EXECUTIVE NOTE

The Water Services and Sewerage Services Licences (Scotland) Order 2006 (S.S.I/2006/464)

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 13(6), 18(3), 20(8) and 34(2) of, and paragraphs 1(1), 1(4) and 12(1) of schedule 2 to the Water Services etc. (Scotland) Act 2005 ("the 2005 Act"). The instrument is subject to negative resolution parliamentary procedure.

Background and Policy Objectives

The 2005 Act safeguards our public health, environment protection and social policy objectives for Scottish Water by placing clear limits on the extent to which private sector firms can compete with Scottish Water in providing water and sewerage services on the public systems. In the interests of protecting public health and the environment, it provides that Scottish Water alone may operate and maintain the public water and sewerage systems; and in the interest of maintaining the current discounts on charges for a range of vulnerable groups it provides that Scottish Water alone may serve the 2.2 million households on the public systems.

The only part of Scottish Water's activities that the 2005 Act does not reserve exclusively to Scottish Water are those connected with retailing water and sewerage services to non-household customers – that is reading meters, issuing bills, handling complaints etc. for the 130,000 or so business customers served by the public systems. Instead, the 2005 Act provides for Scottish Water to establish a retail undertaking as a separate business, which the Water Industry Commission for Scotland ("the Commission") will licence to provide these services in competition with private sector firms, which the Commission will also licence.

The Order makes provision in relation to the information to be contained in applications from prospective retailers for water services and sewerage services licences, and for their notification. It also prescribes the form of discontinuation notices for both water supply and trade effluent services, and the form of the register of licences to be kept by the Commission. The Order also modifies the application process for the purposes of the initial licence application to be made by the retail undertaking established by Scottish Water under section 13(1) of the 2005 Act.

The Order

Article 2 makes provision for the purpose of paragraph 1(1) of schedule 2 to the 2005 Act and requires applications for water services and sewerage services licences to be submitted to the Commission on the form provided by it for that purpose, and specifies the information to be provided by applicants in such an application.

Article 3 makes provision for the purpose of paragraph 1(4) of schedule 2 to the 2005 Act and requires applicants to publish notice of their application (in the form prescribed in Schedule 1 to the Order) within 14 days of the Commission confirming their application is sufficient for determination. Article 3(1)(b) makes provision in relation to the period in

which representations may be made on an application, which period is 14 days from the date of publication of the notice.

Article 4 modifies the effect of paragraphs 1 and 2 of schedule 2 to the 2005 Act in respect of the initial application for a water services and a sewerage services licence made by the retail undertaking to be established by Scottish Water, and reduces the period of notice (for the purpose of article 3(2) of the Order) and in which representations may be made on the application (article 3(1)(b) of the Order) from 14 to 7 days.

Articles 5 and 6 of, and Schedules 2 and 3 to, the Order prescribe notices for the discontinuation of water and trade effluent services, respectively.

Consultation

8. The subject of retail competition and the establishment of a licensing regime was included as part of the early consultation on the Water Services etc. (Scotland) Bill. The Order has been prepared in consultation with the Commission and Scottish Water.

Financial Effects

9. The licensing regime will have no long-term financial effects on the Scottish Executive. In the short-term the set up of the licensing regime has been met by grant to the Commission from Ministers. Thereafter the licensing regime will be self-financing. Section 9 of the 2005 Act provides that the costs incurred by the Commission in exercising its functions relating to water services and sewerage services licences may be recovered through the licensing fees it has the powers to levy.

Water Division
September 2006