

POLICY NOTE

THE WATER AND SEWERAGE SERVICES (CROSS-BORDER APPLICATIONS) (SCOTLAND) ORDER 2016

SSI 2016/52

Introduction

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 34(2) of the Water Services etc. (Scotland) Act 2005 (“the 2005 Act”), and paragraph 1A of schedule 2 to that Act, which was inserted by section 7 of the Water Act 2014. The instrument is subject to negative procedure.

Policy Objectives

The Scottish Government is committed to working with UK partners to deliver a retail market for water and sewerage services for non-household customers.

This Order makes provision that allows an application to the Water Services Regulation Authority (“the Authority”) in England and Wales for a water supply or sewerage licence to be also treated as an application to the Water Industry Commission for Scotland (“the Commission”) for a water services or sewerage services licence respectively in Scotland. The intention is for these arrangements to assist in developing a seamless join between the markets in Scotland and England in relation to retail services for all non-household customers, and for eligible water supply customers in Wales (i.e. water supply customers that use 50 megalitres of water a year under the restricted retail authorisation).

Only applications made to the Authority for a licence giving retail or restricted retail authorisations fall within these arrangements. This is because there are no provisions in Scotland that would licence activities similar to those allowed for in the wholesale, supplementary or disposal authorisations applicable in England and Wales.

This Order comes into force on 1st April 2016.

Background and discussion

The Water Act 2014 amended the Water Industry Act 1991 (“the 1991 Act”) and the 2005 Act so as to provide a framework for the Authority (in England and Wales) and the Commission (in Scotland) to forward applications to each other in circumstances where an applicant wishes to make an application in more than one of those geographical areas.

Section 17FB of the 1991 Act requires the Authority in England and Wales to forward applications for water supply or sewerage licences and associated information to the Commission in Scotland when requested to do so, subject to certain requirements. An equivalent duty is placed on the Commission by paragraph 1B of schedule 2 to the 2005 Act.

This Order makes provision for the Commission to treat such applications forwarded to it under section 17FB of the 1991 Act as also being an application for the grant of a water services licence or sewerage services licence under paragraph 1 of schedule 2 to the 2005 Act, being the equivalent licences in Scotland. The Commission is only required to treat such an application as having been made under the 2005 Act if the conditions set out in article 2(2)

are met. The conditions ensure that the Commission won't be required to accept such an application unless it has been made in accordance with section 17FB of the 1991 Act and contains sufficient information to enable the Commission to consider it as an application made under the 2005 Act. It is a condition that the forwarded application is accompanied by a fee of the amount that is usually payable for applications of that type under the charging scheme made under the 2005 Act. This reflects the fact that the cost to the Commission of considering and determining a forwarded application is the same as if the application had been made directly to them. The fee does not need to accompany the application when it is forwarded by the Authority if alternative arrangements are put in place for payment which are agreed by the Commission.

The licence for England & Wales and the licence for Scotland will remain separate and assessment processes will run separately by the respective regulators. However, as a result of the changes made by this Order and the 2014 Act, an applicant will now only need to provide the necessary information once when applying for multiple applications across more than one of the geographical territories at a time which are the responsibility of the Authority and the Commission.

The UK Government are making an equivalent Order which will make provision allowing an application to the Commission for a water services licence or sewerage services licence to be also treated by the Authority as an application for a water supply licence or sewerage licence respectively in England and Wales. It is expected that the Order will also come into force on 1st April 2016.

The duties in section 17FB of the 1991 Act, and paragraph 1B of schedule 2 to the 2005 Act, were introduced by sections 6 and 7 of the Water Act 2014 respectively. Sections 7 of the 2014 Act is being fully brought into force on 1st April 2016 by the Water Act 2015 (Commencement No. 2) (Scotland) Order 2016 (S.S.I. 2016/48) (C.8). It is expected that section 6 of the 2014 Act will also come fully into force on 1st April 2016 by virtue of a commencement order to be made by the UK Government.

Consultation and financial implications

This is a technical Order which make further provision in relation to the cross-border application arrangements introduced by the 2014 Act. The Order does not introduce any new obligations on customers applying for water services or sewerage services licences, nor impose any increase in application costs. We have therefore not produced a BRIA, or consulted widely.

The Scottish Government have, however, engaged with a variety of relevant key stakeholders throughout the policy development and drafting to ensure this policy progressed consistently and in tandem with that of the UK Government Department for Environment, Food and Rural Affairs, who set the policy objectives for the Water Services Regulation Authority. In addition, the Scottish Government engaged in a short targeted public stakeholder engagement process to seek views from the Water Industry sector between 25 November 2015 and 9 December 2015.

Water Industry Team