

# **WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 1 – Protection of the water environment**

##### ***Section 2 - The general duties***

16. Section 2 sets out the extent to which specified bodies are required to have regard to the requirements of the Directive when exercising their functions.
17. Subsections (1) and (2) should be read with subsection (8) which defines the terms “relevant enactments”, “responsible authorities” and “designated functions”.
18. The effect of subsection (4) is to require the Scottish Ministers, SEPA and the responsible authorities to take into account social and economic considerations when exercising the functions referred to subsection (3). This is consistent with the principle of proportionality in European law which requires that the means of achieving a particular objective should correspond to the importance of, and be necessary for the achievement of, that objective. Subsections (3) and (4) also require Scottish Ministers, SEPA and the responsible authorities to promote sustainable flood management, to act in the way best calculated to contribute to sustainable development so far as is consistent with the purposes of the relevant enactment or designated function in question, and to adopt an integrated approach.
19. Subsection (5) places a general duty on the Scottish Ministers and all public bodies and office holders, in exercising any functions, to have regard to the desirability of protecting the water environment.
20. Subsection (6) enables the Scottish Ministers to direct or guide SEPA and the responsible authorities on how they must exercise those of their functions that are covered by this section.
21. Subsection (7) would enable Ministers, for example, to direct that specified functions must be exercised so as to satisfy technical standards set by SEPA.