

WATER INDUSTRY (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

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

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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 poinding 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.

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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.