

# **WATER SERVICES ETC. (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Schedule 5: Amendments to Enactments***

299. **Schedule 5** is introduced by section 32 of the Act. The schedule makes amendments to other enactments which are required in consequence of provisions made under this Act.

#### ***Paragraph 1: Sewerage (Scotland) Act 1968 (c.47)***

300. **Paragraph 1** repeals section 29(3)(j) of the Sewerage (Scotland) Act 1968. That provision allows Scottish Water to set charges in relation to the disposal of trade effluent into sewers. Under the new arrangements introduced by the Act, all such charges will be set by reference to the charges scheme made under new section 29A of the Water Industry (Scotland) Act 2002.

#### ***Paragraph 2: House of Commons Disqualification Act 1975 (c.24)***

301. **Paragraph 2** repeals the section of Part III of schedule 1 to the House of Commons Disqualification Act 1975 which relates to the Water Industry Commissioner. This specifies offices the holders of which are disqualified from being a member of the House of Commons. Since the Water Industry Commissioner is replaced by the Water Industry Commission under the Act, the reference to the Water Industry Commissioner needs to be removed.

#### ***Paragraph 3: Race Relations Act 1976 (c.74)***

302. **Paragraph 3** repeals the section of Part II of schedule 1A to the Race Relations Act 1976 which relates to the Water Industry Commissioner. This Part specifies offices the holders of which are subject to the general statutory duty to eliminate unlawful racial discrimination and promote equality of opportunity in the carrying out of their functions. As above, the reference to the Water Industry Commissioner needs to be removed.

#### ***Paragraph 4: Water (Fluoridation) Act 1985 (c.63)***

303. **Paragraph 4** replaces references in the Water (Fluoridation) Act 1985 to the Commissioner with references to the Commission.

#### ***Paragraph 5: Public Finance and Accountability (Scotland) Act 2000 (asp 1)***

304. **Paragraph 5** replaces references in the Public Finance and Accountability (Scotland) Act 2000 to the Commissioner, with references to the Commission.

#### ***Paragraph 6: Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)***

305. **Paragraph 6(a) to (d)** repeals all references to the Water Industry Commissioner in the Ethical Standards in Public Life etc. (Scotland) Act 2000. Sub-paragraph (e) replaces

these references by adding the Water Industry Commission established by the Act to the list of devolved public bodies. This provides that the Commission and its members will be subject to that Act and required to draw up and comply with a code of conduct under that Act.

***Paragraph 7: Water Industry (Scotland) Act 2002 (asp 3)***

306. **Paragraph 7** amends the Water Industry (Scotland) Act 2002 in consequence of the provisions of the Act. Sub-paragraph (1) replaces references to the Commissioner with references to the Commission, since the Water Industry Commissioner is being replaced with the Water Industry Commission under Part I of the Act.
307. Sub-paragraph (2) amends section 3(6) of the 2002 Act (functions of the Commissioner) and replaces references to customers there with references to persons whose premises are connected to, or might reasonably become connected to, the public water supply or sewerage systems. This ensures that, in its duty to advise Ministers on the standard of service Scottish Water provides and the manner in which it conducts relations with “customers”, the Water Industry Commission will represent those persons.
308. Sub-paragraph (3) amends section 5 (annual reports by, and information from, the Commissioner) of the 2002 Act in relation the content of the Commission’s annual report, to require the report to contain a summary of any action taken by the Commission in response to representations and recommendations made by the Customer Panels under the amended section 2 of the 2002 Act (as introduced by section 3(1) of the Act).
309. Sub-paragraph (4) replaces references to Scottish Water’s “customers” in section 26 (customer standards code) of the 2002 Act, with reference to persons whose premises are connected to, or might reasonably become connected to, the public water supply or sewerage systems. This ensures that Scottish Water’s customer standards code will apply in relation to services provided to such persons. It also repeals subsection (2) of section 26 of that Act, which provided that a customer standards code had to be submitted to the Commissioner no later than the date on which Scottish Water first sent a charges scheme to the Commissioner. This is in consequence of the repeal of section 32 of the 2002 Act by section 21(3) of the Act (and its replacement with new provisions as regards the determination of Scottish Water’s charges).
310. Sub-paragraph (5) repeals section 40 of the Act (reduced charges), which allowed Ministers to provide by regulations that certain people should pay Scottish Water reduced charges. In future provision for reduced charges will be given effect through Ministers’ statement under the new section 29D which Scottish Water will take account of in making charges schemes under the new section 29A.
311. Sub-paragraph (6) replaces wording in section 49 of the 2002 Act to ensure that the Scottish Ministers and Scottish Water are obliged to carry out their functions with regard to the interests of all end users of the public water and sewerage systems. The intention of this amendment is to exclude licensed water and sewerage services providers from the scope of this customer interest duty. Although those providers will be customers of Scottish Water in its wholesale capacity and will receive water and sewerage services from them, the high level customer interest duty placed on Ministers and Scottish Water is to be exercised with regard to direct (i.e. domestic) customers of Scottish Water, and customers of the licensed providers, but not the providers themselves.
312. Sub-paragraph (7) amends section 57(7) of the 2002 Act (information and reports) to require Scottish Water to include in its annual report, information on the extent to which it has complied with requirements made under sections 13(2), 15(1) or (5) of the Act.
313. Sub-paragraph (8) adds the new section 56B to the orders and regulations which are excluded from those orders and regulations to be subject to negative procedure in the

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Scottish Parliament; and includes section 56B with the sections under which orders and regulations may be made subject to affirmative procedure.

314. Sub-paragraph (9) amends section 70 of the Act (interpretation) to the effect that “charges scheme” has the meaning given to it under the new section 29A(1) of the 2002 Act, and substitutes a definition of the Water Industry Commission for that of the Water Industry Commissioner.
315. Sub-paragraph (10) repeals Part I of schedule 1 (the Commissioner) to the Act, since the Water Industry Commissioner is replaced by the Water Industry Commission under Part I of the Act.

***Paragraph 8: Scottish Public Services Ombudsman Act 2002 (asp 11)***

316. Paragraph 8 inserts the Convener of the Water Customer Consultation Panels into schedule 2 (listed authorities) to the Scottish Public Services Ombudsman Act 2002, to ensure that the Convener’s activities come under the scrutiny of the Ombudsman. It also replaces the reference in that Act to the Commissioner with a reference to the Commission, since the Water Industry Commissioner is being replaced with the Water Industry Commission under Part 1 of the Act.

***Paragraph 9: Freedom of Information (Scotland) Act 2002 (asp 13)***

317. Paragraph 9 inserts the Convener of the Water Customer Consultation Panels into schedule 1 (Scottish public authorities) to the Freedom of Information (Scotland) Act 2002, to ensure that the Convener is subject to the requirements of that Act. It also replaces the reference in that Act to the Commissioner with a reference to the Commission, again since the Water Industry Commissioner is being replaced with the Water Industry Commission under Part 1 of the Act.

***Paragraph 10: Public Appointments and Public Bodies etc.(Scotland) Act 2003 (asp 4)***

318. Paragraph 10 repeals the entry relating to the Commissioner in schedule 2 to the Act, and replaces it with a reference to the Commission, since the Water Industry Commissioner is being replaced with the Water Industry Commission under Part I of the Act.

**Parliamentary History**

319. 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 the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>References</i>
<b>Introduction</b>	
11 June 2004	Bill as introduced (SP Bill 23)
<b>Stage 1</b>	
<b><i>a) Environment and Rural Development Committee</i></b>	
19 <sup>th</sup> Meeting, 9 September 2004	cols 1087 - 1128
20 <sup>th</sup> Meeting, 15 September 2004	cols 1134 - 1181
21 <sup>st</sup> Meeting, 22 September 2004	cols 1214 - 1224
22 <sup>nd</sup> Meeting, 29 September 2004	cols 1248 - 1275

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<b><i>Proceedings and Reports</i></b>	<b><i>References</i></b>
23 <sup>rd</sup> Meeting, 5 October 2004	cols 1308 - 1327
13 <sup>th</sup> Report, 2004 (Session 2)	Stage 1 Report on the Water Services etc. (Scotland) Bill (SP PAPER 233)
<b><i>b) Finance Committee</i></b>	
21 <sup>st</sup> Meeting, 9 September 2004	cols 1612 - 1634
22 <sup>nd</sup> Meeting, 14 September 2004	cols 1654 - 1665
Report to ERD Committee, 29 September 2004	Report on Water Services etc. (Scotland) Bill
<b><i>c) Subordinate Legislation Committee</i></b>	
26 <sup>th</sup> Meeting, 28 September 2004	cols 582 - 584
27 <sup>th</sup> Meeting, 5 October 2004	cols 594 - 596
Report to ERD Committee included in ERD Committee Stage 1 Report	Stage 1 Report on the Water Services etc. (Scotland) Bill (SP PAPER 233)
<b><i>d) Consideration by the Parliament</i></b>	
Stage 1 debate, 17 November 2004	17 November 2004 cols 11897 - 11949 and 11961 - 11965
<b>Stage 2</b>	
<b><i>a) Environment and Rural Development Committee</i></b>	
Pre-Stage 2, 28 <sup>th</sup> Meeting, 24 November 2004	cols 1369 - 1396
29 <sup>th</sup> Meeting, 8 December 2004	cols 1408 - 1420
30 <sup>th</sup> Meeting, 15 December 2004	cols 1437 - 1450
Bill as amended at Stage 2	Bill as amended (SP Bill 23A)
<b><i>b) Finance Committee</i></b>	
5 <sup>th</sup> Meeting, 8 February 2005	cols 2348 - 2353
<b><i>c) Subordinate Legislation Committee</i></b>	
4 <sup>th</sup> Meeting, 1 February 2005	cols 784 - 786
4 <sup>th</sup> Report, 8 February 2005	Report on the Water Services etc. (Scotland) Bill at Stage 2 (SP 288)
<b>Stage 3</b>	
<b><i>Consideration by the Parliament</i></b>	
Stage 3 debate, 9 February 2005	9 February, cols 14358 - 14384 and 14416 - 14417
Bill passed, 9 February 2005	Bill as passed (SP Bill 23B)
<b>Royal Assent</b>	
17 March 2005	Water Services etc. (Scotland) Act 2005