



## Licence Contraventions - Enforcement Procedure February 2009

---

This is the Commission's response to the consultation issued in December 2008 on introducing proposals for dealing with an allegation that a licensed provider has contravened, or is contravening, a term or condition of its licence.

### **Contact**

Katherine Russell

Director of Corporate Affairs and Customer Service

T: 01786 430200

E: [licensingconsultation@watercommission.co.uk](mailto:licensingconsultation@watercommission.co.uk)

## Background

The Water Industry Commission for Scotland (“the Commission”) published its consultation, ‘Licence Contraventions - Enforcement Procedures’, in December 2008. The aim of the consultation was to set out the Commission’s proposals to ensure that it complies with its statutory obligations, under section 8 of the Water Services etc (Scotland) Act 2005 (the 2005 Act), to introduce an enforcement procedure in line with current best practice in utility regulation<sup>1</sup>.

We received two responses to the consultation from Business Stream (“BS”) and Waterwatch Scotland (“WWS”). We would like to thank both respondents to the consultation for their comments and suggestions, which we have found very useful.

## Responses

The respondents to the consultation raised some particular issues which the Commission would like to address:

- Whilst we appreciate any licensed provider would wish to limit the number of participants involved in any investigation until its conclusion, section 8(5) of Schedule 2 of the 2005 Act sets out that the Commission must consult Scottish Water and other such persons as it considers appropriate in considering whether to serve an enforcement notice.
- The Commission also believes there is a need to ensure openness and transparency throughout any investigation, a view we are confident is shared by licensed providers and other stakeholders. Licensed providers’ concerns, with regards to the public notification of any investigation, are again, understandable, however, the Commission takes the view that any notification of an investigation should be published in line with best practice in the utility industry as a whole.
- The Commission acknowledges that there may be scenarios where a customer’s complaint relates to both an alleged licence breach, which would be the responsibility of the Commission to investigate under the 2005 Act, and a non-licence related complaint, which would be the responsibility of WWS to investigate. If such a scenario were to arise it would be the responsibility of the Commission and WWS to ensure that in any such instance, the correct information is passed on to the correct organisation so that both organisations can discharge their obligations<sup>2</sup>.
- Whilst there have been no such instances to date, the Commission will work with WWS in a timely and co-operative manner (and in the customer’s best interests) to ensure that all relevant information is passed on as necessary and the customer’s complaint is dealt with as expediently as possible.

---

<sup>1</sup> The consultation also covered the Commission’s powers as set out in Schedule 2 of the 2005 Act which provide the Commission with a variety of enforcement options where it appears that a licensed provider is not complying, or is unable to comply, with the terms and conditions of its licence.

<sup>2</sup> Under section 6C of the Water Industry (Scotland) Act 2002 the Commission and the Convener of WWS are required to make arrangements to secure co-operation and the exchange of information between the two organisations.

- All participants in the competitive market together with the Commission and WWS are obligated to work in the best interest of customers. As a result, should there be a licence breach which affects a customer, the customer can rightly expect any wrongs incurred to be corrected and a suitable penalty imposed on those responsible if appropriate. However, with regards to the particular issue of the imposition of a financial penalty on a licenced provider by the Commission, section 11(8) of Schedule 2 of the 2005 Act requires that any monies received as the result of a penalty from a licence contravention be paid into the Scottish Consolidated Fund.

On more general issues, the Commission also would like to note the following:

The Commission must ensure that all necessary information is obtained pending any investigation. Therefore, flexibility in allowing Licence Providers to provide accurate information in a timely manner will be considered on an individual basis. Furthermore, the Commission considers it to be the case that the term 'stakeholder' in the consultation document, does include customers.

The Commission would also like to assure all stakeholders that it is the Commission's intention to act proportionally and to enhance transparency in investigating any alleged licence contraventions. The Commission's reference to an allegation being investigated dependant on whether or not it is a *'priority matter for the Commission, due to its apparent seriousness and the resource implications of an investigation'* was included to make it clear that, in the first instance, all alleged licence contraventions will be examined to ensure they are within the scope of the Commission and are not, for example, of a frivolous nature, before opening up an allegation to a full investigation.

The Commission's primary responsibility is to promote the interests of all water and sewage customers in Scotland<sup>3</sup>. The Commission is confident that the strategy set out in the consultation adopts clear intentions as to how any allegations of licence contraventions will be investigated. Further, whilst the list of factors the Commission will take into account in deciding whether to proceed with an investigation is not exhaustive, the Commission is confident that the principles for dealing with allegations of a contravention of a licence condition by a licensed provider have been set out clearly and stakeholders can be confident that the process is open, transparent and fair to all stakeholders.

---

<sup>3</sup> see s1, 2005 Act