

Section 29E process — activity before Scottish Water submits an application

1. Matters relating to a formal proposal

1.1 Initial proposal by licensed provider

Although the licensed provider may approach Scottish Water informally for initial discussions on possible section 29E departures, the formal obligations listed below commence once the licensed provider submits a formal proposal to Scottish Water.

The formal proposal should set out details of:

- Licensed provider applying;
- Location of proposed activity;
- Nature of proposed activity;
- Source of savings;
- Amount of savings; and
- Time period over which savings would be realised.

This proposal does not have to be as detailed as an application to the Commission would be, but should be enough to convey a good understanding of what is proposed.

1.2 Scottish Water's costs

Scottish Water may incur costs by investigating and processing the application. Because the Strategic Review of Charges 2006-10 covers all Scottish Water's costs in meeting its statutory obligations, including section 29E, Scottish Water may not seek to recover these costs from applicant licensed providers. As such, no application fee may be charged and the costs of processing the application cannot be subtracted from the calculation of savings that Scottish Water realises from the section 29E departure. However, the share of benefits received by Scottish Water should substantially outweigh any initial up-front costs (see section 1.4 below).

1.3 Scottish Water applies to the Commission for the section 29E departure

Under the 2005 Act, only Scottish Water can apply to the Commission for a section 29E departure. To ensure the process is not delayed unnecessarily, Scottish Water must make this application within 3 months of receiving the formal proposal from the licensed provider. The application must follow the form published by the Commission.

If Scottish Water believes it needs more time, it must justify the extension to the licensed provider. The licensed provider may complete an application at any time (in accordance with

the form published by the Commission) and direct Scottish Water to pass the application to the Commission.

When Scottish Water submits an application to the Commission, the licensed provider should include its own comments on the proposal. For example, it may indicate:

- That it agrees with all of the contents; or
- That it disagrees with particular aspects, for example whether the scheme is practicable, the amount of savings or the estimate of the costs Scottish Water incurred in processing the application.

On the other hand, if the licensed provider completes an application and compels Scottish Water to pass the application to the Commission, Scottish Water may attach comments to the application. However, Scottish Water cannot delay the application in doing so.

We hope that Scottish Water and the licensed provider will agree the details in most cases. This includes the calculations of Scottish Water's savings associated with the departure. Although the Commission would not be bound to agree to all of the details of a section 29E application, the fact that the parties agreed would carry weight.

1.4 Calculation of a departure from the wholesale charge

The Commission expects that the savings from the section 29E departure will be shared between Scottish Water and the licensed provider in proportions to be decided. The parties may suggest the appropriate reduction in the application: this may be expressed as an absolute figure or as a percentage discount from the standard wholesale charge.

2. Other relevant issues

2.1 Confidentiality

Discussions between Scottish Water and a licensed provider on a potential or actual application for a section 29E departure are confidential. Neither party may divulge details to other customers or market participants.

2.2 Increases to Scottish Water's wholesale charge

The 2005 Act allows for Scottish Water to apply for a departure from the wholesale charges scheme where a customer of a licensed provider has done, or agreed to, something that increases Scottish Water's costs. It is possible that Scottish Water will apply for such departures, either with or without the support of the relevant licensed provider. It is also possible that a licensed provider might initiate such an application when it is seeking an enhancement to Scottish Water's normal service.

Where a licensed provider initiates a section 29E application to increase Scottish Water's wholesale charge, the process above will apply (with references to savings and charge reductions modified appropriately).

Where Scottish Water initiates a section 29E application to increase its wholesale charge, it must inform the licensed provider at least three months before submitting the application. Scottish Water must also give the licensed provider a draft application at least one month before submitting it to the Commission. The licensed provider may attach its own comments to the application on any aspect.