

# **WATER INDUSTRY (SCOTLAND) ACT 2002**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The largest element of the Act (Part 3) provides for the establishment of Scottish Water as the successor to the three water and sewerage authorities established by the Part II of Local Government etc. (Scotland) Act 1994 (“the 1994 Act”). Many of the provisions in Part 3 of the Act are based on equivalent provisions in Part II of the 1994 Act. Provisions have also been included for Scottish Water to have a board structure that differs from that of the existing authorities and for Scottish Water to have a greater measure of commercial freedom than that enjoyed by the existing authorities.
4. The Act’s other elements provide for changes to the representation of the interests of water customers to take account of the establishment of Scottish Water (Part 1) and the creation of a Drinking Water Quality Regulator with powers in respect of Scottish Water and private water supplies (Part 2). As these provisions deal with the regulatory framework within which Scottish Water will operate, they precede those relating to the creation of Scottish Water.
5. The 1994 Act refers to the water authorities that it created as “the new water and sewerage authorities”. For ease of understanding, these notes refer to them as the “existing authorities”.

## **PART 1 – WATER INDUSTRY COMMISSIONER AND CUSTOMER PANELS**

### **Section 1 – Water Industry Commissioner for Scotland**

6. This section continues in existence the Water Industry Commissioner for Scotland established by section 67A of the 1994 Act (which was inserted by section 12 of the Water Industry Act 1999 (“the 1999 Act”).

7. Subsection (2) gives the Commissioner the general function of promoting the interests of customers of Scottish Water in relation to the provision of services by it in the exercise of its core functions. This is similar to the Commissioner’s general function under the 1994 Act in relation to the existing authorities. Scottish Water’s “core functions” are all its statutory functions, but excluding its new general power under section 25(1) and the ancillary power under section 25(2) so far as relating to that power (see section 70(2)).

8. Subsection (3) gives the Scottish Ministers a power of direction over the Commissioner, equivalent to that provided in the 1994 Act (under section 67A(4)).

9. Subsection (4) gives effect to Part 1 of schedule 1 which makes detailed provision as to the appointment of the Commissioner and as to the Commissioner’s staff, status and accounts which essentially is a restatement of the current provision as to those matters set out in Schedule 9A to the 1994 Act.

### **Section 2 – Water Customer Consultation Panels**

10. This section provides for the establishment of Water Customer Consultation Panels to replace the Water Industry Consultative Committees established by section 67A(2) of the 1994 Act. Those Committees will cease to exist by virtue of the repeal of section 67A of the 1994 Act by the Act.

11. Subsection (1) provides that the Scottish Ministers shall establish the Panels by an order, which must specify, or make provision for determining, the area of Scotland for which each Panel is responsible and the number of Panel members (subsection (2)).

12. The Panels are to represent the views and interests of the customers of Scottish Water (in respect of Scottish Water’s core functions) in the area for which the Panel is responsible and must publish reports on matters they consider relevant to the interests of those customers and make any recommendations they consider appropriate to the Commissioner about the promotion of the interests of those customers (subsections (3) and (4)). The Commissioner must have regard to any representations made by the Panels, and to their reports and recommendations, in exercising the Commissioner’s functions in relation to Scottish Water (subsection (5)).

13. Subsection (6) gives effect to Part 2 of schedule 1, which makes detailed provisions as to the membership of the Panels, remuneration of their members, provision of administrative support to them, and their proceedings.

14. An order under subsection (1) is to be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### **Section 3 – Functions of the Commissioner**

15. This section is based on section 68 of the 1994 Act as amended by the 1999 Act. Subsection (1) requires the Commissioner to investigate complaints about Scottish Water made by its current, potential or former customers (in respect of its core functions). Such complaints can be made direct to the Commissioner or through the Customer Panels, which are required to pass any complaints on to the Commissioner (subsection (2)). The Commissioner need not investigate any complaint which is not pursued with Scottish Water or which he judges is vexatious or frivolous (subsection (3)). The Commissioner can make representations to Scottish Water on behalf of a complainer (subsection (4)).

16. Subsection (5) places a new duty on the Commissioner to report back to a Customer Panel on any complaint referred to the Commissioner by the Panel under subsection (2), either by providing a report on the investigation the Commissioner has carried out or by giving the Panel reasons why the Commissioner decided not to investigate such a complaint.

17. Subsection (6) gives the Commissioner a duty to advise the Scottish Ministers on any matter that appears to relate to Scottish Water's standards of service or the manner in which it conducts its customer relations (in respect of its core functions).

18. Subsection (7) gives the Commissioner a general ancillary power to do anything that may aid the exercise of the functions of the Commissioner.

### **Section 4 – Power of the Commissioner to require information**

19. This section, which is based on section 69 of the 1994 Act as amended by the 1999 Act, places a duty on Scottish Water to provide the Commissioner with information, where it is reasonable that the Commissioner should require the information to carry out the Commissioner's functions (subsection (1)).

20. Subsection (2) provides for the Commissioner or Scottish Water to refer to the Scottish Ministers for a final decision in any disagreements over whether information sought by the Commissioner is sought reasonably.

## **Section 5 – Annual reports by, and information from, the Commissioner**

21. This section provides for the Commissioner to make annual reports and provide information. Subsection (1), which is based on section 70 of the 1994 Act as amended by the 1999 Act, requires the Commissioner to submit an annual report to the Scottish Ministers at the end of each financial year on the exercise of the Commissioner's functions and to provide Ministers with any further information on these that they require. Subsection (2) requires the Commissioner's annual report to summarise action taken by him in the course of the year in connection with Customer Panel recommendations, representations or reports and, where he has decided to take no action, a summary of the reasons. Subsection (3) provides that Commissioner's annual report must set out any Ministerial directions given to the Commissioner during the year.

## **Section 6 – Funding of the Commissioner**

22. This section sets out how the Commissioner will be funded and is based on section 71 of the 1994 Act as amended by the 1999 Act and SI 1999/1820.

23. Subsection (1) gives the Scottish Ministers power to pay grants to the Commissioner, should they choose to do so. Subsection (2) gives the Scottish Ministers powers to direct Scottish Water to make payments to the Commissioner in respect of the Commissioner's expenses.

## **PART 2 – DRINKING WATER QUALITY REGULATOR**

### **Section 7 – Drinking Water Quality Regulator for Scotland**

24. Subsection (1) provides for the appointment by the Scottish Ministers of a Drinking Water Quality Regulator for Scotland who will have the general functions of ensuring that drinking water quality duties are complied with by public water suppliers and of supervising the enforcement by local authorities of such duties (subsection (2)).

25. Subsections (3) to (5) make provision for the Regulator to authorise other persons to discharge on behalf of the Regulator any of the functions of the Regulator. The Scottish Ministers are given power to issue directions to the Regulator, with which the Regulator must comply (subsection (6)). Subsection (7) defines terms related to the Regulator's functions for the purposes of this Part of the Act. In particular, it defines "drinking water quality duty" to mean such duties under Part VIA of the Water (Scotland) Act 1980, under this Act and such other enactments as the Scottish Ministers may specify by order. It also defines "public water supplier" to mean Scottish Water.

26. An order under subsection (7) is to be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### **Section 8 – Power to obtain information**

27. This section gives the Regulator power to serve notices requiring the provision of information relating to the quality of water supplied by a public water supplier and the production of documents. The Regulator may serve such a notice on the public water supplier itself, its officers or employees or any other persons believed to be in possession of relevant information or documents. The Regulator cannot require a person to disclose anything that they would not be required to disclose during legal proceedings in the Court of Session (subsection (3)).

28. Subsection (4) gives “document” a broad meaning for the purposes of this section so that it covers any medium in which information is stored; but documents stored otherwise than in legible form must be provided in a legible form. Subsection (5) enables copies to be taken of documents produced under this section.

29. Subsection (6) provides for it to be an offence not to comply, without reasonable excuse, with a requirement in a notice under this section or intentionally to alter, suppress or destroy a document required to be produced. Subsection (7) establishes penalties for those found guilty of the offence. At present the statutory maximum fine for a summary conviction is £5,000 and this is subject to periodic revision. In the case of conviction on indictment, the fine would be an amount without limit which the Court, having regard to the circumstances, considered appropriate.

### **Section 9 – Powers of entry, inspection etc.**

30. Subsections (1) to (4) confer a number of powers to enable the Regulator to establish whether drinking water quality duties are being complied with. These are powers of entry to the premises of public water suppliers and of those receiving supplies from a supplier and, if entry to those premises is not sufficient, powers of entry to the premises of other persons (subsection (2)), power to carry out inspections, measurements and tests on the premises or of substances, articles and documents found there (subsection (2)(b)) and power to remove such substances etc. for the purpose of carrying out such inspections etc. (subsection (2)(c)) and power to remove samples from the premises (subsection (2)(d)). Subsection (3) provides that the powers in subsection (2) cannot be exercised in relation to the premises described in subsection (2)(a) (iii) unless the Regulator is satisfied that the information he requires cannot be obtained by exercise of his powers in relation to the premises referred to in subparagraphs (2) (a) (i) and (ii).

31. The owners and occupiers of premises being entered are required to give the Regulator such assistance and information as the Regulator requires (subsection (4)). Refusal or failure to comply is an offence, as is obstruction of a person exercising the powers of entry etc. conferred by this section (subsection (5)). Subsection (6) specifies the penalties for these offences.

## **Section 10 – Enforcement notices**

32. Subsection (1) gives the Regulator power to serve an enforcement notice on a public water supplier whom the Regulator believes has contravened or is contravening a drinking water quality duty. Such a notice may be served where the Regulator believes that the contravention is likely to recur or continue and that the water supplier is not taking appropriate steps to rectify the contravention or prevent it recurring. Subsection (2) gives the Regulator power to consult the relevant local authority and Health Board when considering whether to serve a notice.

33. Subsection (3) requires that an enforcement notice contain details of the alleged contravention, the Regulator's reasons for believing it to be a contravention, the date by which it is to be rectified, any particular steps the Regulator wants the supplier to take (including any dates by which those steps must be taken (subsection (4)) for that purpose and the date on which the notice takes effect, which may be no earlier than the last day for bringing an appeal against the notice under section 11(2) (subsection (5)).

34. Subsection (6) requires the Regulator, before serving an enforcement notice on a public water supplier, to give the public water supplier a copy of the proposed notice and time to make representations to the Regulator about it. The Regulator must take into account any representations arising from an advance notice of enforcement before proceeding to enforcement (subsection (7)).

## **Section 11 – Enforcement notices: further provisions**

35. Subsection (1) provides for publicising enforcement notices by requiring the Regulator to send copies to the Commissioner and to any local authority or Health Board consulted under section 10(2), and for the Regulator to publish the notice so as to bring it to the attention of persons affected.

36. Subsections (2) to (5) make provision for a public water supplier to appeal to the sheriff against an enforcement notice. The appeal must be lodged within 14 days of the notice having been served. Pending determination of an appeal, a notice is suspended. The sheriff's decision on the appeal is final.

37. Subsection (6) introduces a requirement, where a water supplier has been served with an enforcement notice, for the water supplier to consult the relevant Health Board, and to have regard to the Board's views when dealing with the contravention. This duty is suspended during the period when any appeal against the notice remains extant (subsection (7)).

## **Section 12 – Failure to comply with enforcement notices**

38. This section makes provision for circumstances where a public water supplier fails to comply with the terms of an enforcement notice. Subsections (2) and (3) give the Regulator power to enter any premises and carry out the work necessary to achieve compliance and then to recover from the water supplier the cost of carrying out that work. Anyone who intentionally obstructs those seeking to achieve compliance is guilty of an offence (subsection (4)). If things required by the enforcement notice to be done by a certain date are not done in time, the water

supplier is guilty of an offence (subsection (5)) and continued failures to comply could lead to the water supplier being guilty of further offences in this respect (subsection (7)). The penalty for the offences created under this section are, on summary conviction, a fine not exceeding the statutory maximum and on conviction on indictment, a fine.

### **Section 13 – Emergencies**

39. This section makes provision for circumstances where a contravention of a drinking water quality duty by a public water supplier is causing a significant risk to public health or to the quality of the public drinking water supply such that urgent remedial action is needed. In such a case the Regulator can serve an emergency notice requiring the water supplier to take remedial action by a specified date (subsection (2)). Additionally, the Regulator is given the same power as section 12 gives in relation to enforcement notices, i.e. power to enter any premises to carry out work to address the emergency and then to recover the cost of carrying out the work (subsection (3)). There is similar supplementary provision in subsections (4) to (8) to that set out in section 12(3) to (7).

### **Section 14 – Variation and withdrawal of notices**

40. This section empowers the Regulator to withdraw enforcement and emergency notices or to vary them, but not so as to impose more stringent requirements, which would require further enforcement or emergency notices to be issued.

### **Section 15 – Register of enforcement and emergency notices**

41. This section requires the Regulator to keep, and make available for inspection by anyone at any reasonable time, a register of all enforcement and emergency notices issued. Subsection (2) provides details that must be specified in the register in relation to each notice. Subsection (3) gives the Scottish Ministers power to make an order prescribing the manner in which the register is to be kept and further information which it is to contain in addition to that required by subsection (2). Subsection (4) clarifies what is meant by “compliance date” in subsection (2).

### **Section 16 – Power to require information from local authorities**

42. This section requires local authorities to provide the Regulator with information about their enforcement of the drinking water quality duties that they are responsible for enforcing. Local authorities have duties under Part VIA of the Water (Scotland) Act 1980 to ensure compliance with drinking water quality duties by private water suppliers. If a local authority and the Regulator are in dispute over whether information is sought reasonably, they can refer the matter for decision to the Scottish Ministers (subsection (2)).

### **Section 17 – Annual reports**

43. This section requires the Regulator to prepare an annual report for each calendar year on the exercise of the Regulator’s functions and to submit the report to the Scottish Ministers.

### **Section 18 – Powers of entry etc.: further provision**

44. This section gives effect to schedule 2 which contains further provision regulating the exercise of the powers of entry conferred by sections 9(1), 12(2)(a) and 13(3)(a) for various purposes.

## **PART 3 – SCOTTISH WATER**

### **Section 20 – Scottish Water**

45. Subsection (1) establishes Scottish Water as a body corporate. Subsection (2) gives effect to schedule 3, which makes detailed provision as to the constitution etc. of Scottish Water.

### **Section 21 – Transfer of functions from new water and sewerage authorities**

46. This section transfers all of the functions of the existing authorities to Scottish Water. This has the effect of making Scottish Water responsible for the discharge of the statutory, or core, water and sewerage functions conferred on the existing authorities, principally by the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980 (“the 1980 Act”).

### **Section 22 – Transfer of property and liabilities**

47. Subsection (1) provides for all of the existing authorities’ property and liabilities to transfer to Scottish Water. As a result, the public water and sewerage infrastructure will vest in Scottish Water and Scottish Water will become responsible for discharging all of the existing authorities’ contractual obligations, including those relating to the staff of the existing authorities, all of whom will transfer – under section 23 – to Scottish Water.

48. Subsection (2) makes it clear that property and liabilities can transfer despite any provision that would otherwise prevent or restrict the transfer.

### **Section 23 – Transfer of staff**

49. This makes it clear that the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) will apply so as to transfer staff of the existing authorities to Scottish Water, in accordance with the terms of those Regulations, at the same time as the functions and property and liabilities of the existing authorities transfer.

### **Section 24 – Dissolution of new water and sewerage authorities etc**

50. Subsection (1) empowers the Scottish Ministers to dissolve the existing authorities on dates to be set by them by order; and that different dates may be set for the dissolution of each authority (subsection (2)). The existing authorities could continue in existence after the transfer of their functions, property, staff etc. to Scottish Water to enable them, for example, to complete final accounts.



51. Subsection (3) gives the Scottish Ministers power by order to make ancillary provisions in connection with the establishment of Scottish Water, the dissolution of the existing authorities and the transfer to Scottish Water. This power will, in particular, enable the Scottish Ministers to deal with transitional and consequential issues arising from the move to the single authority. For example, the Scottish Ministers will be able to provide that water and sewerage charges made in the name of the existing authorities can be passed to Scottish Water.

52. Orders under this section must be made by statutory instrument and are subject to negative procedure in the Parliament. An order under subsection (3) can textually amend primary legislation but if it does so it will be subject to affirmative procedure (see section 68).

### **Section 25 – General powers**

53. This section confers on Scottish Water wider general powers than those that the existing authorities have under section 89 of the 1994 Act.

54. Subsection (1) confers on Scottish Water a new general power to engage in any activity (whether in Scotland or elsewhere) that is not inconsistent with the exercise by it of its core water and sewerage functions. Subsection (2) confers on Scottish Water an ancillary power to do anything that will assist it to discharge both its core functions and its general power under subsection (1). Subsections (3) to (5) provide illustrations of the things that Scottish Water can do by virtue of this ancillary power; but the list is not an exhaustive description of what can be done. Subsections (3)(e), (4) and (5) are based on provision made in relation to local authorities by section 1 of the Local Government (Contracts) Act 1997.

55. Subsection (6) makes it clear that the powers conferred on Scottish Water by this section are additional to any other powers they may have; but the powers cannot be used to avoid any express prohibitions or restrictions placed on it elsewhere. It also establishes that the section does not enable Scottish Water to raise funds beyond the restrictions provided for in sections 41 and 42.

56. Scottish Water must exercise its powers under this section in accordance with directions to be given by the Scottish Ministers under section 56.

### **Section 26 – Customer standards code**

57. This section, which is based on section 66 of the 1994 Act, provides for Scottish Water to prepare and observe a code of practice, referred to as “the customer standards code”, in relation to its core functions.

58. Subsection (1) places a duty on Scottish Water to prepare and then submit to the Commissioner a customer standard code covering customer service standards, procedures for dealing with complaints and the payment of compensation. The first code is to be submitted to the Commissioner by the time Scottish Water submits its first charges scheme to the Commissioner (subsection (2)). The code can be varied from time to time and replaced with a new one (subsection (3)). The code comes into force when it is approved (subsection (4)). The procedure for approval is specified at section 27.

59. Subsection (5) places a duty on Scottish Water to endeavour to observe the approved code; but contravention will not of itself give rise to civil or criminal liability. Scottish Water must inform its customers of the contents of a code (subsection (6)).

60. Subsection (7) places on the Commissioner the duty to monitor Scottish Water's compliance with an approved code. It also gives the Commissioner the powers to report to the Scottish Ministers on compliance and to require Scottish Water to review a code.

#### **Section 27 – Approval of customer standards code**

61. This section, which is based on provisions at sections 66 and 76 of the 1994 Act, specifies the procedure for approval of Scottish Water's customer standards code. The Commissioner must approve the customer standards code as drafted or can agree changes to it with Scottish Water before approving it (subsection (1)), and before approving a code the Commissioner must consult each Customer Panel. Where the Commissioner cannot approve the code without modification, and the Commissioner and Scottish Water cannot reach agreement on modifications to the draft code, it is to be sent to the Scottish Ministers for approval (subsection (2)). Scottish Water can require the Commissioner to send the code to the Scottish Ministers for approval where 3 months after submission it has not been approved by the Commissioner (subsection (3)).

62. Subsection (4) gives the Scottish Ministers power to approve codes sent to them under subsections (2) or (3), after consulting each Customer Panel, either without modification or, after having consulted the Commissioner and Scottish Water, with modification.

63. Subsection (5) requires the Commissioner to send the Scottish Ministers a copy of any code approved by the Commissioner; and subsection (6) requires the Scottish Ministers to send to the Commissioner a copy of any code that they approve.

#### **Section 28 – Consultation code**

64. This section requires Scottish Water to have a code of practice on consultation.

65. Subsection (1) provides that the consultation code should set out the consultation Scottish Water will carry out on any significant activities and proposals for such activities, in respect of their core functions. The code must be submitted to Scottish Ministers for approval.

66. Subsection (2) requires the consultation code to include provision for consultation with those who live, work or have business in the area affected by the activity being consulted on, or those who represent the interests of such persons. The code must also contain provision about how consultation is to be carried out by Scottish Water and provision for Scottish Water to have regard to the views of those consulted.

67. Subsection (3) provides that Scottish Water must consult each Customer Panel before submitting the consultation code to Scottish Ministers, and have regard to their views. Subsection (4) provides for Scottish Ministers to approve the consultation code, and subsection (5) provides that the code only comes into force when Ministers have approved the code.

68. The code can be varied from time to time or replaced with a new one (Subsection (8)). Scottish Water is required to publish the code and provide a copy of it to anyone who asks for it (subsection (6) and must endeavour to comply with it (subsection (7)).

## **Section 29 – Charges for goods and services**

69. This section is equivalent to section 74 of the 1994 Act, but revised to clarify Scottish Water's powers to charge for goods and services.

70. Subsection (1) is drawn more widely than 74(1)(a) of the 1994 Act and gives Scottish Water a broad general power under which to charge for any goods that it might supply and any services that it might provide.

71. Subsection (2)(a) makes exemptions from the general charging power in subsection (1) in respect of water supplied under the circumstances set out in:

- section 9A of the Water (Scotland) Act 1980, which ensures that no charge can be made for supplies of water for certain fire-fighting purposes; and
- section 47 of that Act, which continues any arrangements in force before 16th May 1949 under which no charge was made for supplies of water.

72. Subsection (2)(b) avoids the general power at subsection (1) overlapping with other specific powers to charge by specifying that subsection (1) does not apply where another charging power already exists. Subsection (3) provides that the power under subsection (1) to charge can be exercised:

- in respect of services provided in the exercise of Scottish Water's core functions as provider of water and sewerage services on the public networks, as part of a charges scheme agreed with the Commissioner; and
- in respect of such services or in any other case, by individual agreements with customers.

73. Subsection (4) provides that where charges are not based on a charges scheme agreed with the Commissioner, the basis for calculating charges is to be a matter for Scottish Water's discretion.

### **Section 30 – Maximum charges for services provided with help of Scottish Water**

74. This section is based on section 75 of the 1994 Act.

75. Subsection (1) gives the Scottish Ministers the power by order to set maximum charges that a person other than Scottish Water can recover from another person for the supply of water and/or sewerage services that are provided with the help of Scottish Water. Subsection (2) explains the situations where, for the purposes of this provision, water and sewerage services are treated as supplied with the help of Scottish Water. These are:

- where a person has access to services that have been provided by Scottish Water but are made available to the person by someone other than Scottish Water; or
- where a person is provided with a supply of water or sewerage or a service for sewage disposal by another person who was initially supplied by Scottish Water.

76. Subsection (3) allows the maximum charge imposed to vary according to the person, circumstances or localities involved. It allows the Scottish Ministers to fix a maximum amount either by specifying the maximum amount of the charge or by specifying a method to calculate that amount.

77. Subsection (4) enables a person who pays a charge that is above the maximum amount fixed under subsection (1) to recover the excess amount from the person who had levied the charge.

78. An order under subsection (1) must be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### **Section 31 – Charges schemes**

79. This section is based on section 76(1) to (4) and (8) of the 1994 Act, as amended by section 13 of, and Part II of Schedule 3 to, the 1999 Act.

80. Subsection (1) requires Scottish Water to make a scheme setting out what it will charge for the provision of services that are part of its core functions. Charges schemes must fix charges paid for services and may also set the times and methods of payment of such charges. This differs from section 76(1) of the 1994 Act in that that subsection empowers rather than requires the existing authorities to make charges schemes. Subsection (2) continues to exempt trade effluent from the scope of charges schemes required at subsection (1). Subsection (3) allows a charges scheme to make different provisions for different classes of customers, including different charges depending on individual circumstances or location. Subsection (4) specifies that a charges scheme comes into force when it has been approved in accordance with section 32.

81. Subsection (5) places a duty on the Commissioner and the Scottish Ministers when approving a charges scheme to consider any advice published under section 33.

82. Subsection (6) allows Scottish Water to enter into individual charge agreements with any person independent of a charges scheme for services provided by Scottish Water.

### **Section 32 – Approval of charges schemes**

83. This section is based on section 76(5) to (7) of the 1994 Act, as amended by the 1999 Act. It sets out the procedure for approval of charges scheme made by Scottish Water under section 31. The procedure is similar to that set out in section 27 for approval of the customer standards code.

### **Section 33 – Commissioner’s advice on charges**

84. This section, which follows closely section 75A of the 1994 Act, as inserted by section 13 of the 1999 Act, provides for the Commissioner to advise the Scottish Ministers on the amount of charge income needed by Scottish Water during a particular period.

85. Subsection (1) requires the Commissioner to provide the Scottish Ministers when they ask for it with advice on the matters to be taken into or left out of account in setting charges. The advice should cover whatever period the Scottish Ministers specify (subsection (2)).

86. Subsection (3) sets out the factors that will have a bearing on the amount of charge income required by Scottish Water and to which the Commissioner must have regard in framing the advice.

87. Subsection (4) identifies the aspects of Scottish Water’s core functions whose costs to Scottish Water the Commissioner must bear in mind in framing the advice. Paragraphs (a) to (c) of the subsection provide functions that were set out at section 75A(4) of the 1994 Act. Paragraph (d) is a new and additional function, covering the first time provision of water and sewerage services. As a result the cost to Scottish Water of making such provision in accordance with the Scottish Ministers’ requirements will be a factor in the Commissioner’s advice.

88. Subsection (5) gives the Scottish Ministers 3 months in which to consider the advice submitted to them by the Commissioner. By the end of that period they must have accepted it, with or without any modifications they judge necessary, or have rejected it substituting advice of their own. Subsection (6) requires the Scottish Ministers to give their reasons for modifying or rejecting advice and for substituting their own advice.

89. Subsection (7) requires the Commissioner to publish the advice submitted to the Scottish Ministers along with any modification or substitution made by the Ministers and Ministers’ reasons for the modification or substitution. It follows that in practice the Commissioner can only publish this material once the process established in this section has been completed.

### **Section 34 – Publication of summary of charges scheme**

90. This section is based on section 77 of the 1994 Act. It places a duty on Scottish Water to make publicly available any charges scheme made by it and approved under section 32 and to publish a summary of the scheme, along with information as to how copies of the scheme can either be inspected or obtained.

### **Section 35 – Liability of occupiers etc for charges**

91. This section is a substantially amended version of section 78 of the 1994 Act. It makes provision for the basis on which those responsible for premises with water or sewerage services provided by Scottish Water shall be liable for payment of charges.

92. Subsection (1) establishes that where Scottish Water provides premises with water or sewerage services it is deemed to be providing those services to the current occupier of the premises. It makes clear that it also covers the provision and maintenance of communication and supply pipes (as defined in the Water (Scotland) Act 1980). Subsection (2) makes the same deeming provision in relation to provision of sewerage services to premises. If any premises are unoccupied then the owner is treated as the occupier for the purposes of these deeming provisions (subsection (3)). These deeming provisions can be disapplied by agreement with Scottish Water (subsection (4)).

93. Subsections (5) to (8) make provision for enabling Scottish Water to recover charges from a former occupier of premises even after that occupier has left the premises in cases where the occupier had agreed with Scottish Water to charge by reference to metered consumption of services. Such an occupier remains liable for the charges if they fail to give Scottish Water 48 hours notice that they are about to cease occupying the premises (subsection (6)). Subsection (7) determines the period for which the occupier remains liable. Subsection (8) establishes that references to 48 hours in this section – by excluding weekends and public holidays from the reckoning – effectively mean two working days.

### **Section 36 – Section 35: meaning of “occupier”**

94. This section provides in cases where the local authorities bill and recover the charges set by Scottish Water under section 37(1)(a) (i.e. in the case of dwellings that are not charged for water and sewerage services by reference to metered consumption), that the occupiers of premises for the purposes of paying charges are to be those liable to pay council tax in respect of the premises or, where the premises are exempt dwellings for council tax purposes, those who would be so liable. For other cases, subsection (2) gives the Scottish Ministers power by order to make provision for particular persons to be treated as being, or not being, the occupiers of particular premises for the purposes of liability for water charges.

### **Section 37 – Collection of charges by local authority**

95. This section, based on section 79 of the 1994 Act, enables the Scottish Ministers to determine by order that, where Scottish Water provides unmeasured water and sewerage services to dwellings, charges are to be collected by the appropriate local authority for the area concerned and that the authority should make payments to Scottish Water in respect of charges collected (subsection (1)). Such an order need not apply to all the dwellings in an area. Subsection (2) sets the matters that may be included in an order made under subsection (1) and these include provisions as to forms and procedures and appeals.

96. Subsection (3) gives effect to schedule 4, which largely restates Schedule 10 to the 1994 Act (repealed by Schedule 7, paragraph 23 (f)), on recovery of unpaid charges by the local authority.

97. An order under subsection (1) must be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### **Section 38 – Suspension of collection of charges by local authority**

98. This section applies to dwellings that are subject to a determination under section 37(1)(a) (i.e. for which the local authorities bill and collect water charges). The section provides a process whereby Scottish Water can give, and subsequently withdraw, wholly or partly, notice to a local authority that it should no longer bill or collect water charges from any such dwellings as are specified in the notice. Where Scottish Water has served such a notice, it will have to bill and collect the water or sewerage charges itself.

99. Subsection (4) provides that Scottish Ministers may make regulations regarding such a notice, and subsection (5) provides that these regulations may provide for a payment to be made by Scottish Water to the relevant local authority in respect of any reasonable administrative expenses it incurs as a consequence of the notice.

### **Section 39 – Primacy of duty to maintain domestic water supply etc.**

100. This section, based on section 80 of the 1994 Act, establishes that the charging powers at sections 29(1) and 37 do not affect Scottish Water's duties to provide water and sewerage services for domestic purposes to those on the public networks. In effect it means that domestic customers cannot be disconnected for not paying their water and sewerage charges.

### **Section 40 – Reduced charges**

101. This section is based on section 81 of the 1994 Act.

102. Subsection (1) empowers the Scottish Ministers to make regulations reducing the charges under section 37 to be paid by those to be defined in the regulations, including exempting some from charges altogether. Subsection (2) provides for regulations to specify the reduced amount to be paid or to make rules for determining the reduced amount. The Scottish Ministers can define those who qualify for the reduced charge, and set the rules for calculating the reduced charge, by reference to such factors as they see fit (subsection (3)).

103. Regulations under subsection (1) must be made by statutory instrument and are subject to negative procedure in the Parliament (see section 68).

### **Section 41 – Duties and powers relating to finance**

104. This section updates the duties at section 83 of the 1994 Act. In common with the other sections in the Act dealing with Scottish Water's finances, it does so taking account as appropriate of the Public Finance and Accountability (Scotland) Act 2000 and the introduction of resource budgeting and accounting in the public finances.

105. Subsection (1) effectively requires Scottish Water taking one year with another to ensure that it has sufficient income to meet its expenditure. Subsection (2) gives the Scottish Ministers power, by order, to set Scottish Water minimum rates of return as measured against the value of its average net assets that it must achieve. Subsection (3) provides for the Scottish Ministers to place Scottish Water under specified duties of a financial nature. But if such a duty replaces a duty to achieve a rate of return set under subsection (2), the duty must be set out in an order which will be subject to approval of the Scottish Parliament. Subsection (4) gives the Scottish Ministers flexibility as to the periods to be covered by and the content of a duty imposed by them under subsection (3).

106. Subsection (6) requires Scottish Water to ensure that its charges make a proper contribution to the cost of discharging its duties in light of its present and likely future circumstances and of any duty placed on it by subsections (2) or (3).

107. An order under subsection (2) must be made by statutory instrument and is subject to negative procedure in the Parliament. An order under subsection (5) must be made by statutory instrument and is subject to affirmative procedure in the Parliament (see section 68).

### **Section 42 – Financing and borrowing**

108. This section is based on section 84 of the 1994 Act. It gives the Scottish Ministers power to pay grants, on such conditions as they think fit, to Scottish Water to cover the costs of carrying out its functions, or of reimbursing the costs to the authority of reducing charges for groups of customers if required to do so under section 40 (subsections (1) and (2)).



109. Subsection (3) gives Scottish Water the power to borrow from the Scottish Ministers on conditions set by them and from others within or beyond the United Kingdom, subject to the approval of the Scottish Ministers. Scottish Water's net borrowings under these powers in each financial year must not exceed the limit to be set for each year in a Budget Act (subsections (4) and (5)). Sums borrowed from the Scottish Ministers are to be repaid as directed by them (subsection (6)).

#### **Section 43 – Guarantees**

110. This section, based on section 85 of the 1994 Act, gives the Scottish Ministers power to guarantee, on whatever terms and conditions they wish, borrowings by Scottish Water and its subsidiaries (subsection (1)). The Scottish Ministers must inform the Scottish Parliament immediately after they issue a guarantee (subsection (2)). Scottish Water must reimburse the Scottish Ministers on terms to be determined by them whenever they are required to honour a guarantee (subsection (3)).

111. Subsection (4) applies the Companies Act definition of "subsidiary".

#### **Section 44 – Directions as to payment and investment**

112. This section, based on section 86 of the 1994 Act, gives the Scottish Ministers power to direct Scottish Water to pay them any surplus funds held by it, or to invest those funds as Ministers direct, unless by virtue of another provision Scottish Water is required to pay the sum over to the Scottish Ministers anyway.

#### **Section 45 – Accounts and audit**

113. This section, based on section 87 of the 1994 Act, as amended by the Public Finance and Accountability (Scotland) Act 2000, deals with Scottish Water's accounting and audit duties.

114. Subsection (1) requires Scottish Water to keep proper accounting records and to prepare a statement of accounts for each financial year which is to be sent for auditing by the Auditor General for Scotland in accordance with sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000.

115. Subsection (2) requires Scottish Water to prepare its statement of accounts in accordance with directions given by the Scottish Ministers.

#### **Section 46 – Acquisition of land by agreement**

116. This section, based on section 98 of the 1994 Act, gives Scottish Water power to acquire land, wherever situated, by agreement with third parties for the purposes of any of its functions, not just its core water and sewerage functions, or for the provision by others of a public water supply or public sewerage system (subsection (1)).

117. Subsection (2) provides that the provision in subsection (3) only applies for land acquired for the purposes of Scottish Water's core functions. Subsection (3) provides for the incorporation into this section of the Lands Clauses Acts (with specified exceptions), and, as appropriate, sections of the Railway Clauses Consolidation (Scotland) Act 1845 (as originally enacted) and Part IV of Schedule 4 to the Water (Scotland) Act 1980 relating to the payment of compensation on land acquisition.

### **Section 47 – Compulsory acquisition of land**

118. This section, based on section 99 of the 1994 Act, deals with Scottish Water's power to acquire land compulsorily.

119. Subsection (1) permits the Scottish Ministers to authorise the compulsory acquisition of land (other than water rights) in Scotland by Scottish Water for use in the exercise of its core functions or to allow others to provide public water or sewerage systems.

120. Subsection (2) provides that the exercise by Scottish Water of the powers at subsection (1) is without prejudice to section 17 of the Water (Scotland) Act 1980, which deals with the acquisition of water rights, and subject to section 18 of that Act, which deals with the authorisation of the compulsory acquisition of land necessary for the purposes of an order under section 17.

121. Subsection (3) applies the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to compulsory purchases by Scottish Water as it applies to other statutory undertakers.

122. Subsection (4) gives the Scottish Ministers the power to authorise Scottish Water to acquire land compulsorily, or acquire it by agreement, for the purposes of exchanging it for such land as is mentioned in section 1(2)(b) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (i.e. land forming part of a common or open space or held inalienably by the National Trust for Scotland).

### **Section 48 – Disposal of land**

123. This section, based on section 100 of the 1994 Act, permits Scottish Water to dispose of any of its land generally, but requires it to get the Scottish Ministers' consent where the proceeds of a disposal would be less than market value.

### **Section 49 – Interests of customers**

124. This section restates section 65(2)(a)(i) and (ii) of the 1994 Act, but with the additional provision that it refers to disability and remote areas, as well as medical conditions and rural areas. It places duties on the Scottish Ministers and Scottish Water, when discharging their respective functions under the Act, and under the 1968 and the 1980 Acts, to have regard to the needs and interests of customers and potential customers, especially those who have special needs because of a disability or medical condition, or who live in rural or remote areas.

### **Section 50 – Economy, efficiency and effectiveness**

125. This section places a general duty on Scottish Water to ensure that its resources are used economically, efficiently and effectively.

### **Section 51 – Sustainable development**

126. This section places a new general duty on Scottish Water in terms of sustainable development. Subsection (2) qualifies the duty so that the Scottish Ministers and Scottish Water need only act in accordance with it where doing so does not run counter to the performance of any enactment relating to the performance of their functions. Subsection (3) provides that Scottish Water must have regard to any guidance issued by Scottish Ministers in complying with this duty.

### **Section 52 - Public access to land held by Scottish Water**

127. This section places a general duty on Scottish Water to have regard to the desirability of preserving for the public freedom of access to land held by it.

### **Section 53 – Environmental matters**

128. This section is an amended version of 65(2)(b), (c) and (d) of the 1994 Act.

129. Subsections (1) and (2) place duties on the Scottish Ministers and Scottish Water, when discharging their respective functions under the Act, and under the 1968 and the 1980 Acts, to have regard to the desirability of preserving public access and protecting and conserving particular aspects of the environment. Subsection (3) requires the Scottish Ministers and Scottish Water, in exercising those functions, to further environmental conservation and enhancement of natural beauty.

130. Subsection (4) qualifies the duties on the Scottish Ministers and Scottish Water under subsection (3) so that they need only act to meet them where doing so does not run counter to the purposes of any enactment relating to any of their functions.

### **Section 54 – Protection of natural heritage**

131. This section places duties on Scottish Natural Heritage (SNH) and Scottish Water in terms of protecting the natural heritage. It is based on section 73 of the 1994 Act.

132. Subsections (1) to (3) require SNH to notify Scottish Water of areas of land that have been designated under natural heritage protection legislation and of any cancellations or variations of those designations. Subsection (4) requires Scottish Water to consult SNH about works or other activity that it plans to undertake on any sites that have been notified to it by SNH, where the activity planned is likely to impact adversely on the land in question.

133. Subsection (5) requires Scottish Water to consult a National Park Authority where any works or other activity that it plans to undertake could affect land within the National Park.

134. Subsection (6) permits Scottish Water to take action in an emergency on land that would be covered by (4) and (5) without first notifying SNH or a National Park Authority. Where Scottish Water acts in this way it must inform SNH or the relevant National Park Authority of what it has done as soon as is practicable.

### **Section 55 – Consultation with Health Boards**

135. This section places a duty on Scottish Water to consult the relevant Health Board when it appears to Scottish Water that services provided by it in the exercise of its core functions are likely to give rise to a significant risk to public health in the Health Board's area. Scottish Water must exercise its core functions so as to seek to reduce or eliminate the risk, having regard to any views expressed by the Health Board. This duty is without prejudice to the duty under section 11(6) requiring a public water supplier served with an enforcement notice to consult the relevant Health Board and have regard to their views.

### **Section 56 – Directions**

136. This section revises substantially section 116 of the 1994 Act on the power of the Scottish Ministers to give directions.

137. Subsection (1) places a new duty on the Scottish Ministers to give directions to Scottish Water as to the exercise of its general powers under section 25 and its internal management powers under schedule 3 and also as to how Scottish Water is managed generally. These directions could, for example, cover the responsibilities of the members and staff of Scottish Water and could require prior approval of, or consultation with, the Scottish Ministers, to any proposed course of action (subsection (2)). Subsection (2)(c) clarifies that a direction under this section could allow matters in it to be determined by third parties where that is appropriate.

138. Subsection (3) gives the Scottish Ministers a general power to give directions to Scottish Water, whether general or specific. The Scottish Ministers must consult Scottish Water before giving any directions under this section (subsection (4)).

139. Subsection (5) requires Scottish Water to comply with all directions given by the Scottish Ministers under Part 3.

### **Section 57 – Information and reports**

140. This section, which is based on section 118 of the 1994 Act, places duties on Scottish Water in terms of providing information and making reports.

141. Subsection (1) requires Scottish Water to provide the Scottish Ministers with any information about it that the Scottish Ministers require. For that purpose Scottish Water must make available or give access to any information requested of it by anyone authorised to do so by the Scottish Ministers (subsection (2)).

142. Subsection (3) requires Scottish Water to produce a half-year and full annual reports of its activities. The half-year report must include a statement of accounts for the period covered by it (subsection (4)).

143. Subsection (5) provides that Scottish Water's annual report must include reports on its performance against the customer standards code, consultation code and its duties on economy, effectiveness and efficiency and sustainable development.

144. Subsection (6) provides that Scottish Water must submit its half-year and annual reports to the Scottish Ministers, the Commissioner and the Convener of the Water Customer Consultation Panels and must publish them. Subsection (8) provides that the Scottish Ministers must lay the reports before the Scottish Parliament.

### **Section 58 – Records**

145. This section is a restatement of the provisions at section 119 of the 1994 Act, requiring Scottish Water to consult the Keeper of the Records of Scotland about arrangements for preserving and managing its records and to allow the Keeper reasonable access to the records.

### **Section 59 – Validity of actings**

146. This section provides that failure to comply with any duty imposed under Part 3 of the Act does not affect the validity of Scottish Water's actings.

### **Section 60 – Private legislation**

147. This section, which is based on section 121 of the 1994 Act, gives Scottish Water power to promote, in the Scottish Parliament only, and oppose in the Westminster and Scottish Parliaments, private legislation. It may promote private legislation only with the consent of the Scottish Ministers, who must withhold their consent if the powers being sought by Scottish Water could be achieved by means of an order under the 1968 Act or the 1980 Act.

### **Section 61 – Supply of goods and services to and by local authorities.**

148. This replaces section 122 of the 1994 Act. The effect of the provision is that Scottish Water can provide goods and service to local authorities and can arrange for other public bodies to provide goods and services to it.

### **Section 62 – Information from local authorities and assessors**

149. This section restates section 123 of the 1994 Act and enables provision to be made for Scottish Water to obtain from local authorities and assessors information that would help it set and recover its charges under a charges scheme.

150. Subsection (1) gives the Scottish Ministers power to make regulations requiring local authorities or assessors to supply Scottish Water with relevant information. Relevant information is information held by local authorities in connection with council tax, council water

charges, non-domestic water and sewerage rates and non-domestic rates and information held by assessors in connection with their functions, but only such information as would help Scottish Water in setting and collecting its own charges under a charges scheme (subsections (2) and (3)).

151. Regulations under subsection (1) must be made by statutory instrument and are subject to negative procedure in the Parliament (see section 68).

## **PART 4 – MISCELLANEOUS AND GENERAL**

### **Section 63 – Register of trade effluents: confidential information**

152. This inserts a new section 37C into the 1968 Act which enables a person to apply to Scottish Water to have commercially confidential information which might otherwise be registered in the Register of Trade Effluents under section 37A of the 1968 Act withheld from that Register. Information is commercially confidential for the purposes of the new section if its publication in the Register would prejudice to an unreasonable degree the commercial interests of the applicant or any other person (subsection (9)).

153. If Scottish Water determines that information is commercially confidential it will withhold the information from the Register (subsection (1)). If Scottish Water fails to make a determination within 21 days of a request to do so, or such other period as may be specified by order, it is treated as having determined the information is commercially confidential (subsection (2)). Where Scottish Water determines the information is not commercially confidential the information must not be entered in the register for a period of 21 days from the notification of that determination (subsection (3)). The Scottish Ministers may by direction provide that in the public interest specified information or descriptions of information must be included in the Register regardless of whether the information is commercially confidential (subsection (4)). Information excluded from the register ceases to be regarded as commercially confidential after 4 years following the determination unless Scottish Water determines on the application of the person providing the information that it is still commercially confidential (subsection (5)).

154. An order under the new section must be made by statutory instrument and is subject to negative procedure in the Parliament (see subsection (8)).

### **Section 64 – Works in connection with metering**

155. This section inserts a new section 24B in the 1980 Act, which enables Scottish Water to require works associated with metering such as provision of a new service pipe and alterations to internal pipework to be undertaken.

### **Section 65 – Contravention of water byelaws: penalties and proceedings**

156. This section amends section 72 of the 1980 Act to provide an increase in the maximum penalty from level 4 to level 5 for contraventions of water byelaws. It also amends that section to enable a prosecution for a contravention of the water byelaws to be brought within 6 months of it being discovered, rather than within 6 months of it being committed as is the case at present. But a prosecution cannot be brought more than 3 years after the offence was committed.

## **Section 66 – Offences by bodies corporate and partnerships**

157. This makes the usual provision in relation to offences committed under the Act by bodies corporate (including Scottish Water) and partnerships so that, in appropriate cases, directors, partners and other senior officers can be prosecuted as well as the body or partnership itself.

## **Section 67 – Crown application**

158. The provisions of the Act will bind the Crown, but will not affect the Queen in her private capacity (subsection (1)). The Crown will not, though, be criminally liable for any contravention of the Act but an application can be made to the Court of Session for a declarator (subsection (2)). Crown officials can, however, be prosecuted for any breach they commit in their own right (subsection (3)).

159. Subsection (4) requires the consent of the Crown Estate Commissioners to be obtained before the compulsory purchase powers at section 47 of the Act are exercised in relation to the Crown Estate.

## **Section 68 – Orders and regulations**

160. This section makes general provision concerning the powers of the Scottish Ministers under the Act to make orders and regulations. All such orders and regulations must be made by statutory instrument (subsection (1)). Ancillary provision can be included in them (subsection (2)). Otherwise this section makes provision as to the form of Parliamentary control over statutory instruments made under the Act.

## **Section 69 – Ancillary provision**

161. This section confers on the Scottish Ministers a stand-alone general power to make orders ancillary to the provisions of the Act and any other consequential matters in connection with the Act and its purposes.

162. An order under this section must be made by statutory instrument and is subject to negative procedure in the Parliament; but it will be subject to affirmative procedure if it textually amends primary legislation (see section 68).

## **Section 70 – Interpretation**

163. This section makes provision for the interpretation of terms used in the Act.

## **Section 71 – Modification of enactments**

164. This section gives effect to schedules 5, 6 and 7 which make amendments to the 1968 Act, the 1980 Act and other enactments that are consequential on the Act's provisions, particularly the establishment of Scottish Water.

### **Schedule 1 – Water Industry Commissioner and Customer Panels: further provisions**

165. Part 1 of the schedule is based on the provisions at Part 1 of Schedule 9A to the 1994 Act on the Commissioner's appointment, employment of staff, status and financial accounting duties.

166. Part 2 makes detailed provision, based to some extent on Part 2 of Schedule 9A to the 1994 Act, in relation to the establishment of the new Water Customer Consultation Panels.

167. Paragraph 5 provides for a single Convener to be appointed by the Scottish Ministers who will be Convener of all the Panels. This replaces the current arrangement where the Commissioner chairs the Consultative Committees.

168. Paragraph 6 provides that the Convener is to be a member of each Panel and that the Convener is to appoint the other members of the Panels in accordance with procedures and on terms and conditions approved by the Scottish Ministers. Currently, the Commissioner appoints the other members of the Consultative Committees. The number of members in a Panel is fixed by the order under section 2 that establishes it.

169. The schedule also provides for the Convener and Panel members to be paid remuneration on terms set by the Scottish Ministers, and that they may also be paid allowances. It makes it clear that the Commissioner's office will provide administrative support to the Convener and Panels, and requires Panels' proceedings to be conducted on terms determined by the Convener, after consulting the Panel members, and approved by Ministers.

### **Schedule 2 – Drinking Water Quality Regulator: further provision as to powers of entry etc.**

170. This schedule regulates the exercise of the powers of entry etc. conferred by sections 9(1), 12(3)(a) and 13(3)(a).

171. The schedule provides that the Regulator can demand entry to premises as of right only at reasonable times except in an emergency. 24 hours notice must be given, unless the premises are those of a public water supplier. Paragraph 2 provides for the Regulator to obtain a warrant from a sheriff or justice of the peace to enforce the powers of entry etc, and that a warrant will be granted only if certain conditions are met. The Regulator or anyone appointed by him is required to produce written evidence of their authority to exercise their powers. Paragraph 4 allows those authorised to enter premises to take other persons and equipment with them into the premises. Paragraph 5 requires anyone entering the premises under the powers in this schedule to leave them as secure as they found them.

172. The schedule also establishes the circumstances in which the Scottish Ministers will pay compensation in respect of the exercise of the Regulator's powers, and makes it an offence for anyone gaining access to premises under these powers to disclose commercially confidential information gained as a result of that access (paragraphs 6 and 7).



### **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.

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.

#### **Schedule 4 – Recovery by local authority of unpaid charges**

185. This schedule largely restates in respect of Scottish Water the provisions at Schedule 10 to the 1994 Act. It provides for a local authority, as a billing and collection agent for Scottish Water's domestic unmetered charges, to recover outstanding charges due by domestic customers through the summary warrant procedure that applies at present in the case of the existing water authorities or by raising court actions. A summary warrant will authorise earnings arrestment and ordinary arrestments but not pouding and sale.

#### **Schedule 5 – Modifications of the Sewerage (Scotland) Act 1968**

186. This schedule makes amendments to the Sewerage (Scotland) Act 1968. The amendments are principally consequential upon the transfer to Scottish Water of the core sewerage functions.

#### **Schedule 6 – Modification of the Water (Scotland) Act 1980**

187. This schedule makes amendments to the Water (Scotland) Act 1980. Again most of the amendments are consequential upon the transfer to Scottish Water of the core water functions.

#### **Schedule 7 – Modifications of other enactments**

188. This schedule makes amendments to other enactments, including the repeal of the provisions of the 1994 Act that will be unnecessary following the transfer of functions to Scottish Water and the dissolution of the existing authorities.

## **PARLIAMENTARY HISTORY OF WATER INDUSTRY (SCOTLAND) ACT 2002**

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those Reports.

### **Proceedings and Reports**

### **Reference**

#### ***Introduction***

26 September 2001

SP Bill 35 (Session 1)

#### ***Stage 1***

##### *(a) Transport and the Environment Committee*

25th Meeting, 2001

24 October 2001, cols 2126-2166

26th Meeting, 2001

31 October 2001, cols 2181-2226

27th Meeting, 2001

9 November 2001, cols 2254-2290

28th Meeting, 2001

14 November 2001, cols 2291-2316

15th Report 2001 (29 November 2001):  
Stage 1 Report on the Water Industry  
(Scotland) Bill

SP Paper 456

##### *(b) Subordinate Legislation Committee*

30th Meeting, 2001

6 November 2001, cols 643-646

##### *(c) Consideration by the Parliament*

6 December 2001

cols 4539-4593

#### ***Stage 2***

##### *Transport and the Environment Committee*

32nd Meeting, 2001

19 December 2001, cols 2448-2482

1st Meeting, 2002

9 January 2002, cols 2496-2533

2nd Meeting, 2002

16 January 2002, cols 2558-2601

3rd Meeting, 2002

23 January 2002, cols 2604-2660

4th Meeting, 2002

30 January 2002, cols 2663-2679

#### **Stage 3**

##### **(a) Subordinate Legislation Committee**

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

6<sup>th</sup> Meeting, 2002

12 February 2002, cols 783-784

8<sup>th</sup> Report 2002: Report on Water Industry  
(Scotland) Bill as amended at Stage 2

SP Paper 513

(b) Consideration by the Parliament

14 February 2002

cols 6520-6613 and cols 6637-6661

---

© Crown copyright 2002

Printed in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland