



Water Services etc. (Scotland) Act 2005

2005 asp 3

PART 2

PROVISION OF WATER AND SEWERAGE SERVICES

Licensing of services to eligible premises

6 Licence authorisation

- (1) The Commission may, subject to section 7 and [^{F1}paragraphs 1, 1A and 2] of schedule 2, grant a licence authorising a person—
 - (a) to—
 - (i) make arrangements with the occupier of any eligible premises for or in relation to the supply of water to the premises through the public water supply system; and
 - (ii) fix, demand and recover charges for or in relation to the supply of water to any premises in respect of which the person has made such arrangements; and
 - (b) to make such arrangements with Scottish Water and such other persons as are necessary for the purposes of or in connection with the things mentioned in paragraph (a).
- (2) A licence granted under subsection (1) is in this Act referred to as a “water services licence”; and a person who holds a water services licence is in this Act referred to as a “water services provider”.
- (3) The Commission may, subject to section 7 and [^{F2}paragraphs 1, 1A and 2] of schedule 2, grant a licence authorising a person—
 - (a) to—
 - (i) make arrangements with the occupier of any eligible premises for or in relation to the provision of sewerage to, or the disposal of sewage from, the premises through the public sewerage system; and
 - (ii) fix, demand and recover charges for or in relation to the provision of sewerage to, and disposal of sewage from, any premises in respect of which the person has made such arrangements; and

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- (b) to make such arrangements with Scottish Water and such other persons as are necessary for the purposes of or in connection with the things mentioned in paragraph (a).
- (4) A licence granted under subsection (3) is in this Act referred to as a “sewerage services licence”; and a person who holds a sewerage services licence is in this Act referred to as a “sewerage services provider”.
- (5) The references in subsections (1) and (3) to the occupier of premises are, if the premises are unoccupied, to be construed as references to the owner of the premises.

Textual Amendments

- F1** Words in s. 6(1) substituted (20.11.2015) by [Water Act 2014 \(c. 21\), ss. 7\(3\)\(a\), 94\(3\); S.S.I. 2015/360, art. 2\(b\)](#)
- F2** Words in s. 6(3) substituted (20.11.2015) by [Water Act 2014 \(c. 21\), ss. 7\(3\)\(b\), 94\(3\); S.S.I. 2015/360, art. 2\(b\)](#)

Commencement Information

- I1** S. 6 in force at 7.9.2006 for specified purposes by [S.S.I. 2006/445, art. 2, Sch.](#)
- I2** S. 6 in force at 8.1.2007 in so far as not already in force by [S.S.I. 2006/599, art. 2, Sch.](#)

7 Granting of licences

- (1) The Commission may grant a water services licence or a sewerage services licence only if satisfied that the applicant has the ability to perform adequately the activities authorised by the licence.
- (2) In assessing an applicant's ability so to perform those activities, the Commission is to have special regard to the following factors (in so far as relevant in relation to the performance of those activities)—
 - (a) knowledge, expertise and experience; and
 - (b) financial acumen and business viability,
 and such other matters as the Scottish Ministers may by order specify.
- (3) The Commission may issue guidance (either generally or in a particular case or category of case) in relation to the things mentioned in subsection (2).
- (4) A water services licence and a sewerage services licence—
 - (a) must be in writing; and
 - (b) unless revoked or suspended, continues in force for such period as may be specified in or determined by or under the licence.
- (5) As soon as practicable after refusing an application for a water services licence or a sewerage services licence, the Commission is to intimate the refusal to—
 - (a) the applicant; and
 - (b) Scottish Water.
- (6) As soon as practicable after granting a water services licence or a sewerage services licence, the Commission is to send a copy of the licence to—
 - (a) the person to whom it is granted; and
 - (b) Scottish Water.

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Commencement Information

- I3** S. 7 in force at 7.9.2006 for specified purposes by [S.S.I. 2006/445, art. 2, Sch.](#)
I4 S. 7 in force at 8.1.2007 in so far as not already in force by [S.S.I. 2006/599, art. 2, Sch.](#)

8 Compliance with licences

- (1) The Commission is to—
- monitor compliance with the terms and conditions of water services licences and sewerage services licences; and
 - take such steps as it considers are necessary for the purposes of ensuring that the terms and conditions of such licences are complied with.
- (2) The Commission may give directions to any water services provider or sewerage services provider for the purpose of ensuring that the provider complies with the terms and conditions of the provider's licence; and the provider must comply with any such directions.
- (3) The Commission may issue guidance (either generally or in a particular case or category of case) in relation to compliance with the terms and conditions of water services licences and sewerage services licences.
- (4) Scottish Water must report to the Commission any contravention of a term or condition of a water services licence or a sewerage services licence which appears to it to have occurred or be occurring.

Commencement Information

- I5** S. 8 in force at 7.9.2006 by [S.S.I. 2006/445, art. 2, Sch.](#)

9 Fees relating to licences

- (1) The Commission may, for the purpose mentioned in subsection (2), make a scheme (a “fees scheme”) which specifies—
- the 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.
- (2) The purpose is securing that the fees payable in accordance with the scheme are sufficient to meet the costs incurred by the Commission in exercising its functions relating to water services and sewerage services licences.
- (3) A fees scheme may, in particular—
- impose on licence-holders fees by way of annual levies; and
 - specify fees by reference to maximum amounts.
- (4) A fees scheme may make provision with respect to the times and methods of payment of the fees specified by the scheme.
- (5) A fees scheme may—
- make different provision for different cases or types of case;

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- (b) revoke or amend a previous scheme.
- (6) The Commission must—
 - (a) send any fees scheme to the Scottish Ministers for approval; and
 - (b) publish a summary of the scheme (and, in doing so, invite representations for the purposes of subsection (7)).
- (7) The Scottish Ministers—
 - (a) must have regard to any representations about a fees scheme which are made to them within 4 weeks of publication of the summary of it under subsection (6)(b); and
 - (b) may approve a fees scheme with or without modifications.
- (8) If the Scottish Ministers approve a fees scheme with modifications, they must give their reasons for doing so.
- (9) When a fees scheme has been approved under subsection (7), the Commission—
 - (a) must—
 - (i) make arrangements for allowing any person to obtain a copy of the scheme on payment of such reasonable fee (if any) as the Commission may determine; and
 - (ii) publicise those arrangements and publish the scheme; and
 - (b) may charge and recover fees in accordance with the scheme.

Commencement Information

- I6** S. 9 in force at 20.6.2005 for specified purposes by [S.S.I. 2005/351, art. 2, Sch. 1](#)
I7 S. 9 in force at 8.1.2007 in so far as not already in force by [S.S.I. 2006/599, art. 2, Sch.](#)

10 Licensed providers to give information

- (1) Water services providers and sewerage services providers must provide the Commission with such information (including information in the form of a document) as it reasonably requires in the exercise of its functions.
- (2) Subsection (1) does not authorise the Commission to require the disclosure of anything that a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (3) Any person who fails, without reasonable excuse, to provide information required by the Commission under subsection (1) is guilty of an offence.
- (4) A person who is guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.

Commencement Information

- I8** S. 10 in force at 7.9.2006 by [S.S.I. 2006/445, art. 2, Sch.](#)

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11 Participation of licensed providers

- (1) The Commission is (so far as is consistent with the exercise of its function under section 1(2) of the 2002 Act) to exercise its functions relating to water services and sewerage services licences for the purposes of securing the participation—
 - (a) in an orderly manner; and
 - (b) in a manner that is not detrimental to the exercise of Scottish Water's core functions,of water services and sewerage services providers in the provision of water and sewerage services.
- (2) The Commission may give directions of a specific or general character to—
 - (a) Scottish Water; or
 - (b) any—
 - (i) water services or sewerage services provider; or
 - (ii) person in whose favour it intends to grant a water services or sewerage services licence,as to steps to be taken for the purposes mentioned in subsection (1).
- (3) Directions under subsection (2) may, in particular, relate to—
 - (a) any costs attributable to the participation of water services and sewerage services providers in the provision of water and sewerage services; and
 - (b) the provision or exchange of information about customers of water services or sewerage services providers.
- (4) Before giving directions under subsection (2), the Commission must consult any person to whom the directions are to be given.
- (5) Any person to whom directions are given under subsection (2) must comply with the directions.

Commencement Information

19 S. 11 in force at 7.9.2006 by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

[^{F3}11A Complaints about licensed providers

- (1) Subsections (2) to (4) apply where a water services provider or, as the case may be, a sewerage services provider (“the provider”) has requested (in writing) that the Scottish Public Services Ombudsman (“the Ombudsman”) investigate complaints made about the provider by occupiers of premises served by the provider.
- (2) Subject to subsection (4), the Scottish Public Services Ombudsman Act 2002 applies to such complaints as it applies to complaints made under that Act about a listed authority.
- (3) For the purposes of subsection (2), the provider is to be treated as a listed authority and the complainer as the person aggrieved.
- (4) Paragraph 7 of schedule 4 to the Scottish Public Services Ombudsman Act 2002 (Ombudsman not to investigate contractual or commercial transactions relating to a listed authority) does not apply.

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- (5) Subsections (6) to (9) apply where—
- (a) the provider has—
 - (i) requested (in writing) that the Ombudsman may not investigate any new complaints relating to the provider,
 - (ii) sent a copy of that request to the Commission, and
 - (b) the Commission has agreed to that request and notified the Ombudsman accordingly.
- (6) The Ombudsman may not investigate any new complaints relating to the provider from the date that the Ombudsman receives notification under subsection (5)(b).
- (7) The Ombudsman is to continue investigating any undetermined complaints about the provider which have been made to the Ombudsman prior to the Ombudsman's receipt of notification under subsection (5)(b).
- (8) For the purpose of enabling an undetermined complaint to continue to be dealt with, subsections (2) and (3) continue to apply and have effect as they applied and had effect immediately before the Ombudsman received notification under subsection (5)(b).
- (9) For the purpose of subsection (7), a complaint is determined by the Ombudsman if the Ombudsman—
- (a) has decided to conduct an investigation in relation to the complaint and that investigation is concluded, or
 - (b) has decided not to conduct an investigation in relation to the complaint.]

Textual Amendments

- F3** S. 11A inserted (15.8.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 131, 134(7), 134(8)**; [S.S.I. 2011/278](#), art. 2(c)

12 Licences and compliance: further provision

Schedule 2 makes further provision regarding licences and compliance with licences.

Commencement Information

- I10** S. 12 in force at 7.9.2006 for specified purposes by [S.S.I. 2006/445](#), art. 2, **Sch.**
- I11** S. 12 in force at 8.1.2007 in so far as not already in force by [S.S.I. 2006/599](#), art. 2, **Sch.**

Changes to legislation:

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