

# [[WHOLESALE-RETAIL CODE CHANGE PROPOSAL/ CHARGING CHANGE PROPOSAL

For use by the Panel

<b>Change Proposal Reference</b> <i>(To be completed by the Panel Secretary)</i>	<b>CPW093</b>	Version No	<b>1.0</b>
<b>Type of Change Proposal:</b> <i>(delete as appropriate)</i>	Authority Timetabled Change Proposal		
	<del>Charging Change Proposal</del>		
<b>Submission Date</b>	27 March 2020		
<b>Title:</b> of Change Proposal/Charging Change Proposal	Payment deferral interim measures		
<b>Summary:</b> of Change Proposal/Charging Change Proposal <i>(40 to 50 Words Maximum)</i>	To permit the deferral of payments between Retailers and Wholesalers of a percentage of payments invoiced but not yet due in March and from Settlement in April and May		
<b>General Details of the Proposer</b>			
<b>Name of Proposer</b>	Dan Mason		
Capacity (to submit Change Proposals and Charging Change Proposals – on behalf of a Party, as a Panel member, as the customer representative, or the Market Operator or on behalf of the Authority; or Charging Change Proposals – on behalf of a Wholesaler).	On behalf of the Authority		
<b>Contact Email</b>	Daniel.Mason@ofwat.gov.uk		
<b>Telephone/Mobile</b>	07458 125 674		
<b>The Proposer recommends that this Change Proposal/Charging Change Proposal should initially:</b> <i>(delete as appropriate)</i>			
	Proceed to Recommendation		
<b>Is the change Urgent (Yes/No)?</b> If yes, please provide reason for urgency (if applicable)	Yes. The water market faces unprecedented and pressing cash-flow issues due to late paying customers as a result of the 2020 Covid-19 pandemic.		

<b>Related Documents</b>	
Reference of any associated (Interim) Code Panel Change Proposal/ Charging Change Proposal	
Documents Accompanying Form	
<b>Change Proposal/ Charging Change Proposal Details</b>	
Description of (i) the issue or defect which this Change Proposal seeks to address, or (ii) the modified or new charging method or charging structure required pursuant to this Charging Change Proposal, as required under the Market Arrangements Code Section 6.2.1(b).	
<p><b>Impact of the coronavirus on the business retail market</b></p> <p>In the UK, the outbreak and escalation of coronavirus is already having a profound impact on the lives of customers and communities, and this is likely to be the case for many months. From March 2020 in particular, there has been significant disruption to the activities of many businesses, charities and other non-household customers across the country due to the unprecedented challenge caused by the coronavirus pandemic.</p> <p>The Government has made requests to limit all non-essential contact and for employees to work from home where possible and has made subsequent lock-down announcements requiring many businesses across the UK to close.</p> <p>A High Level Group (HLG) comprising senior representatives from Ofwat, Defra, MOSL, CCWater, Water UK, UKWRC and wholesalers and retailers has met twice to consider the actions that may be required to address the impacts of the coronavirus outbreak on business customers and the Non-Household market.</p> <p><b>The Issue</b></p> <p>This Change Proposal seeks to address the potential risk that, under current circumstances, some business customers may fail to pay their Retailers in a timely manner. The Change Proposal takes account of proposals put forward by Water UK and UKWRC at the HLG to build resilience and provide liquidity in the market in the immediate term through some form of settlement deferral.</p> <p>This Change is an interim measure and further Change Proposal(s) will be required to address liquidity in the market in the medium term.</p>	
Description of the Change Proposal/ Charging Change Proposal, its nature and purpose and (for Change Proposals only) how it is consistent with the Principles and falls within the Objectives noted below, as required under the Market Arrangements Code Section 6.2.1(c).	
The Change Proposal seeks to defer Retailers' obligations to pay a percentage of their charges (50% or otherwise determined by Ofwat) relating to Settlement in April and May for a short period	

to be determined by Ofwat. The proposal also obliges Retailers, to the extent that they are in receipt of payment from their own customers, and can finance their own costs, to pay as much of the deferred charge as they are able, notwithstanding the amount actually invoiced.

The Change Proposal also seeks to suspend a percentage of Retailers' charges (50% or otherwise determined by Ofwat) invoiced but not yet due in March for a period of two months from the due date. This includes delaying default interest and preventing a Retailer becoming a Defaulting Trading Party up to that point.

Finally the Change Proposal also includes provision specifying that provided a Retailer has paid at least half of amounts due to a Wholesaler in March invoices by the due date it will be deemed to have paid everything by that date for the purposes of Alternative Eligible Credit Support.

## Legal Text

### Business Terms

#### Covid-19 Payment deferrals for Settlement in April and May

- 9.1.3 For the purposes of any invoices issued by the Contracting Wholesaler in respect of Settlement Reports produced by the Market Operator in April or May 2020, the amount payable by the Contracting Retailer (including in respect of any Balances) shall be deemed to be 50% of the amount specified as payable by the Contracting Retailer in the relevant Settlement Report (the "Non-Deferred Amount"), with the remaining amount deferred and not invoiced (the "Deferred Amount"). The Deferred Amount shall become payable by the Contracting Retailer and may be invoiced by the Contracting Wholesaler in accordance with a payment schedule notified by the Authority to the Market Operator. For the avoidance of doubt, to the extent that the Contracting Retailer is in receipt of payment from its customers which would enable it to pay in excess of the amount invoiced by the Contracting Wholesaler pursuant to this Section, whilst being able to finance its own operating costs, it should do so.
- 9.1.4 The Authority may, by notice to the Market Operator no later than 28 April 2020 substitute a different Non-Deferred Amount to that specified in section 9.1.3.

#### Covid-19 Payment suspension for payments invoiced but not yet due

- 9.9.2 Subject to 9.9.3, if any sum payable under the Wholesale Contract is not paid at the expiry of the period for payment specified in Section 9 (save as contemplated by Section 9.7.2), then the Party who has failed to make payment shall pay interest on the amount outstanding (both before and after judgment or decree) at the rate of four (4) per cent per annum above the Bank Base Rate, such interest to be calculated from (but excluding) the date of expiry of such period until payment thereof, calculated on a daily basis and compounded annually. The Parties agree that the interest referred to in this Section 9.9.2 provides a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.9.3 The Contracting Wholesaler may only charge a Contracting Retailer interest under 9.9.2 in respect of amounts which first became due under a Wholesale Contract in March 2020 but remain unpaid:
- if the total amount outstanding is greater than the Suspension Percentage of the invoiced amount and

- then only on the outstanding amount in excess of the Suspension Percentage of the invoiced amount.  
This restriction on the charging of interest for amounts first due in March 2020 shall only apply for the period of two Months from the due date.

9.11.8 For the purposes of any Alternative Eligible Credit Support a Contracting Retailer shall be considered to have paid an invoiced amount which first became due in March 2020 by the due date if it has paid at least an amount equal to the Suspension Percentage of that amount by the due date.

Covid-19 limited default classification suspension

10.2 For the purposes of Section 10 of the Business Terms a Contracting Retailer may not be classed as a Defaulting Trading Party in respect of a failure to pay sums which first became due in March 2020 unless the total amount outstanding is greater than the Suspension Percentage of the invoiced amount. This limited default classification suspension shall only apply for the period of two Months from the due date.

### Objectives, Principles and Definitions

“Suspension Percentage” means 50% or such other percentage value as the Authority may notify to the Market Operator.

### Timetable

As an Authority Timetabled Change Proposal table below sets out the required implementation approach.

Change Proposal Timetable	
Stage	Date
Change Proposal raised	27 March 2020
Panel initial consideration and recommendation	27 March 2020
Recommendation Report submitted to the Authority	27 March 2020
Implementation Date	30 March 2020

## Principles and Objectives

Description of the principles and objectives affected by the change proposal on the items below (if applicable) as detailed in Part A of Schedule 1 Part 1: Objectives Principles and Definitions.

Principles	Affected (Y/N)	Description
Efficiency	N	-
Proportionality	Y	This is a temporary deferral of charges to assist Retailers to continue in the market. The deferred amounts are intended to be material enough to facilitate potential

		cashflow impacts in a way which can be borne by both wholesalers and retailers in the immediate term. The proposal takes account of feedback from wholesalers and retailers provided in Ofwat's Call for Input's issued on 20 March 2020.
Transparency	N	-
Simplicity, cost-effectiveness and security	Y	These are limited changes to temporarily manage Retailers' cashflow problems
Barriers to entry	N	-
Non-discrimination	N	-
Customer participation	N	-
Customer contact	N	-
Seamless markets	N	-
No limit on upstream competition	N	-
Business Terms Objectives	Y	By making provision for interim measures to assist Retailers manage cashflow issues
Operational Terms Objectives	N	-
Market Terms Objectives	N	-
Description of the impact of the Change Proposal/ Charging Change Proposal on the following items, as required under the Market Arrangements Code Sections 6.2.1 (f), (g) and (h).		
Configured Item	Impacted (Y/N)	Description
Schedule 1: Terms and Conditions of a Wholesale Contract	N	-
Wholesale-Retail Code, Schedule 1 Part 1 (Objectives, Definitions and Principles)	Y	Definition of "Suspension Percentage"
Wholesale-Retail Code, Schedule 1 Part 2 (Business Terms)	Y	Changes to Section 9. Billing and terms of payment

Wholesale-Retail Code, Schedule 1 Part 3 (Operational Terms)	N	-
Wholesale-Retail Code, Schedule 1 Part 4 (Market Terms)	N	-
Wholesale-Retail Code, Schedule 1 Part 5 (CSDs)	N	-
Wholesale-Retail Code, Schedule 1 Part 6 (Operational Forms)	N	-
Appointment	N	-
Licence	N	-
Any other industry code, agreement or document (e.g. the Wholesale Contract or the MOSL Articles) (please specify)	N	-
Central Market Operating System	N	-
Trading Party systems which interface with Central Systems and other relevant Trading Party systems/ business processes.	N	-
Scottish Core Industry Documents	N	-

## Further Information

Description of any discussions on the topic of the Change Proposal/ Charging Change Proposal at the User Forum (as relevant) or otherwise relevant discussions with parties, as required under the Market Arrangements Code Section 6.2.1(i).

Engagement with the High Level Group (HLG) with senior representatives from Ofwat, Defra, MOSL, Water UK, UKWRC, CCW and Wholesalers and Retailers.

Feedback from Trading Parties via Ofwat's Call for Inputs (issued on 20 March 2020).

## Further Comments