

# WS 2018 - 1 - Consultation Proposed Water Sector (Licence, Fee and Penalty) Regulations

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## A. Introduction

1. The Utility Regulation and Competition Office (the ‘Office’) is the independent regulator for the electricity, information and communications technology, water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Different decisions by the Office will affect persons and organisations throughout the country in different ways. It is therefore important that the Office makes regulatory decisions with the appropriate input from persons with sufficient interest or who are likely to be affected by the outcome of such decisions. Consultation is an essential aspect of regulatory accountability and transparency and provides the formal mechanism for these persons to express their views in this manner. The requirement for the Office to consult is mandated in its enabling legislation.
3. Under its enabling and foundational legislation, the Office has several principal functions. One of these principal functions is to protect the short and long-term interests of consumers in relation to utility services. The Office may do so by making administrative determinations, decisions, orders and regulations.
4. The purpose of this consultation paper is to seek the views of operators, the general public, and other interested parties, regarding the draft Water Sector (Licence, Fee and Penalty) Regulations (*‘the draft Regulations’*) in relation to the Water sector.

## B. Legal Framework

5. The Office is guided by its statutory remit in developing the draft Regulations, notably the provisions which follow.
6. **Section 3(2)(e)** of the *Water Sector Regulation Law (as amended)* (*‘WSR Law’*) outlines that one of the principal functions of the Office, in connection with regulating service providers, is “*monitoring and regulating service providers an opportunity for a fair and reasonable return to service providers, and protects the economic interests and wellbeing of consumers by facilitating an environment that mimics as far as is possible competitive behaviour:...*”.
7. **Section 3(2)(i)** of the same law provides that another principal function of the Office is “*...establishing and enforcing administrative determinations,*

*including administrative determinations prescribing the regulatory framework for the Authority and any other service provider;”*

8. **Section 3(2)(h)** of the WSR Law provides that the Office may make recommendations “*to the Minister charged with responsibility for water, the making of regulations under this law and the Water Laws.*”<sup>1</sup>
  
9. **Section 4(1)** of the WSR Law states that:
 

*A person shall not provide water supply or wastewater services to third parties unless that person has been issued with a licence by the Office.*
  
10. **Section 5(1)** of the WSR Law states that:
 

*A person who is a holder of a permit issued by the [Water] Authority under the Water Authority Law (2011 Revision) to supply water or provide wastewater services to a defined development shall apply to the Office for the grant of an operator licence.*
  
11. **Section 6(1)** of the WSR Law states that:
 

*A person who has been granted a concession by Cabinet under the Water Laws in respect of a defined geographic area as a sectoral utility shall apply to the Office for the grant of a service provider licence.*
  
12. **Section 6(2)(d)** of the Utility Regulation and Competition Law (as revised) (the ‘**URC Law**’) states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may “*make administrative determinations, decisions, orders and regulations*”.
  
13. **Section 7(1)** of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “*... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.*”
  
14. It is the position of the Office that it retains the right to propose amendments to the Regulations when appropriate but not so frequent so as to render the water sector licensing framework arbitrary, but in any event only after consultation.

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<sup>1</sup> The Water (Production and Supply) Law (as amended) and the Wastewater Collection and Treatment Law (as amended).

## C. Draft Water Sector (Licence, Fee and Penalty) Regulations Objectives

15. As a result of the establishment of the Office and its responsibility for the regulation of the water sector; including the production, distribution, supply and treatment of water, the duties of the Water Authority (“the Authority”) have been modified. Section 5(3) of the Water Authority Law (as revised) outlines the duties of the Authority. The main regulatory duties of the Authority are to “issue, record and administer licences and permits and fees” in relation to groundwater and “advise the Cabinet on the issuance of concessions” for operations under the Water (Production and Supply) Law as revised. The Authority is also responsible for “*the protection of the groundwater lenses from depletion and contamination, to monitor their condition and to undertake artificial recharge programmes*”.
16. The Department of Environment Health (the “DEH”), in tandem with the Authority, has the responsibility to monitor public and private water supplies, swimming pools and bathing beaches, among other things. The DEH laboratory routinely monitors drinking water quality, as well as collecting and analysing recreational water samples from swimming pools and beaches. Section 4(2) of the Public Health Law (2002 Revision) states that “*it shall be duty of the Chief Medical Officer to take, from time to time, such steps as may be necessary for ascertaining the sufficiency and wholesomeness of water supplies within the Islands*”.
17. Section 3(2) of the WSR Law outlines the principal functions of the Office in relation to the regulation of the water sector. The duties of the Authority, the DEH and the Office do not intersect, although both the Authority and the Office can advise the Cabinet on the granting of concessions. However, the Office recognises the vital roles that the Authority and the DEH have in relation to their respective duties and look forward to continuing the collaboration with these fellow entities in order to best serve the population of the jurisdiction in regard to the overall regulation of the water sector.
18. The Office, after acquiring the responsibility of the regulation of the water sector, considers that it is in the interests of the water sector to implement a licensing framework outlining the types of licences and licence fees associated with those licences. This will ensure clarity in relation to the types of water sector services that will require a licence, and the accompanying application and regulation fees that would have to be paid accordingly.

19. The draft Regulations are attached to this consultation document and are summarised in the paragraphs below. The Office strongly encourages respondents to read the draft Regulations prior to submitting comments, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
20. The attached draft Regulations are divided into five (5) main sections, excluding the Preliminary section, and consist of eighteen (18) Regulations which address:
- The Licensing Framework;
  - Operator Licences and Service Provider Licences
  - Offences and Enforcement
  - Administrative Penalties
  - Fees for Operator Licence
  - Fees for Service Provider Licences
  - Ticketable Offences
21. The main objective of the draft Regulations is to outline the licensing framework, as prescribed by the Office, in relation to the regulation of the water sector in the Cayman Islands. The draft Regulations will apply to Service Providers and holders of Operator's Licences as defined in the WSR Law.
22. A Service Provider is defined in **section 2** of the WSR Law as "*the Authority or any concessionaire that has been issued a licence by the Office to provide water or wastewater services*". Under the same law, a Consumer is defined as "*a person who is a customer of a service provider*" and an Operator's Licence means "*a licence granted by the Office under section 5(2)*". **Section 5(1)** states that "*a person who is the holder of a permit issued by the Authority under the Water Authority Law (2011 Revision) to supply water or provide wastewater services to a defined development shall apply to the office for the grant of an operator licence.*"
23. The Office, while calculating licence and regulatory fees in order to conduct effective regulation of the water sector, considered the Office's costs incurred in connection with carrying out the Office's functions and exercising the Office's powers under the Law.

## D. Consultation Questions

24. Based on the above, the Office invites all interested parties to submit their comments, with supporting evidence, on the following question:

**Question 1:** Do you agree that the draft licence Regulations impose a reasonable burden on potential licence applicants?

**Question 2:** Our objectives for setting the water licensing framework are outlined in Part C of this consultation paper. Are there any other objectives you would like to suggest?

**Question 3:** Please share your views on Parts 4 and 5 of the draft regulations. Will the proposed control procedures be adequate to ensure effectiveness of the draft Regulations?

**Question 4:** Do you agree that we should use a separate basis for charging fees for the different categories of licences?

**Question 5:** Do you have any comments on the way in which we propose to establish the Water Sector (Licence, Fee and Penalty) Regulations?

**Question 6:** Do you have any comments on the information which must be submitted by potential/existing licensees?

**Question 7:** Do you have any comments on the proposed Licensing Framework?

**Question 8:** Please provide your views on any other matters you consider relevant to this Consultation.

## E. How to Respond to This Consultation

25. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Offices website.<sup>2</sup>

26. The Office considers that because the draft Regulations are published as part of this consultation, this consultation will be conducted as a single-phase consultation over a period of **thirty (30) days**. Where, upon review of the responses to the consultation, it becomes clear that a second phase of consultation is required, a further notice will be issued accordingly. As noted above, **section 7(1)** of the URC Law states that prior to issuing an administrative determination of public significance, the Office shall “*issue the proposed determination in the form of a draft administrative*

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<http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>

*determination.*” The Office considers the attached draft Regulations to be a “*draft administrative determination*” for the purposes of **section 7(1)**.

27. All submissions on this consultation should be made in writing and must be received by the Office by **5 p.m. on 21 September 2018** at the latest.
28. The Office will post any comments received within the stated deadline on its website by **5 p.m. on 5 October 2018**.
29. Submissions may be filed as follows:

By e-mail to:  
[consultations@ofreg.ky](mailto:consultations@ofreg.ky)

Or by post to:  
Utility Regulation and Competition Office  
P.O. Box 2502  
Grand Cayman KY1- 1104  
CAYMAN ISLANDS

Or by courier to:  
Utility Regulation and Competition Office  
3<sup>rd</sup> Floor, Alissta Towers  
85 North Sound Rd.  
Grand Cayman  
CAYMAN ISLANDS

30. If a respondent chooses to file any information in confidence with OfReg, it should, *at the time of making its filing*, also file redacted versions for the public record along with the reasons for each confidentiality claim and the other requirements for confidentiality claims as specified in **section 107** of the URC Law.
31. If a respondent chooses to apply to the Office for an extension of the time to file comments or reply comment, it must do so no less than **four (4) days** before the day of the existing deadline, include a complete and detailed justification for the request, and copy all other respondents (if known) *at the same time* as it applies to the Office. The other respondents (if applicable) may comment on the application for an extension within **two (2) days** of submission of the application, copying all other respondents *at the same time*. The Office reserves the right not to accept applications for extensions that do not satisfy these requirements. However, at no time will the Office accept an application for an extension submitted after the deadline in question has passed.

32. The Office expects to issue a Determination regarding the draft Regulations by the end of fourth (4th) quarter, 2018.
33. Upon issuing a Determination, the Office will make a recommendation to the Cabinet that the proposed Water Sector (Licence, Fee and Penalty) Regulations become legislation, in accordance with section 20 of the Law.

WS 2018 – 1 - Consultation  
Proposed Water Sector (Licence, Fee  
and Penalty) Regulations  
ANNEX 1

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CAYMAN ISLANDS



Supplement No.[...] published with Gazette No [...] dated [...].

**THE WATER SECTOR REGULATION LAW, 2017**

**THE WATER SECTOR (LICENCE, FEE AND PENALTY)  
REGULATIONS, 2018**

## **ARRANGEMENT OF REGULATIONS**

### **PART 1 – PRELIMINARY**

1. Citation.
2. Definitions.

### **PART 2 – LICENCING FRAMEWORK**

3. Application
4. Support Functions
5. Licence Format
6. Licence Conditions
7. Payment of Licence Application and Renewal Fees

### **PART 3 – OPERATOR LICENCES AND SERVICE PROVIDER LICENCES**

8. Operator Licence
9. Service Provider Licence
10. Modification of Licence Conditions
11. Appeal of Decisions
12. Register of Licence Applications
13. Payment of Fees

### **PART 4 – OFFENCES AND ENFORCEMENT**

14. Suspension, Revocation or Cancellation of a Licence
15. Providing Services without a Licence

### **PART 5 – ADMINISTRATIVE PENALTIES**

16. Payment of Administrative Penalties
17. Form of the Ticket

18. Not Guilty Pleas

**SCHEDULE 1 - Fees for Operator Licence and Renewal of Operator Licence**

**SCHEDULE 2 - Fees for Service Provider Licences and Renewal of Service Provider Licences**

**SCHEDULE 3 - Ticketable Offences**

CAYMAN ISLANDS

**THE WATER SECTOR REGULATION LAW, 2017**

**PART 1 - PRELIMINARY**

**THE WATER SECTOR (LICENCE, FEE AND PENALTY)  
REGULATIONS, 2018**

The Office, in exercising of its powers conferred by section 3(2)(j) of the Water Sector Regulation Law, 2017, makes the following regulations-

1. These Regulations may be cited as the Water Sector (Licence, Fee and Penalty) Regulations, 2018.

2. In these regulations -

“Appointed operator” means a person appointed by the Office under section 12(4) to take possession of and operate a concession in place of any operator licensee or service provider licensee;

“Authority” means the Water Authority established under section 3 of the Water Authority Law (as amended);

“Business Day” means any day other than a Saturday and Sunday, and a public holiday declared in the Cayman Islands;

“concession” means an instrument by which the Cabinet grants a right or privilege enabling a person –

(a) to produce or supply water, or both, under the Water (Production and Supply) Law (as amended); or

(b) to collect, convey and treat wastewater under the Wastewater Collection and Treatment Law (as amended);

“concessionaire” means a person to whom a concession has been granted;

“domestic use” means the use of water for washing, drinking, flushing closets, private gardening and the other usual household purposes, on any premises which are used solely for private residential purposes;

“domestic wastewater” means any waste substances, liquid or solid, associated with human habitation or which contains or may be contaminated with human or animal excrete or offal;

“freshwater” means water with a total dissolved solid content of five thousand parts per million or less;

“Law” means the Water Sector Regulation Law, 2017;

“licence” means a licence granted by the Office pursuant to its functions under the Law;

“non-potable water” has the same meaning as stated in the Law.

“Office” means the Utility Regulation and Competition Office, established by section 4 of the Utility Regulation and Competition Law (as amended), or any other such embodiment of its functions;

“operator licence” means a licence granted by the Office under section 5(2) of the Law;

“potable water” has the same meaning as stated in the Law.

“service provider licence” means a licence granted by the Office under section 6(2) of the Law;

“wastewater” means domestic wastewater or trade effluent, or both, from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface runoff or leachate that may be present;

“water” means potable water and non-potable water;

“Water Laws” means the Water (Production and Supply) Law (as amended) and the Wastewater Collection and Treatment Law (as amended); and

“water resources” means canals, ground water, groundwater lenses, ponds, territorial waters and underground water.

## **PART 2 – LICENSING FRAMEWORK**

3. These regulations shall apply to any person providing or offering a service or operating a system, or carrying out a service activity or the exercise thereof in terms of these regulations whether or not such service, system or service activity or the exercise thereof are carried out against a fee, charge, barter or any other form of remuneration, howsoever it may be described.

4. (1) With respect to water suppliers and operators, the Office may identify any one or more of the following functions as necessary requirements for the supplier to support them in executing the regulated activities:

- (a) conservation, augmentation and operation of water resources and sources of water supply;
- (b) development, maintenance and promotion of safe and efficient production and distribution systems in order to satisfy, as economically as possible, all reasonable demands for potable water;
- (c) management and operation of undertakings, installations and property for the sole purposes of potable water production, supply and, or distribution;
- (d) promotion of reasonable use of potable water and encouragement of conservation and appropriate re-use of water resources;

provided that such support functions shall be carried out only with the prior approval of the Office and in accordance with the directions specified by the Office.

(2) With respect to wastewater service operators, the Office may identify any of the following functions as a necessary requirement for the operator to support them in executing the regulated activities:

- (a) improvement, extension, cleansing and maintenance of wastewater collection systems;
- (b) operation of wastewater collection systems and such further provisions as are necessary from time to time for effectively dealing with the contents of these systems by means of wastewater treatment and disposal works or otherwise;
- (c) management and operation of undertakings, installations and property for the sole purposes of wastewater collection, treatment, storage, disposal and reuse;
- (d) promotions of reasonable appropriate reuse of water resources and any other by-products including sludge;
- (e) administering and issuing consents to connect to the wastewater collection system;

provided that such support functions shall be carried out only with the prior approval of the Office and in accordance with the directions specified by the Office.

(3) Nothing contained in these regulations or in a licence issued under these regulations shall be interpreted as exempting an operator licence holder or a service provider licence holder from requiring any other licence as required in any other regulations or legislation. In addition, nothing contained in these regulations shall be interpreted as exempting a water service provider or a water service operator from the obligation to hold a licence under these Regulations, upon the grant of another licence(s) elsewhere. Any person holding an operator licence or

a service provider licence who is providing or offering any service or operating any system mentioned in these regulations, and requires a licence under these regulations, shall apply in writing to the Office within three (3) months of the coming into force of these regulations.

5. (1) A licence issued by the Office shall be in writing (or e-licence) and, unless revoked, cancelled or suspended in accordance with any condition therein contained, it shall continue to be in force for such period as may be specified in or determined by or under the licence.

(2) Nothing in these regulations prohibit the Office from issuing a single document incorporating more than one of the licences.

(3) The validity period of the licence shall be determined by the Office.

6. (1) The Office has the power, through the licence, to establish such conditions as the Office considers requisite or expedient having regard to the functions established by the Law.

(2) Operator licence holders or service provider licence holders falling under any one category specified in regulation 4 shall be subject to similar conditions, while different conditions may be established for different categories specified in regulation 4(2).

(3) The Office may establish different licence conditions for:

- (a) potable water suppliers and non-potable water suppliers;
- (b) water suppliers based on the volume of water supplied;
- (c) water suppliers or waste water service operators based on waste water services for a defined development; and
- (d) wastewater services operators based on the volume of wastewater collected and, or treated and, or disposed of.

(4) The Office may include conditions in the licence, consistent with any direction of a policy nature that the Minister may give, and regarding, but not limited to:

- (a) the grant and term of the licence including the identification of support functions to be provided by the operator licence holders or service provider licence holders, in accordance with regulation 4;
- (b) suspension, variation and transfer conditions of the licence;
- (c) the requirement for licensees to comply with such special provisions as the Office may require to meet the needs of the disadvantaged, including the indigent, and the elderly;

- (d) licence fees to be paid by the operator licence holders or service provider licence holders, to the Office;
  - (e) compliance requirements to conditions, directions, management letters, standards, guidelines, codes or rules given by the Office and other laws;
  - (f) charges and tariffs for the provision of the regulated services;
  - (g) the operator licence holders' or service provider licence holders' service obligations including but not limited to obligations to customers, development of emergency response plans, asset management plans and security plans;
  - (h) the monitoring, recording, submission, reporting and auditing of information to the Office;
  - (i) the inspection, making copies and taking extracts of books and records held by an operator licence holder or a service provider licence holder and the carrying out of measurements and tests in relation to any premises, assets or plant;
  - (j) the assessment and auditing of operations and compliance with licence conditions;
  - (k) the regulation of subsidiary companies and, or companies and, or co-operatives providing part of the regulated services.
- (5) Any person granted a licence under these regulations shall:
- (a) comply with any direction given by the Office as to such matters as are specified in the licence or are of a description so specified;
  - (b) provide the services in accordance with such licence conditions provided that the authorised provider shall inform the Office of any changes relating to his service activity which result in the conditions for his authorisation no longer being met and the creation of subsidiaries whose activities fall within the scope of the authorisation and, or the authorisation scheme;
  - (c) do or not do such things as are specified in the licence or are of a description so specified;
  - (d) comply with the decisions or directions issued by the Office for the purposes of complying with any policies or international obligations of the Cayman Islands Government.
7. (1) The operator licence holders and service provider licence holders shall pay application, licence and regulatory fees to the Office as outlined in Schedules 1 and 2 respectively.
- (2) The amount of the licence and regulatory fees shall be established by the Office.

**PART 3 – OPERATOR LICENCES AND SERVICE PROVIDER LICENCES**

8. (1) The Office shall require an applicant for an operator licence or for the renewal of an operator licence to demonstrate that they are a current holder of a permit issued by the Authority under the Water Authority Law (as amended) to supply water or provide wastewater services to a defined development, as well as in good standing.

(2) The applicant shall provide the Office with such further information as the Office may require in the particular case.

(3) The Office may, upon payment of the relevant fees set out in Schedule 1, grant an operator licence.

9. (1) The Office shall require an applicant for a service provider licence or for the renewal of a service provider licence to provide evidence that they have been granted a concession by Cabinet under the Water Laws in respect of a defined geographical area.

(2) Upon submission of the application, the applicant must provide evidence of the following:

(a) that they have met all the preconditions established in the concession required for the grant of the service provider licence; and

(b) financial capacity, industry experience and technical qualifications.

(3) The applicant shall provide the Office with such further information as the Office may require in the particular case, beyond any requested information in relation to the matters listed in section 6(3) of the Law.

(4) The Office may, upon payment of the relevant fees set out in Schedule 2, grant a service provider licence.

10. (1) Subject to the following provisions of this regulation, the Office may modify, amend, replace, add or delete any licence condition as it considers requisite or expedient having regard to the functions established by the Law.

(2) Before making modifications, the Office shall give notice to the relevant licensees-

(a) stating that it proposes to make modifications to the licence and setting out their effect;

- (b) stating the reasons why the modifications are being proposed;
- (c) specifying the period (not being less than three (3) months from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and the Office shall be bound to consider any representations and objections which are duly made and not withdrawn.

(3) The notice referred to in sub regulation (2) shall be:

- (a) brought to attention of the water supplier or wastewater services operator by e-mail correspondence, or delivery via pre-paid courier or post to the supplier's or operator's place of business or registered address;
- (b) brought to public attention by the publication of a notice on the Office's website.

11. (1) A person aggrieved by a decision of the Office –

- (a) not to grant or renew a licence;
- (b) to suspend or revoke a licence; or
- (c) to modify a licence,

may, within twenty-one (21) days of the decision, may appeal to the Board to reconsider the decision.

(2) A request for reconsideration under paragraph (1) shall be by notice in writing setting out –

- (a) the original application;
- (b) the decision against which the request is made; and
- (c) the ground of the request.

(3) On receipt of the notice of request for reconsideration, the Board shall decide if there is just cause for the appellant or the appellant's representative to be heard and if it is so decided, notify the appellant or the appellant's representative and the Office of the date and time of the hearing.

(4) The decision of the Board shall be communicated to the appellant as soon as is reasonably practicable.

(5) A person aggrieved by the decision of the Board, may seek leave of the Grand Court for judicial review of the Office's determination within twenty-eight (28) days, and the time shall begin to run at the dispatch of the decision to a delivery agent who is directed to deliver it to the person concerned.

(6) A copy of the document seeking leave of the Grand Court and subsequent proceedings, shall be served on the Office.

12. (1) The Office shall cause to be kept a register as required by section 12 of the Law.

(2) The Office –

- (a) shall make available for public inspection, applications and operating permits granted pursuant to these Regulations; and
- (b) may permit any person to make copies of any entry in the register and may charge such fees as it considers reasonable for such copies.

13. (1) Fees payable under this Part are set out in Schedule 3.

(2) Where a fee is paid by cheque, draft or money order, such cheque, draft or money order shall be drawn in favour of the “Utility Regulation and Competition Office”.

#### **PART 4 – OFFENCES AND ENFORCEMENT**

14. (1) The Office may, at any time in the course of the period for which a licence is valid, order its suspension, revocation or cancellation where the Office is satisfied that:

- (a) the licensee has failed or is failing to abide by any conditions of the licence, or by these regulations, or
- (b) the licensee does not possess all other relevant permits or licences that are issued by any other authority or regulatory body, or
- (c) the licensee is contravening any statutory or other requirement imposed by any law, or
- (d) the licensee fails to comply with any direction given by the Office as to such matters as are specified in the licence or are of a description so specified, or
- (e) any information submitted in the application for a licence or the application for renewal of a licence and on which the licence has been issued or renewed, as the case may be, is determined to be false, or
- (f) the licensee fails to pay the licence fee as established in Schedules 1 and 2.

(2) In exercising the powers for suspension, revocation or cancellation of licences, the Office may take account of the nature of the failure, or the fact that the licensee is taking the appropriate steps, as it appears to the Office, to comply with the conditions of the licence or any other fact that the Office may deem relevant.

(3) Any decision taken by the Office, including refusal or withdrawal of an authorisation, shall be fully reasoned and be transparent in regard to all reasons resulting in the final decision.

(4) The failure of the Office to inform the applicant of any decision regarding access to a service activity or the exercise thereof shall not be deemed to be approval by the Office to access such service activity or the exercise thereof.

(5) No person may provide any of the services referred to in these regulations where the Office has suspended the applicable licence and until such time that the suspension of the licence is lifted by the Office.

(6) No person may provide any of the services referred to in these regulations where the Office has revoked or cancelled the applicable licence and until such time that a new licence is issued by the Office.

(7) Any person whose licence has been cancelled or revoked may re-apply for a licence and such a new application shall be subject to all the provisions established by these regulations.

15. (1) Notwithstanding any other law to the contrary, where, with respect to and in consequence of committing an offence under these regulations, a report is made by an authority to hold a formal investigation under any law and it appears from the report that these regulations were not complied with at or before the time of the accident, summary proceedings against any person liable to be proceeded against in respect to such non-compliance may be commenced at any time within six years after the making of the report.

(2) A copy of every report with respect to and in consequence of committing an offence under these regulations which is made by an authority appointed to hold a formal investigation under any law shall be sent by that authority to the Office.

## **PART 5 – ADMINISTRATIVE PENALTIES**

16. (1) The Executive Director of Energy and Utilities or his designate, referred to as the “relevant officer”, shall have the power to issue tickets.

(2) The offences set out in Schedule 3 are designated as ticketable offences for the purposes of the Law.

(3) The payment of the administrative penalty stated on the ticket up to twenty-eight (28) days after being served is an option to discharge liability to conviction for the offence set out on the ticket.

(4) Where a person is served with a ticket by the relevant officer in respect of an offence set out in Schedule 3, criminal proceedings in respect of the act that constitutes the offence specified on the ticket, shall not commence except where the administrative penalty remains unpaid after twenty-eight (28) days of the service of the ticket.

(5) Payment of an administrative penalty under this regulation shall be made to the Office and all administrative penalties paid under these regulations shall, unless otherwise expressly stated, form part of the revenue of the Office.

(6) In any proceedings, a certificate that payment of the administrative penalty was or was not made to the Office by the date specified in the certificate shall, where the certificate is signed by the relevant officer, be sufficient evidence of the facts stated unless the contrary is proved.

17. (1) A ticket shall be in the form set out in Schedule 3 and shall –

- (a) contain a statement signed by the relevant officer certifying that the relevant officer has reason to believe that an offence has been committed under these regulations;
- (b) include a summary of the facts of the offence and the specific section of the Law or regulation that has been contravened;
- (c) indicate with reasonable precision, having regard to all the circumstances, the time and place at which the offence was committed;
- (d) set out the administrative penalty for the offence;
- (e) set out the options that the person served with the ticket has in responding to it and the time within which the person shall respond;
- (f) state the period of time during which proceedings will not be commenced for the offence;
- (g) require the person, in the event that the administrative penalty is not paid nor the plea under sub-section (5) entered within the period specified in the notice, to attend before the summary court to enter a plea on such date as may be specified, the date being not earlier than ten (10) days after the expiration of the period; and
- (h) state that the ticket may be used as the evidence of the Office.

(2) The administrative penalty for ticketable offences shall be as specified in Schedule 3.

(3) Service of a ticket on the person whom the relevant officer has reason to believe committed an offence is effected by the relevant officer by serving a copy of the ticket to the person by hand, or by sending it by electronic means or by sending it by registered mail to the last known place of business or abode of the person.

(4) The relevant officer who serves a ticket shall complete and sign a certificate of service stating that the ticket was, on the date set out in the certificate, served on the person whom the relevant officer had reason to believe committed the offence and the certificate shall be evidence that, on the date set out in the certificate, a ticket was served on the person whom the relevant officer had reason to believe committed the offence.

(5) A person may pay the total amount set out in the ticket in accordance with paragraph (6), enter a “not guilty” plea in accordance with regulation 18(1) or attend summary court on the date set out on the ticket and enter a plea.

(6) The payment of the total administrative penalty within twenty-eight (28) days constitutes a discharge from liability for conviction for the offence.

18. (1) A person who is served with a ticket who wishes to enter a “not guilty” plea may request a trial by signing the request for trial on the ticket and delivering it to the Clerk of Court within twenty-eight (28) days of being served with the ticket and the clerk of the court shall enter the plea “not guilty”.

(2) As soon as practicable after a person requests a trial under paragraph (1), the Clerk of the Court shall notify the Executive Director of Energy and Utilities of the request, request the duplicate ticket, fix the time and place of the trial and notify the defendant and the prosecution of the time and place of the trial.

(3) A person who has been served with a ticket under this Part and has not exercised any of the options referred to in Part 5 shall attend at the court on the date specified in the ticket which shall be no earlier than thirty-eight (38) days after the date that the ticket was served on the person and the notice of the court date on the ticket shall be notice to the defendant and the prosecution of the same.

(4) The Office shall, within two (2) days, file with the Clerk of the Court every ticket that remains unpaid after twenty-eight (28) days of having been served.

(5) A ticket filed with the Clerk of Court is evidence that the facts alleged in the ticket without proof of signature or official character of the person appearing to have completed the ticket or the person on whom the ticket was served.

(6) Except as otherwise provided, a notice or document required or authorised to be given or delivered under this regulation may be done by hand, or by sending it by electronic means or by sending it by registered mail to the last known place of business or abode of the person.

(7) Evidence that a notice or document required or authorised to be given or delivered to a person under this regulation may be done by hand, or by sending it by electronic means or by sending it by registered mail to the last known place of

business or abode appearing on a ticket, certificate of service or other document in the court file, is sufficient evidence that the notice or document was given or delivered to the person, unless the contrary is proved.

(8) A person who is convicted of a ticketable offence in a trial requested under paragraph (1) or in trial as a result of a failure to exercise the options in Part 5 may be liable to a fine greater than the administrative penalty provided for that ticketable offence but not exceeding the maximum fine provided for that offence under the Law.

(9) The ticket, for the purposes of a trial under this regulation is deemed to be a complaint within the meaning of section 14 of the Criminal Procedure Code (as amended).

(10) Where the ticket remains unpaid at the expiration of the time specified for the payment of the administrative penalty or where the person served requests a trial the ticket shall be deemed to be a summons issued in accordance with section 15 of the Criminal Procedure Code (as amended).

(11) Proceedings in respect of an offence deemed to be instituted by a ticket under this Law shall not be listed for hearing in Court unless –

(a) the relevant officer delivers the duplicate the ticket with an endorsement stating that the administrative penalty had not been received within the twenty-eight (28) day period within which it was payable; and

(b) a period of ten (10) days has elapsed from the last day on which the administrative penalty was payable.

(12) Where the administrative penalty is not paid within the time specified in the ticket or the person served requests a trial, proceedings in respect of the offence specified in the ticket shall be in accordance with the procedure set out for Category C offences under the Criminal Procedure Code (as amended).

**SCHEDULE 1**

**Fees for Operator Licence and Renewal of Operator Licence**

1	Operator Licence Application fee	\$75
2	Operator Licence Renewal Application fee	\$75 on or before Expiration Date. \$175 after the Expiration Date.
3	Operator Licence Regulatory fee	\$250

**SCHEDULE 2**

**Fees for Service Provider Licences and Renewal of Service Provider Licensees**

1	Licence Application fee	\$175
2	Licence Renewal Application fee	\$175 on or Before Expiration Date. \$275 after the Expiration Date
3	Annual Licence Regulatory fee	Calculated in accordance with section 34 of the Utility Regulation and Competition Law (as amended).
4	Annual Licence Regulatory Fee for a Water and/or	\$2,500

	Wastewater Supplier for a defined development.	
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**SCHEDULE 3**

**Ticketable Offences**

Description of ticketable offence		Section	Fixed Penalty
1.	Attempted assignment or Assignment of a service provider licence or any rights thereunder without the prior written consent of the Office.	Section 7(1)	\$15,000
2.	Failure to comply with prescribed standards of performance, and each day that the violation continues shall constitute a separate offence.	Section 14(2)	\$5,000 and a further \$5,000 each day that the violation continues.
3.	Failure to comply with prescribed technical and equipment standards, and each day that the violation continues shall	Section 14(6)	\$5,000 and a further \$5,000 each day that the violation continues.

	constitute a separate offence.		
4.	Failure to keep deposited at the service provider's offices maps showing and distinguishing all public water supply systems and public wastewater infrastructure owned or operated by the service provider.	Section 19	\$250
5.	Failure to comply with decisions or directions of the Office, and each day that the violation continues shall constitute a separate offence.	Regulation 7(5)(a) and (d)	\$5,000 and a further \$5,000 each day that the violation continues.
6.	Failure to comply with licence conditions, and each day that the violation continues shall constitute a separate offence.	Regulation 7(5)(b) and (c)	\$5,000 and a further \$5,000 each day that the violation continues.
7.	Failure to inform, within 30 days, the Office of any changes relating	Regulation 7(5)(b)	\$10,000 per day or part of a day

	to a licensee's service activity which result in the conditions for the licensee's authorisation no longer being met, or of the creation of subsidiaries whose activities fall within the scope of the authorisation and, or the authorisation scheme.		
8	Provision of services referred to in regulation 4 while the applicable licence is suspended by the Office.	Regulation 16(5)	\$10,000 per day or part of a day

**Form of Ticket**

**THE WATER SECTOR REGULATION LAW, 2017**

**FRONT OF TICKET**

TICKET NUMBER	TIME:
DATE:	OPERATOR LICENCE/SERVICE PROVIDER NO.:
LOCATION:	NAME OF PERSON:

DESCRIPTION OF TICKETABLE OFFENCES	Law/Regulation	Fixed Penalty
1.		[\$ ]
2.		[\$ ]
3.		[\$ ]
4.		[\$ ]
5.		[\$ ]
6.		[\$ ]
7.		[\$ ]
8.		[\$ ]

I, the undersigned [relevant officer] of the Utility Regulation and Competition Office (“OfReg”) responsible for the regulation of water sector, have reason to believe that \_\_\_\_\_(insert name of person) has committed the following ticketable offence detailed in the first column with the respective fixed penalty in the third column:

\_\_\_\_\_ the facts being that  
 \_\_\_\_\_

(Provide a summary of the facts of offence and the provision contravened)

Time and place at which offence committed:  
 \_\_\_\_\_

The offence carries a fixed penalty of \$ \_\_\_\_\_

**THE PERSON TO WHOM THIS TICKET IS SERVED –**

- (a) May pay the fixed penalty prior to the \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_;
- (b) May enter a plea of “not Guilty” up to 28 days after being served and indicate now an intention to plead “Not Guilty” by ticking \_\_; or
- (c) Where the ticket is not paid or there is no notification of an intention to plead “not guilty”, must attend Summary Court:

In Grand Cayman, at 10 am on Tuesday \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_;

In Cayman Brac, at 10 am on Tuesday \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_.

I am the relevant officer authorized by OfReg and certify that I served this ticket on the person/company named on the above ticket: \_\_\_\_\_ - \_\_\_\_\_

**Name of Inspector**                      **Signature**

*Criminal proceedings shall not commence until thirty-eight days after being served with this ticket.*

## BACK OF TICKET

### PLEASE READ CAREFULLY

#### 1. PAYMENT

You may discharge liability to conviction by delivering a copy of this ticket and the total amount of the penalty set out in this ticket to the office at the address indicated below prior to the date inscribed on the front of the ticket being the twenty-eight (28) days after the service of this ticket.

Payments by check or money order are to be made payable to the Utility Regulation and Competition Office. *Please print the ticket number on the front of the check or money order.*

#### 2. PLEA OF NOT GUILTY

If you wish to plead not guilty, notify the summary court in George Town or, where served on Cayman Brac or Little Cayman, the Summary Court at Cayman Brac within twenty-eight (28) days of being served with this ticket. The Clerk will advise you of the date to return to the Summary Court.

**3. FAILURE TO PAY**

Consequent on your failure to pay the fixed penalty specified in paragraph 1 or to enter a plea under paragraph 2, you are summoned to appear in the Summary Court at George Town or, where served on Cayman Brac or Little Cayman, at Cayman Brac at 10:00 am on the \_\_\_ day of \_\_\_, 20\_\_.

If you fail to appear, the magistrate may issue a warrant of arrest to compel your attendance. The date of the hearing shall be no less than thirty-eight (38) days after the service of the ticket.

NOTICE – This ticket may be used as evidence of the relevant officer or the Board

Submit or send pay to:

The Utility Regulation and Competition Office (“OfReg”)

P.O.Box 2502

Grand Cayman KY1- 1104

Telephone: (346) 946 – 4282

Email: [water@ofreg.ky](mailto:water@ofreg.ky)

Website: [www.ofreg.ky](http://www.ofreg.ky)

Hours of operation (Grand Cayman): 8:30 am – 4:00 pm

Made in Cabinet the [...] day of [...], 2018

[ ]

Clerk of the Cabinet