

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Supplementary

Sections 100 to 105

427. These sections deal with devolution and the transfer of functions under the Act to the National Assembly for Wales, consequential amendments, transitional provisions and powers to make orders and regulations, including providing for Schedule 7 and 8 to have effect. They also cite the name of this Act as the Water Act 2003 and set out its extent.

428.

Section 102: Specific transitional and transitory provisions.

Section 102(1) provides that existing abstraction licences are treated as a full licence (see section 1). Section 102(2) provides that where an abstraction is no longer required to be licensed by virtue of the introduction of the new threshold in section 6, then a licence ceases to have effect for that abstraction.

429. **Section 102(3)** provides that where an abstraction licence is no longer required by virtue of section 102(2) then the protected right associated with the abstraction continues. However, the protected right will lapse, under section 102(4), if no abstraction has been made for four years, unless the abstraction is planned to occur over longer intervals and the Agency agrees to a different period.

430. **Section 102(5)** allows the Agency to grant a licence to those abstractors being brought into the licensing regime for the first time even if that could derogate from the rights of other abstractors. It also allows the Secretary of State to make regulations to set aside provisions of other legislation that may preclude the grant of a licence to such abstractors.

431. Provisions in this section are devolved to the Assembly.

432.

Section 103: Powers to make further supplementary, consequential and transitional provision, etc.

This provision enables the Secretary of State to make such supplementary, incidental, consequential, transitory, transitional or saving provision as she considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act. This includes a power to amend primary legislation.

433. This power is necessary because the Act is complex. A wide range of consequential amendments to existing legislation and other supplementary, incidental and transitional provisions may be needed.

434. Provisions in this section are devolved to the Assembly.

435.

Section 104: Regulations and orders.

This section relates to the general form of instruments may be made under the Act, and purposes for which they may be exercised. For example, it provides that any power to make any order or regulations includes powers to make "such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments...)" as the authority doing so considers to be expedient. Instruments are generally subject to the negative procedure (section 103(3)).

436. Provisions in this section are devolved to the Assembly.

437.

Section 105: Interpretation, commencement, short title, and extent.

This section provides for most of the Act to come into force on such days as may be appointed. Different provisions may come into force on different days, and details of the authority with the power to commence the Act (for example, the Secretary of State or the National Assembly for Wales) are set out.