

The Water Services (Intra-Group Regulation) (Amendment) Directions 2008

DIRECTIONS ISSUED TO SCOTTISH WATER

PURSUANT TO SECTION 11(2) OF THE  
WATER SERVICES ETC (SCOTLAND) ACT 2005

BY

THE WATER INDUSTRY COMMISSION  
FOR SCOTLAND

11 January 2008

**1. Statutory background to the directions**

- A. In exercise of its functions under section 11(2) of the 2005 Act, and having consulted Scottish Water, the Commission hereby issues these directions of a general nature to Scottish Water for the purposes of securing the participation in an orderly manner and in a manner that is not detrimental to the exercise of Scottish Water's core functions, of licensed providers in the provision of licensed services.
- B. In issuing these directions the Commission is not prevented from issuing further directions, of a general or specific nature, to Scottish Water, or any other person, on the same subject matter as these directions or on any other matter which the Commission considers appropriate in accordance with its powers.

**2. Citation, commencement and interpretation**

- A. These directions may be cited as the Water Services (Intra-Group Regulation) (Amendment) Directions 2008.

- B. These directions will come into force on the date on which they are made and will remain in force until varied or revoked by the Commission.
- C. Except as otherwise provided in these directions, words and expressions used in these directions shall have the same meaning as defined for the purposes of the standard conditions.
- D. In these directions, unless the context otherwise requires, the term "standard conditions" means the standard conditions determined by the Commission under paragraph 2(2) of schedule 2 to the 2005 Act and as in force from time to time.

**3. Amendment to the Water Services (Intra-Group Regulation) Directions 2006**

- A. Notwithstanding the terms of direction 2B of the Water Services (Intra-Group Regulation) Directions 2006, those directions are hereby amended in the manner shown in the schedule to these directions. Such amendments shall have effect from the date of these directions.
- B. Save as provided in the schedule to these directions, the Water Services (Intra-Group Regulation) Directions 2006 shall continue in full force and effect.

Done at Stirling, 11 January 2008

For and on behalf of the Water Industry Commission for Scotland



Alan Sutherland, Chief Executive

**SCHEDULE**

The Water Services (Intra-Group Regulation) Directions 2006

**DIRECTIONS ISSUED TO SCOTTISH WATER  
PURSUANT TO SECTION 11(2) OF THE  
WATER SERVICES ETC (SCOTLAND) ACT 2005**

**BY**

**THE WATER INDUSTRY COMMISSION  
FOR SCOTLAND**

31 October 2006

**1. Statutory background to the directions**

- A. In exercise of its functions under section 11(2) of the [2005 Act](#), and having consulted Scottish Water, the Commission hereby issues these directions of a general nature to Scottish Water for the purposes of securing the participation in an orderly manner and in a manner that is not detrimental to the exercise of Scottish Water's core functions, of licensed providers in the provision of licensed services.
  
- B. In issuing these directions the Commission is not prevented from issuing further directions, of a general or specific nature, to Scottish Water or any other person, on the same subject matter as these directions or on any other matter which the Commission considers appropriate in accordance with its powers.

**2. Citation, commencement and interpretation**

- A. These directions may be cited as the Water Services (Intra-Group Regulation) Directions 2006.
  
- B. These directions will come into force on 31 October 2006 and will remain in force until varied or revoked by the Commission.

C. Except as otherwise provided in these directions, words and expressions used in these directions shall have the same meaning as defined for the purposes of the ~~initial~~permanent licences.

D. In these directions, unless the context otherwise requires:

Term	Meaning
business undertaking	means the business undertaking established under section 13 of the <u>2005</u> Act;
core functions	means Scottish Water's core functions as defined in section 70(2) of the 2002 Act; and
<del>initial</del> <u>permanent</u> licences	means the <del>initial</del> -licences granted to the business undertaking <u>on 11 January 2008</u> under section 7 of the <u>2005</u> Act.

### 3. Directions on ring-fencing

A. Scottish Water shall establish and maintain managerial and operational systems which prevent any licensed provider from accessing any confidential information unless:

- (a) such confidential information relates to an eligible customer who was an eligible customer of that licensed provider at the time such information was divulged; or
- (b) the Commission's consent has been granted to a licensed provider to access such confidential information in any particular circumstance;
- (c) Scottish Water is expressly required to provide such access by the operational code or the wholesale services agreement between it and the relevant licensed provider.

For the purposes of this sub-paragraph, confidential information means information relating to or derived from Scottish Water's business which is not published or otherwise legitimately in the public domain.

B. Scottish Water must send to the Commission for its approval by such date as the Commission may direct a statement setting out the practices and procedures which Scottish Water will implement to ensure compliance with sub-paragraph 3A above. The Commission may approve

such a statement with or without modifications. Following approval of the statement by the Commission, the statement comes into effect on such date as is specified in the statement.

- C. The statement referred to in sub-paragraph 3B above, shall set out how Scottish Water shall, for the purpose of complying with the requirements of sub-paragraph 3A above:
- (a) maintain independent managerial and operational functions which are separate from those of any licensed provider;
  - (b) implement systems to ensure secure use or access to:
    - (i) premises used by persons involved in the operation of Scottish Water's core functions;
    - (ii) any systems for recording, processing or storage of data to which personnel of Scottish Water have access;
    - (iii) equipment, facilities or property used in connection with Scottish Water's core functions;  
and
    - (iv) services of personnel engaged in Scottish Water's core functions; and
  - (c) manage the transfer of any personnel from Scottish Water to any licensed provider.
- D. Scottish Water may from time to time, and shall when directed by the Commission, review and amend its statement. Any such amended statement shall be sent to the Commission for approval pursuant to sub-paragraph 3B and shall, where the Commission has directed that the amendment be made, be sent for approval to the Commission by such date as it may direct.
- E. Scottish Water shall comply with the provisions of the statement.
- F. Scottish Water shall promptly publish the statement in such manner as shall be best calculated to bring the relevant information to the attention of all interested persons and otherwise as the Commission may direct. Scottish Water shall also give or send a copy of the statement to any person who requires the same, subject only to payment of such reasonable fee as Scottish Water may require (not exceeding such amount (if any) as the Commission may specify).

**4. Direction on intra-group contracting and cross-subsidies**

- A. Scottish Water shall not give any cross-subsidy to, or receive any cross-subsidy from, the business undertaking without the Commission's consent.

- B. Scottish Water shall not enter into or implement, or agree to enter into or implement, any intra-group contract with the business undertaking, except on terms approved by the Commission.
- C. Nothing which Scottish Water is obliged to do or not to do under the [2005 Act](#) (or which the business undertaking is expressly required to do or not to do by the [2005 Act](#), either of the [initial](#)[permanent](#) licences or any other relevant statutory requirement) shall be regarded as a cross-subsidy or as an intra-group contract for the purposes of these directions.
- D. For the purposes of sub-paragraphs 4A to 4C, references to Scottish Water shall be taken to include references to any business carried on by Scottish Water and to any affiliate of the business undertaking, other than a subsidiary of the business undertaking.
- E. For the purposes of this paragraph 4:

Term	Meaning
affiliate	means in relation to the business undertaking, its ultimate controller(s) and any person or undertaking (other than a subsidiary of the business undertaking) under the control of such ultimate controller;
intra-group contract	means any contract or agreement, in whatever form and whether legally binding or not, between the business undertaking or any subsidiary of the business undertaking and Scottish Water or any affiliate of the business undertaking ; and
subsidiary	has the meaning given to the phrase "subsidiary undertaking" by section 258 of the Companies Act 1985.

**5. Directions in respect of the compliance officer**

- A. Scottish Water shall ensure, following consultation with the Commission, that a competent person (who shall be known as the "Compliance Officer") shall be appointed for the purpose of facilitating compliance by Scottish Water with the provisions of these directions.
- B. Scottish Water shall at all times ensure that the Compliance Officer is engaged for the performance of such duties and tasks as Scottish Water considers it appropriate to assign to him or her for the purposes specified in sub-paragraph 5A above, which duties shall include those set out at sub-paragraph 5E below.
- C. Scottish Water shall provide that the Compliance Officer:
- (a) is provided with such staff, premises, equipment, facilities and other resources; and
  - (b) has such access to Scottish Water's premises, systems, information and documentation as, in each case, he or she might reasonably expect to require for the fulfilment of the duties and tasks assigned to him or her.
- D. Scottish Water shall make available to the Compliance Officer a copy of any complaint or representation received by it in respect of any matter arising by virtue of the provisions of these directions.
- E. The duties and tasks assigned to the Compliance Officer shall include:
- (a) providing relevant advice and information to Scottish Water for the purpose of facilitating its compliance with these directions;
  - (b) monitoring (in consultation with the Commission) the effectiveness of the practices, procedures and systems adopted by Scottish Water to comply with these directions;
  - (c) investigating any complaint or representation made available to him or her by the Commission or otherwise in accordance with the practices, procedures and systems adopted by Scottish Water;
  - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable; and
  - (e) reporting to the Commission (or such other persons nominated by it), at such times and in such manner as it may direct, as to his or her activities.



- F. Scottish Water shall produce an annual report:
  - (a) as to its compliance during the relevant year with the relevant duties; and
  - (b) as to its implementation of the practices, procedures and systems adopted in accordance with these directions.
  
- G. The report produced in accordance with sub-paragraph 5F above shall in particular:
  - (a) detail all activities of the Compliance Officer during the relevant year;
  - (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems adopted in accordance with the provisions of these directions; and
  - (c) set out the details of any investigations conducted by the Compliance Officer, including:
    - (i) the number, type and source of the complaints or representations on which such investigations were made;
    - (ii) the outcome of such investigations; and
    - (iii) any remedial action taken by Scottish Water following such investigations.
  
- H. Scottish Water shall submit to the Commission a copy of the report produced in accordance with sub-paragraph 5F and shall publish the report on its website.
  
- I. For the purposes of this paragraph 5:

<b>Term</b>	<b>Meaning</b>
relevant year	means a year beginning on 1 April of each calendar year and ending on 31 March of the following calendar year.

Done at Stirling, 31 October 2006  
For and on behalf of the Water Industry Commission for Scotland

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Alan Sutherland, Chief Executive