

Market Review: Policy Decision on Customer Protection Measures

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 provided an indicative timeline and scope for the review.

As part of that review, this document summarises the responses received and sets out the Commission's policy decision on customer protection measures.

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

- Modify the Standard Licence Conditions (SLCs). Under paragraph 2(5) of Schedule 2 to the Water Services etc. (Scotland) Act 2005, the Commission may modify SLCs. Before making any modifications the Commission must give notice of the proposal and give stakeholders an opportunity to comment.
- Revise the Deemed Contract Scheme. Under Section 20B (4) of the 2005 Act, the Commission must notify stakeholders of the proposed revision.

This document serves as notice under the respective sections of the 2005 Act.

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. Background

The retail non-household market has now been operating for over twelve years and there are thirty retailers competing in Scotland. As more licensed providers have entered the retail market, customers have benefitted from greater choice, more tailored service and lower prices. However, the Commission is mindful that this increased competition may adversely impact licensed providers' creditworthiness and may increase the likelihood of a licensed provider's financial failure.

The Commission wants to ensure that the market continues to work well for customers. To this end, the Commission has launched a comprehensive review of the market. As part of this root-and branch review of the market framework, the Commission has reviewed the risks to customers in the event a licensed provider enters an insolvency process.

Since 2008 only two licensed providers have failed¹ in the Scottish retail non-household market. Both defaults have occurred for reasons not directly connected with the retail market in Scotland and involved two very small Licensed Providers. In the second of these defaults, the Commission was unable to rely on the company administrator to identify a potential buyer for the licensed provider's customer base. Mindful of the risk to Scottish Water in such cases, in 2016 the Commission extended the prepayment² required from licensed providers to ensure that the market arrangements protected the core business of Scottish Water from any detriment.

The Commission has a statutory duty to promote the interest of customers (as a whole) in the provision of water and sewerage services. The Commission has also adopted the principles of Ethical Business Regulation³ (EBR), which encourages candour and transparency in all interactions between the regulators, regulated businesses and other stakeholders. The Commission also expects licensed providers to embed the principles of Ethical Business Practice⁴ (EBP) in their businesses and adopt these principles for all interactions with their customers and stakeholders. This also requires licensed providers to demonstrate that they are acting in the best interests of their customers which in turn will support the orderly functioning of the market, one that continues to deliver benefits to consumers.

2. The issue of customer prepayments

The introduction of the retail non-household market has delivered benefits to consumers including more tailored services and payment terms. Licensed providers offer customers a variety of payment options including payment in arrears and payment in advance. Customers may choose to prepay for services in order to access a lower price (or discount) or improved service level.

¹ The Commission served Aquavita and Satec with a Notice of Revocation of the general water and sewerage licences respectively in 2008 and 2012.

² For more information on the Notice of Commission Decision on credit terms can be found: <https://www.watercommission.co.uk/UserFiles/documents/Credit%20terms%20Decision%20doc%20FINAL.PDF>

³ Hodges C. and Steinholtz R. (2017), 'Ethical Business Practice and Regulation', first edition, Hart Publishing.

⁴ EBP is defined as "An organisation in which the leaders consciously and consistently strive to create an effective ethical culture where employees do the right thing, based upon ethical values and supported by cultural norms and formal institutions." The concept of EBP also aligns with the latest thinking on redefining company purpose as advanced by Professor Colin Mayer and the British Academy.

The Commission notes that if a licensed provider in financial distress enters an insolvency process and the business cannot be sold as a going concern, customers who have made prepayments to the licensed provider would rank as unsecured ordinary creditors. Under these circumstances, it is unlikely that all unsecured creditors would have their claims satisfied in full. There is, therefore, a significant risk that customers could suffer from a material loss in the event of a licensed provider's insolvency⁵.

The UK Law Commission⁶ has also been reviewing options to provide payment protection in several sectors⁷ and reported on its key recommendations to Government in July 2016. Some industries have already put in place measures to protect customer prepayments.

In reviewing the risks associated with customer prepayments in the retail market the Commission asked licensed providers to provide information on their use of prepayment terms. As a result of this, the Commission has noted that most licensed providers offer prepayment terms. However, not all customers may be aware of the risk associated with a licensed provider's financial failure. As a consequence, the reputation of the industry would suffer if such a risk were ever to crystallise.

In light of these issues, the Commission believes that consumers should not be exposed to undue or disproportionate risk. The Commission also believes that consumers should both access benefits for making payments in advance provided they have the cash to make the advanced payment and are made aware of the risks associated with prepayment terms. Such an approach is in line with the principles of EBP that licensed providers are expected to adopt and champion in both their interactions with their customers and the Commission.

3. Measures to protect customer prepayments

In its [November 2018](#) consultation the Commission considered and reviewed alternative options to protect customers' prepayments, which included:

1. An outright ban on customers' prepayments.
2. An industry-wide insurance scheme.
3. An option requiring Licensed Providers to transfer all customer prepayments to Scottish Water, who would then hold these funds on behalf of the customer in a ring-fenced account.
4. An option requiring Licensed Providers to place all customers' prepayments in a trust account.

⁵ In the event the insolvent business is sold and the proceeds of this sale are distributed to creditors, it may still be that all the sale proceeds are required to satisfy the claims of creditors ranking above unsecured creditors in the statutory hierarchy and that there are no funds remaining to reimburse customers.

⁶ In UK insolvency law does not give customers any special protection and consumers will not receive any due monies until all secured and preferential creditors have been satisfied in full as highlighted by the Law Commission in the Consultation Paper No 221, "Consumer Prepayments on Retailer Insolvency", June 2015.

⁷ More information can be found at: <https://www.lawcom.gov.uk/project/consumer-prepayments-on-retailer-insolvency/>. Ofgem has special Administration Powers and through the Supplier of Last Resort (SOLR) mechanism runs competitive auctions for one or more supplier's customer base. In assessing each bid Ofgem takes into account protection of customers' credit balances and has prioritised bids that secure customers' balances. UK travel companies are required to hold an Air Travel Organiser's Licence (ATOL), an industry-wide scheme run by the Civil Aviation Authority (CAA) that protects customers who have booked and paid for their holidays in advance. In the event of an ATOL travel company's failure customers can receive a refund for prepaid monies.

In the November 2018 paper we set out a detailed evaluation of the options to protect customers' prepayments and consulted upon them. The Commission also consulted on allowing licensed providers who still wish to offer prepayment terms to collect monies in advance from their customers provided that certain criteria are met, which included:

1. Licensed providers satisfy the Commission that customer prepayments are fully protected in the event of an insolvency (for example, establishing a trust account to protect customers' credit balances and placing prepayments in this account);
2. Licensed Providers have put in place an appropriate process to explain to the customer the risks and the consequences associated with making payments in advance;
3. A duly authorised and appropriately senior representative of the customer has signed a written statement accepting the risk (countersigned by an auditor or lawyer);
4. The prepaying customer is above a certain size; for example, the business has at least ten full time employees; and
5. Licensed providers cooperate with any monitoring or audit by or on behalf of the Commission relating to its customer protection measures for prepayments.

4. Measures to protect customer prepayments

In its [December 2018](#) response, the Commission confirmed that to protect customers from a loss incurred from a licensed provider's financial failure as a default position, licensed providers should be prohibited from offering prepayment terms to their customers, with the ability to request authorisation to offer prepayment terms from the Commission.

The Commission also considered licensed providers' views regarding the wider proposals outlined in the November 2018 consultation. These included concerns regarding the implications of being required to ring-fence prepayments or implement an industry-wide insurance scheme.

Following careful consideration of these representations, together with an assessment of the risks and benefits associated with implementing these measures, the Commission agreed that these measures should not be required.

The Commission also noted the respondents' concerns around the additional protection measures for small businesses and also noted that requiring customers to provide a statement countersigned by a third-party auditor or lawyer could be impractical. Further, following assessment, the Commission also considered these measures were not necessary.

Taking the above into account, to ensure the package of measures was proportionate, the Commission concluded in its initial decision in December 2018 that licensed providers should be permitted to offer prepayment terms if they:

- a) Opt in (on an annual basis) to offer prepayment terms to customers. The opt in process requires licensed providers to write to the Commission with an explanation of the licensed provider's strategy and reasoning for offering prepayment terms;
- b) Offer customers a choice between payment in arrears and prepayments;
- c) Offer prepayments that do not exceed 3 months' worth of charges; and
- d) Offer an annual discount to customers on prepayment terms that does not exceed more than 8% of the annual bill.

The Commission decided that these measures would take effect from 1 April 2020.

The Commission also set out its intention to use market audits to monitor licensed providers' compliance with their obligations in relation to prepayments.

5. Consideration of further evidence and Commission response

Since its last consultation the Commission has received further representations from two licensed providers. The Commission has reflected on these comments and sets out its policy decision below.

5.1 Further representations from stakeholders

Concerns relating to additional costs etc.

One respondent explained that the proposed approach is restricting competition by imposing additional costs and capital requirements which need to be funded by licensed providers.

The respondent contended that the opt in process would remove the incentive for customer prepayments and impose an additional administrative burden on licensed providers as a result of the introduction of an approval process.

The respondent explained that customers' prepayments should be allowed where the customer has a free choice and receives a financial or service benefit in recognition for paying earlier than the standard arrears payment terms.

The respondent also believed that the limit of three months is too short and that the resulting discount available to customers would not be attractive for customers.

The Commission's view

The Commission believes that it is important that customers continue to receive benefits from the market and agrees that customer should always have a choice and be able, if willing to take the risk and able to pay monies in advance, to receive some benefit from prepayment arrangements.

The Commission, however, does not believe that these measures restrict competition in the retail market. Any licensed provider that seeks to operate in the Scottish market that is appropriately capitalised can earn a retail gross margin including a fair return on a portfolio of customers. The Commission believes that if a licensed provider can be more efficient (by managing its working capital more effectively or through access to cheaper working capital) then it is open for the licensed provider to reflect this in the prices that it offers to its customers and earn the same return.

The Commission considers that its approach is firmly in line with its statutory duty to promote the interests of all customers. To this end, and in line with the principles of EBP, the Commission wants to ensure that licensed providers act responsibly with their customers and do not expose them to any undue or disproportionate risk. To this end, the proposed approach allows customers to opt for a prepayment option whilst ensuring that they can have confidence that they bear only a limited risk.

The Commission, however, is firmly of the view that allowing pre-payments in excess of three months would be inappropriate. Were it to allow for longer pre-payment options, there is a material risk that, if an individual retail entity is not appropriately capitalised, it could expose the customers of that retail entity to a material loss in the event of the entity's entry into administration.

The Commission also disagrees that these measures have an adverse impact on the working capital requirements of an appropriately capitalised licensed provider. The Commission carefully considered and allowed retail gross margins that enable an appropriately capitalised licensed provider to earn a fair return on an average portfolio of customers. When setting wholesale charges and default tariffs the Commission conducted a detailed scrutiny of the costs to serve of different classes of customers, including the wholesale prepayment, the incidence of bad debt and the speed with which each class of customers was inclined to pay. If a licensed provider can be more efficient, whether by managing its working capital more effectively or through access to cheaper working capital then the licensed provider can reflect this in the prices that it offers to its customers and earn the same return. Licensed providers may, of course, accept a lower return by offering lower prices even if they cannot recover all of the offered discount to the customer through improved efficiency.

Further, the customer protection measures allow licensed providers to opt into the possibility of taking up to three months' worth of prepayments from customers. This, on its own, more than offsets the two months' wholesale prepayments, which, also, have already been accounted for in the costs allowed for in the gross margins available in the market. These measures, therefore, do not have an adverse impact on the working capital requirements of an appropriately capitalised licensed provider.

Overall, the measures provide customers with the choice of prepayment whilst mitigating customers' risk exposure and ensuring that they understand the risks associated with the payment terms. This also supports a level playing field across all market participants.

Concerns relating to wholesale payment terms

One respondent explained that changes to the pre-payment terms to Scottish Water in 2017 had also increased the amount that licensed providers are funding in terms of Scottish Water's working capital and that licensed providers had no choice but to accept these terms.

The respondents explained that alternative arrangements such as a payment bond would provide the same level of protection to Scottish Water.

The Commission's view

The Commission disagrees that wholesale prepayments have been funding Scottish Water's working capital and notes that the 4% annual interest that has been paid by Scottish Water on credit balances is a further benefit to licensed providers. In this regard, Scottish Water has been paying the same marginal cost of funds to licensed providers as the interest rate allowed for under the Commission's determination of prices for the period 2015 to 2021. This interest rate is, actually, at a materially higher rate than the rate at which Scottish Water could access short term financing.

Pre-payment requirements to Scottish Water have already been accounted for in the costs allowed for in the gross margins available in the market. Therefore, the impact of this change does not have an adverse impact on the working capital requirements of an appropriately capitalised licensed provider.

The Commission notes the comment from one respondent on the use of bonds as an alternative to the current payment arrangements. This option has been available to licence providers and to date none have chosen this option. The Commission has published the template Wholesale Service Agreement (WSA) on its website to form the basis of negotiation with Scottish Water. Any alternative measure to the current wholesale payment arrangement should ensure that:

- a) There is no detriment to Scottish Water and there is no increased risk relative to the current prepayment arrangements; and
- b) Customers are not exposed to any material, undue or disproportionate risk as a result of such arrangements.

Given the 4% annual interest paid by Scottish Water on the balance of prepayments, in the absence of evidence to the contrary, the Commission cannot see how a bond that guarantees (at least) an equivalent level of security as the two-month prepayment terms, could be more cost-effective than the current arrangements. Such an alternative approach would also require additional resources to carry out the necessary due diligence in order to assess the terms of the bond.

Concerns around implementation timescales

One stakeholder asked the Commission to consider an extension to the implementation of the measures to protect customer payments of either six or twelve months. The respondent argued that this would provide licensed providers with sufficient time to engage with their customers and make the necessary changes to their systems and processes in line with the Commission's policy.

The Commission's view

The Commission agrees that licensed providers should have sufficient time to prepare for the change and believes that a period of six months would be sufficient. In light of the revised timeline for the remainder of the market review the Commission will implement the customer protection measures from 1 October 2020.

5.2 Further reflections on the customer protection measures

In line with the principles of EBR and EBP the Commission believes that the onus should be placed firmly on licensed providers to demonstrate on an ongoing basis how and why they are acting in the best interest of customers and complying with the customer protection measures. To this end, instead of implementing an Annual Audit to ensure that licensed providers have implemented these customer protection measures the Commission expects licensed providers to use Market Health Checks to demonstrate how they have implemented customer protection measures.

The Commission has also made some consequential changes to the deemed contract scheme to align it with its policy decision on customer prepayments and customer protection measures. Appendix 3 to this document contains the revised deemed contract scheme in track changes.

6. Commission's policy decision on measures to protect customers' prepayments

6.1 Policy decision

In light of these considerations and after having carefully reviewed all stakeholders' responses, the Commission has confirmed its initial policy decision is to, as a default position, prohibit licensed providers offering prepayment terms to, and taking prepayments from, customers with the ability to request authorisation to offer prepayment terms from the Commission. This is in order to protect customers from any loss incurred from a licensed provider's financial failure. As outlined in this decision document, licensed providers may apply to the Commission to opt in to provide prepayment terms to customers, subject to a number of requirements.

To mitigate the overall risk to customers consistently with its initial decision, the Commission now confirms its initial policy decision to cap the amount of prepayments that licensed providers, who have already taken all the necessary steps required to be allowed to offer prepayment terms, can collect from customers. The cap will be set at a maximum of three months' worth of charges.

This approach ensures that licensed providers can meet their obligations to pay wholesale charges to Scottish Water two months in advance. It also provides customers with the choice of prepayment whilst mitigating customers' risk exposure.

The Commission has also included details of the opt in process at Appendix 3 to this document which allows licensed providers to apply to offer prepayment terms. To support this policy decision, the Commission has proposed changes to the standard licence conditions– these changes are noted in Appendix 1 of this document in track changes.

6.2 Existing contracts

Prepayment contracts with a fixed end date up to 31 December 2020 can continue to remain in force until the agreed end date, provided that the licensed provider complies with the following requirements on or before 1 June 2020:

- a) the licensed provider must issue a letter to the customer which contains a warning of the risks of prepayment in a manner that draws the customer's attention to it; and
- b) the licensed provider must offer the customer the opportunity to switch their payment terms under the contract from prepayment to payment in arrears – the annualised cost of exiting the pre-payment term cannot exceed 8% of the annualised bill.

All prepayment contracts which do not have a fixed end date or which have a fixed end date that goes beyond December 2020 will require to be phased out on or before 1 October 2020.

6.3 Recent measures in response to COVID-19

As part of the package of measures in response to the COVID-19 pandemic, Scottish Water has offered to relax temporarily the two-month wholesale prepayment terms. In light of these measures and in line with its primary duties, the Commission has written to all licensed providers [requesting information](#) on customers' prepayments. During the duration of these emergency measures the Commission confirms that it does not see an economic rationale that justifies licensed providers from taking customer pre-payments. The Commission, therefore, expects all licensed providers to offer prepaying customers the option to switch to payment in arrears at no extra cost or fee.

Based on the information provided by licensed providers and in light of its primary duties, the Commission will consider whether any further customer protection measure would be necessary.

Next steps

The Commission now welcomes representations from stakeholders as regards to the wording of:

- The proposed modification to the Standard Licence Conditions, as set out at Appendix 1;
- The proposed revisions to the Deemed Contract Scheme as set out at Appendix 2; and
- The proposed draft process set out at Appendix 3.

Stakeholders should send any representations to competitionteam@watercommission.co.uk by no later than 1 June 2020.

Appendix 1 – Changes to standard licence condition B2

Standard Condition B2, Further obligations on charges and related matters

1. The licensee shall:
 - (a) in fixing, demanding or recovering charges for relevant services, and
 - (b) in choosing whether, or on what terms and conditions, to provide relevant services, ensure that no undue preference is shown to, and that there is no undue discrimination against, any eligible customer(s) or any potential eligible customer(s).

- ~~2.~~ The licensee shall ensure that, except with the Commission's consent, any relevant arrangements may be terminated by the customer without payment of any penalty on giving not more than twenty business days prior written notice.

- ~~2.3.~~ The licensee shall ensure that, except with the Commission's consent, it is not party at any time from and after 1 October 2020 to any prepayment arrangements.

- ~~3.4.~~ The Commission may, following such consultation as it may consider appropriate, issue directions prescribing circumstances which do or do not amount to undue preference or undue discrimination in any particular case or class of cases for the purposes of paragraph 1 above.

- ~~4.5.~~ The Commission may make a direction specifying that this condition shall cease to have effect from a specified date. In such an instance, this condition shall be suspended and shall cease to have effect in this licence from the date specified in the notice.

- ~~5.6.~~ For the purposes of this condition:

licensee charges	means charges fixed by the licensee pursuant to section 6(1)(a)(ii) or, as the case may be, section 6(3)(a)(ii) of the 2005 Act;
penalty	means any sum payable to, or at the instance of, a licensee or any person designated by it in circumstances where a customer gives notice terminating relevant arrangements, in addition to permitted termination charges;
permitted termination charges	means licensee charges accruing in the ordinary course (and not, in whole or in part, as a consequence of, or in connection with, termination of the relevant arrangements) up to the date of termination together with any interest payable under the relevant arrangements in that respect;
<u>prepayment arrangements</u>	<u>means arrangements (made as part of or in connection with relevant arrangements) under which a customer is entitled or bound to pay charges for licensed services (in whole or in part) in advance of the date of delivery of such services;</u>
relevant arrangements	means any arrangements for the provision of licensed services to which the licensee may from time to time be party, including any such arrangements as may be established by or under a transfer made in accordance with section 15 of the 2005 Act; and

relevant services

means licensed services other than services provided by the licensee in connection with a section 29E departure.

Appendix 2 – Draft Process for applying for permission to offer Customer Prepayments

Legal background

Following the issue of the Commission’s final policy decision on [April] 2020, and consistent with Standard Licence Condition B2 of Water and Sewerage Services Licences, licensed providers are not permitted (as a default position) to offer prepayment terms to customers.

According to Standard Condition B2 (3), licenced providers may request the Commission’s consent to offer prepayment terms to customers. Consistent with Standard Condition A1 (10), the Commission may give such consent subject to any conditions as the Commission may impose.

The purpose of this document is to set out the process that licensed providers must follow, and the conditions that they must satisfy, in order to apply for consent to offer prepayment terms to customers.

The opt in process

Licensed providers will write to the Commission to request to be permitted to offer prepayment terms to customers in advance of making any such offering to customers from the date of the policy coming into force.

This request should contain a formal application to the Commission setting out an explanation of the following:

- a) The licensed provider’s strategy and reasoning for offering prepayment terms to customers (this would include, for example, outlining the benefits that prepaying customers would receive);
- b) Why the licensed provider believes that there is no material, undue and/or unreasonable risk to the customer in making prepayments to that Licensed Provider;
- c) Their plans to ensure that customers are aware of the risks associated with making payments in advance; and
- d) Date by when they plan to offer the prepayment terms.

The application request should be signed by a named managing director of the licensed provider.

In assessing this request, the Commission will consider whether the payment terms proposed by the applicant:

- Can be justified in a commercially robust manner (including the benefits that prepaying customers are receiving);
- Bring no undue detriment to the customers, and
- Carry out a proportionate amount of risk both to the licensed provider and the prepaying customer.

The Commission will publish any successful request for prepayment terms on the register of licences on the website.

In the event an applicant fails to meet the relevant criteria set out in the Commission's policy the Commission will write to the licensed provider and explain why the application was rejected.

Terms of the prepayment offering

The prepayment terms offered by an applicant must comply with the following criteria:

1. The licensed providers must make the customer two offers at the same time:
 - a) One offer based on payment in arrears; and
 - b) One offer based on prepayment of no more than 3 months' worth of charges.
2. The annual discount made available for customers on prepayment terms can be no more than 8% of the annual payable charges for the payment in arrears option.
3. The customer terms for prepayment must contain a warning to the customer of the risks of prepayment on the signature page, in a clear and transparent manner.

Timescales

Any applications under this policy should be made via email to the Commission at competitionteam@watercommission.co.uk. The Commission will acknowledge receipt of the application within 3 working days.

Following that acknowledgement, the Commission will assess whether the application contains sufficient information for it to begin an assessment. The Commission may request further information from the applicant.

Once the Commission considers that it has sufficient information to begin its assessment, the applicant shall be informed that the Commission has commenced its substantive assessment.

The Commission will endeavour to issue a decision to the applicant within 20 working days of the Commission commencing its substantive assessment. If required, the Commission may request further information during this time.

While the Commission will endeavour to process all applications as quickly as possible, the timescales above should be considered indicative. Applicants will be kept appropriately informed of the progress of their application throughout the assessment process.

Appendix 3 – Revisions to the Deemed Contract Scheme in track changes

1. Deemed Contract Drafting

11. The Licensed Provider shall ~~elect to~~ invoice the Customer for the charges (and any applicable VAT) due for the services provided by it during the Deemed Contract Term (as defined below) ~~either (i) in arrears, or (ii) in advance.~~

12. ~~Where the Licenced Provider has elected to invoice the Customer in arrears, (i) t~~The Licensed Provider shall issue the Customer with its first invoice no later than ten weeks following the Relevant Day, being either (a) the Applicable Day (as defined below), or (b) the day the Licensed Provider is notified of a change of occupancy or ownership in respect of the premises, ~~(ii) t~~ The Licensed Provider shall invoice the Customer no less than two times per annum, and ~~(iii) t~~ the Customer shall pay the charges (and any applicable VAT) within the period (being no less than twenty one days) specified in the relevant invoice.

13. ~~Not used. Where the Licenced Provider has elected to invoice the Customer in advance, (i) the Licensed Provider shall issue the Customer with its first invoice (a) where the Relevant Day falls on or before the date which is nineteen Business Days prior to the start of the first calendar month following the Relevant Day (Month X), no later than fourteen Business Days prior to the start of Month X, or (b) where the Relevant Day falls after the date which is nineteen Business Days prior to the start of Month X, no later than fourteen Business Days prior to the start of the subsequent calendar month following Month X), (ii) the Licensed Provider shall invoice the Customer no less than twelve times per annum (except where the Relevant Day falls after the date which is nineteen Business Days prior to the start of Month X, in which case during the first twelve month period of the Deemed Contract Term (as defined below) the Licensed Provider shall invoice the Customer no less than eleven times), and (iii) the Customer shall pay the charges (and any applicable VAT) within the period (being no less than ten Business Days) specified in the relevant invoice. A Business Day is any day other than a Saturday or Sunday or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.~~

20. A Licensed Provider shall be entitled to fix charges for the provision of the services to which the Deemed Contract relates, and demand and recover such charges, providing such charges (i) do not exceed the default maximum tariff (as defined in SLC B1), (ii) are exclusive of VAT, and (iii) are notified by the Licensed Provider to the Customer prior to or on the date of issue of the first invoice in accordance with paragraph 12 ~~or paragraph 13 above (as relevant).~~ Such notice shall be in a document which is separate to the first invoice (albeit it may be issued to the Customer at the same time as the first invoice) and shall specify the period during which such charges will apply, which period may commence before or after the date of the notice.

