

WS 2019 – 1 - Determination  
Proposed Water Sector (Licence, Fee, Offence  
and Penalty) Regulations

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**UTILITY REGULATION AND COMPETITION OFFICE  
THE CAYMAN ISLANDS**

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## WS 2019 – 1 – Determination – Proposed Water Sector (Licence, Fee, Offence and Penalty) Regulations

### 1. Background

1. The Utility Regulation and Competition Office (the ‘Office’ or ‘OfReg’) is the independent regulator established by section 4(1) of the Utility Regulation and Competition Law (as revised) (the ‘URC Law’) 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. The Office has several principal functions under the URC Law, including the promotion of innovation and facilitating economic and national development. The protection of the short-and long-term interests of consumers is also another principal function of the Office, in relation to the markets and sectors for which it has responsibility. Under the various sectoral laws, the Office also has additional specific functions. The Office, in relation to sectoral providers, is responsible of ensuring that utility services are satisfactory and efficient. The Office achieves this function by supervising, monitoring and regulating any sectoral provider in accordance with the URC Law and sectoral legislation. As the Office is responsible for the water sector, including the production, distribution, supply and treatment of water, it was determined that it was necessary to prepare and consult on a proposed licensing process in relation to the water sector.
3. After conducting a public consultation and receiving input from Licensees the Proposed Water Sector (Licence, Fee, Offence and Penalty) Regulations, as attached, were prepared in accordance with the Office’s powers and function to (1) grant, modify, renew, suspend or revoke Licences issued under the Water Sector Regulation Law (as revised) (“WSR Law”), the Water (Production and Supply) Law (as revised) and the Wastewater Collection and Treatment Law (as revised); and (2) to recommend to Cabinet regulations in accordance with section 20 of the WSR Law.

### 2. Legal Framework

4. Section 3(1)(e) of the 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:...*”.

5. 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;*”
6. 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.*” Section 20(1) provides that the Cabinet may, on the recommendation of the Office, make regulations “*prescribing matters for the better carrying out of the duties and powers of the Office* ” as well as “*prescribing regulatory and licence fees and any other fees duly payable to the Office.*”

7. **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.*

8. **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.*

9. **Section 6(1)** of the WSR Law states that:

*A person who has been granted a concession by Cabinet under the Water Laws<sup>1</sup> in respect of a defined geographic area as a sectoral utility shall apply to the Office for the grant of a service provider licence.*

### 3. WS 2018 – 1 - Consultation

10. The Office launched a public consultation on 22 August 2018, which was due to be closed on 21 September 2018 on the proposed Water Sector (Licence, Fee and Penalty) Regulations. The Office extended the public consultation from 21 September 2018 to 21 October 2018. The Office received comments from two licensees, and took these responses into consideration.
11. The Office, after consideration of the responses, made several amendments to the proposed Regulations which are outlined in Part 5 of this determination.

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<sup>1</sup> The Water (Production and Supply) Law, 2011 and the Wastewater Collection and Treatment Law, 2011.

## 4. Comments Received and Office Responses

12. The Office received responses to WS 2019 – 1 – Consultation, from Cayman Water Authority (“WAC”), and Cayman Water Company (“CWC”):

### 4.1 WAC

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

WAC submitted the following response -

*“In the Water Authority’s view there needs to be more clarity on the application process to obtain a concession and licence under the WSR, the Water Laws and the Regulations. There are various provisions throughout these laws and regulations, which make it challenging and potentially burdensome for potential licence applicants to determine what requirements they need to meet and what information is required when they apply for a concession and a licence. Specifically, the provisions in 4(1) and 4(2) for water supply and wastewater service respectively are defined very broadly and lack specifics. It is essential that the application process is clear, transparent and efficient, but in our view the Regulations do not achieve that.”*

14. **Office Response**

The Office notes WAC’s response, therefore, an additional Part in the Regulations was inserted which addresses what supporting documentation will be required to be submitted when applying for a concession. Additional regulations were added to assist in clarifying matters. However, the Office disagrees with WAC’s position that the Regulations are not “clear, transparent and efficient” in relation to the licensing process as Regulation 3 clearly identifies the applicability of the Regulations. Regulation 4 provides that the Office may identify additional conditions to insert in a standard licence agreement and lists the range of topics that those conditions may refer to. The Office cannot list specific conditions, as the need for additional conditions will depend on the specific circumstances of each application.

15. **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?

The Water Authority submitted the following response -

*“Please refer to the attached for our specific comments on Part C of the consultation paper. In respect of other Government agencies whose duties intersect the duties of the Office, we suggest that Section C includes the role of*

*the National Conservation Council, established under the National Conservation Law, 2013 (“NCL”). Section 41 of the NCL requires that all government entities shall comply with the provisions of the NCL and section 41(3) states that “every entity shall, in accordance with any guidance notes issued by the Council, consult with the Council and take into account any views of the Council before taking any action including the grant of any permit or licence and the making of any decision or the giving of any undertaking or approval that would or would be likely to have an adverse effect on the environment generally or on any natural resource.”*

**16. Office Response**

The Office notes WAC’s response and agreed with proposed amendment which was incorporated into Regulation 6(4).

**17. 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?

*“...It appears that the Office, apart from enforcing and implementing its own laws and regulations, also verifies whether licensees comply with other laws and regulations (Regulation 14). We would be grateful if the Office could confirm the genesis of this power as it is not clear from the water sector laws and also the extent to which it is envisaged that the provision would be executed. For instance; if a licensee has not paid the pension contribution or health insurance for one of its employees, will this be reason for the Office to suspend, revoke, or cancel a licence?*

*Under Regulation 14, the Office may suspend a licence and the service may not be provided until the suspension of the licence is lifted, or a new licence is issued. This provision is not practical for an essential service provided by a service provider as the customers will be at risk of not having water or wastewater service.*

*Regulation 16 states that the payment of the administrative penalty is an option to discharge liability to conviction for the offence set out on the ticket. It is not clear what remedy the Office has in the event the ticket is paid, but the offence that resulted in the issue of the ticket continues.”*

**18. Office Response**

The Office notes WAC’s response and would like to clarify that it is not responsible for the enforcement of any other legislation besides its foundational law and sectoral legislation as listed in Schedule 2 of the Law. However, as a regulator with responsibility for the markets and sectors listed in Schedule 1 of the Law, the Office holds the position that all its Licensees should be compliant with all applicable laws presently in force in the jurisdiction. Hence, the Office

strongly encourages compliance by inserting the requirement to comply with applicable laws and regulations of the Cayman Islands as a licence condition. In addition, the Office also holds the position that in certain circumstances, e.g. if a Licensee is breaching particular laws that pertain to the health and safety of the residents in the Cayman Islands, then that Licensee will need to rectify any non-compliance issues before being able to hold a valid licence. The Office will make a fair and reasoned determination in each circumstance.

The Office will not act unreasonably in relation to the suspension, revocation and cancellation of a licence. The Office does comprehend the significance of the provision of essential services to consumers within the jurisdiction and will inform a Licensee of any issues that may result in the possible suspension, revocation and cancellation of a licence (as soon as the Office becomes aware or arrives at the conclusion).

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

*"Please refer to the reply to question 5."*

20. **Office Response**

N/A

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

*"Questions 4 and 5 cover the same issue, so we answer both questions together."*

*The Water Authority agrees that there should be a fee structure that recognises differences in water or wastewater services, so that operator Licences do not attract the same fees.*

*Section 23 of the Consultation paper states that 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. Section 10 of the Law provides for charges and licence, regulatory fees and statutory fees for service providers, but it appears that the Regulations have not worked these out in any detail. It is not clear on what basis the proposed fees have been established and how they will recover the operational cost of the Office to regulate the water sector. We could be grateful for some clarification on this point.*

*We also see it as a shortcoming that the Consultation paper does not provide any background information about how the penalties have been established.*

*As pointed out in our second comment, the provisions for statutory fees are not addressed at all in the Regulations. Specifically, the mechanism/arrangements to charge statutory fees to cover the cost of the Authority to exercise its statutory functions under the Water Authority law (2018 Revision) are not addressed at all.*

*In our view the Regulations miss the opportunity to ensure that the regulatory fees and statutory fees cover the regulatory functions of the Office for the water sector and the statutory functions of the Authority to conduct its statutory duties under the Water Authority Law.”*

## 22. Office Response

The Office notes WAC’s response. The Office, in determining the proposed fees, considered the level of effort required to assess licence and permit applications as well as its costs to administer and monitor compliance with water licensing. It also considered the fees charged by fellow regulators in the Cayman Islands as well as by regulators in other jurisdictions. A summary of the information is set out in the tables below:

| Jurisdiction   | Fee Type   |                           | Amount Payable |
|--|--|---------------------------|----------------|
| Australia:<br>Essential Services<br>Commission   | Very small   | Less than 100 connections | AUD \$230.00   |
|  | Small  | 101 to 500 connections    | AUD \$1,150.00 |
|  | Medium   | 500 to 5,000 connections  | AUD \$6,900.00 |
| British Columbia, CA.:<br>Ministry of Forests,<br>Lands and Natural<br>Resource Operations | New Licence Application  |                           | CAD \$250.00   |
| Cayman Islands:<br>Water Authority Cayman<br>(WAC)   | Registration and Licence fee                                       |                           | KYD \$200.00   |
|  | Renewal of Licence   |                           | KYD \$200.00   |
| Jamaica:<br>The Office of Utilities<br>Regulation (OUR)                                    | Registration and Licence fee                                       |                           | USD \$500.00   |
| Scotland:<br>Water Industry<br>Commission for Scotland<br>(the Commission)                 |  |                           | GBP £4,750.00  |
| Tasmania:<br>Office of the Tasmanian<br>Economic Regulator                                 | New Licence Application (includes advertising fee of AUD \$331.70) |                           | AUD \$682.56   |



|   |                                    |                    |
|---|------------------------------------|--------------------|
| Trinidad & Tobago Regulated Industries Commission (RIC) | New Licence Application fee        | TTD \$150.00 + VAT |
| UK: Ofwat (The Water Services Regulation Authority)     | New Licence Application (Combined) | £2,500.00          |

Please note that the best known example of a system with a national independent economic regulator is in England and Wales, one of the few jurisdictions where the water sector has been fully privatised, hence its inclusion in the table.

The following table provides an overview of the fee structures of other national regulators. Licence fee data, where quoted, indicates the most current available at the time of writing.

| Regulator                                | Fee Type   | Amount Payable \$         |
|--|--|---------------------------|
| Cayman Islands Monetary Authority (CIMA) | Administrative fee – Mutual Fund or Application for a certified copy of a licence or certificate | KYD \$300.00              |
|  | Application fee – Category “A” & “B” Banks   | KYD \$2,000.00            |
|  | Licence fee – Trust Company  | KYD \$7,000.00            |
| Civil Aviation Authority (CAA)           | Priority Notice of impending mortgage registration   | KYD \$250.00              |
| Maritime Authority Cayman (MACI)         | Registration/re-registration of ship   | USD \$700.00/KYD \$574.00 |

#### *Cayman Islands Monetary Authority (CIMA)*

The Monetary Authority Law (2018 Revision) requires that licensed entities pay an annual licence fee to CIMA. Financial industry licence fees are set by CIMA as an amount the Authority considers to be a reasonable contribution towards administrative costs.

#### *Civil Aviation Authority (CAA)*

The Air Navigation (Overseas Territories) Order 2013 specifies that the Governor may make such regulations that “prescribe the fees to be charged in connection with the issue, validation, renewal, extension or variation of any certificate, licence or other document (including the issue of a copy), or the undergoing of any examination, test, inspection or investigation or the grant of any permission or approval, required by, or for the purpose of, this Order or any regulations made under it and the method by, the time at which and the person to whom such fees must be paid.” Civil Aviation industry licence fees are set by CAA as an amount the Authority considers to be a reasonable contribution towards administrative costs.

*Maritime Authority Cayman (MACI)*

The Merchant Shipping Law (2016 Revision) requires that licensed entities pay an annual licence fee to MACI. Shipping industry licence fees are set by MACI as an amount the Authority considers to be a reasonable contribution towards administrative costs.

The Office, while determining penalties, considered the amounts of penalties imposed by other local and international regulators as well as considered the severity and impact of each offence. A summary of the information is set out in the tables below:

|   |  |  |
|---|--|--|
| Bahamas Utilities Regulation & Competition Authority (URCA) | Failure to obtain the required licence, permit authorisation         | Fine not exceeding BSD \$500,000.00  |
|   | Failure to provide the necessary information for merger applications | Fine not exceeding BSD \$500,000.00  |
|   | Failure to comply with information requests                          | Fine not exceeding BSD \$500,000.00  |
|   | Failure to pay licence & other fees due to URCA                      | BSD \$300,000.00 plus Not greater than BSD \$10,000/day for a continuing offence and five times the amount of any sum shown by a court that would have been payable as a proper fee but for the commission of the offence. |
| Bermuda Regulatory Authority (RA)                           | Failure to obtain the required licence, permit authorisation         | BMD \$50,000.00 or imprisonment for up to two years, or both.  |
|   | Failure to comply with a direction of the Authority                  | BMD \$5,000.00 for each day during which the refusal or failure continues.   |
|   | Failure to comply with statutory duties or regulations               | BMD \$50,000.00 or imprisonment for up to two years, or both.  |
|   | Failure to comply with general determinations                        | BMD \$30,000.00 or imprisonment for up to one year, or both.   |
|   | Failure to comply with orders issued by a presiding officer          | BMD \$20,000.00 or imprisonment for up to six months, or both.   |
|   | Violation of requirements  | Up to BMD  |

|   |   |  |
|---|---|--|
|   | and prohibitions regarding anti-competitive conduct                         | \$50,000.00 or imprisonment for up to two years, or both.            |
|   | Failure to file reports   | BMD \$20,000.00 or imprisonment for up to six months, or both.       |
|   | Failure to comply with information requests                                 | Up to BMD \$50,000.00 or imprisonment for up to two years, or both.  |
|   | Obstruction of the Authority  | Up to BMD \$20,000.00 or imprisonment for up to six months, or both. |
| Cayman Islands Monetary Authority (CIMA)                | Minor breaches  | KYD \$5,000.00.  |
|   | Serious breaches - individual   | KYD \$50,000.00 max.   |
|   | Serious breaches - corporate  | KYD \$100,000.00 max.  |
|   | Very Serious breaches - individual  | KYD \$100,000.00 max.  |
|   | Very Serious breaches - corporate   | KYD \$1,000,000.00 max.  |
| Trinidad & Tobago Regulated Industries Commission (RIC) | Contravention or non-compliance with the RIC Act                            | TTD \$300,000.00 on summary conviction; and                          |
|   | For a continuing offence  | TTD \$60,000.00/day that the offence continues after conviction.     |
|   | Contravention of Regulations made under the RIC Act                         | TTD \$150,000.00/offence on summary conviction; and                  |
|   | For a continuing offence  | TTD \$30,000.00/day that the offence continues after conviction.     |
|   | Willfully making a return or furnishing false information to the Commission | TTD \$50,000.00.   |
|   | Obstruction of the Commission   | TTD \$50,000.00 on summary conviction                                |

The Office holds the position that the Water Authority Law (2018 Revision) and the Water Authority Regulations (2018 Revision) adequately addresses the obligation to pay WAC's statutory fees and the amounts of such fees.

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

*"In respect of potential licences, this question is addressed already by the first question. Section 10 of the Law determines the information that operator and service provider licensees are required to submit. In our view it would be best that the requirements for submission of specific information are determined in the individual licence as the level and detail of information that the regulator requires will depend on the type of license (operator versus service provider), the service that is provided (e.g. potable water, non-potable water, wastewater), the size of geographical area, the volume of water produced and distributed and the volume of wastewater that is collected and treated."*

24. **Office Response**

The Office notes WAC response and agrees with WAC.

Each licence will be modified accordingly to include specific conditions dependent on the type of licence and the service provided.

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

*"Please refer to the attached for our specific comments on Part 2 of the Regulations. Generally, we consider that this section is unclear and difficult to follow, in particular sections 3 and 4. It also appears to repeat some sections of the Law, which in our view is not necessary. Also, a number of new terms are used in this section that are not defined and therefore may result in confusion."*

26. **Office Response**

In light of WAC's response, the Office made amendments to Regulation 4 and removed Regulation 12 which appeared to repeat a section of the Law.

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

*"Please refer to the attached for our specific comments on the consultation paper and the Regulations."*

28. **Office Response**

The Office made several amendments in the Regulations based on the suggestions made by WAC.

## 4.2 CWC

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

CWC did not submit a direct response to the question.

30. **Office Response**

N/A.

31. **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?

CWC did not submit a direct response to the question.

32. **Office Response**

N/A.

33. **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?

CWC did not submit a direct response to the question.

34. **Office Response**

N/A.

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

CWC did not submit a direct response to the question.

36. **Office Response**

N/A.

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

CWC did not submit a direct response to the question.

38. **Office Response**

N/A.

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

CWC did not submit a direct response to the question.

40. **Office Response**

N/A.

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

CWC did not submit a direct response to the question.

42. **Office Response**

N/A.

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

CWC submitted the following response.

|  |   |
|--|---|
| <p><b>CAYMAN WATER COMPANY LIMITED COMMENTS ON THE DRAFT WATER SECTOR (LICENCE, FEE AND PENALTY) REGULATIONS, 2018</b></p> |   |
| <p>The Title</p>   | <p>The proposed scope of these Regulations is much broader than the title suggests including such matters as judicial review and creation of offences. In our view, matters pertaining to decisions to revoke or suspend licences would be more appropriately dealt with in the Compulsory Divestiture Regulations.</p> |

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|--------------------------------|--|
| <p>The Preamble</p>            | <p>This states that the Regulations are made by the Office in exercise of its powers under section 3(2)(j) of the Water Sector Regulation Law (“WSRL”). However, we do not consider that this section empowers the Office to make regulations granting itself powers, determining licence fees and creating offences. “Establishing” regulations is not the same as making regulations. Instead, the Office’s proper role in this respect is set out in section 3(2)(h) of the WSRL, namely recommending to the Minister the making of regulations. Section 20(1)(e) and Section 20(2) make clear that these Regulations are properly issued by Cabinet.</p> |
| <p>Regulation 2</p>            | <p>The terms “Appointed operator”, “Business Day” and “freshwater” are defined but not used in the Regulations. In any event, the definition of freshwater appears to contain an error: we think it should be 1,000 (versus 5,000) parts per million. Where the defined terms are simply reproductions of the defined terms in the WSRL it may be more efficient to say that the terms used herein have the same meaning as in the WSRL.</p>   |
| <p>Regulation 3</p>            | <p>The content of this Regulation appears to be taken from a different statutory context and is not in our view appropriate for the context of the WSRL. In particular, there are no definitions of “offering a service” or “operating a system”. Instead, the provision should simply reflect section 4(1) of the WSRL.</p>   |
| <p>Regulation 4</p>            | <p>In order to maintain consistency with the usage of the WSRL the terms “operator licensee” and “service provider licensee” should be used rather than “water service provider” and “water service operator”.</p>   |
| <p>Regulation 4(1) and (2)</p> | <p>We do not understand the meaning of these provisions, and in particular the words “to support them”.</p>  |

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|-----------------|---|
| Regulation 4(3) | <p>We are concerned that this provision appears to suggest that licensees will not be exempted from the Trade &amp; Business Licensing Law (“TBLL”) and Local Companies (Control) Law (“LCCL”) regime, since CWC previously was exempted. Since CWC would be operating under a licence issued by the Office it is not clear that it is “a company operating under a franchise granted by the Government” as per section 4(1)(d) of the LCCL. As a matter of principle, regulated companies ought to be exempted from the TBL and LCCL regime as reflected for example in section 23(10) of the Electricity Sector Regulation Law (2018 Revision). Contrary to what it states, this provision (or an amendment to the WSRL) should specifically be exempting at least service provider licensees from the TBLL and LCCL.</p> |
|-----------------|---|



|                         |   |
|-------------------------|---|
| Regulation 5(1)         | “(or e-licence)”. This term requires a definition.  |
| Regulation 6            | Again, because these Regulations seek to prescribe matters for the better carrying out of the powers on the Office it is appropriate that they are made by Cabinet rather than the Office under section 20(1)(d) of the WSRL rather than the Office. We do not understand how the policy of the directions of the Minister should be able to affect the grant of the licence as suggested in Regulation 6(4)(a).  |
| Regulation 7            | The amount of the licence and regulatory fees should be prescribed in Regulations made by Cabinet under section 20(1)(e) of the WSRL.   |
| Regulation 9(2)         | This provision has omitted the statutory provision that the applicant have an intention to commence performance within a reasonable period of time. See section 6(2) of the WSRL.   |
| Regulation 9(3) and (4) | This provision exceeds the powers of the Office set out in section 6(3) of the WSRL which says that the Office “ <b>shall</b> ” (not may) grant if the applicant has met all the conditions set out in section 6, and does not authorize the Office to require information beyond that required for the purposes of section 6.  |
| Regulation 10(1)        | This provision is in conflict with Section 9(1) and (2) of the WSRL which states that a service provider licence may be modified (a) where the Office and the licensee consent in writing; or (b) <b>acting on the direction of Cabinet</b> , for reasons of the <b>security, or public interest or health of the general population of the Islands</b> with or without the consent of the licensee. The Office has no statutory power to “modify, amend, replace, add or delete any licence condition as it considers requisite or expedient...” which would be egregious if such a power did exist. Section 5(4) of the WSRL states that operator Licences are not subject to modification unless triggered by the modification in the terms of or on the renewal of the permit issued by the Authority, so this provision exceeds the statutory power of the Office. |
| Regulation 10(3)        | This should be (a) <b>and</b> (b).  |
| Regulation 11(1)        | There is a missing step, namely that the Office must give notice how the licence has been modified and its reasons.   |
| Regulation 11(4)        | Communication of the decision of the Board should be time-bound, e.g., 21 days to be consistent with the WSRL and good practice.  |

|                  |  |
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| Regulation 11(5) | The time period of 28 days conflicts with section 92 of the Utility Regulation and Competition Law (“URC Law”) which states that the period should be 45 days. Time should begin to run from actual delivery so that a licensee is not disadvantaged because, for example, a negligent delivery agent did not deliver the decision in a timely manner or at all as this would infringe on the rights to appeal. There should also be a right to appeal to the Court (versus by way of judicial review) consistent with section 91(11) of the URC Law and as specifically contemplated by section 8(8) of the WSRL. |
| Regulation 12    | This provision exceeds the provisions of section 12 of the WSRL which refers to a register of concessions and Licences, not a register of applications and operating permits. We do not think that applications need to be a matter of public record.  |
| Part IV          | This Part is not within the scope of section 3(2)(j) of the WSRL. It is clear from section 20(2) of the WSRL that Regulations creating offences should be made by Cabinet, and not by the Office.  |
| Regulation 14(1) | A number of these grounds, for example failure to comply with any direction of the Office, are light bases for revocation or cancellation of a licence.<br>Instead, the grounds for the appointment of a competent operator set out in section 11(1) of the WSRL (since this would flow from a suspension or revocation of a licence) should properly be the basis for suspension or revocation of a licence. Furthermore, these provisions are incompatible with the grounds of suspension or revocation negotiated with CWC in the draft Licence.  |
| Part V           | This Part is not within the scope of section 3(2)(j) of the WSRL. It is clear from section 20(2) of the WSRL that Regulations prescribing penalties should be made by Cabinet, and not by the Office.  |
| Regulation 18(4) | The period of 2 days may encompass a weekend when it is not possible to file with the Clerk of Court.  |
| Schedule 2       | “calculated in accordance with section 34 of the URC Law”. Section 34 provides no methodology for the calculation of annual licence regulatory fee. This should instead refer to “calculated in accordance with the licence” as per section 10(1) of the WSRL.   |
| Schedule 3       | The penalties have increased dramatically from CI \$100 or CI\$500 in CWC’s old licence to CI\$5,000 or CI\$10,000. We consider a fivefold increase would be more than adequate to continue to have a deterrent effect. Also, we consider that the penalties should not be the same for all licensees but should be scalable in some way perhaps related to whether water is supplied on a retail or bulk basis, or the volume supplied as it  |

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|                | may impact disproportionately on small suppliers. Items 5, 6, 7 and 8 appear to have incorrect Regulation reference.   |
| Back of Ticket | Typo: “Guilty” should be corrected. Also “cheque” in place of “check”, and should be extended to include “draft or money order” consistent with Regulation 13. |

#### 44. Office Response

The Office notes CWC’s submission and made amendments to the Regulations in relation to the Regulation 2, Regulation 4, Regulation 9, Regulation 10, Regulation 11, Regulation 12, Regulation 14, Regulation 18, Schedule 2, Schedule 3 and the Ticket template. In response to CWC’s comments in relation to the Cabinet’s power to make these regulations, the Office would like to reiterate that it will adhere to the Law and submit a recommendation to the Cabinet that the final set of the Proposed Regulations should become legislation. In addition, the proposed amount of any licensing/regulatory fees and penalties listed in the Regulations are to be approved by the Cabinet. The Office notes CWC’s comments in relation to the definition of “freshwater”, and will consider whether an amendment to the WSR Law is necessary in the future in order to change the definition.

## 5. Amendments

45. Having considered all the submissions made by the respondents, the Office determines that it will recommend the Proposed Water Sector (Licence, Fee, Offence and Penalty) Regulations, as proposed in WS 2018 – 1 – Consultation, with the following changes:
- a. The Table of Contents were amended by amending the titles of the Schedules 1 to 3. Another part was added and two new schedules were added.
  - b. In Part 1, a new defined term “*e-licence*” was added to Regulation 2.
  - c. Regulation 4(1) was amended to delete the words “*may identify any one or more of the following functions as necessary requirements for the supplier to support them in executing the regulated activities...*” and insert the words “*may identify additional conditions that are required in order for the service providers to execute the regulated activities...*” to eliminate any confusion in regard to the Office’s ability to identify any additional licence conditions.
  - d. Regulation 4(4) was inserted to reference application forms.

- e. Regulation 5(3) was amended for clarity by inserting the words “*service provider licences shall*”.
- f. Regulation 6(4) was amended for clarity by inserting the word “*additional*” before the word “*conditions*”.
- g. Regulation 7(2) was amended by deleting the words “*time to time*” and by inserting the words “*and deadline for payment*”.
- h. Regulation 8(1) was amended to address the provision in the Water Authority Regulations (2018) which allow the Authority to discharge sewage and trade effluents, hence “*by operation of law*”.
- i. Payment of fees were addressed in Regulations 8(3) and 8(4) and 9 (3) and 9(4).
- j. Regulations 8(5) and 9(5) makes provision for additions to the register of licensees.
- k. Regulation 9 was amended by replacing sub-regulation 9(2)(a) and inserting the words “*that the applicant submitted all the necessary documentation to the Cabinet, where applicable, that are outlined in Regulation 19(1).*” In addition, Regulation 9 was also amended by replacing sub-regulation 9(2)(b) by inserting the words “*that they have met all the pre-conditions established in the concession required for the grant of the service provider licence*”, and inserting a new sub-regulation 9(2)(c) addressing timeliness.
- l. Regulation 10 was amended by deleting the words “*as it considers requisite or expedient having regard to the functions established by the Law*” and inserting the words “*in accordance with sections 9(1) and (2) of the Law.*” The following words were inserted “*the Office shall cause to be served upon the licensee a copy of every objection or representation received by it within the period specified in sub-regulation (2)(c), and a copy of any other objection which it intends to take into consideration*”.
- m. Regulation 11 was amended by deleting the words “*as soon as is reasonably practicable*” and inserting the words “*within twenty-one (21) days*” at the end of sub-regulation 11(4). In addition, regulation 11(5) was amended by deleting “*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*” and inserting the words “*within forty-five (45) days, and the time is deemed to be the time that the notice has been served*” in their place.
- n. Regulation 12 was removed, as it was deemed to be redundant as the Law address the Office’s obligation to maintain a publicly available register.

- o. Regulation 13 was replaced with a provision addressing the renewal of licences.
- p. Regulation 14 was amended by deleting the word “*valid*” and inserting the word “*required*” in its place as well as inserting the words “*of a licence*” after the word “*cancellation*” in 14(1). Sub-regulation 14(1), was also amended by deleting the words “*or before the time of the accident*” and inserting the words “*any time*” in sub-regulation 14(1). Sub-regulation 14(1)(b) was amended by deleting the words “*are issued by any other authority or regulatory body*” and inserting “*would be required to operate*” in its place. Sub-regulation 14(3) was amended by inserting the words “*given in writing and shall be fully reasoned*” between the words “*shall be*” and “*and be transparent*”. Sub-regulation 14(4) was amended by inserting the words “*to provide*” after the words “*service activity or*”. In addition, regulation 14 was amended by inserting a new sub-regulation 14(5).
- q. Regulation 16 was amended by inserting the words “*in respect of ticketable offences*” after the word “*ticket*” in sub-regulation 16(1). Sub-regulation 16(3) was also amended by deleting the words “*is an option*” and inserting the words “*will be deemed*” in its place; inserting the words “*any and all*” in between the words “*discharge*” and “*liability*” as well as deleting the words “*to conviction for*” and inserting the words “*in respect of*” in its place.
- r. Regulation 17 was amended by replacing the word “*registered*” with “*Certified*” in its place in sub-regulation 17(3). (Certified mail is a new service provided by the Post Office. It records delivery to the addressee’s post box.) In addition, sub-regulation 17(4) was amended by inserting the words “*by hand*” and “*if the relevant officer serves a ticket by electronic means or Certified mail, he shall provide an affidavit of service.*”
- s. Regulation 18 was amended by inserting the word “*business*” in sub-regulation 18(4) as well as replacing the word “*registered*” with “*Certified*” in its place in sub-regulations 18(6) and 18(7).
- t. The new Part 6 addresses concessions and consist of regulation 19 which outlines the supporting documentation required to be submitted when applying for a concession, (as requested by the WAC to provide clarity).
- u. The First Schedule was amended by replacing “*\$75*” where mentioned with “*\$200*” as well as replacing “*\$175*” where mentioned with “*\$375*”. The fees were increased as the Office determined that the previously proposed fees were not adequate after comparisons with other local and regional regulators.

- v. The Second Schedule was amended by replacing “\$175” where mentioned with “\$400”, and replacing “\$275” where mentioned with “\$500”. The fees were increased as the Office determined that the previously proposed fees were not adequate after comparisons with other local and regional regulators. The word “*calculated*” was replaced with the word “*determined*”. In addition, the words “*Utility Regulation and Competition Law (as amended)*” were removed and replaced with the words “*Law, with a minimum of \$10,000.*” Lastly, the words “*or equivalent to 0.05% of the capital employed to establish, maintain and operate the service as evidenced by audited or approved financial statements acceptable to the Office whichever is greater.*”
  - w. The Third Schedule was amended by adding two new ticketable offences in relation to Sections 10(2) and 11(5) of the Law, as suggested by CWC in its submission.
  - x. The new Fourth and Fifth Schedules contains the Licence Templates for Waste Operators and Water Operators respectively.
  - y. All references to “*Schedule 1*”, “*Schedule 2*” and “*Schedule 3*” were removed and replaced with “*First Schedule*”, “*Second Schedule*” and “*Third Schedule*” accordingly.
  - z. Grammatical errors, incorrect references and numbering were also addressed and amended throughout the Regulations.
46. A copy of the final Proposed Water Sector (Licence, Fee, Offence and Penalty) Regulations is attached as Appendix 1 to this Determination.
47. The Office, in accordance with sub-sections 20(1)(d) and 20(1)(e) of the Law, will make a recommendation to the Cabinet that the attached Proposed Water Sector (Licence, Fee, Offence and Penalty) Regulations be made Regulations.



## Appendix 1

### Final Proposed Water Sector (Licence, Fee, Offence and Penalty) Regulations

CAYMAN ISLANDS



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

**THE WATER SECTOR REGULATION LAW (2019 REVISION)**

**THE WATER SECTOR (LICENCE, FEE, OFFENCE AND PENALTY)  
REGULATIONS, 20[XX]**



## **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
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13. Suspension, Revocation or Cancellation of a Licence

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

14. Providing Services without a Licence
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### **PART 5 – ADMINISTRATIVE PENALTIES**

16. Payment of Administrative Penalties
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18. Not Guilty Pleas

**PART 6 – CONCESSIONS**

19. Supporting Documentation

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

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

**THIRD SCHEDULE - Ticketable Offences**

**FOURTH SCHEDULE –Template for Wastewater Operators Licence**

**FIFTH SCHEDULE –Template for Water Operators Licence**

CAYMAN ISLANDS

**THE WATER SECTOR REGULATION LAW (2019 REVISION)**

**PART 1 - PRELIMINARY**

**THE WATER SECTOR (LICENCE, FEE, OFFENCE AND PENALTY)  
REGULATIONS, 2019**

The Cabinet, in exercising its powers conferred by section 20 of the Water Sector Regulation Law (2019 Revision), makes the following regulations-

1. These Regulations may be cited as the Water Sector (Licence, Fee, Offence and Penalty) Regulations, 2019.

2. In these regulations -

“Authority” has the same meaning as stated in the Law;

“concession” has the same meaning as stated in the Law;

“concessionaire” has the same meaning as stated in the Law;

“domestic use” has the same meaning as stated in the Law;

“domestic wastewater” has the same meaning as stated in the Law;

“e-licence” means a licence that exist in an electronic format which may be transmitted electronically or printed to paper;

“Law” means the Water Sector Regulation Law (as revised);

“licence” has the same meaning as stated in the Law;

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

“Office” has the same meaning as stated in the Law;

“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” has the same meaning as stated in the Law;

“water” has the same meaning as stated in the Law;

“Water Laws” has the same meaning as stated in the Law; and

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

## **PART 2 – LICENSING FRAMEWORK**

3. These regulations shall apply to any person supplying water or wastewater services, 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, or any other form of remuneration, howsoever it may be described.
4. (1) With respect to water suppliers and operators, the Office may identify additional conditions that are required in order for the service providers to execute 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 additional conditions that are required in order for the service providers to execute 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 the Law in accordance with the 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 the Law, shall apply in writing to the Office within three (3) months of the coming into force of these regulations.

(4) All applications for licences shall be made to the Office on the appropriate form issued by and obtainable from the Office, and include such of the appropriate particulars as are material to the application.

- 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, and service provider licences shall be subject to such conditions as the concession issued under the Water Laws.
- 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(1).
- (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 wastewater service operators based on wastewater 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 additional conditions in the licence, consistent with any direction of a policy nature that the Cabinet 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, the National Conservation Council 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; and

- (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 the First and Second Schedules respectively.
- (2) The amount and deadline for payment of the licence and regulatory fees may be amended by the Office and deadline for payment.

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

#### **OPERATOR 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 valid permit issued by the Authority (or by operation of law) 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 the First Schedule, grant an operator licence.
- (4) The Office shall not entertain any application until payment of the prescribed fee has been effected.

(5) Upon the granting of an operator licence, the Office shall cause an entry to be made to that effect in its register of licensees.

### **SERVICE PROVIDER LICENCES**

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 the applicant submitted all the necessary documentation to the Cabinet, where applicable, that are outlined in Regulation 18(1);
  - (b) that they have met all the preconditions established in the concession required for the grant of the service provider licence; and
  - (c) that they have an intention to commence performance within a reasonable period of time.
- (3) The relevant fees set out in the Second Schedule, become immediately payable to the Office upon the issuance of a service provider licence.
- (4) The Office shall not entertain any application until payment of the prescribed fee has been effected.
- (5) Upon the granting of a service provider licence, the Office shall cause an entry to be made to that effect in its register of licensees.
10. (1) Subject to the following provisions of this regulation, the Office may modify, amend, replace, add or delete any licence condition in accordance with sections 9(1) and (2) of the Law.
- (2) Before making any modifications, the Office shall give written 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 thirty (30) days 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.



The Office shall cause to be served upon the licensee a copy of every objection or representation received by it within the period specified in sub regulation (2)(c), and a copy of any other objection which it intends to take into consideration.

- (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; and
  - (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, 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 within twenty-one (21) days.

(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 forty-five (45) days, and the time is deemed to be the time that the notice has been served.

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

12. (1) Fees payable under this Part are set out in the First Schedule.

- (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”.
13. (1) Operator licences granted under paragraphs (1) of regulation 8 may be renewed by the Office upon a written request to be filed with the Office not later than two months prior to expiration.
- (2) Such requests shall be accompanied by the appropriate renewal fee prescribed in the First Schedule and the production of a valid permit issued by the Authority. Failure of the licence holder to file for the renewal of his licence within this period will result in the relevant application being entertained by the Office as though it was an application for a new licence or, if no application has been filed prior to the expiration of the licence, in its termination. The Office may issue expiration date reminder notices to licence holders.

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

14. (1) The Office may, at any time in the course of the period for which a licence is required, order the suspension, revocation or cancellation of a licence 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 would be required to operate; 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 the First and Second Schedules.
- (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 given in writing and 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 to provide the exercise thereof.
  - (5) No person may provide any of the services referred to in these regulations where the licence has not been granted or has lapsed and has not yet been renewed by the Office.
  - (6) 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.
  - (7) 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.
  - (8) 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 any time, 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 in respect of ticketable offences.

- (2) The offences set out in the Third Schedule 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 will be deemed to discharge any and all liability in respect of 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 the Third Schedule, 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 the Third Schedule 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 the Third Schedule.
  - (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 Certified mail to the last known place of business or abode of the person.
  - (4) The relevant officer who serves a ticket by hand 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. If the relevant officer serves a ticket by electronic means or Certified mail, he shall provide an affidavit of service.
  - (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) business 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 certified 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 certified 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) 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).
- (9) 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).
- (10) 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.
- (11) 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).

## **PART 6 – CONCESSIONS**

19. (1) When submitting an application to the Cabinet for a concession, the following information with supporting documents shall be submitted –
- (a) whether the applicant possesses the managerial and technical qualifications (competence and capability) necessary to perform fully the obligations attached to the concession for which the applicant is applying;
  - (b) whether there is any current or pending litigation involving the applicant's business or its subsidiaries;
  - (c) whether the applicant is a fit and proper person to be granted a licence;
  - (d) whether the applicant is of financial soundness and possesses adequate financial resources to finance its obligation under the law and to deliver its business plan and has the capacity to raise new funds in the future in order to operate the proposed services;
  - (e) whether, during the term of any current or prior concession, if any, the applicant has complied with all terms, conditions, specifications and requirements of any licence, order, directive, rule or regulation pertaining to such concession;
  - (f) the total estimate of investment value in relation to the design and construction of any proposed facility in support of the concession for which the applicant is applying;
  - (g) the design and technical documentation in support of the concession for which the applicant is applying;
  - (h) whether the applicant has the ability to undertake an assessment of the influence of any proposed projects on the environment;
  - (i) whether the applicant possesses a risk management plan including descriptions of all of the following: any risks to health, safety and the environment, any risks relating to the construction, operation and schedule for the proposed services, any risks relating to technology failures and detailed plans to manage any of the foregoing risks using industry best practices;
  - (j) whether the applicant intends to perform the obligations attached to the concession for which the applicant is applying in a period of time which, in the opinion the Cabinet, is reasonable;

- (k) whether the interests of consumers will be protected, including the needs of rural customers, the disadvantaged and the elderly;
- (l) whether the applicant has, at the date of the application for a concession or proposes to have, within a specified time after a concession has been issued, participation of Caymanians and, if so, the nature and extent of such participation, including without limitation, the level of beneficial ownership by Caymanians, if any, and any participation by Caymanians as directors, management or otherwise;
- (m) whether the efficient consumption or use of water by consumers have been promoted or will be promoted, including the research, development and introduction of new water supply and/or wastewater services technologies;
- (n) whether foreign and domestic investors will be encouraged to invest in the water sector; and
- (o) whether the public interests and security interests of the Islands will be safeguarded.

(2) Upon review of the information listed in regulation 18(1), the Office and the Water Authority will provide its recommendation to Cabinet within two (2) weeks of receipt upon the Cabinet's request.



**FIRST SCHEDULE**

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

|   |  |   |
|---|--|---|
| 1 | Operator Licence Application fee         | \$200   |
| 2 | Operator Licence Renewal Application fee | \$200 on or before Expiration Date.<br>\$375 after the Expiration Date. |
| 3 | Operator Licence Regulatory fee          | \$250   |

**SECOND SCHEDULE**

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

|   |  |   |
|---|--|---|
| 1 | Licence Application fee                          | \$400   |
| 2 | Licence Renewal Application fee                  | \$400 on or Before Expiration Date.<br>\$500 after the Expiration Date  |
| 3 | Annual Licence Regulatory fee                    | Determined in accordance with the licence as per section 10(1) of the Law, with a minimum of \$10,000.                |
| 4 | Annual Licence Regulatory Fee for a Water and/or | \$2,500 or equivalent to 0.05% of the capital employed to establish, maintain and operate the service as evidenced by |

|  |  |  |
|--|--|--|
|  | Wastewater Supplier for a defined development. | audited or approved financial statements acceptable to the Office, whichever is greater. |
|--|--|--|

**THIRD SCHEDULE**

**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 meet reporting requirements in relation to financial statements.  | Section 10(2) | \$5,000  |
| 3.                                | Failure to grant access to an appointed operator.  | Section 11(5) | \$5,000 and a further \$5,000 each day that the violation continues. |
| 4.                                | Failure to comply with prescribed standards of performance, and each day that the violation  | Section 14(2) | \$5,000 and a further \$5,000 each day that the violation continues. |

|    |   |                            |  |
|----|---|----------------------------|--|
|    | continues shall constitute a separate offence.  |                            |  |
| 5. | Failure to comply with prescribed technical and equipment standards, and each day that the violation continues shall constitute a separate offence.   | Section 14(6)              | \$5,000 and a further \$5,000 each day that the violation continues. |
| 6. | 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  |
| 7. | Failure to comply with decisions or directions of the Office, and each day that the violation continues shall constitute a separate offence.  | Regulation 6(5)(a) and (d) | \$5,000 and a further \$5,000 each day that the violation continues. |

|     |  |                            |  |
|-----|--|----------------------------|--|
| 8.  | Failure to comply with licence conditions, and each day that the violation continues shall constitute a separate offence.  | Regulation 6(5)(b) and (c) | \$5,000 and a further \$5,000 each day that the violation continues. |
| 9.  | Failure to inform, within 30 days, the Office of any changes relating 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. | Regulation 6(5)(b)         | \$10,000 per day or part of a day                                    |
| 10. | Provision of services referred to in regulation 3 or 4 while the applicable licence(s) has not been granted or has lapsed and is not yet renewed by the Office.  | Regulation 13(5)           | \$10,000 per day or part of a day                                    |

|     |  |                            |                                   |
|-----|--|----------------------------|-----------------------------------|
| 11. | Provision of services referred to in regulation 4 while the applicable licence is suspended, revoked or cancelled by the Office. | Regulations 13(6) and (7). | \$10,000 per day or part of a day |
|-----|--|----------------------------|-----------------------------------|

**Form of Ticket**

**THE WATER SECTOR REGULATION LAW (2019 REVISION) and the Water Sector (Licence, Fee, Offence and Penalty) Regulations, 2019**

**FRONT OF TICKET**

| TICKET NUMBER:                     |                   | TIME:           |  |
|------------------------------------|-------------------|-----------------|--|
| DATE:                              |                   | NAME OF PERSON: |  |
| LOCATION:                          |                   | LICENCE NO.:    |  |
|                                    |                   |                 |  |
| DESCRIPTION OF TICKETABLE OFFENCES | Law or Regulation | Fixed Penalty   |  |
| 1.                                 |                   | \${ }           |  |
| 2.                                 |                   | \${ }           |  |
| 3.                                 |                   | \${ }           |  |
| 4.                                 |                   | \${ }           |  |
| 5.                                 |                   | \${ }           |  |

|     |  |       |
|-----|--|-------|
| 6.  |  | [\$ ] |
| 7.  |  | [\$ ] |
| 8.  |  | [\$ ] |
| 9.  |  |       |
| 10. |  |       |
| 11. |  |       |

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 twenty-eight (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 \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_;

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

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

**Name of Inspector**

**Signature**

*Criminal proceedings shall not commence until thirty-eight (38) 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 cheque, draft 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 cheque 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: +1 (345) 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 – 5:00 pm



**FOURTH SCHEDULE**

**Template for Wastewater Operators Licence**

**WATER SECTOR REGULATION LAW (2019 Revision) and the Water Sector (Licence, Fee, Offence and Penalty) Regulations, 2019**

(Section 4)

**Wastewater Operator's Licence**

1. Licence No:
2. Permit No:
3. Licence holder:
4. Address:
5. Date of expiration:

Fee:

Paid:

This licence is granted subject to the provisions of the Water Sector Regulation Law (2019 Revision) ("the Law") and the special condition specified.

Failure to comply with the provisions of the Law, or with the terms and conditions of this licence may result in the penalties specified in section 4 of the Law, and the modifications or revocation of this licence.

Date:

Signature and Seal of OfReg:



Made in Cabinet the [...] day of [...], 20[XX]

[ ]

Clerk of the Cabinet