

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Provision of Water and Sewerage Services

Licensing of services provided to eligible premises

Section 6: Licence authorisation

34. **Section 6** provides for the Commission to grant licences which authorise licence holders to provide services to the occupiers of eligible premises (as defined in section 27). The Commission's powers to grant licences are subject to the provisions at section 7, as regards the Commission granting licences, and at paragraphs 1 and 2 of schedule 2 to the Act, which makes detailed provision for applications for licences and licence conditions.
35. Subsections (1) and (2) and subsections (3) and (4) respectively empower the Commission to grant a "water services licence" and a "sewerage services licence". These licences will authorise their holders (the "water services providers" and "sewerage services providers") to arrange for the supply of water, or the provision of sewerage services, as the case may be, to the occupiers of eligible premises. Subsection (5) provides that where premises are unoccupied, references to occupiers in this section are to be read as referring to the owner of the premises. Eligible premises are defined in section 27 as premises other than domestic dwellings. These subsections also set out that providers can fix, demand and recover charges for the water or sewerage services they provide.

Section 7: Granting of licence

36. Section 7 specifies the grounds on which the Commission can grant a water services or sewerage services licence and the procedure to be followed.
37. Subsection (1) requires the Commission to be satisfied that an applicant has the ability to perform adequately the activities authorised by a licence, before granting the licence. Subsection (2) requires the Commission, in assessing an applicant's ability to perform those activities, to have particular regard to an applicant's knowledge, experience, expertise, financial acumen and business viability, and to any other factors specified by the Scottish Ministers in an order. Section 34 provides for orders under subsection (2) to be subject to negative procedure in the Parliament. In the interests of transparency, subsection (3) empowers the Commission to issue guidance setting out the factors it will consider when assessing an applicant's ability under subsection (2).
38. Subsection (4) requires a licence to be in writing. It provides for it to be in force as set out in the licence unless it has been revoked or suspended. Subsection (5) requires the Commission to notify the applicant and Scottish Water of a decision to refuse a licence application. And where the Commission has granted a licence application, subsection (6) provides for the Commission to send a copy of the licence to the applicant and Scottish Water.

Section 8: Compliance with licences

39. Section 8 places a duty on the Commission to monitor compliance with the terms and conditions of licences and to take any action necessary to ensure compliance. To carry out this duty, the section confers two powers on the Commission: subsection (2) enables the Commission to give directions to service providers which providers are obliged to comply with; and subsection (3) empowers the Commission to issue guidance in relation to compliance with the terms and conditions of a licence. In addition, subsection (4) requires Scottish Water to inform the Commission if it appears a licence condition is being or has been breached.

Section 9: Fees relating to licences

40. Section 9 provides for the Commission to make a fees scheme specifying matters relating to water services and sewerage services licences in respect of which fees are payable, and the amounts of fees payable (and as appropriate, the persons by whom they are payable) in respect of each of those matters. Subsection (2) states that the purpose of the scheme is to ensure that such fees are sufficient to meet the costs incurred by the Commission in exercising its functions in relation to water and sewerage services licences.
41. Subsections (3), (4) and (5) respectively provide that a fees scheme: may impose on licence-holders fees by way of annual levies and specify fees by reference to maximum amounts; may make provision for the times and methods of payment of fees; and may make different provision for different cases or types of case, and may revoke or amend a previous scheme.
42. Subsection (6) requires the Commission to send any fees scheme to the Scottish Ministers for approval, and publish a summary of the scheme. Subsection (7) requires Ministers to have regard to any representations made about a fees scheme within four weeks of the publication of the summary, and allows them to approve a scheme with or without modifications. Subsection (8) provides that if Ministers approve the scheme with modifications, they must give their reasons for doing so.
43. Subsection (9) provides that when a fees scheme has been approved, the Commission must make arrangements for any person to obtain a copy of the scheme, and publicise those arrangements and publish the scheme; and that the Commission may charge and recover fees in accordance with the scheme.

Section 10: Licensed providers to give information

44. Section 10 gives the Commission further powers in respect of its monitoring and compliance functions at section 8 by requiring water and sewerage service providers to provide the Commission with information.
45. Subsection (1) places a duty on service providers to comply with requests for information by the Commission, provided the request is reasonable for the Commission to make in the exercise of its functions. Subsection (2) provides that service providers need not provide the Commission with information that they would not be required to disclose on grounds of confidentiality in proceedings in the Court of Session (such as legally privileged information).
46. Subsection (3) provides that it is an offence for a service provider to fail to provide information required by the Commission without a reasonable excuse. Subsection (4) specifies that the penalties for this offence, depending on the type of conviction, are a fine not exceeding the statutory maximum, currently set at £5,000, on summary conviction (i.e. where convicted by a Sheriff sitting without a jury), or an unlimited fine if convicted on indictment (i.e. where convicted by a jury in the Sheriff Court or the High Court).

Section 11: Participation of licensed providers

47. **Section 11** gives the Commission powers to take such steps as it considers necessary to ensure that the opening up of the market for licensed water and sewerage services under Part 2 of the Act happens in an orderly manner, and with minimum disruption to Scottish Water and its customers.
48. Subsection (1) gives the Commission a duty to exercise its functions in such a way as to secure that water and sewerage services providers participate in the provision of services pursuant to a licence in an orderly manner and in a way that is not detrimental to the exercise of Scottish Water's core functions. To enable it to do this, the Commission is given powers under subsection (2) to direct Scottish Water or a licensed water or sewerage services provider, including a potential licensed provider, to take such steps as are required to ensure their participation achieves the aims in subsection (1). Subsection (4) requires proposed directions to be consulted upon with the intended recipient(s). Subsection (5) requires that the recipient(s) of directions under subsection (2) must comply with these.
49. In particular, it is envisaged that the Commission may use its power under this section to require licensed providers to use a central mechanism (one which the Commission would have identified as optimum) to facilitate the exchange of information required when a customer switches to another licensed provider. Subsection (3) specifically provides for directions to relate to this matter and to any costs associated with the participation of licensed providers in the market, which could, for example, include the costs of developing such a mechanism.

Section 12: Licences and compliance: further provision

50. Section 12 introduces schedule 2 which makes more detailed provisions on licences and compliance with them.