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STATUTORY INSTRUMENTS

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**2005 No. 3172**

**The Water Services etc. (Scotland) Act 2005  
(Consequential Provisions and Modifications) Order 2005**

**Article 9: supplementary**

**10.**—(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice given under article 9(4)(a) or (6), or published under article 9(8).

(2) In giving any notice under article 9(4)(a) or (6), or publishing any notice under article 9(8), the Commission must have regard to the following considerations before disclosing any information—

- (a) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest;
- (b) the need to exclude from disclosure (so far as practicable) any commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the person to which it relates;
- (c) the need to exclude from disclosure (so far as practicable) any information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests; and
- (d) the extent to which the disclosure of the information mentioned in sub-paragraph (b) or (c) is necessary for the purposes of the notice.

(3) The following sections of Part 3 of the Enterprise Act 2002<sup>(1)</sup> shall apply, with the modifications referred to in paragraphs (4) to (6), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under article 9, as they apply for the purposes of any investigation on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties);
- (h) section 116 (statement of policy);
- (i) section 117 (false or misleading information)<sup>(2)</sup>; and
- (j) section 125 (offences by bodies corporate).

(4) Section 110 shall, in its application by virtue of paragraph (3), have effect as if—

- (a) subsection (2) were omitted;

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<sup>(1)</sup> 2002 c. 40. There have been amendments to Part 3 which are not relevant to this Order.

<sup>(2)</sup> Section 117 has been amended by the 2003 Act, section 389 and Schedule 16, paragraph 20.

- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under article 9(8) of the Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 in connection with the reference concerned or, if no direction has been given by the Commission under article 9(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”;
  - (c) in subsection (7), for the words “statutory maximum” there were substituted “amount specified as level 5 on the standard scale”; and
  - (d) in subsection (9), the words from “or section” to “section 65(3))” were omitted.
- (5) Section 111 shall, in its application by virtue of paragraph (3), have effect as if–
- (a) for subsection (4) there were substituted–
    - “(4) No penalty imposed under section 110(1) shall–
    - (a) in the case of a fixed amount, exceed £20,000;
    - (b) in the case of an amount calculated by reference to a daily rate, exceed £5,000; and
    - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed–
      - (i) in respect of a fixed amount, £20,000; and
      - (ii) in respect of an amount calculated by reference to a daily rate, £5,000.”;
  - (b) for subsection (5)(b)(ii) there were substituted–
    - “(ii) if earlier, the day on which a notice is published by the Commission under article 9(8) of the Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 in connection with the reference concerned or, if no direction is given by the Commission under article 9(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”; and
  - (c) for subsection (6) there were substituted–
    - “(6) No penalty imposed under section 110(3) shall exceed £20,000.”.
- (6) Section 117 shall, in its application by virtue of paragraph (3), have effect as if–
- (a) in each of subsections (1)(a) and (2)–
    - (i) the words “the OFT, OFCOM,” and “or the Secretary of State” were omitted;
    - (ii) for “their” there was substituted “its”; and
    - (iii) for “this Part” there is substituted “the Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005”; and
  - (b) in subsection (3), for the words “statutory maximum” there were substituted “amount specified as level 5 on the standard scale”.
- (7) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 and 125 of that Act shall, for the purposes of the application of those sections by virtue of paragraph (3), have effect in relation to those sections as applied by virtue of that paragraph.