

## Assessing the financial viability of applicants for water services licences and sewerage services licences

### March 2009

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This note sets out details of the recent decision by the Water Industry Commission for Scotland (the **Commission**) with regard to the assessment of the financial viability of applicants for water services licences and sewerage services licences.

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## Background

Since 8 January 2007 potential new entrants to the competitive market for non-household customers have been able to apply to the Commission for water services licences and sewerage services licences<sup>1</sup>. As at February 2009 we have granted licences to four companies (**licensed providers**)<sup>2</sup>.

Under section 7(1) of the 2005 Act, for each licence application we may only grant a licence if satisfied that the applicant has the ability to perform adequately the activities authorised by the licence. Section 7(2) of the 2005 Act also sets down specific factors to which we must have special regard when assessing an applicant's ability to perform those activities. Those factors include the applicant's:

*“(a) knowledge, expertise and experience; and*

*(b) financial acumen and business viability.”*

To comply with the requirements of the 2005 Act, we have published an application form and guidance as to the application process and assessment criteria we will use when considering whether to grant a licence. The form and guidance can be found on our website<sup>3</sup>. We have also published our policy statement on the approach to the development of the retail market in Scotland<sup>4</sup>. Our policy statement sets out that all applicants *“will have to demonstrate financial viability”* and *“will have to provide evidence either that they have a commercially robust capital structure ... or that they can rely on third party financial support.”*

The Commission has made a recent decision that impacts on the way we assess the financial viability of licence applicants.

## Escrow arrangements

At its meeting in December 2008, the Commission considered the approach to be taken with regard to licence applicants who do not have a demonstrable business track record<sup>5</sup>. Such an applicant would typically be a company newly-formed for the purpose of obtaining a water services licence and/or a sewerage services licence.

The Commission determined that those applicants that do not have a demonstrable business track record must provide a clear and ongoing financial commitment to the competitive market. Where an

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<sup>1</sup> Part 2 of the Water Services etc. (Scotland) Act 2005 (the **2005 Act**) commenced on 8 January 2007, to the extent it had not commenced previously.

<sup>2</sup> Scottish Water Business Stream, Ondeo Industrial Solutions, Osprey Water Services and Satec.

<sup>3</sup> [www.watercommission.co.uk/view\\_Licence\\_Application.aspx](http://www.watercommission.co.uk/view_Licence_Application.aspx)

<sup>4</sup> “Development of the Scottish retail market: A policy statement”. This can be found on our website: [www.watercommission.co.uk/view\\_Market\\_Documents\\_Comp.aspx](http://www.watercommission.co.uk/view_Market_Documents_Comp.aspx)

<sup>5</sup> A demonstrable business track record could include the applicant showing that they have accounts filed with Companies House, although the Commission may ask for further information.

applicant prepays its wholesale charges, this commitment will be in the form of an escrow account to be used for the payment of monies owed to Scottish Water by the applicant.

The escrow account will only be accessible by Scottish Water and the applicant must provide an initial balance and then ensure that the balance of the account remains at that amount or an amount equal to the applicant's monthly wholesale charges (whichever is the greater). The escrow account will be interest bearing with the applicant entitled to any and all interest earned.

The Commission also determined that its intention would be for the creation of such an escrow account and the maintenance of the correct balance to be a licence condition for each relevant applicant<sup>6</sup>.

## **Amendments to the template Wholesale Services Agreement**

To effect the change set out above, the Commission has amended the template WSA and the application guidance, both of which can be found on our website<sup>7</sup>.

**Water Industry Commission for Scotland**  
**27 March 2009**

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<sup>6</sup> The condition would be reviewable after the applicant's first year of operation within the competitive market.

<sup>7</sup> [www.watercommission.co.uk](http://www.watercommission.co.uk)