

SCHEDULE 2

(introduced by section 12)

LICENCES AND COMPLIANCE: FURTHER PROVISION

Application for licence

- 1 (1) An application for a water services licence or a sewerage services licence is to be made to the Commission and is—
- (a) to be in such form and made in such manner; and
 - (b) to contain such information (including information in the form of a document),
- as the Scottish Ministers may by order prescribe.
- (2) The applicant must provide the Commission with such further information (including information in the form of a document) as it reasonably requires in order to determine the application.
- (3) Sub-paragraph (2) does not authorise the Commission to require the disclosure of anything that a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) The applicant must, in such manner and within such time from the making of the application as the Scottish Ministers may by order prescribe, publish a notice of the application; and the notice must—
- (a) specify such procedure for making representations to the Commission with respect to the application; and
 - (b) contain such other particulars,
- as the Scottish Ministers may so prescribe.
- (5) Where the Commission proposes to refuse an application, the Commission is to give the applicant notice—
- (a) of that fact (together with its reasons for proposing to refuse the application); and
 - (b) specifying the date by which the applicant may make representations to the Commission with respect to the proposed refusal.
- (6) The Commission is, in determining the application, to have regard to any representations made by virtue of—
- (a) sub-paragraph (4)(a); and
 - (b) sub-paragraph (5)(b).
- (7) Any applicant for a water services licence or a sewerage services licence who knowingly or recklessly makes a statement, in connection with the application for the licence, that is false or misleading in a material particular is guilty of an offence.
- (8) A person who is guilty of an offence under sub-paragraph (7) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.
- (9) A person whose application for a water services licence or sewerage services licence has been refused may, within 14 days of the date on which the refusal was intimated to the person under section 7(5)(a), appeal to the Court of Session against the refusal on a question of law.

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- (10) Where a water services licence or sewerage services licence has been granted, Scottish Water may, within 14 days of the date on which a copy of the licence was sent to Scottish Water under section 7(6)(b), appeal to the Court of Session against the granting of the licence on a question of law; and the licence is suspended until the appeal is withdrawn or finally determined.
- (11) In an appeal under sub-paragraph (9) or (10), the Court may quash or confirm the Commission's decision to refuse the application or (as the case may be) grant the licence; and the decision of the Court in the appeal is final.

Conditions of licence

- 2 (1) Each water services licence and sewerage services licence—
- (a) is, subject to sub-paragraph (10), to have incorporated in it by reference to the standard conditions such of those conditions as are applicable to it; and
 - (b) may include such ordinary conditions as appear to the Commission to be necessary or expedient for the purposes of or in connection with the activities authorised by the licence.
- (2) The Commission is, within 9 months of the coming into force of this sub-paragraph, to determine standard conditions that are to apply to water services licences and sewerage services licences.
- (3) The standard conditions are to relate to the obligations of water services providers and sewerage services providers to their customers and to Scottish Water; and the standard conditions may, in particular—
- (a) include standard conditions that are to apply to—
 - (i) all licences; and
 - (ii) a particular type of licence; and
 - (b) make provision for—
 - (i) the standard conditions (or any of them) not to apply to a particular licence or type of licence in such circumstances; and
 - (ii) the coming into effect and suspension of the standard conditions (or any of them) in such manner and in such circumstances, as may be specified in the standard conditions.
- (4) The Commission is to—
- (a) consult the Scottish Ministers on proposals for standard conditions; and
 - (b) publish the standard conditions.
- (5) The Commission—
- (a) is from time to time to review the standard conditions; and
 - (b) may—
 - (i) modify the standard conditions; and
 - (ii) make such modification to the conditions of any licence as it considers is necessary or expedient as a consequence of any modification of the standard conditions.
- (6) Before making any modification under sub-paragraph (5)(b), the Commission is to—
- (a) send a notice of the proposed modification to—

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- (i) every water services provider and sewerage services provider whose licence would be affected by the modification;
 - (ii) the Scottish Ministers; and
 - (iii) Scottish Water; and
 - (b) publish the notice.
- (7) The notice must—
 - (a) state the reasons why the modification is proposed; and
 - (b) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposed modification may be made to the Commission.
- (8) The Commission is to have regard to any representations made by virtue of sub-paragraph (7)(b).
- (9) Where the Commission modifies the standard conditions, the Commission is to publish them as modified.
- (10) The Commission may, in granting a particular licence, exclude or modify any of the standard conditions to such extent as it considers appropriate in the circumstances of the case.
- (11) Sub-paragraphs (6) to (8) apply to exclusions and modifications under sub-paragraph (10) as they apply to modifications under sub-paragraph (5)(b) (but as if, in the case of an exclusion, the references in sub-paragraphs (6) and (7) to modification were references to exclusion).
- (12) Any ordinary condition of a licence may provide for the condition to—
 - (a) have effect or cease to have effect; or
 - (b) be modified,at such time, in such manner and in such circumstances, as the Commission considers appropriate.
- (13) The Commission may modify any condition of a particular licence if it considers that the modification is necessary or expedient in the circumstances of the case.
- (14) Sub-paragraphs (6) to (8) apply to modifications under sub-paragraph (13) as they apply to modifications under sub-paragraph (5)(b).
- (15) Any water services provider or sewerage services provider who is aggrieved by the inclusion of a condition in the licence held by the provider may, within 14 days of the date on which the licence was granted, appeal to the Court of Session against the inclusion of the condition on a question of law.
- (16) Any water services provider or sewerage services provider who is aggrieved by a modification of a condition included in the licence held by the provider may, within 14 days of the date on which the modification has effect, appeal to the Court of Session against the making of the modification on a question of law.
- (17) In an appeal under sub-paragraph (15) or (16), the Court may quash, confirm or vary the condition; and the decision of the Court in the appeal is final.

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Conditions: sustainable development

- 3 (1) The Scottish Ministers may issue to the Commission guidance as to how water services and sewerage services providers might, by the manner in which they perform the activities authorised by their licences, reasonably contribute to the achievement of sustainable development.
- (2) In exercising its functions under paragraph 2, the Commission is to have regard to any guidance issued under sub-paragraph (1).

Transfer of licence

- 4 (1) Any water services licence or sewerage services licence may, subject to sub-paragraphs (2) to (5), be transferred to another person by the provider who holds it (“the transferor”), either in respect of—
- (a) all the activities; or
 - (b) any particular activity or activities, authorised by the licence.
- (2) A transfer of a licence is not valid unless—
- (a) the transfer complies with any condition of the licence as to transfer; and
 - (b) the Commission consents to the transfer.
- (3) The Commission may consent to a transfer only if satisfied that—
- (a) in a case where the proposed transfer is in respect of all the activities authorised by the licence, the person to whom the transferor proposes to transfer the licence (“the transferee”) has the ability to perform adequately those activities; or
 - (b) in a case where the proposed transfer is in respect of any particular activity or activities authorised by the licence, the transferee has the ability to perform adequately that activity or (as the case may be) those activities.
- (4) In assessing the transferee’s ability so to perform that activity or those activities, the Commission is to have special regard to—
- (a) the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7; and
 - (b) any other matters specified under that subsection.
- (5) In relation to a transfer—
- (a) an application for consent is to be made by the transferee; and
 - (b) sub-paragraphs (1) to (6) of paragraph 1 apply as regards an application for consent as they apply as regards an application for a licence.
- (6) Any applicant for consent to a transfer of a licence who knowingly or recklessly makes a statement, in connection with the application for consent, that is false or misleading in a material particular is guilty of an offence.
- (7) A person who is guilty of an offence under sub-paragraph (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.
- (8) The Commission may consent to a transfer subject to such—
- (a) modification to any condition of the licence; and

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- (b) conditions apart from the conditions of the licence, as it considers it appropriate to make.
- (9) As soon as practicable after deciding whether to consent to a transfer, the Commission is to intimate its decision to—
 - (a) the transferor and the transferee; and
 - (b) Scottish Water.
- (10) Where the Commission withholds consent to the transfer, the transferee may, within 14 days of the date on which the decision to do so was intimated to the transferee under sub-paragraph (9)(a), appeal to the Court of Session against the decision on a question of law.
- (11) Where the Commission consents to the transfer, Scottish Water may, within 14 days of the date on which the decision to do so was intimated to Scottish Water under sub-paragraph (9)(b), appeal to the Court of Session against the decision on a question of law.
- (12) In an appeal under sub-paragraph (10) or (11), the Court may quash or confirm the Commission’s decision to withhold consent to the transfer or (as the case may be) to consent to the transfer; and the decision of the Court in the appeal is final.
- (13) In this paragraph, “transfer” includes any form of assignation.

Powers of entry etc.

- 5 (1) For the purposes of monitoring and ensuring compliance with the terms and conditions of licences under section 8(1), the powers mentioned in sub-paragraph (2) are exercisable by the Commission and any person authorised by the Commission for the purpose of the exercise of those powers.
- (2) The powers are—
 - (a) power to enter any premises—
 - (i) of any water services provider or sewerage services provider;
 - (ii) in respect of which such a provider has made arrangements for or in relation to the supply of water or the provision of sewerage or disposal of sewage;
 - (iii) of any other person,for the purpose of exercising a power mentioned in heads (b) and (c);
 - (b) power to carry out such inspection of any document or article found on the premises as the Commission considers necessary; and
 - (c) for the purpose of inspecting any such document or article, power to take the document away from the premises.
- (3) The power mentioned in head (a) of sub-paragraph (2) entitles the Commission (or a person authorised by the Commission) to demand, as of right, entry—
 - (a) to premises referred to in sub-head (i) of that head, at any reasonable time (and without notice); and
 - (b) to premises referred to in sub-head (ii) or (iii) of that head, at any reasonable time provided that the Commission (or the person) gives 24 hours’ notice of the exercise of the power to the occupier of the premises.

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- (4) The powers mentioned in sub-paragraph (2) must not be exercised in relation to premises referred to in sub-head (iii) of head (a) of that sub-paragraph unless the Commission is satisfied that the exercise of those powers in relation to the premises referred to in sub-heads (i) and (ii) of that head would be insufficient for the purposes referred to in sub-paragraph (1).
- (5) The owner and occupier of any premises in respect of which a power mentioned in sub-paragraph (2) is being exercised, and any person on the premises when the power is being exercised, must—
 - (a) give the person exercising the power such assistance; and
 - (b) provide that person with such information,
 as that person reasonably requires.

Powers of entry etc.: further provision

- 6 (1) A person entitled to enter premises by virtue of the power mentioned in paragraph 5(2)(a)—
 - (a) may take on to the premises such other persons and such equipment as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and
 - (b) must, if required to do so, produce written evidence of that entitlement.
- (2) A person who enters premises in the exercise of the power mentioned in paragraph 5(2)(a) must leave the premises as effectually secured against trespassers as the person found them.
- (3) Where a person exercises the power mentioned in paragraph 5(2)(a), the Commission is to make full compensation to any person who has sustained loss or damage by reason of—
 - (a) the exercise that power; or
 - (b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2),
 except in so far as the loss or damage is attributable to the fault of the person who sustained it.
- (4) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of any power conferred by paragraph 5(1) and (2) is guilty of an offence.
- (5) Any person who—
 - (a) intentionally obstructs a person acting in the exercise of any power conferred by paragraph 5(1) and (2); or
 - (b) refuses or fails, without reasonable excuse, to comply with a requirement made under paragraph 5(5),
 is guilty of an offence.
- (6) A person who is guilty of an offence under sub-paragraph (4) or (5) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

Warrants

- 7 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in paragraph 5(2); and
 - (b) at least one of the conditions mentioned in sub-paragraph (2) is fulfilled in relation to the premises,
- the sheriff or justice may grant a warrant authorising the Commission (and any person authorised by the Commission for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.
- (2) The conditions are—
- (a) that the exercise of the power in relation to the premises has been refused;
 - (b) that such a refusal may reasonably be expected;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent from the premises;
 - (e) that the case is one of urgency;
 - (f) that an attempt to gain entry to the premises without the authority of a warrant would defeat the object of the proposed entry.
- (3) A sheriff or justice must not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) is fulfilled unless the sheriff or justice is also satisfied—
- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or
 - (b) that the giving of such notice would defeat the object of the proposed entry.
- (4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.

Enforcement notices

- 8 (1) If it appears to the Commission (whether or not following the exercise of powers under paragraph 5)—
- (a) that—
 - (i) a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider and the contravention is likely to recur; or
 - (ii) such a provider is contravening a term or condition of the licence held by the provider and the contravention is likely to continue or to recur or both; and
 - (b) that the provider is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence,
- the Commission may serve on the provider a notice (in this paragraph and paragraphs 9, 10 and 12 referred to as an “enforcement notice”) in respect of the contravention.
- (2) An enforcement notice must specify—
- (a) the contravention to which it relates;
 - (b) the Commission’s reasons for believing (as the case may be) that the contravention—
 - (i) has occurred and is likely to recur; or

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- (ii) is occurring and is likely to continue or to recur or both;
 - (c) the date by which the provider is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence;
 - (d) any particular steps which the Commission requires the provider to take for that purpose; and
 - (e) the date on which the notice is to take effect.
- (3) An enforcement notice may specify different dates by which different steps specified under sub-paragraph (2)(d) must be completed.
- (4) The date referred to in sub-paragraph (2)(e) must be no earlier than the day following the last day on which an appeal may be made under sub-paragraph (9).
- (5) In considering whether to serve an enforcement notice, the Commission must consult—
 - (a) Scottish Water; and
 - (b) such other persons as the Commission considers appropriate.
- (6) Before serving an enforcement notice on a provider under sub-paragraph (1), the Commission is to—
 - (a) serve a copy of the proposed notice on the provider; and
 - (b) specify a period (which is to be not less than 7 days and no more than 28 days from the date of service of the notice) within which the provider may make representations to the Commission about the proposed notice.
- (7) The Commission—
 - (a) is to have regard to any representations made by virtue of sub-paragraph (6) (b); and
 - (b) may adjust the notice in light of the representations.
- (8) The Commission must send a copy of an enforcement notice to—
 - (a) the Scottish Ministers; and
 - (b) Scottish Water.
- (9) A provider on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service of the notice, appeal to the sheriff against the notice; and the enforcement notice is of no effect until the appeal is withdrawn or finally determined.
- (10) In an appeal under sub-paragraph (9), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (11) The Commission may—
 - (a) withdraw an enforcement notice; or
 - (b) waive or relax any requirement of an enforcement notice, including substituting a later date for a date specified under sub-paragraph (2)(c) or (3), and may do so whether or not the notice has taken effect.
- (12) The withdrawal of an enforcement notice does not affect the Commission's power to issue a further such notice.

Enforcement notices: offences

- 9 (1) Any water services provider or sewerage services provider, on whom an enforcement notice has been served, who—
- (a) fails to rectify, or (as the case may be) fails to take steps to prevent the recurrence of, a contravention specified in the notice—
 - (i) by the date specified in relation to the contravention under sub-paragraph (2)(c) of paragraph 8; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date; or
 - (b) fails to complete a step specified under sub-paragraph (2)(d) of paragraph 8—
 - (i) by the date specified in relation to that step under sub-paragraph (3) of that paragraph; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date,
- is guilty of an offence.
- (2) An offence under sub-paragraph (1) may be charged by reference to any day or longer period of time; and a provider may be convicted of a second or subsequent offence under that sub-paragraph by reference to any period of time following conviction for such an offence.
- (3) A person who is guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on indictment, to a fine.

Revocation of licences

- 10 (1) A water services licence or sewerage services licence may be revoked in accordance with this paragraph.
- (2) If it appears to the Commission that a water services provider or sewerage services provider, on whom an enforcement notice has been served, has—
- (a) failed to rectify, or (as the case may be) failed to take steps to prevent the recurrence of, a contravention specified in the notice—
 - (i) by the date specified in relation to the contravention under sub-paragraph (2)(c) of paragraph 8; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date; or
 - (b) failed to complete a step specified under sub-paragraph (2)(d) of paragraph 8—
 - (i) by the date specified in relation to that step under sub-paragraph (3) of that paragraph; or
 - (ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date,
- the Commission may revoke the licence held by the provider by serving on the provider a notice of revocation.
- (3) If—

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- (a) it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider; and
 - (b) the Commission considers that the provider would fail to comply with the terms of an enforcement notice pertaining to that contravention,
- the Commission may revoke the licence by serving on the provider a notice of revocation.
- (4) If (having special regard to the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7 and to any other matters specified under that subsection) the Commission considers that a water services provider or sewerage services provider no longer has the ability to perform adequately the activities authorised by the licence held by the provider, the Commission may (whether or not the provider has contravened a term or condition of the licence held by the provider) revoke the licence by serving on the provider a notice of revocation.
- (5) The Commission may, following a request made to the Commission by a water services provider or a sewerage services provider for the licence held by the provider to be revoked, revoke the licence by serving on the provider a notice of revocation.
- (6) The Commission must not revoke a licence under this paragraph unless satisfied that revocation is reasonable having regard to—
- (a) the terms and conditions of the licence;
 - (b) the provider’s responsibilities to the provider’s customers; and
 - (c) any other matters the Commission considers to be relevant.
- (7) A notice of revocation must specify—
- (a) the reasons why it is served; and
 - (b) the date (which must be no earlier than the day after the last day on which an appeal against the notice may be made under sub-paragraph (8)) from which the revocation is to have effect.
- (8) A provider on whom a notice of revocation has been served under sub-paragraph (2), (3) or (4) may, by summary application made within 14 days of the date of service of the notice, appeal to the sheriff against the notice; and the revocation is of no effect until the appeal is withdrawn or finally determined.
- (9) In an appeal under sub-paragraph (8), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (10) As soon as practicable after a revocation under this paragraph has effect, the Commission must—
- (a) send a copy of the notice of revocation to—
 - (i) Scottish Water; and
 - (ii) the Scottish Ministers; and
 - (b) publish the notice.

Penalties for contravention of licence

- 11 (1) Where it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider, the Commission may impose on the provider a financial penalty of such amount as it considers reasonable in the circumstances of the case.

- (2) The Commission—
- (a) is to prepare a statement of policy with respect to the imposition of penalties under sub-paragraph (1) and the determination of their amount;
 - (b) is to keep the statement under review and may revise the statement;
 - (c) in preparing the statement (and any revised statement), is to consult such persons as it considers appropriate; and
 - (d) is to publish the statement (and any revised statement) in such manner as it considers appropriate.
- (3) Before imposing a penalty under sub-paragraph (1), the Commission is to serve on the provider a notice of its intention to impose the penalty; and the notice must specify the date by which the provider may make representations to the Commission with respect to the penalty.
- (4) In imposing a penalty under sub-paragraph (1), the Commission is to have regard to—
- (a) the statement of policy under sub-paragraph (2) as published at the time of the contravention to which the penalty relates; and
 - (b) any representations made by virtue of sub-paragraph (3).
- (5) A provider on whom a penalty is imposed under sub-paragraph (1) may, by summary application made within 14 days of the date on which the penalty was imposed, appeal to the sheriff against the imposition of the penalty or the amount of the penalty; and the penalty is not recoverable until the appeal is withdrawn or finally determined.
- (6) In an appeal under sub-paragraph (5), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (7) Any penalty imposed under sub-paragraph (1) is recoverable, from the person on whom it was imposed, by the Commission—
- (a) by civil diligence; and
 - (b) whether or not that person continues to hold the licence in relation to which the penalty was imposed.
- (8) Any sums received by the Commission by virtue of this paragraph must be paid into the Scottish Consolidated Fund.

Register of licences

- 12 (1) The Commission must keep a register of water services licences and sewerage services licences in such manner as the Scottish Ministers may by order prescribe.
- (2) The register must—
- (a) record the particulars of each water services provider and sewerage services provider;
 - (b) record the terms and conditions of each water services licence and sewerage services licence;
 - (c) record, in relation to any enforcement notice—
 - (i) the particulars of the provider on whom the notice was served;
 - (ii) the date of service of the notice;
 - (iii) the matters specified under sub-paragraph (2) of paragraph 8;
 - (iv) any date specified under sub-paragraph (3) of that paragraph; and

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- (v) anything done under sub-paragraph (11) of that paragraph;
 - (d) record, in relation to any notice of revocation served under paragraph 10—
 - (i) the particulars of the provider on whom the notice was served;
 - (ii) the date of service of the notice;
 - (iii) the reasons why it was served; and
 - (iv) the date specified under sub-paragraph (7)(b) of that paragraph;
 - (e) record, in relation to any penalty imposed under paragraph 11—
 - (i) the particulars of the provider on whom it was imposed;
 - (ii) the amount; and
 - (iii) the date on which it was imposed;
 - (f) record the outcome of any appeal provided for in this schedule; and
 - (g) contain such other information as the Scottish Ministers may by order prescribe.
- (3) The register must be available for inspection by any person at any reasonable time.