

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Licences and Compliance: Further Provision

Paragraph 5: Powers of entry etc.

261. **Paragraph 5** provides for the Commission to have powers of entry to premises so as to enable it to discharge its duty, under section 8(1) of the Act, to monitor and ensure compliance with licence conditions. Sub-paragraph (1) empowers the Commission, or anyone authorised by it, to exercise the powers specified in sub-paragraph (2).
262. Sub-paragraph (2)(a) enables the Commission and its officials to enter (i) the premises of any water or sewerage services provider (“the first category”), (ii) the premises of anyone that a provider has arranged to provide with services (“the second category”), or (iii) the premises of any other person (“the third category”). Sub-paragraphs (2) (b) and (c) respectively make provision for powers to inspect such documentation and articles, and to remove them from the premises, as the Commission considers necessary to give effect to its monitoring and compliance duties. The exercise of the powers of entry is qualified by sub-paragraph (3). Thus whereas the Commission, or anyone authorised by the Commission, can enter the premises of a licensed provider in terms of the first category at any reasonable time without notice, they can only enter premises falling within the second and third categories on giving 24 hours' notice. Moreover, sub-paragraph (4) specifies that premises in the third category can be entered only where the Commission is satisfied that gaining access to premises in the first and second categories only would not be sufficient to enable it to discharge its monitoring and compliance duties. In practice, this would mean that the Commission could seek entry to premises in the third category only where it had grounds for believing that it might obtain there information relevant to monitoring and compliance that could not be obtained in any of the premises in the preceding two categories. The effect of these qualifications is to direct the Commission's powers of entry, first to the premises of service providers, then to the premises of customers of service providers, and only in the last resort to premises in general.
263. Sub-paragraph (5) requires that the Commission be given reasonable assistance by the owners and occupiers of premises that are subject to the exercise of the Commissioner's powers of entry. This duty extends to those who are present on the premises when the powers are being exercised.