
Wholesale Retail Code Change Proposal – Ref CPW094

Modification proposal	Authority Timetabled Change Proposal: Wholesale Retail Code Change Proposal – CPW094 Temporary Change to Disconnections
Decision	The Authority has decided to approve this Change Proposal
Publication date	6 April 2020
Implementation date	8 April 2020

Background to this Change Proposal

In the UK, the outbreak and escalation of the Covid-19 pandemic 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 Covid-19 pandemic. The systematic closure of businesses resulting from the imposition of legislation in March 2020 makes restrictions on opening enforceable by law. Those businesses that are permitted to remain open may have to operate with reduced staffing due to illness affecting output and cash-flow. This has had a profound effect on water consumption.

The Authority is concerned that the closure or reduction in output by businesses may result in an interruption of cash-flow to Self-Supply Retailers (as end customers in themselves) which in turn may result in the non-payment of bills and ultimately disconnection. The Authority considered that urgent action was required to ensure that Self-Supply Retailers are not under threat from disconnection.

To address this issue, the Authority proposed a Change Proposal that amended Part I13 of the Operational Terms of the Wholesale Retail Code (the “**WRC**”) for a limited period. A restriction was to be included that prevents the service of a disconnection notice under section 61(1ZA)(b) of the Water Industry Act 1991 by a Wholesaler to a Self-Supply Retailer. The period in which this restriction will apply is from the

implementation date until 31 May 2020, or such other date as the Authority may notify to MOSL in writing.

The background and associated documents relating to this Change Proposal can be found on the [MOSL website](#).

Industry Consultation

In parallel to this Change Proposal, the Authority is also considering an equivalent amendment to the Customer Protection Code of Practice (the “**CPCoP**”) to ensure that businesses, charities and other non-household customers are not threatened with disconnection as a result of the Covid-19 pandemic. At the time the Change Proposal was submitted to the Panel, the Authority was in the process of consulting on the proposed changes to the CPCoP. This consultation included a question on the proposed legal drafting of the Change Proposal. The Authority provided assurance to the Panel that consultation responses to the CPCoP would be taken into account when deciding whether to accept, amend or reject the Change Proposal.

The Authority received 12 responses to its consultation on the changes to the CPCoP. Three Retailers, four Wholesalers and the Consumer Council for Water either had no comments on the proposed legal drafting of the Change Proposal, or agreed with it.

Two other Retailers acknowledged that the Proposed Change was consistent with the proposed approach to Retailers and their Non-Household Customers. One of these Retailers did, however, consider that amendments were required to the proposed drafting to ensure that it was clear that these changes relate on to the Covid-19 pandemic. We do not consider that changes are required to the proposed drafting to provide further clarity on this. It has been made clear in the change proposal form, the CPCoP consultation and in this decision document that the insertion of this section is in response to the Covid-19 pandemic. This restriction is a temporary measure only, and once the lockdown due to Covid-19 is lifted Ofwat will take steps to remove this restriction.

One Wholesaler thought that a reference to ‘Retailer’ should be replaced with a reference to ‘Wholesaler’. Slight amendments were made to the legal drafting that was be consulted on under the CPCoP before the Change Proposal was submitted to the Panel. This meant that a reference was included to ‘Wholesaler’.

One Retailer did not think that the Change Proposal was required because of the proposal to amend the CPCoP and the date of the next Panel meeting being after the proposed implementation date. Self-Supply Retailers are not protected by the CPCoP, which is why the Authority considers that, to ensure businesses are consistently protected, an amendment is required to the WRC. The Change Proposal was

submitted to the Panel ahead of the closure of the CPCoP consultation meaning that it was not necessary to wait until the next scheduled Panel meeting.

Panel recommendation

The Panel considered this Change Proposal at a meeting on Tuesday 31 March 2020. It recommended, by unanimous decision, that the Authority approve this Change Proposal, but raised four specific points for the Authority to consider with a view to ensuring there is clarity in the legal drafting and there is consistency with the Customer Protection Code of Practice:

1. The Panel understood that this Change Proposal did not intend to absolve Self-Supply Retailers from paying and that they should continue to pay if they can do so (i.e. it did not give permission to Self-Supply Retailers to withhold payment).
2. The Panel understood that this Change Proposal intended only to restrict that 'due' payment could not be used a trigger for disconnection of Self-Supply Retailers by Wholesalers (i.e. other financial or defaulting mechanisms were not affected).
3. The Panel asked that the Authority reassure itself that the current drafting clearly supported the Panel's understanding at (1) and (2).
4. The Panel understood that the goal of this Change Proposal was to bring alignment between the Operational Terms and the CPCoP. Therefore, the Panel expects that wording should be as close as possible in the impending update to the CPCoP.

This recommendation has been made on the basis of improving the principles of Efficiency, Proportionality and Transparency as well as meeting the Operational Terms Objectives. The recommended date of implementation is Wednesday 8 April 2020.

Our decision

We have concluded that the implementation of CPW094 will better facilitate the principles of the Wholesale Retail Code as detailed in Schedule 1 Part 1 Objectives, Principles and Definitions and is consistent with our statutory duties.

Reasons for our decision

The Authority is taking steps to ensure that all Non-Household Customers are protected against the threat of disconnection as a result of non-payment of bills due to the impact of the Covid-19 pandemic, and this amendment to the Operational Terms forms part of this suite of changes. Responses to the CPCoP consultation, which included a question on the proposed legal drafting to the Change Proposal, demonstrate that respondents are broadly supportive of the approach. A summary of responses to the consultation on the CPCoP, and our conclusions on these can be found in [our decision document](#) on the CPCoP amendments.

This decision has been made on the basis that a temporary mechanism is required to ensure that Self-Supply Retailers (as end customers in themselves) are not disconnected as a result of non-payment of bills due to the impact of the Covid-19 pandemic which has resulted in the systematic closure of businesses resulting from the imposition of legislation in March 2020 and the reduction in staffing due to illness affecting output and cash-flow.

The Authority considers that the Change Proposal is consistent with the WRC principle of Efficiency by ensuring that there is a consistent approach across the water and wastewater sector to prevent disconnections for all end customers during the Covid-19 pandemic. We consider that the temporary nature of the measures to address the unprecedented impact of Covid-19 ensures that the Change Proposal is consistent with the principle of Proportionality. The principle of Transparency is met as the measures are concise, clearly expressed and well-structured to enable Self-Supply Retailers and Wholesaler to readily understand the temporary restrictions, and they meet the Operational Terms Objectives by enabling the facilitation by the Contracting Retailer of its functions by removing the risk of disconnection due to the non-payment of charges.

The Panel raised four key points, which are detailed above. For clarity and in response to those points, the Authority confirms that:

1. The Change Proposal does not absolve Self-Supply Retailers from paying, and that they should continue to pay if they can do so;
2. The Change Proposal only restricts that 'due' payment cannot be used to trigger disconnections for Self-Supply Retailers. It does not affect other financial and defaulting mechanisms.
3. The Authority has made minor amendments to the proposed legal drafting to make it clear that all other rights and obligations under the Wholesale Retail Code, rather than just the Operational Terms are unaffected. It has also inserted the implementation date, removed the second reference to 'Self-

Supply Retailer' as only the reference to 'Wholesaler' is required and removed a typographical error. The final legal drafting is set out below.

4. The Authority is ensuring that, where possible, there is consistency in drafting between this amendment to the Operational Terms and amendments to the CPCoP.

Decision notice

In accordance with paragraph 6.3.7 of the Market Arrangements Code, the Authority approves this Change Proposal subject to:

The following amendments to the proposed drafting:

For the period from **8 April 2020** until 31 May 2020, or such other date as the Authority may notify to the Market Operator in writing, no amounts owed by a Self-Supply Retailer to a Wholesaler are "due" or shall be treated as "due" by the ~~Self-Supply Retailer or the~~ Wholesaler for the purposes of a disconnection notice under section 61(1ZA)(b) of the Water Industry Act 1991 ~~Act~~, and for these purposes only. All other rights and obligations under these ~~Wholesale Retail Code Operational Terms~~ remain unaffected by this restriction.

Georgina Mills
Director, Business Retail Market