
STATUTORY INSTRUMENTS

2004 No. 1822 (S. 3)

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
WATER SUPPLY**

The Water Industry (Scotland) Act 2002
(Consequential Modifications) Order 2004

Made - - - - *13th July 2004*
Coming into force - - *14th July 2004*

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998⁽¹⁾;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 104, 112(1) and 113 of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 and shall come into force on the day after the day on which it is made.

(2) Subject to paragraph (3) below, the modifications specified in the Schedule to this Order have the same extent as the provision being amended or repealed.

(3) The modifications specified in paragraphs 2, 3, 4, 7, 8, 11, 12, 13 and 15 of the Schedule to this Order extend to Scotland only.

Modifications

2. The modifications specified in Parts 1 and 2 of the Schedule to this Order shall have effect.

(1) 1998 c. 46.

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Scotland Office, Department for Constitutional
Affairs Dover House, London
13th July 2004

ANNE C McGUIRE
Parliamentary Under Secretary of State

SCHEDULE

Article 2

PART 1

MODIFICATIONS OF PUBLIC GENERAL ACTS

Opencast Coal Act 1958 (c. 69)

1. In section 7(8) of the Opencast Coal Act 1958 (definitions etc. for the purposes of section 7)(2), in the definition of “statutory water undertakers”, in paragraph (ii), for the words from “a water authority” to the end substitute “Scottish Water”.

Transport Act 1962 (c. 46)

2. In section 63 of the Transport Act 1962 (abstraction of water by British Waterways Board) (3)–
- (a) in subsection (7), for paragraph (d), substitute–
 - “(d) Scottish Water.”; and
 - (b) in subsection (14), the definition of “local water authority” is repealed.

Pipe-lines Act 1962 (c. 58)

- 3.—(1) The Pipe-lines Act 1962 is amended as follows.
- (2) In section 37 (fire brigades, police etc. to be notified of certain pipe-line accidents and to be furnished with information)(4)–
- (a) in subsection (1), in paragraph (b)–
 - (i) after “authorities” in the first place where it occurs omit the comma and substitute “and”; and
 - (ii) the words “and local water authorities” are repealed;
 - (b) in subsection (1), for paragraph (c) substitute–
 - “(c) if Scottish Water will or may have, in consequence of the happening of the event, to take steps to–
 - (i) prevent or combat pollution of water or flooding; or
 - (ii) prevent injury to its sewers or sewage disposal works, interference with the free flow of the contents of any of its sewers or the prejudicial affection of the treatment and disposal of such contents or to combat the effects of any such injury, interference or affection,
- to that body;”;
- (c) in subsection (2), in paragraph (b)–
 - (i) after “authority” in the first place where it occurs insert “or”; and

(2) Section 7(8) was substituted by the Coal Industry Act 1994 (c. 21), section 52(2) and Schedule 8, paragraph 4(c) and was amended by the Environment Act 1995 (c. 25), section 120(1) and Schedule 22, paragraph 5(1) and by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), section 4 and Schedule 2, paragraph 5(1).

(3) Section 63(7) was amended by S.I. 1970/1681. Section 63 was repealed in England and Wales by the Water Resources Act (c.38), section 136 and Schedule 14, Part 2.

(4) Section 37 was amended by the Water Resources Act 1963 (c. 38), section 136 and Schedule 13, paragraph 18; the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and G; the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 30; and by S.I. 1993/1823 and S.I. 1996/973.

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- (ii) the words “or local water authority” are repealed;
- (d) in subsection (2), in paragraph (c)—
 - (i) for “a sewerage authority” substitute “Scottish Water”;
 - (ii) for “them” substitute “it”;
 - (iii) for “either” substitute “any”; and
 - (iv) for “paragraph” substitute “paragraphs (b) or”; and
- (e) in subsection (4), paragraph (c) is repealed.
- (3) In section 44 (protection of water against pollution)—
 - (a) for “local water authority” substitute “Scottish Water”; and
 - (b) after “they” insert “or it”.
- (4) In section 66(1) (general interpretation provisions)(5), the definition of “local water authority” is repealed.

Gas Act 1965 (c. 36)

- 4.—(1) The Gas Act 1965 is amended as follows.
- (2) In section 15(11)(b) (responsibility of public gas transporter for interference with supplies of water)(6), for “a local water authority” substitute “Scottish Water”.
 - (3) In section 17(5) (accidents)(7)—
 - (a) in paragraph (a), the words “, local water authority” are repealed; and
 - (b) after paragraph (a), insert—
 - “(zaa) if it appears to them that Scottish Water will or may have duties to discharge, or will or may have to take precautionary or preventative action, in any such event, for that body.”.
 - (4) In section 28(1) (interpretation of Part II)(8)—
 - (a) in the definition of “limits of supply”, for the words “any local water authority” substitute “Scottish Water”; and
 - (b) the definition of “local water authority” is repealed.
 - (5) In Schedule 2 (storage authorisation orders)(9), in Part 4 (general application of Schedule to Scotland), in paragraph 17(a), for “local water authorities” substitute “Scottish Water”.
 - (6) In Schedule 4 (compulsory purchases)(10)—
 - (a) in paragraph 5(1)—
 - (i) for “persons” substitute “person”;
 - (ii) for “are statutory water undertakers” substitute “is Scottish Water”;
 - (iii) for “the statutory water undertakers” substitute “Scottish Water”; and
 - (iv) before “them” in both places where it occurs insert “it or”;

(5) There are amendments to section 66 which are not relevant to this Order.

(6) Section 15(11) was amended by the Water (Scotland) Act 1980 (c. 45), section 112(1) and Schedule 10, Part 2.

(7) Section 17(5) was amended by the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 32(4); the Gas Act 1995 (c. 45), section 16(1) and Schedule 4, paragraph 7(1); and S.I. 1996/973.

(8) In section 28(1), the definition of “local water authority” was substituted by the Water (Scotland) Act 1980 (c. 45), section 112(1) and Schedule 10, Part 2.

(9) Schedule 2, Part 4 was amended by S.I. 1996/973.

(10) Paragraph 5 was amended by the Gas Act 1986 (c. 44), section 67 and Schedule 7, paragraph 6(2).

- (b) in paragraph 5(2)–
 - (i) for “persons” in the first place where it occurs substitute “person”;
 - (ii) for “are not statutory water undertakers” substitute “is not Scottish Water”; and
 - (iii) for “those persons” substitute “that person”; and
 - (c) paragraph 9(c) is repealed.
- (7) In Schedule 6 (power to enter on land and to prospect and survey)–
- (a) in paragraph 2(3)(11)–
 - (i) for “a sewerage authority” in both places where it occurs substitute “Scottish Water”; and
 - (ii) for “functions” substitute “core functions (within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002) (asp 3)”;
 - (b) in paragraph 2(4)(12)–
 - (i) for “statutory water undertakers” substitute “Scottish Water”; and
 - (ii) for “the undertakers” substitute “Scottish Water”; and
 - (c) in paragraph 11(13), heads (b) and (c) are repealed.

Nuclear Installations Act 1965 (c. 57)

5. In section 3(3)(c) of the Nuclear Installations Act 1965 (grant and variation of nuclear site licences)(14), for the words from “any local water authority” to the end substitute “Scottish Water”.

Sewerage (Scotland) Act 1968 (c. 47)

6. In section 37B of the Sewerage (Scotland) Act 1968 (exclusion from register of information affecting national security)(15)–

- (a) in subsection (2), for “a sewerage authority” substitute “Scottish Water”;
- (b) in subsection (3)–
 - (i) for “The sewerage authority” substitute “Scottish Water”; and
 - (ii) for “they exclude” substitute “it excludes”; and
- (c) in subsection (4), for “the sewerage authority” substitute “Scottish Water”.

Transport Act 1968 (c. 73)

7.—(1) The Transport Act 1968 is amended as follows.

(2) In section 109 (power of certain bodies to maintain or take over waterways and connected works)(16)–

- (a) in subsection (2)–

(11) Paragraph 2(3) was amended by the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 39(9).
(12) Paragraph 2(4) was amended by the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 39(9).
(13) Paragraph 11 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180(1) and Schedule 13, paragraph 66(3) and by S.I. 1996/973.
(14) There are amendments to section 3(3)(c) which are not relevant to this Order.
(15) Section 37B was inserted by the Local Government etc. (Scotland) Act 1994 (c. 39), section 103.
(16) Section 109 was amended by the Water Act 1973 (c. 37), section 9(a); the Local Government (Scotland) Act 1973 (c. 65), section 148 and Schedule 17, paragraph 1; the Gas Act 1986 (c. 44), section 67(1) and Schedule 7, paragraph 9; the Electricity Act 1989 (c. 29), section 112(1) and Schedule 16, paragraph 14; the Gas Act 1995 (c. 45), section 16(1) and Schedule 4, paragraph 7(2)(d); S.I. 1970/1681; and S.I. 2000/3251.

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- (i) for paragraph (b) substitute—
 - “(b) Scottish Water;” and
- (ii) paragraph (j) is repealed;
- (b) in subsection (3)—
 - (i) in paragraph (b), for the words from “any” to “1963)” substitute “Scottish Water unless the Scottish Ministers”; and
 - (ii) after “undertakers or of” insert occurs insert “Scottish Water or of”; and
- (c) in subsection (5), the words “or (b)(i)” and “, in the case of a local authority,” are repealed.
- (3) In section 112 (power to extinguish statutory rights and obligations in respect of canals not comprised in undertaking of Waterways Board)(17)—
 - (a) in subsection (2), for the words “any local authority or water” substitute “Scottish Water or any local”; and
 - (b) in subsection (3)(a), for the words “a water authority” substitute “Scottish Water”.
- (4) In section 113(5) (byelaws in respect of waterways owned or managed by certain bodies)(18), in the definition of “relevant authority” for the words from “any” in the second place where it occurs to “order)” substitute “, except where applying for the order, Scottish Water or any local authority”.
- (5) In paragraph 5(2)(a) of Schedule 13 (publication of proposed orders and consideration of objections)(19), for “a water authority” substitute “Scottish Water”.

Health and Safety at Work etc. Act 1974 (c. 37)

- 8. In section 28 of the Health and Safety at Work etc. Act 1974 (restrictions on disclosure of information)(20)—
 - (a) in subsection (3)(c)(ii)—
 - (i) for “, sewerage authority or water authority” substitute “or Scottish Water”; and
 - (ii) for “that authority” substitute “that undertaker or, as the case may be, Scottish Water”; and
 - (b) in subsection (5)(b)—
 - (i) for “, a sewerage undertaker, a sewerage authority or a water authority” substitute “or a sewerage undertaker or to an officer of Scottish Water;” and
 - (ii) for “body” in the second place where it occurs insert “authority, undertaker or, as the case may be, Scottish Water”.

House of Commons Disqualification Act 1975 (c. 24)

- 9. In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified)(21)—

(17) Section 112 was amended by the Water Act 1973 (c. 37), section 9(a); the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 38; the Planning (Consequential Provisions) Act 1990 (c. 11), section 4 and Schedule 2, paragraph 22(3); and the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), section 4 and Schedule 2, paragraph 17(2); and S.I. 2000/3251.

(18) Section 113(5) was amended by the Water Act 1973 (c. 37), section 9(a) and the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 38(3).

(19) Paragraph 5(2) was amended by the Water Act 1973 (c. 37), section 9(a) and the Water Act 1989 (c. 15), section 190(1) and Schedule 25, paragraph 38(3).

(20) Sections 28(3)(c)(ii) and 28(5)(b) were amended by the Water Act 1989 (c. 15), section 190(1), Schedule 25, paragraph 46.

(21) Amendments have been made to Schedule 1, Part 2 which are not relevant to this Order.

- (a) the entry “The Scottish Water and Sewerage Customers Council or any committee established by that council under paragraph 10(1) of Schedule 9 to the Local Government etc. (Scotland) Act 1994” is repealed; and
- (b) insert at the appropriate places the following entries—
 - “Scottish Water.”;
 - “A Water Customer Consultation Panel.”.

Competition Act 1980 (c. 21)

- 10.** In section 11(3) of the Competition Act 1980 (references of public bodies and certain other persons to the Commission)(**22**), after paragraph (c) insert—
- “(ca) Scottish Water.”.

Civil Aviation Act 1982 (c. 16)

- 11.** In Schedule 2 to the Civil Aviation Act 1982 (application of enactments relating to statutory undertakers etc.), in paragraph 3(2)(b), for the words from “a” to the end substitute “Scottish Water.”.

Telecommunications Act 1984 (c. 12)

- 12.** In section 98(9) of the Telecommunications Act 1984 (use of certain conduits for telecommunication purposes)(**23**)—
- (a) in the definition of “public sewer”, in paragraph (b), for “a sewerage authority” substitute “Scottish Water”;
 - (b) the definition of “sewerage authority” is repealed; and
 - (c) in the definition of “water authority”, in paragraph (b), for the words from “shall” to “1994” substitute “means Scottish Water”.

Airports Act 1986 (c. 31)

- 13.** In Schedule 2 to the Airport Act 1986 (application of enactments relating to statutory undertakers etc.), in paragraph 3(2)(b), for the words from “a” to the end substitute “Scottish Water”.

Insolvency Act 1986 (c. 45)

- 14.** In section 233 of the Insolvency Act 1986 (supplies of gas, water, electricity etc.)(**24**)—
- (a) in subsection (3)(c), for “a water authority” substitute “Scottish Water”; and
 - (b) in subsection (5), paragraph (c) is repealed.

(22) The previous paragraph 11(3)(cc) was repealed by the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), section 71 and Schedule 7, paragraph 10.

(23) In section 98(9), the definitions of “public sewer” and “sewerage authority” were amended by the Local Government etc. (Scotland) Act [1994 \(c. 39\)](#), section 180(1) and Schedule 13, paragraph 133(3); the definition of “water authority” was amended by the Water Act [1989 \(c. 15\)](#), section 190 and Schedule 25, paragraph 68 and by the Local Government etc. (Scotland) Act [1994 \(c. 39\)](#), section 180(1) and Schedule 13, paragraph 133(3).

(24) Section 233(3)(c) was amended by the Water Act [1989 \(c. 15\)](#) section 190 and Schedule 25, paragraph 78(1).

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Electricity Act 1989 (c. 29)

15. In Schedule 5 to the Electricity Act 1989 (water rights for hydro electric generating stations in Scotland)(**25**)–

- (a) in paragraph 8–
 - (i) in head (a), sub-head (i) is repealed; and
 - (ii) after that head insert–
 - “(aa) along with a copy of the draft order, on Scottish Water;”;
- (b) in paragraph 9, the words “naming the water authority affected by the proposed order,” are repealed;
- (c) in paragraph 12, after “from” in the second place where it occurs insert “Scottish Water or”; and
- (d) paragraph 14 is repealed.

Social Security Administration Act 1992 (c. 5)

16. In section 109B of the Social Security Administration Act 1992 (power to require information)(**26**)–

- (a) in subsection (2A)(g)(**27**), for the words from “any” in the second place where it occurs to the end substitute “Scottish Water or any local authority which is to collect charges by virtue of an order under section 37 of the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#)”; and
- (b) in subsection (2D)(a)(**28**), for the words from “any” to the end substitute “Scottish Water,”.

Radioactive Substances Act 1993 (c. 12)

17. In section 47(1) of the Radioactive Substances Act 1993 (general interpretation provisions)(**29**), in the definition of “relevant water body”, in paragraph (b), for “a water and sewerage authority established by section 62 of the Local Government etc. (Scotland) Act 1994” substitute “Scottish Water”.

Employment Rights Act 1996 (c. 18)

18. In section 50(2) of the Employment Rights Act 1996 (right to time off for public duties)(**30**), for paragraph (h) substitute–

- “(h) Scottish Water or a Water Customer Consultation Panel,”.

Social Security Fraud Act 2001 (c. 11)

19. In section 4(1)(c) of the Social Security Fraud Act 2001 (arrangements for payments in respect of information)–

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- (25) Schedule 5, paragraph 8(a) was amended by the Local Government etc. (Scotland) Act [1994 \(c. 39\)](#), section 180(1) and Schedule 13, paragraph 160(2) and by the [National Parks \(Scotland\) Act 2000 \(asp 10\)](#), section 36 and Schedule 5, paragraph 14(1); Schedule 5, paragraphs 9 and 14 were amended by the Local Government etc. (Scotland) Act [1994 \(c. 39\)](#), section 180(1) and Schedule 13, paragraph 160.
 - (26) Section 109B was inserted by the Child Support, Pensions and Social Security Act [2000 \(c. 19\)](#), section 67 and Schedule 6, paragraph 2.
 - (27) Subsection (2A) was inserted by the Social Security Fraud Act [2001 \(c. 11\)](#), section 1.
 - (28) Subsection (2D) was inserted by the Social Security Fraud Act [2001 \(c. 11\)](#), section 1.
 - (29) In section 47(1) the definition of “relevant water body” was amended by the Local Government etc (Scotland) Act [1994 \(c. 39\)](#) section 180(1) and Schedule 13, paragraph 181(b).
 - (30) Section 50(2)(h) was inserted by S.I. [2000/1737](#) and amended by the Water Industry Act [1999 \(c. 9\)](#), section 12(1).

- (a) for the words from “a” in the second place where it occurs to “[1994 \(c. 39\)](#)” substitute “Scottish Water”; and
- (b) for “authority” in the second place where it occurs substitute “that body”.

PART 2

MODIFICATION OF SUBORDINATE LEGISLATION

Electricity Safety, Quality and Continuity Regulations 2002 (S.I.2002/2665)

20. In Schedule 3, in Part 4 to the Electricity Safety, Quality and Continuity Regulations 2002 (notification of specified events), in paragraph 4(a)(i) for “(in Scotland, a water and sewerage authority)” substitute “(in Scotland, Scottish Water)”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#). Section 20 of that Act created Scottish Water, which took over the functions previously exercisable by the water and sewerage authorities (the former East, North and West of Scotland Water Authorities).

Article 2 provides for the modifications of the enactments specified in the Schedule to this Order. In the Schedule, modifications of public general enactments are in Part 1 and the modification of subordinate legislation is in Part 2.

The effect of the modifications is to remove references to the old water and sewerage authorities and the Scottish Water and Sewerage Customers Council and to insert references to Scottish Water and a Water Customers Consultation Panel in the enactments and subordinate legislation specified.