

# **WATER SERVICES ETC. (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Schedule 2: Licences and Compliance: Further Provision***

##### ***Paragraph 4: Transfer of licence***

251. **Paragraph 4** establishes the basis on which a water or sewerage services provider can transfer a licence to another person.
252. Sub-paragraph (1) allows in principle for a licence to be transferred from a provider, who holds a licence, to another person. A transfer can be in respect of all, or part of, the activities covered by a licence. Sub-paragraph (2) requires any transfer to comply with any conditions (whether standard or ordinary) relating to transfers and to be subject to the consent of the Commission.
253. Sub-paragraphs (3) and (4) empower the Commission to consent to a transfer, but only where satisfied that the person the licence is being transferred to is able to carry out adequately the activities in respect of which the transfer is being proposed. In deciding whether someone is able to conduct these activities adequately the Commission must take into account the factors that would normally be considered when granting the licence under section 7 of the Act.
254. Sub-paragraph (5) requires a transferee to submit an application to the Commission for consent to the transfer and provides for a similar application procedure for the transfer of a water or sewerage services licence to that which applies to licence applications under paragraph 1(1) to (6) of schedule 2 to the Act.
255. Sub-paragraph (6) makes it an offence to knowingly or recklessly make a false statement in connection with a transfer application (similar to paragraph 1(7) of schedule 2) whilst sub-paragraph (7) prescribes the penalties for such an offence (similar to paragraph 1(8) of that schedule).
256. Sub-paragraph (8) empowers the Commission to make its consent to a transfer subject to any conditions in respect of the licence or more generally as it considers appropriate. Sub-paragraph (9) requires the Commission to notify, as soon as is practicable after its decision about a transfer, those parties with an interest in that transfer and Scottish Water.
257. Sub-paragraph (10) permits prospective transferees to appeal to the Court of Session on a question of law against a decision by the Commission to withhold consent to a transfer.
258. Sub-paragraph (11) permits Scottish Water to appeal to the Court of Session, on a question of law, against the granting of consent to transfer a water or sewerage services licence, in the same way that Scottish Water may appeal against the granting of the original licence under paragraph 1(10) of schedule 2.

*These notes relate to the Water Services etc. (Scotland) Act  
2005 (asp 3) which received Royal Assent on 17 March 2005*

259. Sub-paragraph (12) provides that the decision of the Court of Session in an appeal under sub-paragraphs (10) or (11) shall be final.
260. Sub-paragraph (13) ensures that any attempt to assign a water or sewerage services licence will be a transfer for the purposes of paragraph 4 of schedule 2 to the Act.