

May 2020

**Covid-19 and the Business Retail Market:  
Proposal to accept a Customer Protection Code  
Change Proposal – CP0007 – a Consultation**

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## 1. About this document

The impacts of Covid-19 are being felt across the whole of the UK economy. Government and regulators have been acting together to support businesses through this period. In the water sector, Ofwat's primary focus is to protect the interests of customers. We want to relieve Non-Household Customers of the pressure of having to pay water bills on time if they are seriously affected by Covid-19, while ensuring all Non-Household Customers have access to reliable water and associated retail services now, and into the future.

With that aim, in April 2020, shortly after the lockdown was announced, Ofwat [made amendments](#) to the Customer Protection Code of Practice (**CPCoP**) to offer additional protections to customers affected as a result of Covid-19 (**CP0006**). These changes ensured that Retailers would not enforce non-payment of invoices, charge interest or impose late payment charges, or disconnect Non-Household Customers.

In April 2020, Ofwat separately consulted on [proposals to address liquidity challenges and increased bad debt](#) (**'the liquidity and bad debt consultation'**) which have arisen as a result of Covid-19. Some of the responses to this consultation suggested that the provisions in the CPCoP following implementation of CP0006 had diminished Retailers' abilities to collect payments due from Non-Household Customers and recover and manage increasing levels of debt effectively.

Recognising that there is a need to ensure that the regulatory framework is consistent and aligned, in our [decision document](#) on liquidity and bad debt, we committed to revising the provisions that were included in the CPCoP following implementation of CP0006. Our policy aim is to ensure that protections remain in place for those Non-Household Customers who are seriously affected by Covid-19, while enabling Retailers to recover and manage debt from Non-Household Customers who are operating and able to pay their water bill. We expect Retailers to take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay. This Customer Protection Code Change Proposal (**'the Change Proposal'**) has therefore been developed to achieve this policy aim.

For the purposes of this Change Proposal, we consider that there are three categories of Non-Household Customer:

- (i) **Non-Household Customers that are seriously affected by Covid-19** because all of their premises are not open or available to workers, the public

or visitors or have seen a significant decrease in their usual activities (significant being a reduction of 95% or more), and all of whose premises Retailers are flagged as Vacant in accordance with CSD 0104 (we refer to these customers as '**Covid-19 Affected Customers**');

- (ii) **Non-Household Customers that are affected by Covid-19** because they are experiencing difficulties paying or have experienced an unforeseen reduction in consumption as a result of Covid-19;
- (iii) **Non-Household Customers that are not affected by Covid-19** because they continue to require water or sewerage services at the same (or higher) level as prior to Covid-19 and are not experiencing payment difficulties as a result of Covid-19.

We propose that Covid-19 Affected Customers will be treated differently to those in categories (ii) and (iii) in that they will automatically be eligible to continue receiving the protections that are currently in place.

We recognise that Non-Household Customers may move between these categories throughout the current crisis. We expect Retailers to take the necessary steps to establish where their customers sit within these three categories on an ongoing basis.

This document sets out for consultation the following proposed amendments, with further detail provided in section 4:

### **Specific protections for Covid-19 Affected Customers**

It is proposed that amendments are made to the CPCoP to ensure that Covid-19 Affected Customers remain protected from the prospect of:

- Disconnection;
- Enforcement of debt; and
- Interest and late payment charges

### **Protections for other Non-Household Customers**

Whilst Non-Household Customers that are able to pay must continue to do so, we recognise that some Non-Household Customers may not fall within the definition of a Covid-19 Affected Customer but may still experience difficulties in making payments

as a result of the pandemic. We are therefore proposing that the following should be incorporated into the CPCoP:

### **A Covid-19 Repayment Scheme**

Retailers will be required to take reasonable steps to enable Non-Household Customers to repay where they can. We are proposing that Retailers are required to set out, in a Covid-19 Repayment Scheme, the reasonable steps they will take to enable Non-Household Customers to pay where they can, over a time period that customers are able to afford and the information or evidence that Retailers will take into account when a customer disagrees with the Retailer's assessment of its circumstances. It is our view that Non-Household Customers that have not been affected by Covid-19 must continue to pay their water and wastewater bills and we expect this to be reflected in the Retailers' Covid-19 Repayment Scheme.

We expect this Covid-19 Repayment Scheme to be available to all Non-Household Customers who do not fall within the definition of Covid-19 Affected Customer, but for the protections included within it to be tailored depending on whether and how seriously the Non-Household Customer has been affected by Covid-19. Retailers will be required to set out:

1. the steps a Retailer will take to consider a Non-Household Customer's circumstances, particularly the Non-Household Customer's reasonable ability to pay outstanding amounts, including interest on those amounts and / or late payment charges, as a result of Covid-19;
2. the specific terms and conditions of the different repayment plan offerings it will make to take account of those different circumstances;
3. contact details that a Non-Household Customer should use to contact its Retailer where it disagrees with the Retailer's assessment of its circumstances, and the type of evidence it may provide to assist the Retailer in any re-assessment.

As part of this consultation, we are seeking from Retailers and other stakeholders examples of repayment plans or schemes that they already offer to Non-Household Customers, and views on what may be included within a specific Covid-19 Repayment Scheme.

## Provision of information

We also consider that amendments should be made to the information that Retailers are required to include on their websites regarding the changes to the protections available for Non-Household Customers. This includes a proposal that all Non-Household Customers must be provided with a clear means of contacting Retailers.

Unless otherwise specified, words and expression used in this decision document have the same meaning as in the CPCoP.

This document is structured as follows:

- **Section 2** details how to respond to this consultation.
- **Section 3** provides information regarding the background to the Change Proposal and summarises the provisions that we included in the CPCoP to protect Non-Household Customers until 31 May 2020 following implementation of CP0006.
- **Section 4** outlines the proposed changes to the CPCoP that would apply from 1 June 2020.
- **Section 5** details the reasons the Change Proposal has been raised.
- **Section 6** outlines the governance arrangements for Customer Protection Code Change Proposals and discusses our assessment of the urgency of the proposed change.
- **Section 7** lists the consultation questions which we would welcome responses to.
- **Section 8** outlines our next steps in relation to the Change Proposal.

The proposed legal drafting for this Change Proposal can be found in Appendix 1 of this document.

## 2. Responding to this consultation

We welcome your views on the questions detailed in section 7 of this document by **5pm on 20 May 2020**.

Please submit email responses to [CPCOPcodechange@ofwat.gsi.gov.uk](mailto:CPCOPcodechange@ofwat.gsi.gov.uk), with the subject '**CPCoP consultation – CP0007**'. Due to the pandemic, we are currently unable to accept responses by post.

We may publish responses to this consultation on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [Privacy Policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

### 3. Background to the proposal

In March 2020, the UK government issued guidance and imposed legislative measures to help reduce the spread of Covid-19 by requiring that, unless exceptions apply, businesses and premises should be closed and people should stay at home where possible. Following the UK government announcement on 10 May 2020, restrictions on the types of businesses that are able to operate remain in place and this will continue to have a profound effect on water consumption in some sectors, with a consequential impact to those operating in the business retail market.

#### 3.1 Interim measures introduced by Ofwat

Ofwat initially put in place interim measures to address this sudden reduction in consumption and to temporarily defer the payment by Retailers of some wholesale charges through changes to the Wholesale Retail Code (the “WRC”). These interim measures were:

- [CPW091 Temporary change to vacancy](#) which enabled retailers to temporarily apply the vacancy flag in the Central Market Operating System so that (most and in some cases all) charges do not apply for those premises that have closed down due to Covid-19; and
- [CPW093 Interim deferral of wholesale charges](#) which enabled Retailers to temporarily defer up to 50% of wholesale charges for the months of March, April and May 2020<sup>1</sup>.

#### 3.2 Customer Protection Change Proposal CP0006

To build on the protections for Non-Household Customers in the CPCoP in light of the Covid-19 pandemic, and the interim measures that were put in place for Retailers under the WRC, Ofwat consulted on a [proposal to amend the Customer Protection Code of Practice](#) to introduce interim protections for Non-Household Customers. We consulted for a period of three days<sup>2</sup> from 30 March to 2 April 2020. Following which

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<sup>1</sup> The provisions included in CPW093 relating to May were a backstop only. This has since been superseded by CPW096, discussed in section 4.2.

<sup>2</sup> The rationale for urgency for CP0006 can be viewed in our consultation document: <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/CPCoP-Consultation-Disconnection.pdf>



we issued a decision document which can be viewed [here](#). CP0006 introduced the following protections for Non-Household Customers:

- Protection from disconnection
- Suspension of debt enforcement
- Suspension of interest and late payment charges

### **3.3 Change Proposal CPW096**

Following the implementation of the interim measures to provide temporary support to Retailers through CPW091 and CPW093, Ofwat and MOSL worked together to develop more enduring solutions to the liquidity challenges and increases in bad debt issues which had arisen in the non-household retail market as a result of Covid-19. Proposals to address the identified issues were consulted on and following consideration of the responses, we published our [decision document](#). Code change CPW096 was implemented via this decision document following engagement with the industry Codes Panel.

CPW096 made provision for the availability of liquidity support for Retailers to be extended until the end of July 2020 by allowing Retailers to defer a proportion of their wholesale charges. Where Retailers choose to defer a proportion of their wholesale charges, Wholesalers are able to apply interest to the deferred amount. Within the decision document, we also set out our position regarding how bad debt resulting from Covid-19 will be managed.

In response to the liquidity and bad debt consultation, a number of Retailers expressed concern that the provisions that had been introduced into the CPCoP to protect customers during the current crises would affect their ability to effectively recover and manage debt. In addition, some Retailers highlighted an inconsistency in the application of interest. As a result of our decision on CPW096, Wholesalers are able to charge interest where a Retailer chooses to defer a proportion of its wholesale charges. In contrast, the current provisions of the CPCoP prevent Retailers from charging interest to customers who are late in paying their bill.

## 4. The proposal

We remain focussed on ensuring that Covid-19 Affected Customers continue to be afforded the protections that are currently in place in the CPCoP. However, we recognise that there are some Non-Household Customers who are not affected or have been affected to a lesser extent.

For the purposes of this Change Proposal we consider that there are three categories of customer:

- **Non-Household Customers that are seriously affected by Covid-19** because all of its premises are not open or available to workers, the public or visitors or it has seen a significant decrease in its usual activities (significant being a reduction of 95% or more) and all of whose premises Retailers have been flagged as Vacant in accordance with CSD 0104 (**Covid-19 Affected Customers**);
- **Non-Household Customers that are affected by Covid-19** because they are experiencing difficulties paying or have experienced an unforeseen reduction in consumption as a result of Covid-19;
- **Non-Household Customers that are not affected by Covid-19** because they continue to require water or sewerage services at the same (or higher) level as prior to Covid-19 and are not experiencing payment difficulties as a result of Covid-19.

We consider that these customers can be identified as detailed in the table below, although we expect Retailers to take the necessary steps to differentiate between Non-Household Customers who genuinely need support and those who should be expected to pay.

<b>Customer category</b>	<b>How Retailers will be able to identify these customers</b>
Covid-19 Affected Customers are those customers where all of its premises are not open or available to workers, the public or visitors or it has seen a significant decrease in its usual activities (significant being a reduction of 95% or more)	<ul style="list-style-type: none"><li>• A vacant flag is applied for all of the relevant customers premises in CMOS in accordance with section 3.1.6 of CSD 0104 of the WRC</li><li>•</li></ul>

<p>Non-Household Customers that have been affected by Covid-19 because they are experiencing difficulties paying or have experienced an unforeseen reduction in consumption as a result of Covid-19</p>	<ul style="list-style-type: none"> <li>• A Non-Household Customer has contacted the Retailer to advise of payment difficulties and has provided evidence to the Retailer where this is reasonably requested; or</li> <li>• There is evidence of payment difficulties or an unforeseen reduction in consumption as a result of Covid-19</li> </ul>
<p>Customers that have not been affected by Covid-19 because they continue to require water or sewerage services at the same (or higher) level as prior to Covid-19 and are not experiencing payment difficulties as a result of Covid-19.</p>	<ul style="list-style-type: none"> <li>• Premises remain open; and</li> <li>• There is no evidence of an unforeseen reduction in consumption as a result of Covid-19; and</li> <li>• The Non-Household Customer has not indicated that they are experiencing payment difficulties</li> </ul>

Our primary aim is to ensure that Covid-19 Affected Customers continue to be protected from the prospect of disconnection, enforcement of debt and interest and late payment charges. Non-Household Customers who are operating normally and can pay should be subject to normal debt recovery processes.

Therefore, when the current ‘blanket’ protections expire on 31 May 2020, we are proposing to target these protections so that they are only available to those Non-Household Customers where it is evident that they have been seriously affected by Covid-19 and are defined as Covid-19 Affected Customers.

We discuss at section 4.2.1 below the proposal to require Retailers to develop a Covid-19 Repayment Scheme. The proposal introduces new measures to provide a level of support for all other Non-Household Customers (that is, customers who are not those defined as Covid-19 Affected Customers). The protections included within this scheme would be tailored depending on whether and how seriously the Non-Household Customer has been affected by Covid-19.

Details of our proposal are set out below, and the proposed legal drafting to give these changes effect are set out in Appendix 1.

Our proposal is that the provisions relating to Covid-19 Affected Customers will remain in place indefinitely, whilst provisions relating to other Non-Household Customers will be in place until 31 March 2021 or such other date as Ofwat may notify in writing to Retailers. We do not think that it is necessary to include an end date on the provisions for Covid-19 Affected Customers as they should ultimately become subject to the less stringent restrictions as Covid-19 restrictions are lifted.

## **4.1 Protections that would apply for Covid-19 Affected Customers**

For customers where all of their premises have been designated vacant in accordance with section 3.1.6 of CSD 0104 of the WRC (the '**Covid-19 Vacant Flag**'), we are proposing that the following protections apply:

### **4.1.1 Disconnection**

Sections 61(1ZB) of the 1991 Act enables a Retailer to request that a Wholesaler disconnects a service pipe or otherwise cut off the supply of water to premises. Section 61(1ZC) of the 1991 Act imposes restrictions on when the Retailer may request this, being that a Non-Household Customer is liable to pay charges, the Retailer has served notice requiring payment and payment has not been made.

This Change Proposal proposes to retain the current restrictions on Retailers in relation to disconnections, but only for Covid-19 Affected Customers. This means that, for the period set out in the CPCoP, Retailers will not be able to request disconnections by Wholesalers for the non-payment of charges by this sub-set of customers.

Retailers will be required to include in their Terms and Conditions of Supply that amounts owed by these customers shall not be considered 'due' or treated as 'due' by the Retailer for the purposes of a disconnection under section 61(1ZC)(b) of the 1991 Act. This restriction will not affect the requirement on Non-Household Customers to pay amounts owed to Retailers in accordance with their Terms and Conditions of Supply, but should alleviate an additional pressure on Covid-19 Affected Customers from the threat of disconnection.

For all other Non-Household Customers, including those customers with multiple premises where the Covid-19 Vacant Flag has only been applied to some of these premises, it is proposed that before seeking to pursue disconnection, Retailers must take reasonable steps to enable the relevant Non-Household Customer to pay where it can.

### **4.1.2 Enforcement of debt**

We are proposing an amendment to the CPCoP which retains the suspension of enforcement activity, but only for Covid-19 Affected Customers.

For all other Non-Household Customers, including those customers with multiple premises where the Covid-19 Vacant Flag has only been applied to some of these premises, it is proposed that before seeking to enforce a debt, Retailers must take reasonable steps to enable the relevant Non-Household Customer to pay where it can.

We recognise that some Non-Household Customers may have incurred historic debts prior to the Covid-19 pandemic, and that these customers may now be seriously affected by Covid-19. For these customers, the additional protections outlined below will be in place for all debts, not just debts that have been incurred as a result of Covid-19. For customers that are not affected by Covid-19 and have historic or current debts which remains outstanding, to reduce potential for non-payment by the customers and align with our decisions relating to liquidity and bad debt, we consider that Retailers should be able to enforce those debts, subject to offering reasonable repayment plans as required by the current provisions of the CPCoP.

#### **4.1.3 Charging interest and late payment fees**

We are proposing an amendment to the CPCoP which retains the suspension of the application of interest and late payment charges for Covid-19 Affected Customers.

For all other Non-Household Customers, including those customers with multiple premises where the Covid-19 Vacant Flag has only been applied to some of these premises, it is proposed that before determining whether to charge interest or impose late payment charges, Retailers must take reasonable steps to enable Non-Household Customers to repay where they can. These steps should be set out in the Retailers' Covid-19 Repayment Scheme, discussed further below.

## **4.2 Protections for all other customers**

We propose that the following protections will be included in the CPCoP for customers.

### **4.2.1 Covid-19 Repayment Scheme**

The protections set out in sections 4.1.1, 4.1.2 and 4.1.3 apply only to Covid-19 Affected Customers.

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For all other Non-Household Customers, Retailers will be required to take necessary steps to differentiate between Non-Household Customers who genuinely need support and those who should be expected to pay, and to take reasonable steps to enable Non-Household Customers to repay where they can. We are proposing that Retailers are required to set out, in a Covid-19 Repayment Scheme, the reasonable steps it will take to enable Non-Household Customers to pay where they can, over a time period that they are able to afford and the information or evidence that they will take into account.

We expect this Covid-19 Repayment Scheme to be available to all Non-Household Customers who do not fall within the definition of a Covid-19 Affected Customer, but for the protections included within it to be tailored and proportionate, depending on whether and how seriously the customer has been affected by Covid-19.

For the avoidance of doubt, it is our view that customers that have not been affected by Covid-19 must continue to pay their water and wastewater bills and we would expect this to be reflected in the Retailers' Covid-19 Repayment Scheme.

Our proposal is that Retailers will be required to set out:

1. the steps a Retailer will take to consider a Non-Household Customer's circumstances, particularly the Non-Household Customer's reasonable ability to pay outstanding amounts, including interest on those amounts and / or late payment charges, as a result of Covid-19;
2. the specific terms and conditions of the different repayment plan offerings it will make to take account of those different circumstances;
3. contact details that a Non-Household Customer should use to contact its Retailer where it disagrees with the Retailer's assessment of its circumstances, and the type of evidence it may provide to assist the Retailer in any re-assessment.

However, as part of this consultation, we are specifically seeking information from Retailers and other stakeholders about the types of repayment schemes that they have / have had in place with Non-Household Customers both prior to and during the pandemic and views on what may be included within a specific Covid-19 Repayment Scheme.

Retailers will not be required to submit their Covid-19 Repayment Schemes to Ofwat for approval. Our view is that it should be the Retailer's responsibility to determine what it considers to be reasonable and in the best interests of its customers.

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However, we will monitor compliance with this provision, if implemented following this consultation.

### **4.3 Website information**

Following implementation of CP0006, there is an obligation on Retailers to include specific information on their websites to inform Non-Household Customers of the additional protections that had been introduced following the Covid-19 crisis. The Consumer Council for Water (CCW) has carried out regular reviews of Retailers' websites during the Covid-19 pandemic to establish the level of information provided to customers, and has shared with us the results of these reviews.

Taking into account the reviews carried out by CCW, and the importance of clear communication during this crisis, we think that Retailers should be doing more to provide their customers with accessible information, for example via their website. We are proposing further changes to the CPCoP to require Retailers to include clear contact information on their websites, which should include at least one electronic way of contacting the retailer (for example a form that enables their customers to leave contact details for a call back or an email address) and a dedicated telephone number. We welcome stakeholders' views on this proposal.

Retailers should be transparent and clear in their communications with Non-Household Customers and draw their attention to protections that are available to them. We are therefore proposing to amend the CPCoP so that Retailers will be required to include a notice in a prominent position on their website which specifies that, where a customer is a Covid-19 Affected Customer, they will not be:

- a) served disconnection notices for the non-payment of bills or invoices;
- b) subject to default interest or late payment charges for the non-payment of invoices issued from 1 June 2020; and
- c) subject to enforcement proceedings for the non-payment of invoices.

Retailers should be clear in this notice that these measures will only be applicable for Covid-19 Affected Customers and that when their customers cease to fall within that category they shall be eligible for the Retailer's Covid-19 Repayment Scheme. Included in this notice must be a clear definition of those Non-Household Customers that are Covid-19 Affected Customers, the circumstances in which a Non-Household Customers' premises will be considered vacant due to Covid-19 and how the Non-

Household Customer can obtain a copy of the Retailer's Covid-19 Repayment Scheme.

Should this Change Proposal be accepted, we will work with CCW to monitor compliance with the requirements for the above information to be clearly included on Retailers' websites.

#### **4.4 Customers with multiple premises**

We recognise that some Non-Household Customers who operate across multiple premises may be impacted differently depending on the extent to which they are able to operate across their premises. We have considered the extent to which the proposed provisions of the CPCoP should apply to these customers.

Our view is that where a Non-Household Customer has multiple premises but only some of which have been designated Vacant Premises, that customer does not fall under the definition of a Covid-19 Affected Customer. If a customer is operating across multiple sites, and some of these sites have been marked as vacant, then the customer will benefit from lower bills. If, despite this, the customer faces payment difficulties, then the Retailer will need to take reasonable steps to establish the specific circumstances of the customer and to enable the customer to pay where it can as well as considering the appropriate protections to offer, where appropriate.

#### **4.5 Self-Supply Retailer protection from disconnection**

Ofwat approved a proposal to amend Part I13 of the Operational Terms of the WRC for a limited period to include a restriction 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<sup>3</sup>. This restriction applies until 31 May 2020, or such other date as Ofwat may notify to MOSL in writing. We are also seeking views through this consultation as to whether the provision that was included in the WRC to offer an equivalent protection from disconnection for self-supply Retailers is still required. Our current view is that this protection should fall away on 31 May 2020.

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<sup>3</sup> CPW094 – Temporary change to disconnections

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## 4.6 Proposed date of implementation

This Change Proposal, if approved, would require Retailers to:

1. clarify in their terms and conditions that restrictions imposed on disconnections would only apply to Covid-19 Affected Customers;
2. make updates to their websites to include information relating to the protections available for Non-Household Customers and a form, or otherwise, which enables Non-Household Customers to easily make contact with their Retailer; and
3. develop a Covid-19 Repayment Scheme.

We have considered the potential impact on Retailers' existing systems and processes. Subject to the responses to this consultation, we consider that the impact on Retailer's systems and processes should be relatively low.

CP0006 amended the CPCoP, implementing a requirement on Retailers to include information on their websites about the protections that were implemented for Non-Household Customers. This will require some rewording as a result of this Change Proposal. However, we consider the potential impact of making this amendment to be low. The additional provisions that this Change Proposal is seeking to introduce is a contact form, or otherwise, on Retailers' websites that enables them to be easily contacted and the introduction of a Covid-19 Repayment Scheme. We are seeking views of Retailers regarding the impact of these.

We propose that the implementation date for this Change Proposal will be 1 June 2020. This will ensure continuity of the customer protections that were put in place by CP0006 which in some cases will cease to apply on 31 May 2020. We propose to publish our decision as soon as practicable following closure of this consultation and consideration of the responses received to allow Retailers time to review their systems and processes to account for this change and to update their websites with the proposed information set out in section 4.3 above.

We propose publishing an updated version of the CPCoP on the same day as our decision document.

## **5. Reasons for the proposed change**

As a result of the responses to the liquidity and bad debt consultation, we committed in our decision document to reviewing the provisions that had been implemented in the CPCoP as a result of the current crisis. We communicated our intention to ensure that these protections are targeted at Non-Household Customers that are seriously affected by Covid-19 and that where customers are able to pay they must do so.

We consider that a Retailers' ability to recover debt needs to be balanced against protections for Non-Household Customers that are affected by Covid-19 and it is on this basis that this Change Proposal has been developed. Our intention is to ensure that Covid-19 Affected Customers continue to be protected. Non-Household Customers who are operating normally and can pay should be incentivised to do so.

Further detail regarding consultation responses that have been considered in the development of this change proposal is provided below.

### **5.1 The liquidity and bad debt consultation responses**

During the consultation on proposals for addressing the liquidity and bad debt challenges that have arisen in the business retail market as a result of Covid-19, concerns were raised by Retailers regarding their ability to manage Non-Household Customer debt because of the provisions that had been implemented in the CPCoP to assist customers until 31 May 2020.

Most Retailers raised concerns with respect to the objective which stated that Retailers should continue to be prohibited from charging customers' interest, imposing late payment fees or requesting disconnection. Some thought that this objective pulled against another objective which was set out in the consultation, this being that Retailers should continue to collect charges and to use these to fund the payment of wholesale charges.

Most Retailers flagged that they will be required to pay interest on deferred charges to Wholesalers whilst being unable to charge interest or late repayment fees to customers. A number of Retailers thought this was unfair and unworkable. Many stated that there should be clarity over the restrictions enforced regarding debt collection and suggested they should be able to 'chase' debt that existed prior to Covid-19.

## 5.2 CP0006 consultation responses

In addition to considering the responses to the liquidity and bad debt consultation, we have reflected back on responses that were received to the consultation on CP0006. We implemented CP0006 as a temporary measure to offer immediate protections for Non-Household Customers following implementation of code changes CPW091 (temporary change to vacancy) and CPW093 (interim deferral of wholesale charges). The liquidity provisions we have put in place since then (via CPW096 (payment deferral – medium term)) mean that some of the changes we are now proposing to the CPCoP would not have been appropriate at that time.

We have identified some comments that, following our decisions on liquidity and bad debt, are also relevant to development of this Change Proposal. It was argued by some Retailers that they should be able to continue to enforce debts where enforcement action was already underway prior to the pandemic. In addition, it was suggested that the additional protections should only be applicable to customers that were unable to pay as a result of Covid-19 rather than offering 'blanket' protections for customers. Some Retailers also said that 'blanket' protections would remove consequences of non-payment for customers that could continue to pay but refused to. It was suggested that where a customer is unable to pay for a reason unconnected to Covid-19, Retailers should be able to pursue these customers in line with the applicable terms and conditions.

## 6. Code governance arrangements and modification

This consultation has been issued in accordance with section 5.2 of the CPCoP. After this consultation has concluded, responses will be considered and a final decision will be made as soon as reasonably practicable.

In accordance with section 5.2.4 of the CPCoP, our final decision shall include:

- The reasons for the proposed change;
- The scope and impact of the potential change, including consideration of potential risks;
- An evaluation against our statutory duties and the Code Principles;
- Any relevant evidence considered (including consultation responses received);
- Implementation timescales, which will take into account the likely impact on Retailer's exiting systems and processes; and
- The date from which the change will take effect.

### 6.1 Urgency of the proposal

Section 5.2.2 of the CPCoP provides that consultations under this section should ordinarily be for a minimum of 28 calendar days, except in the case of urgency.

We consider that the Change Proposal is urgent. After considering the responses to the liquidity and bad debt consultation, it became apparent that we would need to revisit the recent changes to the CPCoP in response to the pandemic. The responses to the liquidity and bad debt consultation indicated that our proposals, combined with the provisions included in the CPCoP through implementation of CP0006, resulted in an increased risk of Retailers facing financial distress and potentially exiting the market in a disorderly fashion, which would not be in the interests of customers during the current crisis. This is primarily because of the potential for increased levels of late payment as Retailers were unable to recover and manage debt, including those incurred by customers not seriously affected by Covid-19 and those debts that were incurred prior to the pandemic.

Many of the current protections in the CPCoP cease on 31 May 2020. Therefore, a decision needs to be made on this Change Proposal as soon as practicable, and prior to 31 May 2020 to ensure that Non-Household Customers who have been seriously affected by Covid-19 continue to receive additional protections but also that

Non-Household Customers who are able to pay should do so and can be subject to the relevant contractual provisions if they do not.

## 7. Consultation questions

The questions we would welcome responses on in relation to our proposed decision to accept this Change Proposal are detailed below. Where appropriate, answers should be supported with evidence.

1. Do you think the Change Proposal will achieve the following policy aims:
  - a. Covid-19 Affected Customers should continue to be protected.
  - b. Customers who are operating normally and can pay should be subject to normal debt recovery processes.
  - c. Retailers should take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay.
2. What is your view of the proposal that the protections relating to disconnection, suspension of enforcement, late payment and interest charges will only automatically apply to Covid-19 Affected Customers?
3. What do you think should be included in a Covid-19 Repayment Scheme? Do you have any examples of similar schemes that you have offered and/or have considered as a result of Covid-19? Please provide details.
4. What are your views on our proposals to require Retailers to clearly provide a method of contact on websites, as set out in section 4.3?
5. What is your view of the legal drafting for the Change Proposal (see appendix 1)?
6. Do you consider that the Change Proposal promotes and facilitates the General Principles of the CPCoP (section 4 of the CPCoP)?
7. What is your view on our assessment that the impact of implementing the changes on Retailer's systems will be low? What is your view of the proposed implementation date of the Change Proposal being 1 June 2020?
8. Do you consider that the amendment to Part I13 of Operational Terms is still required to protect Self-Supply Retailers from disconnection?

## 8. Next steps

The consultation on the Change Proposal will close on **20 May 2020 at 5pm**.

Following the closure of this consultation, we will consider responses prior to issuing our final decision. See section 2 of this document for details about how to respond to this consultation.

We will endeavour to make the decision on the Change Proposal as soon as practicable following closure of this consultation, and ahead of the proposed implementation date of 1 June 2020.

## Appendix 1 – Legal drafting

### Section 1: Definitions and interpretation

New Definitions:

1. **Covid-19 Affected Customers:** means a Non-Household Customer for whom all of its premises have been designated as Vacant Premises by the Retailer in accordance with section 3.1.6 of CSD 0104 of the Wholesale Retail Code, unless the exception applies. The exception is where a Retailer can provide robust evidence that the Non-Household Customers' ability to pay is unaffected by Covid-19. Where a Non-Household Customer has multiple premises but only some of which have been designated Vacant Premises, this definition does not apply.
2. **Covid-19 Repayment Scheme:** means the scheme produced by a Retailer that set out the reasonable steps it must take to enable Non-Household Customers to pay where they can, and over a time period that they are able to afford.
3. **Vacant Premises:** has the meaning given in the Wholesale-Retail Code

### Section 7: Provision of information by a Retailer to its Non-Household Customers

- New section 7.1.6: Covid-19 Repayment Scheme<sup>4</sup>
- Retailers must have in place a Covid-19 Repayment Scheme.
- This scheme must set out:
  1. the steps a Retailer will take to consider a Non-Household Customer's circumstances, particularly the Non-Household Customer's reasonable ability to pay outstanding amounts, including interest on those amounts and / or late payment charges, as a result of Covid-19 ;
  2. the specific terms and conditions of the different repayment plan offerings it will make to take account of those different circumstances;
  3. contact details that a Non-Household Customer should use to contact its Retailer where it disagrees with the Retailer's assessment of its

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<sup>4</sup> Section to replace current section 7.1.6



circumstances, and the type of evidence it may provide to assist the Retailer in any re-assessment.

No repayment plan under a Covid-19 Repayment Scheme may be less generous to Non-Household Customers than those offered by the Retailer from 1 January 2020 onwards in accordance with a Reasonable Repayment Plan for an Outstanding Debt.

#### **New section 7.1.7: Disconnection<sup>5</sup>**

- (a) For Covid-19 Affected Customers, Retailers shall include a clause in their Terms and Conditions of Supply that shall remain in effect until they cease to be Covid-19 Affected Customers that specifies:

“No amounts owed by the Non-Household Customer to the Retailer are “due” or shall be treated as “due” by the Retailer for the purposes of a disconnection notice under section 61(1ZC)(b) of the 1991 Act, and for these purposes only. All other rights and obligations under these Terms and Conditions of Supply are unaffected by this clause [Retailer to insert relevant clause number].

- (b) For all other Non-Household Customers, until 31 March 2021 or such other date as the Authority may notify in writing to Retailers, prior to the issue of a disconnection notice, Retailers must take account of their Covid-19 Repayment Scheme.

#### **New section 7.1.8**

Retailers must include in a prominent position on their website from 1 June 2020 a notice that specifies that where a Non-Household Customer qualified as a Covid-19 Affected Customer the Non-Household Customer will not be:

- (a) served disconnection notices for the non-payment of bills or invoices;
- (b) subject to default interest or late payment charges for the non-payment of invoices issued from 1 June 2020; and
- (c) subject to enforcement proceedings for the non-payment of invoices.

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<sup>5</sup> Section to replace current section 7.1.7

Retailers must be clear in this notice that the measures at (a) to (c) will only apply to Covid-19 Affected Customers to extent they fall within that category, and that when that ceases to apply they shall be eligible for the Retailer's Covid-19 Repayment Scheme.

The notice shall include:

- (a) a clear definition of those Non-Household Customers that are Covid-19 Affected Customers;
- (b) the circumstances in which their premises may be classed as Vacant Premises due to Covid-19; and
- (c) how a Non-Household Customer can obtain a copy of the Retailer's Covid-19 Repayment Scheme.

Retailers must provide a clear method in a prominent place on their websites for Non-Household Customers to be able to contact them, by way of:

- (a) a form that enables Non-Household Customers to leave their name, address, email address and phone number to enable a call back from Retailers; or
- (b) a contact email address; and
- (c) a dedicated telephone number.

## **Section 9: Billing**

New section 9.4: Interest and late payment charges<sup>6</sup>

9.4.1 Notwithstanding their contractual right to do so, Retailers may not charges any default interest or impose late payment charges for the non-payment of any bills or invoices issued to Covid-19 Affected Customers from 1 March 2020 until they cease to be Covid-19 Affected Customers.

9.4.2 For all other Non-Household Customers, until 31 March 2021 or such date as the Authority may notify in writing to Retailers, may apply

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<sup>6</sup> Section to replace current section 9.4

interest or late payment charges in accordance with their Covid-19 Repayment Scheme.

### **New section 9.5: Enforcement<sup>7</sup>**

9.5.1 Notwithstanding their contractual right to do so, Retailers may not seek to enforce non-payment of invoices against Covid-19 Affected Customers whilst they remain Covid-19 Affected Customers.

9.5.2 For all other Non-Household Customers, until 31 March 2021 or such date as the Authority may notify in writing to Retailers, when determining whether to take enforcement action, Retailers must comply with their Covid-19 Repayment Scheme.

### 9.6 No waiver

The prohibitions in sections 9.4 and 9.5 do not constitute and should not be interpreted as a waiver by Retailers of their contractual rights other than as required for the limited period prescribed by the prohibitions. Retailers will be able to exercise their contractual rights again once the Authority has removed relevant prohibitions from this code.

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<sup>7</sup> Section to replace current section 9.5

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Ofwat (The Water Services Regulation Authority)  
is a non-ministerial government department.  
We regulate the water sector in England and Wales.

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

Phone: 0121 644 7500  
Fax: 0121 644 7533  
Website: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)  
Email: [mailbox@ofwat.gov.uk](mailto:mailbox@ofwat.gov.uk)

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