

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Licences and Compliance: Further Provision

Paragraph 1: Application for licence

234. *Paragraph 1* provides an order-making power for the Scottish Ministers to make provision in respect of applications for a water or sewerage services licence under the Act. The paragraph sets out detailed provisions about the Commission's functions in considering applications from those seeking licences, and about the requirements to be placed on applicants.
235. Sub-paragraph (1) requires the form for applications to the Commission under this paragraph to be prescribed by Ministers. Sub-paragraph (2) requires applicants to provide the Commission with any other information reasonably required to enable consideration of the application unless that is legally privileged information (sub-paragraph (3)).
236. Sub-paragraph (4) requires applicants to publish a notice of their application and to explain in this notice the procedures by which anyone can make representations to the Commission about the application. The timing of this notice and the procedures on representation contained in it are to comply with requirements prescribed by Ministers in an order.
237. Sub-paragraph (5) requires the Commission to give notice to applicants of any proposed refusal of an application, explaining the reasons for it and specifying a time within which representations about it may be made. Sub-paragraph (6) provides that in making a final decision about whether to grant or refuse an application, the Commission is required to have regard to any representations made by the applicant and other interested parties.
238. Sub-paragraph (7) makes it an offence for an applicant to provide false or misleading information in an application for a licence. Sub-paragraph (8) specifies that the penalties for anyone guilty of this offence are up to the statutory maximum fine (currently £5,000), where convicted by a Sheriff sitting without a jury, or where convicted by a jury, an unlimited fine.
239. Sub-paragraph (9) gives applicants who are refused a licence the right to appeal against that refusal to the Court of Session, on a question of law. Sub-paragraph (10) gives Scottish Water a right of appeal on a question of law, to the Court of Session against a licence being granted. Sub-paragraph (11) establishes the decisions which the Court of Session can make in these cases, and provides that these are final.