

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Licences and Compliance: Further Provision

Paragraph 2: Conditions of licence

240. **Paragraph 2** makes provisions about the conditions that are to attach to water services licences and sewerage services licences.
241. Sub-paragraph (1) provides for each licence to contain within it certain standard conditions, and any other "ordinary" conditions particular to individual licences, which the Commission judges to be necessary or expedient. Sub-paragraph (2) requires the Commission to specify what the standard conditions are to be within 9 months of the sub-paragraph coming into force. For example, this will allow the Commission to use part of the 9 month period to consult publicly on draft conditions.
242. Sub-paragraph (3) provides for the matters to be covered by the standard conditions. It is anticipated that these will include requirements that service providers avoid undue discrimination between customers, meet their financial obligations to Scottish Water at all times, and comply with standard procedures in transferring or surrendering licences. In the interests of allowing the Commission to operate flexibly and to take into account different circumstances, the sub-paragraph enables conditions to apply only to specified classes of licence and to come into effect or be suspended in particular circumstances.
243. Sub-paragraph (4) requires the Commission to consult Ministers on its proposals for standard conditions and to publish the conditions once determined. The intention is that the Commission should consult Ministers about these proposals having had regard to the outcome of a public consultation on the draft conditions.
244. Sub-paragraphs (5) to (11) provide for the Commission to review and modify the standard conditions and to modify other conditions of any licence if necessary as a consequence of modifying a standard condition. This is the mechanism for changing the standard conditions for all licences that contain them. The Commission is not required to obtain the agreement of each licence holder to whatever change is being made.
245. Sub-paragraph (5) places a duty on the Commission to review the standard conditions from time to time and gives it the power to modify them and also, in consequence of so doing, to make any other modifications to licence conditions which it considers necessary or expedient. The frequency with which this type of review is required will depend on experience gained of the system in operation. Sub-paragraph (6) requires that the Commission, before making any modification to a standard condition or a consequential amendment to a licence condition, should notify the licence holders affected by any proposed modification, Scottish Water and Ministers; and should publish this notification. Sub-paragraph (7) requires that the notice explains the Commission's reasons for proposing modifications and specifies the timescale within which representations about them can be made to it. Sub-paragraph (8) requires the Commission to have regard to any representations made about the proposed

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

modification. Sub-paragraph (9) requires the Commission to publish any modifications that are made to the standard conditions.

246. Sub-paragraph (10) empowers the Commission to grant a licence that does not contain the standard conditions in their normal form, again in the interests of flexibility to reflect the particular circumstances of the case. Sub-paragraph (11) requires, where the Commission is minded to grant a licence on this basis, that the Commission should follow the procedures for consulting on modifications to standard conditions set out at sub-paragraphs (6) to (8).
247. In the interests of flexibility, sub-paragraph (12) gives the Commission discretion to provide in an ordinary condition of a licence, for that condition to have effect or cease to have effect or be modified at such time, in such manner and in such circumstances as it considers appropriate.
248. Sub-paragraph (13) empowers the Commission to modify any conditions within a particular licence, if it considers that this is necessary in the circumstances of the case. Sub-paragraph (14) requires, where the Commission is minded to modify a condition on this basis, that it should follow procedures for consulting on modifications to standard conditions set out at sub-paragraphs (6) to (8).
249. Sub-paragraphs (15) and (16) empower a water or sewerage services provider to appeal to the Court of Session against the inclusion or modification respectively of a condition in a licence, on a question of law. Sub-paragraph (17) provides that the decision of the Court in the appeal is final.