
STATUTORY INSTRUMENTS

2005 No. 3172

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

References to the Commission

3.—(1) Where paragraph (2), (3) or (4) applies, the WIC shall, as soon as practicable, make a reference to the Commission in accordance with this article.

(2) This paragraph applies where—

- (a) a water services licence or a sewerage services licence has been granted; and
- (b) the person to whom it is granted or Scottish Water has, within one month of the date on which a copy of the licence was sent under section 7(6) of the 2005 Act, requested in writing that the WIC makes a reference.

(3) This paragraph applies where—

- (a) a condition included in a water services licence or a sewerage services licence has been modified in terms of paragraph 2 of Schedule 2 to the 2005 Act; and
- (b) a water services provider or a sewerage services provider whose licence has been modified or Scottish Water has, within one month of the date on which the modification has effect, requested in writing that the WIC makes a reference.

(4) This paragraph applies where—

- (a) the WIC has—
 - (i) made a determination;
 - (ii) made a revised determination; or
 - (iii) decided not to revise a determination; and
- (b) Scottish Water has, within 2 months of the date on which—
 - (i) a determination was sent to it under section 29B(1)(b) of the 2002 Act;
 - (ii) a revised determination was notified to it under section 29F(7) of that Act; or
 - (iii) it received notification of a decision not to revise a determination under section 29F(6) of that Act,requested in writing that the WIC makes a reference.

(5) An article 3(2) or (3) reference shall be so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
 - (i) relate to the carrying out of activities authorised or regulated by or under a water services licence or a sewerage services licence, as the case may be; and
 - (ii) are specified in the reference,operate, or may be expected to operate, against the public interest; and

- (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modification of the conditions of such a licence.
- (6) An article 3(4) reference shall be so framed as to require the Commission to investigate and report on such questions as are specified in the reference and which relate to whether a different determination or revised determination shall be substituted for that of the WIC.
- (7) In determining, for the purposes of—
- (a) an article 3(2) or (3) reference whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take account of the WIC's powers and duties set out in section 1 of the 2002 Act and sections 7 and 11 of, and Schedule 2 to, the 2005 Act; and
 - (b) an article 3(4) reference that a different determination or revised determination should be substituted for that of the WIC, the Commission shall do so in accordance with the WIC's powers and duties set out in sections 1 and 29C(2)(1) of the 2002 Act.
- (8) The WIC may at any time, by notice given to the Commission, vary a reference by—
- (a) adding to the matters specified in the reference; or
 - (b) excluding from the reference some of the matters so specified,
- and on receipt of any such notice the Commission shall give effect to the variation.
- (9) The WIC may specify in a reference, or a variation of a reference, for the purpose of assisting the Commission in carrying out an investigation—
- (a) in relation to an article 3(2) or (3) reference—
 - (i) any effects adverse to the public interest which, in its opinion, the matters specified in the reference have or may be expected to have; and
 - (ii) any modifications of the conditions of a water services licence or a sewerage services licence by which, in the WIC's opinion, those effects could be remedied or prevented; or
 - (b) in relation to an article 3(4) reference, any modifications of the determination or the revised determination, which, in the WIC's opinion, would answer the questions specified in the reference.
- (10) As soon as practicable after making a reference or a variation of such a reference, the WIC shall—
- (a) serve a copy of the reference or variation of that reference on—
 - (i) all water services providers and sewerage services providers;
 - (ii) Scottish Water;
 - (iii) the Scottish Ministers; and
 - (iv) the Convener of the Water Customer Consultation Panels; and
 - (b) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (11) The WIC shall, for the purpose of assisting the Commission in carrying out an investigation on a reference, give to the Commission—
- (a) any information in its possession which relates to matters falling within the scope of the investigation and which is either—

- (i) requested by the Commission for that purpose; or
 - (ii) information which, in the WIC's opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the WIC's power to give, in relation to any such matters.
- (12) The Commission, for the purpose of carrying out any investigation on a reference, shall take account of any information given to it for that purpose under paragraph (11).