to a Transfer under this Section 1.4.4, the Commission will intimate its decision to the LP Transferor, the LP Transferee and Scottish Water.

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e. Where the Commission has issued notice that it is proposing to consent to the Transfer of the Transferring Supply Points from an LP Transferor to an LP Transferee ("the Proposal to Grant Notice") then the provisions of this Section 1.4, shall apply and shall supersede and take priority over any conflicting provisions of the Market Code. A copy of the Proposal to Grant Notice shall be sent by the Commission to the CMA.

f. In this Section 1.4.4 and in Section 1.5 of the Market Code, "Transfer Date" shall mean the date specified by the Commission in the Proposal to Grant Notice as the date on which such transfer shall take effect.

1.2 Transfer of Licence(s) and bulk assignment of Supply Points: Process

1.2.1 Admission

Following publication of the Proposal to Grant Notice for either a transfer of Licence(s) under Section 1.4.1 or a Transfer of Supply Points under Section 1.4.4 and prior to the Transfer Date, the CMA shall (if the LP Transferee is not already a Licensed Provider) prepare to admit the LP Transferee as an additional party to the Market Code in accordance with Section 1.3 save that:-

(i) the LP Transferee shall be required to complete the Training Process prior to admission unless the Commission has agreed (in its discretion) to waive the requirement for the LP Transferee to comply with all or any part of the Training Process (save any requirement for self-certification which must always remain), such waiver being set out in the relevant Proposal to Grant Notice.

(ii) the LP Transferee shall be required to provide written confirmation to the CMA that it agrees that it shall exercise all of the rights and be responsible and perform all of the duties and obligations of the LP Transferor under the Market Code, including without limitation all

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accruals and debits arising from the Market Code, with effect from the Transfer Date and whether relating to a date or dates prior to or after the Transfer Date. For the avoidance of doubt, for a bulk Transfer this shall relate only to the rights, duties and obligations of the LP Transferor under the Market Code in relation to the Transferring Supply Points.

- (iii) the CMA shall be required to provide the Commission with notice specifying (a) whether or not the LP Transferee has completed the Training Process (subject to any waiver of all or part of the Training Process by the Commission under Section 1.5.1(i) above); and (b) whether there are any reasons that the CMA is aware of why the transfer should not take effect on the Transfer Date, including without limitation any failure to provide the written confirmation required by Section 1.5.1(ii) or a failure to complete the Training Process (including any necessary self-certification); such notice to be provided not less than [x] days in advance of the Transfer Date; and
- (iv) the CMA and the LP Transferee shall be required to execute a Suspensive Accession Agreement in the form set out in Schedule 4 hereto.

1.2.2 Resignation

Where there is a transfer of Licence(s) or a bulk Transfer of all of the LP Transferor's Supply Points, prior to the Transfer Date the LP Transferor shall submit a Resignation Notice provided that such notice will not be effective unless and until:

- (i) the requirements set out in Section 1.3.6 are complied with; and
- (ii) all necessary Transfers of the Transferring Supply Points have been performed in accordance with Section 1.5.4, below.

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1.2.3 CMA activities prior to the Transfer Date

Upon receiving a copy of the relevant Proposal to Grant Notice, the CMA shall:

- (i) provide the LP Transferor with confirmation of any amount due to the CMA and outstanding by the LP Transferor. For the avoidance of doubt, for a bulk Transfer this shall relate only to the outstanding amounts in relation to the Transferring Supply Points;
- (ii) agree with the LP Transferor and the LP Transferee a plan that details how the transfer will be undertaken on the Transfer Date, which shall include a list of all Supply Points subject to the transfer, the Transfer Date, the method by which all relevant Data Items are updated and any admission or resignation required as a result of the transfer; and
- (iii) monitor the implementation and progress of the Transfer against the plan agreed in Section 1.5.3(ii).

1.2.4 Licence Transfer and Bulk assignation of Supply Points

At 23.59 hours on the day immediately prior to the Transfer Date, the following provisions shall apply to admit the LP Transferee as an additional party to the Market Code (if required), to effect the resignation of the LP Transferor (if required) and to effect the transfer of the relevant Supply Points (being all Supply Points or the Transferring Supply Points, as appropriate) Registered to the LP Transferor to the LP Transferee with effect on, from and after the Transfer Date:

- (i) the CMA shall admit the LP Transferee as an additional party to the Market Code (if required) and shall effect the resignation of the LP Transferor as a party to the Market Code (if required).

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(ii) subject to Section 1.5.4(iii), the CMA shall allocate the relevant Supply Points that are Registered to the LP Transferor at 23.59 hours on the day immediately prior to the Transfer Date to the LP Transferee with effect on, from and after the Transfer Date; shall Register those relevant Supply Points as so allocated; and on the Transfer Date shall provide written confirmation by the end of the day of the Transfer Date that such Transfer has been effected to the LP Transferee, the LP Transferor and Scottish Water.

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(iii) in relation to a Transfer under Section 1.5.4(ii), the LP Transferee shall not be required to submit any Transfer Application to the CMA and the CMA, the LP Transferor and the LP Transferee shall not be required to comply with the provisions of CSD 0102 in relation to the Transfer:

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(iv) subject to Section 1.5.4(v), below, the LP Transferee shall become the Licensed Provider of the relevant Supply Points for the purposes of the Market Code and the CMA and all Trading Parties shall treat the LP Transferee as the Licensed Provider of the relevant Supply Points, ceasing communication with the LP Transferor in relation to the relevant Supply Points and directing all communications and processes without interruption to the LP Transferee in respect of the relevant Supply Points; and

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(v) the CMA shall be entitled to continue to communicate with the LP Transferor throughout the day of the Transfer Date as necessary in order to ensure the effective Transfer of the relevant Supply Points.

Part 2: CMA Duties

4.42.1 Scope

4.42.1.1 This Part 2 sets out or refers to the CMA's enduring duties in providing the facilities, resources and services required for the effective implementation of the Market Code.

4.42.1.2 This Part 2 also sets out or refers to the process for the appointment or removal of the body carrying out the duties of the CMA.

4.42.1.3 In carrying out its duties the CMA shall:-

- (i) exercise a reasonable degree of skill and care;
- (ii) act independently of the interests of any market participant or group of market participants;
- (iii) act impartially and show no undue preference in its relationship with market participants;
- (iv) act promptly when taking any action it is required to take; and
- (v) 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.

4.42.1.4 The CMA shall be permitted to sub-contract the performance of its duties and, accordingly, to enter into, manage and enforce such sub-contracts. In sub-contracting any duties, the CMA shall remain liable for the acts, defaults and omissions of its sub-contractors.

Appendix 2 Standard Licence Condition A9

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 [appointeeundertaking](#),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, having due regard to the nature of the Scottish market; and
- d. it does not engage in any specified transaction.

5.6. 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 46 above and;
- b. the licensee's participation in any specified transaction, the licensee's participation in any transaction which amounts to or facilitates a contravention by the licensee or any related appointee of any obligation or requirement imposed on it by or under:
 - c. any of articles 101, 102, 106 and 107 of the Treaty on the Functioning of the European Union;
 - d. either of the prohibitions contained in section 2 and section 18 of the Competition Act 1998; and/or
 - e. b. the Water Act 1989 or the Water Industry Act 1991, including by virtue of (i) any of the conditions included in its instrument of appointment, or (ii) any determination made under such conditions.

7. 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.

6.8. 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; and
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; and-
specified transaction	<p>means any transaction which amounts to or facilitates a contravention by the licensee or any 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 appointee undertaking	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; and
appointed business	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; and
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).

Appendix 3 Standard Licence Condition A1

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

Term	Meaning
	that agreement and cognate expressions shall be construed accordingly;
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 article 3 of Council Regulation 139/2004/EC-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;

Term	Meaning
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 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

Term	Meaning
	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);
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.