

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Water Industry Commission and Customer Panels

Section 1: Water Industry Commission for Scotland

4. **Section 1** establishes a corporate body, the Water Industry Commission for Scotland, to take on the functions of the Water Industry Commissioner.
5. Subsection (1) of section 1 replaces section 1 of the Water Industry (Scotland) Act 2002 (“the 2002 Act”) with a new section 1 establishing the Water Industry Commission for Scotland. Subsection (2) of the new section 1 of the 2002 Act gives the Commission the general function of promoting the interests of persons whose premises are connected or might reasonably become connected to the public water supply and/or sewerage system (as defined in sections 28 and 29 of the Act respectively). This ensures that the Commission will promote the interests of both Scottish Water’s direct customers, and the customers of licensed providers of retail services. It is a duty to promote the interest of customers as a whole which might be relevant, for example, where the interests of different categories of customers conflicted.
6. Subsection (3) of the new section 1 of the 2002 Act gives Scottish Ministers power to direct the Commission with regard to the financial management or administration of the Commission, having first consulted it. This ensures that the Commission is accountable to Ministers for these matters, while at the same time functioning independently with regard to its technical functions of calculating Scottish Water’s required revenue, and charge determination and the other substantive functions conferred on it by or under the Act. Subsection (4) introduces schedule A1 which makes detailed provision as to the appointment of the Commission and as to the Commission’s staff, status and accounts and its procedures for carrying out its functions. This schedule is inserted into the 2002 Act by schedule 1 to the Act.
7. Subsection (2) of section 1 replaces section 4(2) of the 2002 Act (power of the Commissioner to require information), with the effect that the Commission may not require Scottish Water to disclose anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session. This enables Scottish Water to treat as confidential legally privileged information. Subsection (2) also adds a new subsection (3) to section 4 of the 2002 Act, which requires Scottish Water to inform the Commission in writing if it considers that it is entitled to withhold information which the Commission has requested. This removes Ministers from having a role in resolving conflicts between the Commission and Scottish Water as to whether the information requested by the Commission is reasonable.
8. Subsection (3) of section 1 adds a new subsection (4) to section 5 of the 2002 Act (annual reports by, and information from, the Commissioner), requiring Scottish Ministers to lay before Parliament a copy of the Commission’s annual report, detailing the Commission’s functions during that financial year.

Section 2: Dissolution of office of Commissioner

9. **Section 2** provides for Scottish Ministers to specify an appointed day to dissolve the office of the Water Industry Commissioner for Scotland, given that it is replaced by the Water Industry Commission for Scotland, as described above.

Section 3: Customer Panels

10. **Section 3** amends provision in Part 1 of the Water Industry (Scotland) Act 2002 relating to the Water Customer Consultation Panels, customer representation and investigating customer complaints. The Water Customer Consultation Panels (“Customer Panels”) and the Convener of those Panels are appointed by virtue of section 2 of, and Part 1 of schedule 1 to, the 2002 Act.
11. Subsection (1) replaces sections 2(3) to (5) of the 2002 Act, which made provision in relation to the functions of a Customer Panel, including its duty to publish reports, and in relation to the duty of the Water Industry Commissioner to have regard to representations, recommendations or reports made by a Customer Panel, with new subsections (3) to (5D).
12. New subsection 2(3) of the 2002 Act provides that the general function of the Customer Panels is to represent the views and interests of those whose premises are connected to the public water supply and sewerage systems, or might reasonably become connected to those systems.
13. New subsection 2(4) to the 2002 Act places a duty on Customer Panels to publish reports on matters relevant to the interests of the persons they represent, and gives them the power to make recommendations to the Water Industry Commission, the Scottish Ministers, the Drinking Water Quality Regulator, the Scottish Environment Protection Agency and Scottish Water:
 - (a) Recommendations to the Water Industry Commission can be made as to the promotion of the interests of those represented by the Customer Panels, whether generally or specifically;
 - (b) Recommendations to the Scottish Ministers, the Drinking Water Quality Regulator or the Scottish Environment Protection Agency can be made on any matters considered relevant to those interests, in connection with such functions of those bodies as are exercisable in relation to Scottish Water’s exercise of core functions (as defined in section 70(2) of the 2002 Act to mean its statutory functions as the public water supplier and provider of sewerage); and
 - (c) Recommendations to Scottish Water can be made on any matter considered relevant to those interests in relation to Scottish Water’s exercise of core functions.
14. New subsection (5) provides that Scottish Water must have regard to any representations or recommendations made to it by a Customer Panel. New subsection (5A) makes equivalent provision as regards other persons to whom a Customer Panel makes representations or recommendations.
15. New subsection (5B) requires the Customer Panel to publish a summary of any representations and recommendations made by it, as referred to in subsections (4) to (5A). This may be complied with through including such a summary in a report.
16. New subsection (5C) provides that any person who receives recommendations under new subsection (4) must respond to the recommendations within 6 months, and publish a summary of their responses.
17. New subsection (5D) enables Customer Panels to jointly exercise their functions in publishing reports and making recommendations or representations.

*These notes relate to the Water Services etc. (Scotland) Act
2005 (asp 3) which received Royal Assent on 17 March 2005*

18. **Section 3(2)** of the Act repeals section 3(1) to (5) of the 2002 Act (the Water Industry Commissioner's complaints investigation function) in consequence of the amendments made in section 3(3) (paragraph 20 below).
19. **Section 3(3)** of the Act inserts new sections 6A to 6C into the 2002 Act to confer on the Convener of the Customer Panels ("the Convener") duties to: investigate complaints about Scottish Water's exercise of its core functions; publish an annual report; and, with the Water Industry Commission, produce a memorandum of understanding.
20. New section 6A(1) of the 2002 Act places a duty on the Convener to investigate complaints in respect of Scottish Water's exercise of its core functions from any person whose premises are connected to, or have been, or might reasonably become, connected to the public water or sewerage systems (as defined in sections 28 and 29 of the Act). Section 6A(2) provides that if such a complaint is received by a Customer Panel or the Water Industry Commission, they must refer it to the Convener. Section 6A(3) provides that the Convener need not investigate a complaint which has not already been pursued with Scottish Water, or which the Convener considers vexatious or frivolous. Section 6A(4) enables the Convener to make representations about complaints to Scottish Water. Sections 6A(5) and (6) require the Convener to report to the Water Industry Commission or a Customer Panel about the outcome of any investigations made about a complaint referred under subsection (2), or give reasons for any decision not to investigate such a complaint. Section 6A(7) requires Scottish Water to respond to reasonable requests for information from the Convener in connection with the Convener's complaints investigation function. If Scottish Water and the Convener disagree on whether a request for information is reasonable, section 6A(8) provides that the disagreement may be referred to Scottish Ministers to decide the matter, and the latter's decision is final.
21. New section 6B of the 2002 Act requires the Convener to submit to the Scottish Ministers and to publish an annual report, on the exercise of functions by both the Customer Panels and the Convener (under section 6A), as soon as practicable after the end of each financial year. The Convener is also required to provide the Scottish Ministers with any information they require as regards the exercise of those functions. The Scottish Ministers are required to lay a copy of the annual report before Parliament.
22. New section 6C of the 2002 Act requires the Water Industry Commission and the Convener of the Customer Panels to make arrangements for co-operation and the exchange information between the Commission and the Panels and between the Commission and the Convener; and for the consistent treatment of matters which affect both the Commission and the Panels, or both the Commission and the Convener. These arrangements are to be set out in a memorandum, which they are to send to the Scottish Ministers. The memorandum is to be kept under review, and any revised memorandum must also be sent to Ministers.