

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Licences and Compliance: Further Provision

Paragraph 11: Penalties for contravention of licence

281. **Paragraph 11** gives the Commission the power to impose financial penalties on water or sewerage services providers if they contravene the terms and conditions of their licence. The Commission is required to prepare and publish a policy with respect to the imposition of penalties.
282. Sub-paragraph (1) empowers the Commission to impose penalties for contravention of licence terms and conditions. In the interests of transparency, sub-paragraph (2) requires the Commission to develop and to publish, and to keep under review and revise, a statement of its policy for imposing penalties on providers who contravene the terms and conditions of their licences. The Executive expects the Commission to consult publicly on the basis of a draft policy statement prior to a final statement being published.
283. Sub-paragraph (3) requires the Commission to notify a provider of its intention to impose a penalty. Sub-paragraph (4) requires the Commission to have regard to any policy statement under sub-paragraph (2) and any representations from a provider in respect of a notice before determining the penalty to be imposed on the provider. Sub-paragraph (5) enables a provider to appeal to the sheriff within 14 days against any penalty imposed by the Commission and the penalty is not recoverable until the appeal is withdrawn or finally determined. Sub-paragraph (6) empowers the sheriff to make any order in respect of such an appeal that is considered necessary and provides that the sheriff's decision in such cases is final.
284. Sub-paragraph (7) ensures that the Commission will be able to recover any penalties that it imposes by using general debt recovery procedures and remedies. It ensures too that a former provider can be pursued for any penalty, even where it no longer holds a licence. In terms of sub-paragraph (8), the proceeds of penalties recovered must be paid into the Scottish Consolidated Fund.