

# WATER INDUSTRY (SCOTLAND) ACT 2002

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## EXPLANATORY NOTES

### THE ACT

#### Part 4 – Miscellaneous and General

##### *Schedule 3 – Scottish Water: status, constitution, proceedings etc.*

173. This schedule makes provision in relation to Scottish Water, which is in several respects significantly different from that in schedule 7 to the 1994 Act relating to the constitution etc. of the existing authorities.
174. [Paragraph 1](#) establishes that Scottish Water is not a Crown body.
175. [Paragraph 2](#) provides for Scottish Water’s board to contain non-executive and executive members, with non-executive members being appointed by the Scottish Ministers. It establishes that the Chief Executive of Scottish Water is to be an executive board member and that the other executive members, who will be employees of Scottish Water, are to be appointed (in effect co-opted) by the board, subject to the approval of the Scottish Ministers. Sub-paragraphs (1) and (2) set upper and lower limits on the numbers of executive and non-executive board members and establishes that non-executive members must always be in a majority of at least two. Sub-paragraphs (4) and (5) provide for one non-executive member to be appointed who appears to have special knowledge of the interests of Scottish Water’s employees, and for Scottish Ministers to consult employee representatives on the specification for this appointment.
176. [Paragraph 3](#) provides that all board members except the Chief Executive are to have fixed term appointments. Board members can resign by written notice and otherwise the Scottish Ministers (in the case of non-executive members) or Scottish Water determines their terms and conditions, with Scottish Ministers’ approval (in the case of executive members). This paragraph also establishes the circumstances in which board members may be removed from the board.
177. [Paragraph 4](#) provides for the Scottish Ministers to appoint a non-executive board member to chair the board and another to act as that member’s deputy. It establishes the circumstances in which these members may resign and can be removed from these positions and their other terms and conditions of appointment.
178. [Paragraph 5](#) provides for the non-executive board members to be paid remuneration and for all members to receive allowances for their expenses. The Scottish Ministers can direct Scottish Water to make pension provision in respect of non-executive members.
179. [Paragraph 6](#) establishes that the Scottish Ministers will appoint the first Chief Executive of Scottish Water and that Scottish Water, with the approval of the Scottish Ministers, will make subsequent appointments. It provides for Scottish Water, with the approval of the Scottish Ministers, to appoint staff and requires it, subject to the Scottish Ministers’ approval, to set terms and conditions for staff. It must make pension provision for its staff.

*These notes relate to the Water Industry (Scotland) Act  
2002 (asp 3) which received Royal Assent on 1 March 2002*

180. [Paragraph 7](#) provides for Scottish Water to establish committees, which can include employees who are not members. Paragraph 8 enables Scottish Water to determine its own quorum and proceedings and those of its committees.
181. [Paragraph 9](#) allows Scottish Water to delegate powers to its committees, members and staff. Paragraph 10 provides that vacancies among members or errors in their appointment will not invalidate any actions by Scottish Water.
182. [Paragraph 11](#) ensures that Scottish Water's board can act validly pending the first appointment of the non-executive member provided for in paragraph 2(4).
183. [Paragraph 12](#) provides for the initial round of executive board member appointments in anticipation of Scottish Water being vested with its functions and in the expectation of those appointed being employed by Scottish Water.
184. The powers conferred on Scottish Water by this schedule must be exercised in accordance with directions under section 56.