



# Water Industry (Scotland) Act 2002

## 2002 asp 3

VALID FROM 01/04/2002

### PART 1

#### WATER INDUSTRY COMMISSIONER AND CUSTOMER PANELS

##### **1 Water Industry Commissioner for Scotland**

- (1) There is to continue to be a Water Industry Commissioner for Scotland (referred to in this Act as the “Commissioner”).
- (2) The Commissioner has the general function of promoting the interests of customers of Scottish Water in relation to the provision of services by it in the exercise of its core functions.
- (3) The Scottish Ministers may, after consulting the Commissioner, give the Commissioner directions of a general or specific character as to the exercise of the Commissioner’s functions; and the Commissioner must comply with any such direction.
- (4) Part 1 of schedule 1 makes further provision about the Commissioner.

##### **2 Water Customer Consultation Panels**

- (1) The Scottish Ministers shall by order establish panels of individuals to be known as Water Customer Consultation Panels (each referred to in this Part as a “Customer Panel”).
- (2) An order under subsection (1) must, in relation to each Customer Panel established by it, specify, or make provision for determining—
  - (a) the area for which the Panel is established, and
  - (b) the number of members of the Panel.
- (3) Each Customer Panel is to have the general function of representing the views and interests of the customers of Scottish Water in the Panel’s area in relation to the provision of services by Scottish Water in the exercise of its core functions.

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- (4) A Customer Panel must—
- (a) publish reports on any matter it considers relevant to the interests of those customers in relation to such provision,
  - (b) make such recommendations as it considers appropriate to the Commissioner as to the promotion of the interests of those customers in relation to such provision, either generally or in relation to any specific matter.
- (5) In exercising functions in relation to Scottish Water, the Commissioner must have regard to—
- (a) any representations made to the Commissioner by a Customer Panel,
  - (b) any reports published under subsection (4)(a), and
  - (c) any recommendations made under subsection (4)(b).
- (6) Part 2 of schedule 1 makes further provision about the Customer Panels.

### **3 Functions of the Commissioner**

- (1) The Commissioner must investigate any complaint made to the Commissioner or a Customer Panel by a current, potential or former customer of Scottish Water as respects any of its core functions.
- (2) A Customer Panel must refer to the Commissioner any such complaint which is made to it.
- (3) The Commissioner need not investigate a complaint under subsection (1) if—
  - (a) the complainer has not pursued the complaint with Scottish Water, or
  - (b) it appears to the Commissioner that the complaint is vexatious or frivolous.
- (4) The Commissioner may, on behalf of the complainer in a complaint investigated under subsection (1), make representations to Scottish Water about any matter—
  - (a) to which the complaint relates, or
  - (b) which appears to the Commissioner to be relevant to the subject matter of the complaint.
- (5) Where the Commissioner investigates a complaint referred by a Customer Panel under subsection (2), or decides not to investigate such a complaint, the Commissioner must send to the Panel a report of the investigation or, as the case may be, a statement of the reasons for not investigating the complaint.
- (6) The Commissioner is to advise the Scottish Ministers on any matter which appears to the Commissioner or to them to relate to—
  - (a) the standard of service provided by Scottish Water to its customers, or
  - (b) the manner in which it conducts its relations with its customers or potential or former customers,
 in the exercise of its core functions.
- (7) The Commissioner has power to do anything which is calculated to facilitate, or is incidental or conducive to, the exercise of the Commissioner’s functions.

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#### **4 Power of the Commissioner to require information**

- (1) Scottish Water must, on being requested to do so by the Commissioner, provide the Commissioner with such information held by it as the Commissioner may reasonably seek in the exercise of the Commissioner's functions.
- (2) Where Scottish Water and the Commissioner cannot agree as to whether information is sought reasonably, either of them may refer the matter to the Scottish Ministers, whose decision is final.

#### **5 Annual reports by, and information from, the Commissioner**

- (1) The Commissioner must—
  - (a) as soon as practicable after the end of each financial year, submit to the Scottish Ministers, and publish, a report on the exercise of the Commissioner's functions during that year, and
  - (b) provide the Scottish Ministers with such information regarding the exercise of those functions as they may require.
- (2) A report under subsection (1)(a) must include a summary of—
  - (a) action taken by the Commissioner during the year to which the report relates in response to such representations, reports and recommendations as are mentioned in section 2(5), and
  - (b) where the Commissioner has decided during that year not to take any action in response to any such representation, report or recommendation, the reasons for that decision.
- (3) A report under subsection (1)(a) must set out any directions under section 1 which have been given to the Commissioner during the period to which the report relates.

#### **6 Funding of the Commissioner**

- (1) The Scottish Ministers may make grants to the Commissioner in respect of the Commissioner's expenses.
- (2) Scottish Water must make to the Commissioner, in respect of the Commissioner's expenses, payments of such amounts, and at such times, as the Scottish Ministers may direct.

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## PART 2

### DRINKING WATER QUALITY REGULATOR

#### *Appointment*

#### **7 Drinking Water Quality Regulator for Scotland**

- (1) The Scottish Ministers may appoint a person to be known as the Drinking Water Quality Regulator for Scotland (in this Part referred to as the “Regulator”) to exercise the functions conferred on the Regulator by this Part.
- (2) The Regulator is to have the general functions of—
  - (a) seeking to ensure that the drinking water quality duties imposed on a public water supplier are complied with, and
  - (b) supervising the enforcement by local authorities of the drinking water quality duties which it is their responsibility to enforce.
- (3) Any person authorised by the Regulator for the purpose (an “authorised person”) may exercise, on behalf of the Regulator, any function of the Regulator.
- (4) In relation to the exercise by an authorised person of a function of the Regulator which that person is authorised to exercise, references in this Part to the Regulator are, so far as necessary, to be construed as, or as including, references to the authorised person.
- (5) An authorisation given for the purposes of subsection (3) does not prevent the Regulator from exercising any function to which the authorisation relates.
- (6) The Scottish Ministers may, after consulting the Regulator, give the Regulator directions of a general or specific character as to the exercise of the Regulator’s functions; and the Regulator must comply with any such direction.
- (7) In this Part—
 

“drinking water quality duty” means a duty in relation to the quality of water imposed on a water supplier by, under or by virtue of—

  - (a) Part VIA of the 1980 Act,
  - (b) this Act, or
  - (c) such other enactment relating to the quality of water supplied by a water supplier as the Scottish Ministers may by order specify,

“public water supplier” means Scottish Water.

#### *Public water suppliers: general powers of Regulator*

#### **8 Power to obtain information**

- (1) The Regulator may serve on a person a notice requiring the person—

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- (a) to provide the Regulator, or a person authorised by the Regulator, at a time and place and in the form and manner specified in the notice, with such information relating to the quality of water supplied by a public water supplier as may be specified or described in the notice, or
  - (b) to produce to the Regulator, or to a person authorised by the Regulator, at a time and a place specified in the notice, any documents relating to that matter which are specified or described in the notice and are in that person's custody or under that person's control.
- (2) A notice under subsection (1) may be served on—
- (a) the public water supplier,
  - (b) an officer or employee of the public water supplier,
  - (c) any other person whom the Regulator has reason to believe is or may be in possession of relevant information or documents.
- (3) Nothing in this section authorises the Regulator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.
- (4) References in this section to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.
- (5) Where by virtue of this section documents are produced to any person, that person may take copies of or make extracts from them.
- (6) A person who—
- (a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under subsection (1), or
  - (b) intentionally alters, suppresses or destroys a document which that person has been required by such a notice to produce,
- is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

## **9 Powers of entry, inspection etc.**

- (1) For the purpose of establishing whether any drinking water quality duty to which a public water supplier is subject has been, is being or is likely to be complied with, the Regulator may exercise the powers specified in subsection (2).
- (2) Those powers are—
- (a) power to enter—
    - (i) any premises of the water supplier,
    - (ii) any premises to which a supply of water is provided by the water supplier,
    - (iii) any premises of any other person,for the purpose of exercising any of the powers specified in paragraphs (b) to (d),

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- (b) power to carry out such inspections, measurements and tests on those premises or of substances, articles or documents found there as the Regulator thinks necessary,
  - (c) for the purpose of carrying out such inspections, measurements and tests as the Regulator thinks necessary, power to take away from those premises substances, articles or documents found there,
  - (d) power to take away from those premises such samples of water, land, substances or articles as the Regulator thinks necessary.
- (3) The powers specified in subsection (2) must not be exercised in relation to premises referred to in paragraph (a)(iii) of that subsection unless the Regulator is satisfied that the exercise of those powers in relation to the premises referred to in paragraph (a) (i) and (ii) of that subsection would be insufficient for the purpose specified in subsection (1).
- (4) The owner and occupier of any premises in relation to which the Regulator exercises the powers specified in subsection (2) and any person on such premises when those powers are being exercised must—
- (a) give the Regulator such assistance, and
  - (b) provide the Regulator with such information,
- as the Regulator may reasonably require.
- (5) A person who—
- (a) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4), or
  - (b) intentionally obstructs a person acting in the exercise of any power conferred by subsection (1),
- is guilty of an offence.
- (6) A person guilty of an offence under subsection (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

#### *Enforcement of duties of public water suppliers*

### **10 Enforcement notices**

- (1) Where the Regulator reasonably believes (whether or not following the exercise of the Regulator’s powers under section 9)—
- (a) that a public water supplier has contravened any drinking water quality duty and the contravention is likely to recur, or
  - (b) that a public water supplier is contravening any drinking water quality duty and the contravention is likely to continue or to recur or both,
- and (in either case) that the water supplier is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence, the Regulator may serve on the water supplier an enforcement notice.
- (2) In considering whether to serve an enforcement notice the Regulator may consult—
- (a) the local authority for any area affected by the contravention, and
  - (b) the Health Board for any such area.

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- (3) An enforcement notice must specify—
  - (a) the contravention to which it relates,
  - (b) the Regulator’s reasons for believing (as the case may be) that the contravention—
    - (i) has occurred and is likely to recur, or
    - (ii) is occurring and is likely to continue or to recur or both,
  - (c) the date by which the water supplier is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence,
  - (d) any particular steps which the Regulator requires the water supplier to take for that purpose, and
  - (e) the date on which the notice is to take effect.
- (4) An enforcement notice may specify different dates by which different steps specified under subsection (3)(d) must be completed.
- (5) The date referred to in subsection (3)(e) must be no earlier than the day following the last day on which an appeal may be brought under section 11(2).
- (6) Before serving an enforcement notice on a public water supplier under subsection (1), the Regulator must serve a copy of the proposed notice on the water supplier and specify a period, which must expire no less than 7 days and no more than 28 days from the date of service of the notice, within which the water supplier may make representations to the Regulator about the proposed notice.
- (7) The Regulator must take into account any representations in relation to the proposed enforcement notice duly made by the water supplier and may adjust the notice in light of those representations.

## **11 Enforcement notices: further provisions**

- (1) The Regulator must—
  - (a) send a copy of an enforcement notice to the Commissioner and to any local authority or Health Board consulted by the Regulator under section 10(2), and
  - (b) arrange for the notice to be published in such manner as the Regulator thinks appropriate for bringing it to the attention of persons affected, or who may be affected, by the contravention.
- (2) A public water supplier on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service, appeal to the sheriff against the notice.
- (3) Where an appeal is brought under subsection (2) the enforcement notice is of no effect until the appeal is withdrawn or finally determined.
- (4) On an appeal under subsection (2) the sheriff may make such order as the sheriff thinks fit.
- (5) The decision of the sheriff on such an appeal is final.
- (6) A public water supplier on whom an enforcement notice has been served—
  - (a) must consult the Health Board for any area affected by the contravention to which the notice relates, and

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(b) must, in rectifying the contravention or taking steps to prevent its recurrence, have regard to any views expressed by the Health Board.

(7) The duty under subsection (6) does not apply during any period in which the enforcement notice is of no effect by virtue of subsection (3).

## **12 Failure to comply with enforcement notices**

(1) This section applies where, in relation to an enforcement notice, a public water supplier—

(a) fails to rectify, or (as the case may be) to take steps to prevent the recurrence of, a contravention specified in the notice by the date specified in relation to the contravention under subsection (3)(c) of section 10, or

(b) fails to complete a step specified under subsection (3)(d) of that section by a date specified in relation to that step under subsection (4),

(or, in either case, by such later date as the Regulator may have substituted under section 14(1)(b)).

(2) Where this section applies, the Regulator may—

(a) enter any premises and carry out the work necessary to rectify or prevent the recurrence of the contravention or, as the case may be, to complete the step, and

(b) recover from the water supplier any expenses which the Regulator reasonably incurs in carrying out, or securing the carrying out, of that work.

(3) The expenses which may be recovered under subsection (2)(b) include such proportion of the Regulator's administrative expenses (including expenses incurred in establishing the contravention and in connection with the enforcement notice) as the Regulator considers appropriate.

(4) A person who intentionally obstructs a person acting in the exercise of any power conferred by subsection (2)(a) is guilty of an offence.

(5) If, at any time after a date referred to in subsection (1), anything which the enforcement notice requires the water supplier to do by that date has not been done, the water supplier is guilty of an offence.

(6) A person guilty of an offence under subsection (4) or (5) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(7) An offence under subsection (5) may be charged by reference to any day or longer period of time and a public water supplier may be convicted of a second or subsequent offence under that subsection by reference to any period of time following conviction for such an offence.

## **13 Emergencies**

(1) Where the Regulator reasonably believes—

(a) that a public water supplier has contravened or is contravening any drinking water quality duty,

(b) that as a result of the contravention there is a significant risk to public health or the quality of a public drinking water supply, and



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- (c) that urgent action is necessary to reduce or remove that risk, the Regulator may take action in accordance with this section.
- (2) The Regulator may serve on the water supplier an emergency notice requiring the water supplier, by such date as the notice may specify, to take such steps as the notice may specify, being steps which the Regulator considers necessary for the purpose of reducing or removing the risk referred to in subsection (1)(b).
- (3) Without prejudice to subsection (2), the Regulator may—
- (a) enter any premises and carry out such work as the Regulator considers necessary for the purpose mentioned in that subsection, and
  - (b) recover from the water supplier any expenses which the Regulator reasonably incurs in carrying out, or securing the carrying out, of that work.
- (4) The expenses which may be recovered under subsection (3)(b) include such proportion of the Regulator's administrative expenses (including expenses incurred in establishing the contravention and in connection with the emergency notice) as the Regulator considers appropriate.
- (5) A person who intentionally obstructs a person acting in the exercise of any power conferred by subsection (3)(a) is guilty of an offence.
- (6) If, at any time after the date specified in the emergency notice (or such later date as the Regulator may have substituted under section 14(1)(b)), anything which the notice requires the water supplier to do has not been done, the water supplier is guilty of an offence.
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (8) An offence under subsection (6) may be charged by reference to any day or longer period of time and a public water supplier may be convicted of a second or subsequent offence under that subsection by reference to any period of time following conviction for such an offence.

#### **14 Variation and withdrawal of notices**

- (1) The Regulator may—
- (a) withdraw an enforcement notice or an emergency notice,
  - (b) waive or relax any requirement of an enforcement notice or an emergency notice, including substituting a later date for a date specified under section 10(3)(c) or (4) or, as the case may be, section 13(2).
- (2) The powers in subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The withdrawal of an enforcement notice or an emergency notice does not affect the Regulator's power to issue a further such notice.

#### **15 Register of enforcement notices and emergency notices**

- (1) The Regulator must keep a register of enforcement notices and emergency notices.

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- (2) The register must, in relation to each such notice, specify—
  - (a) the name and address of the water supplier on whom the notice was served,
  - (b) the date of service,
  - (c) the compliance date, and
  - (d) in the case of an enforcement notice, the date specified under section 10(3)
  - (e).
- (3) The Scottish Ministers may by order make provision as to—
  - (a) the manner in which the register is to be kept,
  - (b) the information, in addition to that required by subsection (2), which the register is to contain.
- (4) In subsection (2)(c), “the compliance date” means—
  - (a) in relation to an enforcement notice, the date specified under section 10(3)(c),
  - (b) in relation to an emergency notice, the date specified under section 13(2),
 and, in either case, includes any date substituted for that date under section 14(1)(b).
- (5) The register must be made available for inspection by any person at any reasonable time.

#### *Supervision of local authority enforcement*

### **16 Power to require information from local authorities**

- (1) A local authority must, on being requested to do so by the Regulator, provide the Regulator with such information held by it as the Regulator may reasonably seek in relation to the enforcement by the local authority of the drinking water quality duties which it is the authority’s responsibility to enforce.
- (2) Where a local authority and the Regulator cannot agree whether information is being sought reasonably, either of them may refer the matter to the Scottish Ministers, whose decision is final.

#### *Supplementary*

### **17 Annual reports**

The Regulator must, as soon as practicable after the end of each calendar year, submit to the Scottish Ministers, and publish, a report on the exercise of the Regulator’s functions during that year.

### **18 Powers of entry etc.: further provision**

- (1) Schedule 2 makes further provision about the exercise of powers of entry etc. conferred by sections 9(1), 12(2)(a) and 13(3)(a).
- (2) References in this Part to a power conferred by any of those provisions include references to such a power exercisable by virtue of a warrant under that schedule.

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## 19 Interpretation of Part 2

In this Part—

“drinking water quality duty” has the meaning given by section 7(7),

“emergency notice” means a notice under section 13(2),

“enforcement notice” means a notice under section 10(1),

“public water supplier” has the meaning given by section 7(7),

“Regulator” means the Drinking Water Quality Regulator for Scotland.

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## PART 3

### SCOTTISH WATER

#### *Establishment*

VALID FROM 08/03/2002

## 20 Scottish Water

- (1) There is established a body corporate to be known as Scottish Water, with the functions conferred on it by or under this Act and any other enactment.
- (2) Schedule 3 makes further provision about the status, constitution, proceedings etc. of Scottish Water.

## 21 Transfer of functions from new water and sewerage authorities

The functions of each of the new water and sewerage authorities are transferred to Scottish Water.

## 22 Transfer of property and liabilities

- (1) The property and liabilities to which the new water and sewerage authorities are entitled or subject are transferred to Scottish Water.
- (2) Subsection (1) has effect in relation to property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

## 23 Transfer of staff

The Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I.1981/1794) apply to the transfer of functions by section 21, whether or not they would so apply apart from this section.

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## **24 Dissolution of new water and sewerage authorities etc.**

- (1) The new water and sewerage authorities are dissolved on such date as the Scottish Ministers may by order specify.
- (2) Different dates may be specified in relation to different such authorities.
- (3) Without prejudice to section 69, the Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they think necessary or expedient in consequence of or in connection with—
  - (a) the establishment of Scottish Water,
  - (b) the transfer of functions, property, liabilities and staff of the new water and sewerage authorities,
  - (c) the dissolution of those authorities.

### *General powers*

## **25 General powers**

- (1) Scottish Water may engage in any activity (whether in Scotland or elsewhere) which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions (within the meaning of section 70(2)).
- (2) Scottish Water may do anything (whether in Scotland or elsewhere) which it considers is necessary or expedient for the purpose of or in connection with its functions (including any activity in which it engages by virtue of subsection (1)).
- (3) The power in subsection (2) includes, in particular, power to—
  - (a) form or promote (whether alone or with others) companies (within the meaning of the Companies Act 1985 (c.6)),
  - (b) subscribe for share or loan capital of any person,
  - (c) guarantee the discharge of any obligation (whether financial or not) of any person,
  - (d) form partnerships, enter into arrangements or agreements and co-operate in any way with any person,
  - (e) enter into a contract with any person for the provision or making available of assets or services, or both (whether or not together with goods) whether by Scottish Water or by that person.
- (4) Where—
  - (a) under subsection (2), Scottish Water enters into a contract such as is referred to in subsection (3)(e) (a “provision contract”), and
  - (b) in connection with the provision contract, a person (the “financier”) makes a loan to, or provides any other form of finance for, a party to the provision contract other than Scottish Water,
 the power in subsection (2) also includes power to enter into a contract with the financier, or any insurer of or trustee for the financier, in connection with the provision contract.
- (5) In subsection (3)(e), “assets” means assets of any description (whether tangible or intangible), including (in particular) land, buildings, roads, works, plant, machinery, vehicles, vessels, apparatus, equipment and computer software.

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- (6) This section is without prejudice to any power otherwise exercisable by Scottish Water but does not enable Scottish Water—
- (a) to do anything in contravention of any express prohibition, restriction or limitation on its powers which is contained in any other enactment,
  - (b) to raise money (whether by borrowing or otherwise) in a manner which is not authorised apart from this section.

### *Codes of practice*

## **26 Customer standards code**

- (1) In relation to services provided in the exercise of its core functions, Scottish Water must prepare and submit to the Commissioner a code of practice (a “customer standards code”) making provision—
- (a) as to its standards of performance in providing services to its customers,
  - (b) for procedures for dealing with complaints by its customers or its potential or former customers,
  - (c) as respects the circumstances in which it will pay compensation if or in so far as those standards are not attained,
  - (d) as respects such matters as are incidental to the provision made under paragraphs (a) to (c), and such supplemental matters (if any) as it thinks fit.
- (2) The customer standards code must be submitted to the Commissioner no later than the date on which Scottish Water first sends a charges scheme to the Commissioner under section 32(1).
- (3) Subject to subsection (1), Scottish Water may from time to time—
- (a) vary, or
  - (b) revoke and replace,
- its customer standards code, and must submit the varied or new code to the Commissioner.
- (4) A customer standards code submitted to the Commissioner under subsection (1) or (3) comes into force only when it is approved in accordance with section 27.
- (5) Scottish Water must endeavour to comply with its approved customer standards code; but contravention of that code does not of itself give rise to any criminal or civil liability.
- (6) Scottish Water must publish the approved customer standards code and provide a copy of the code to any person who requests it.
- (7) The Commissioner—
- (a) must monitor the compliance by Scottish Water with its approved customer standards code,
  - (b) may advise the Scottish Ministers on such compliance, and
  - (c) may require Scottish Water to review its customer standards code, or any provision of it, in such respects as the Commissioner may specify.

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## **27 Approval of customer standards code**

- (1) The Commissioner may, after consulting each Water Customer Consultation Panel, approve a customer standards code submitted under section 26(1) or (3)—
  - (a) without modifications, or
  - (b) with such modifications as are agreed by the Commissioner and Scottish Water.
- (2) Where—
  - (a) the Commissioner is not prepared to give approval under subsection (1)(a), and
  - (b) Scottish Water does not agree to some or all of the modifications proposed by the Commissioner under subsection (1)(b),
 the Commissioner must send the code (with any modifications to it agreed by the Commissioner and Scottish Water) to the Scottish Ministers.
- (3) Where 3 months have elapsed since the Commissioner has received a customer standards code by virtue of section 26(1) or (3) and the Commissioner has neither—
  - (a) given approval under subsection (1) of this section, nor
  - (b) sent the scheme to the Scottish Ministers under subsection (2) of this section,
 Scottish Water may require the Commissioner to send it to the Scottish Ministers.
- (4) The Scottish Ministers may, after consulting each Water Customer Consultation Panel, approve a code sent to them under subsection (2) or (3)—
  - (a) without modifications or further modifications, or
  - (b) with such modifications as, after consulting Scottish Water and the Commissioner, they think fit.
- (5) Where the Commissioner approves a customer standards code under subsection (1), the Commissioner must send a copy of the code as so approved to the Scottish Ministers.
- (6) Where the Scottish Ministers approve a customer standards code under subsection (4), they must send a copy of the code as so approved to the Commissioner.

## **28 Consultation code**

- (1) Scottish Water must prepare and submit to the Scottish Ministers a code of practice (a “consultation code”) making provision as to the consultation which it will carry out in relation to—
  - (a) proposals for, and
  - (b) the undertaking of,
 any significant activity in the exercise of its core functions.
- (2) The consultation code must, in particular, make provision—
  - (a) as to consultation with persons who live, work or carry on business in any area significantly affected by such an activity, or who represent the interests of such persons,
  - (b) as to the manner of such consultation, the information to be provided to consultees and the time to be allowed for consultees to express views,

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- (c) for Scottish Water to have regard to the views of the persons consulted in pursuance of the code,  
and may make different provision in relation to different cases or descriptions of case.
- (3) Before submitting the consultation code to the Scottish Ministers, Scottish Water—
  - (a) must consult each Water Customer Consultation Panel on the code and have regard to any comments on it made by any Panel, and
  - (b) may adjust the code in light of those comments.
- (4) The Scottish Ministers may approve the consultation code—
  - (a) without modifications, or
  - (b) with such modifications as, after consulting Scottish Water, they think fit.
- (5) A consultation code submitted to the Scottish Ministers under subsection (1) comes into force only when it is approved in accordance with subsection (4).
- (6) Scottish Water must publish the approved consultation code and provide a copy of the code to any person who requests it.
- (7) Scottish Water must endeavour to comply with the approved consultation code; but contravention of the code does not of itself give rise to any criminal or civil liability.
- (8) Subject to subsection (1), Scottish Water may from time to time—
  - (a) vary, or
  - (b) revoke or replace,the consultation code; and this section applies to the varied or new code as it does to the original code.

### *Charges*

#### **29 Charges for goods and services**

- (1) Scottish Water may fix, demand and recover charges for any goods supplied or services provided by it.
- (2) Subsection (1)—
  - (a) is subject to sections 9A and 47 of the 1980 Act (no charge for water in certain circumstances), and
  - (b) does not apply in a case where Scottish Water has power otherwise than under that subsection to fix charges for goods or services.
- (3) The power conferred by subsection (1) is exercisable—
  - (a) in relation to charges for services provided in the exercise of Scottish Water's core functions, by or in accordance with a charges scheme under section 31, and
  - (b) in that or any other case, by or in accordance with an agreement with the person to be charged.
- (4) Subject to sections 31 to 36, Scottish Water may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to it to be appropriate.

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### **30 Maximum charges for services provided with help of Scottish Water**

- (1) The Scottish Ministers may by order fix maximum charges which a person other than Scottish Water may recover from another such person in respect of the supply of water to, the provision of sewerage to, or the disposal of sewage for that other person with the help of services provided by Scottish Water.
- (2) For the purposes of this section, water is supplied to, sewerage provided to, or sewage disposed of for a person with the help of services provided by Scottish Water if—
  - (a) a facility for that person to have access to a supply of water provided by Scottish Water in pipes, or to make use of sewerage which is, or facilities for the disposal of sewage which are, provided by Scottish Water is made available to that person otherwise than by Scottish Water,
  - (b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by Scottish Water, or
  - (c) that person is provided with sewerage, or with facilities for the disposal of sewage, by a person who, for the purposes of providing the sewerage or facilities, makes use of sewerage or of such facilities provided, directly or indirectly, by Scottish Water.
- (3) An order under this section may make different provision in relation to different persons, circumstances or localities and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.
- (4) Where a person pays a charge in respect of anything to which an order under this section relates and the amount paid exceeds the maximum charge fixed by the order, the amount of the excess is recoverable by that person from the person to whom the charge was paid.

### **31 Charges schemes**

- (1) Scottish Water must, in accordance with this section, make a scheme (referred to in this Act as a “charges scheme”) which fixes the charges to be paid for services provided by it in the exercise of its core functions and which may also make provision with respect to the times and methods of payment of the charges fixed by the scheme.
- (2) Subsection (1) does not apply in relation to services as respects which conditions as to payment may be imposed under section 29(3)(j) of the 1968 Act (conditions relating to the reception, treatment and disposal of trade effluent).
- (3) A charges scheme may—
  - (a) make different provision for different cases, or classes of case, including different provision in relation to different circumstances or localities,
  - (b) contain supplemental, consequential and transitional provisions for the purposes of the scheme,
  - (c) revoke or amend a previous scheme.
- (4) A charges scheme comes into force only when it is approved in accordance with section 32 and has effect as so approved.
- (5) Scottish Water in making a charges scheme, and the Commissioner and the Scottish Ministers in considering whether to approve such a scheme, must have regard to any advice published under section 33 in force at the time of the making of the scheme.



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- (6) Nothing in any charges scheme affects any power of Scottish Water to enter into an agreement with any person in any particular case determining the charges to be made for services provided by Scottish Water.

**Modifications etc. (not altering text)**

C1 S. 31 extended (1.4.2002) by S.S.I. 2002/166, art. 4(1)(2)

**32 Approval of charges schemes**

- (1) Scottish Water must send a charges scheme made by it under section 31 to the Commissioner.
- (2) The Commissioner may approve the scheme—
- (a) without modifications, or
  - (b) with such modifications as are agreed by the Commissioner and Scottish Water.
- (3) Where—
- (a) the Commissioner is not prepared to give approval under subsection (2)(a), and
  - (b) Scottish Water does not agree to some or all of the modifications proposed by the Commissioner under subsection (2)(b),
- the Commissioner must send the scheme (with any modifications to it agreed by the Commissioner and Scottish Water) to the Scottish Ministers.
- (4) Where 3 months have elapsed since the Commissioner has received a charges scheme by virtue of subsection (1) and the Commissioner has neither—
- (a) given approval under subsection (2), nor
  - (b) sent the scheme to the Scottish Ministers under subsection (3),
- Scottish Water may require the Commissioner to send it to the Scottish Ministers.
- (5) The Scottish Ministers may approve a scheme sent to them under subsection (3) or (4)—
- (a) without modifications or further modifications, or
  - (b) with such modifications as, after consulting Scottish Water and the Commissioner, they think fit.
- (6) Where the Commissioner approves a charges scheme under subsection (2), the Commissioner must send a copy of the scheme as so approved to the Scottish Ministers.
- (7) Where the Scottish Ministers approve a charges scheme under subsection (5), they must send a copy of the scheme as so approved to the Commissioner.

**Modifications etc. (not altering text)**

C2 S. 32 extended (1.4.2002) by S.S.I. 2002/166, art. 4(1)(2)

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### **33 Commissioner’s advice on charges**

- (1) The Commissioner must, when required by the Scottish Ministers, advise them on the matters to be taken into, or left out of, account by Scottish Water in fixing charges in charges schemes.
- (2) The advice is to apply in relation to charges schemes made during such period as the Scottish Ministers may specify (in this section referred to as “the period of the advice”).
- (3) In preparing advice, the Commissioner is to have regard to—
  - (a) the economy, efficiency and effectiveness with which Scottish Water is using its resources in exercising its core functions,
  - (b) the likely cost to Scottish Water, for the period of the advice, of exercising the functions specified in subsection (4),
  - (c) the likely resources, other than income from charges for goods and services, available to Scottish Water for the period of the advice,
  - (d) any guidance issued to Scottish Water by the Scottish Ministers, and
  - (e) any directions given under section 44 or 56.
- (4) The functions referred to in subsection (3)(b) are the core functions of Scottish Water so far as consisting of—
  - (a) complying with any duty to which it is subject by virtue of any enactment,
  - (b) complying with any such duty to which it will, or is likely to, become subject during the period of the advice,
  - (c) providing services to its customers at the same standard, and protection of the environment at the same level, as those at the time when the advice is given, or at such other standard or level as the Scottish Ministers may specify, and
  - (d) extending, in accordance with requirements made by the Scottish Ministers, the provision of public sewers and supplies of water to premises or areas not in receipt of such provision.
- (5) The Scottish Ministers must, within 3 months of receiving from the Commissioner advice under subsection (1)—
  - (a) accept the advice, with or without modifications, or
  - (b) reject the advice and substitute their own advice for it.
- (6) Where the Scottish Ministers accept the Commissioner’s advice with modifications or reject it, they must give reasons for doing so.
- (7) The Commissioner must publish advice as accepted, modified or substituted under subsection (5), together with any reasons given under subsection (6).

### **34 Publication of summary of charges scheme**

When a charges scheme is approved in accordance with section 32, Scottish Water must—

- (a) make arrangements for allowing any person to—
  - (i) inspect the scheme at any reasonable time,
  - (ii) obtain a copy of it, or any part of it, on payment of such reasonable fee (if any) as Scottish Water may determine, and
- (b) publicise those arrangements and publish a summary of the scheme.

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### **35 Liability of occupiers etc. for charges**

- (1) Supplies of water provided by Scottish Water to any premises and the provision and maintenance by Scottish Water of communication pipes and supply pipes for the purposes of such supplies are to be treated for the purposes of this Act as services provided to the occupier for the time being of those premises.
- (2) The provision of sewerage, and the disposal of sewage, provided by Scottish Water are to be treated for the purposes of this Act as provision to, or as disposal for, the occupier for the time being of any premises which—
  - (a) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with a public sewer provided for foul water or surface water or both, or
  - (b) are premises the occupier of which has, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.
- (3) Subject to subsection (5), in relation to any period during which premises referred to in subsection (1) or (2) are unoccupied, references to the occupier in the subsection in question are to be construed as references to the owner of the premises.
- (4) Subsections (1) to (3) do not apply so far as provision to the contrary is made by any agreement to which Scottish Water is a party.
- (5) Charges which, under section 29, are fixed in relation to any premises by reference to volume may be imposed so that a person remains liable, in relation to those premises, to pay charges for—
  - (a) a supply of water, and
  - (b) provision of sewerage or disposal of sewage,provided by Scottish Water after the person has ceased to be occupier of the premises.
- (6) A person is liable by virtue of subsection (5) for any charges fixed in relation to any premises by Scottish Water only where that person fails to inform Scottish Water of the ending of that person's occupation of the premises at least 48 hours before that person ceases to occupy them.
- (7) The charges for which a person may be liable by virtue of subsection (5) are charges in respect of a period ending no later than whichever of the following first occurs after the person ceases to occupy the premises—
  - (a) where the person informs Scottish Water of the ending of that person's occupation, the 28th day after informing Scottish Water,
  - (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined,
  - (c) any day on which any other person informs the authority that that other person has become the new occupier of the premises.
- (8) In calculating the period of 48 hours referred to in subsection (6) any time falling on—
  - (a) a Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c.80),is to be disregarded.

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- (9) In subsection (1), “communication pipes” and “supply pipes” have the same meanings as in the 1980 Act.

### 36 Section 35: meaning of “occupier”

- (1) In the application of section 35 to services which are the subject of a determination under section 37(1)(a), references in section 35(1) and (2) to the occupier of premises are references to the person—
- (a) who is liable under or by virtue of sections 75 to 77 of the Local Government Finance Act 1992 (c.14) to pay council tax (within the meaning of section 70(1) of that Act) in respect of the premises, or
  - (b) who would be so liable but for the premises being an exempt dwelling (within the meaning of Part II of that Act).
- (2) Without prejudice to subsections (3) and (4) of section 35, the Scottish Ministers may, after consulting such persons as they think fit, by order make provision, in relation to such premises or description of premises as the order may specify, as to the persons who are, for the purposes of subsections (1) and (2) of that section, to be treated as being, or as not being, occupiers of the premises.
- (3) Section 35(3) and subsection (2) of this section do not apply in a case to which subsection (1) of this section applies.

### 37 Collection of charges by local authority

- (1) The Scottish Ministers may by order determine—
- (a) that as respects specified services provided, within a financial year specified in the order, by Scottish Water to dwellings, or to such description of dwellings as the order may specify—
    - (i) within the area of a local authority, or
    - (ii) within such part of that area as the order may specify,
 the authority and not Scottish Water is to demand and recover charges payable for those services under a charges scheme, and
  - (b) that the authority is, at such intervals as may be so specified, to make such payments to Scottish Water (to which no other amount is to be payable under the charges scheme for the services provided) as may be so specified or as may be determined in accordance with the provisions of the order.
- (2) In subsection (1), “specified services” means services specified, or of a description specified, in the order.
- (3) An order under subsection (1) may include provision as to—
- (a) forms and procedures which the local authority is to adopt in demanding payment,
  - (b) circumstances in which a customer of Scottish Water who is aggrieved by a decision or calculation of the local authority may appeal—
    - (i) except in a case specified by virtue of sub-paragraph (ii), to a valuation appeal committee (constituted under section 29 of the 1994 Act), or

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- (ii) in such cases as the order may specify, to a body constituted under the order (or under a previous such order) to consider appeals as respects any such case,
  - (c) procedures to be followed in any appeal by virtue of paragraph (b),
  - (d) the provision, for the purposes of this section, of information by Scottish Water to the local authority,
  - (e) the keeping by the local authority of accounts and records as respects their functions by virtue of this section and the exhibition of, or of copies of, such accounts and records to Scottish Water.
- (4) Schedule 4 makes provision about recovery by a local authority of unpaid charges.
- (5) In this section and section 38, “dwelling” has the same meaning as in Part II of the Local Government Finance Act 1992 (c.14).

### **38 Suspension of collection of charges by local authority**

- (1) This section applies in relation to any dwellings to which Scottish Water provides services which are the subject of a determination under section 37(1)(a).
- (2) Where, in relation to any such dwellings, Scottish Water serves a notice under this subsection on the relevant local authority, the services which are the subject of the determination, so far as provided to dwellings to which the notice relates, are to be treated for so long as the notice remains in force as if they were not subject to the determination.
- (3) A notice under subsection (2) may be withdrawn in whole or in part by Scottish Water by serving a further notice on the relevant local authority.
- (4) The Scottish Ministers may by regulations make provision as to—
- (a) the form and content of a notice under subsection (2) or (3),
  - (b) when such a notice comes into force,
  - (c) (either or both) the maximum and minimum numbers of dwellings to which such a notice may relate,
  - (d) such other matters in relation to such a notice as the Scottish Ministers think necessary or expedient.
- (5) Regulations under subsection (4) may also make provision for the payment by Scottish Water to the relevant local authority of a sum, specified in or calculated in accordance with the regulations, in respect of any reasonable administrative expenses incurred by the authority in consequence of the service of a notice under subsection (2) or (3).
- (6) In this section, “the relevant local authority” means the local authority which—
- (a) is, by virtue of the determination under section 37(1)(a), responsible for demanding and recovering charges payable for services provided by Scottish Water to the dwellings to which the notice under subsection (2) or (3) relates and which are the subject of the determination, or
  - (b) was, until the notice came into force, so responsible.

### **39 Primacy of duty to maintain domestic water supply etc.**

Sections 29(1) and 37 are without prejudice to—

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- (a) the duties of Scottish Water under section 6 of the 1980 Act (which include the duty to maintain a supply of wholesome water provided to meet a requirement for domestic purposes),
- (b) the entitlements of any person under section 12 of the 1968 Act (which include the entitlement of an occupier of premises to drain into public sewers to which the drains or private sewers of the owner of the premises are connected).

#### **40 Reduced charges**

- (1) The Scottish Ministers may by regulations provide that a person who—
  - (a) is, under a charges scheme, liable to pay an amount to Scottish Water or, by virtue of section 37, to a local authority, and
  - (b) fulfils such conditions as are specified in the regulations,
 is instead exempt from such liability or liable to pay the reduced amount referred to in subsection (2).
- (2) The reduced amount is an amount—
  - (a) less than the amount it would be but for the regulations, and
  - (b) determined in accordance with rules specified in the regulations.
- (3) The conditions and rules to be specified in regulations under subsections (1)(b) and (2)(b) respectively may be determined by reference to such factors as the Scottish Ministers think fit.

### *Finances*

#### **41 Duties and powers relating to finance**

- (1) Scottish Water must exercise its functions so as to secure that, taking one year with another, its income is not less than sufficient to meet its expenditure.
- (2) The Scottish Ministers may by order direct Scottish Water to exercise its functions, during any period specified in the order, with a view to securing that it achieves in respect of that period a rate of return on the value of its average net assets (as for the time being defined for the purposes of this section by the Scottish Ministers) which is not less than the rate specified in the order as the rate of return which the Scottish Ministers consider it is reasonable for Scottish Water to achieve.
- (3) Without prejudice to subsection (1), the Scottish Ministers may, after consulting Scottish Water, determine that Scottish Water is (in addition to or in place of a duty imposed by virtue of subsection (2)) subject to a specified duty of a financial nature; and different determinations may be so made in relation to different functions of Scottish Water.
- (4) A determination under subsection (3) may—
  - (a) relate to a period beginning before the date on which it is made,
  - (b) contain incidental or supplemental provisions,
  - (c) be varied by a subsequent determination under that subsection.
- (5) A determination under subsection (3) must be made by order where—

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- (a) the duty specified in it is in place of a duty imposed by virtue of subsection (2), or
  - (b) it varies a previous determination made by order.
- (6) Scottish Water must secure that its charges make a proper contribution to its duties, as respect financial matters, under this Act, taking into account—
- (a) its present circumstances and future prospects, and
  - (b) any duty imposed on it by virtue of subsection (2) or (3).

## **42 Financing and borrowing**

- (1) The Scottish Ministers may pay to Scottish Water grants of such amounts as they may determine—
- (a) in respect of the exercise of its functions and its administrative expenses,
  - (b) for the purpose of meeting, or alleviating, any loss it may sustain by virtue of regulations made under section 40.
- (2) A grant under subsection (1) may be made subject to such conditions as the Scottish Ministers think fit.
- (3) For the purpose of the exercise of any of its functions, Scottish Water may—
- (a) subject to such conditions as the Scottish Ministers think fit, borrow from them, and they may lend to it, sums of such amounts as they may determine, and
  - (b) with the consent of the Scottish Ministers, borrow money, whether in sterling or otherwise, from any person or body, whether in the United Kingdom or elsewhere.
- (4) In any financial year the net amount of sums borrowed by Scottish Water must not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- (5) In subsection (4), “net amount” means the amount of sums borrowed in the financial year less—
- (a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and
  - (b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.
- (6) Any loans made in pursuance of subsection (3)(a) are to be repaid to the Scottish Ministers at such times and by such methods, and interest on the loans is to be paid to them at such times and at such rates, as they may from time to time direct.

## **43 Guarantees**

- (1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by Scottish Water or any subsidiary of Scottish Water.
- (2) Immediately after a guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.

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- (3) Where any sum is paid out in fulfilment of a guarantee under this section, Scottish Water must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—
- (a) payments of such amounts as they may so direct in or towards repayment of the sums so paid out, and
  - (b) payments of interest, at such rate as they may so direct, on the amount outstanding for the time being in respect of sums so paid out.
- (4) In subsection (1), “subsidiary” is to be construed in accordance with section 736 of the Companies Act 1985 (c.6).

#### **44 Directions as to payment and investment**

- (1) The Scottish Ministers may, after consulting Scottish Water, direct it to pay to them, on a date specified in the direction, a sum specified in, or calculated in accordance with, the direction, being a sum not required for the exercise of its functions.
- (2) The Scottish Ministers may, after consulting Scottish Water, direct it to invest, in such manner as may be specified in the direction, a sum specified in, or calculated in accordance with, the direction, being a sum not immediately required for the exercise of its functions.
- (3) A direction under subsection (1) or (2) is not competent in relation to any sum which is payable to the Scottish Ministers under or by virtue of any other provision of this Act.

#### **45 Accounts and audit**

- (1) Scottish Water must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its affairs and its income and expenditure, and
  - (c) send the statement of accounts, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.
- (2) Every statement of accounts prepared by Scottish Water in accordance with this section must comply with any direction given by the Scottish Ministers relating to—
  - (a) the information to be contained in the statement of accounts,
  - (b) the manner in which that information is to be presented, or
  - (c) the methods and principles according to which the statement of accounts is to be prepared.

#### *Land transactions*

#### **46 Acquisition of land by agreement**

- (1) Scottish Water may under this subsection—
  - (a) for the purposes of any of its functions, or
  - (b) for the purpose of the provision, by some person other than itself, of—
    - (i) a supply of water to the public, or



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(ii) a system, to which the public is to have access, of drains, sewers or sewage treatment works,

acquire by agreement any land (other than water rights) wherever situated.

(2) Subsection (3) applies in relation to any acquisition of land under subsection (1) for the purposes of any of the core functions of Scottish Water or for the purpose mentioned in paragraph (b) of that subsection.

(3) In relation to any such acquisition of land, the Lands Clauses Acts (except in so far as they relate to acquisition other than by agreement and to access to the special Act and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19)), and—

(a) in a case where the acquisition is—

(i) in relation to Scottish Water's functions under or by virtue of the 1968 Act, or

(ii) for the purpose of the provision of a system such as is mentioned in paragraph (b)(ii) of subsection (1) of this section,

sections 6 and 70 to 78 of the Railways Clauses Consolidation (Scotland) Act 1845 (c.33) (as originally enacted and not as amended by section 15 of the Mines (Working Facilities and Support) Act 1923 (c.20)), and

(b) in any other case, section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (as referred to in paragraph (a)) and Part IV of Schedule 4 to the 1980 Act,

are hereby incorporated with this section; and, in construing those Acts for the purposes of that subsection, this section is to be taken to be the special Act and Scottish Water is to be taken to be the promoter of the undertaking or company as the case may require.

#### **47 Compulsory acquisition of land**

(1) Scottish Water may—

(a) for the purposes of any of its core functions, or

(b) for the purpose specified in section 46(1)(b),

be authorised by the Scottish Ministers to purchase compulsorily under this subsection land (other than water rights) situated in Scotland.

(2) Subsection (1) is—

(a) without prejudice to any order under section 17 (acquisition of water rights) of the 1980 Act, and

(b) subject to section 18 (authorisation of compulsory acquisition of land necessary for purposes of order under section 17) of that Act.

(3) Scottish Water is, in respect of all of its core functions, a statutory undertaker for the purposes of section 120(1)(b) of the Local Government, Planning and Land Act 1980 (c.65) (persons to whose compulsory acquisition of an interest in land the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) in certain circumstances applies).

(4) Scottish Water may be authorised by the Scottish Ministers to purchase compulsorily, or may acquire by agreement, land in Scotland for giving in exchange for such land as is mentioned in section 1(2)(b) of that Act of 1947.

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(5) This section is subject to section 67(4).

#### **48 Disposal of land**

- (1) Scottish Water may dispose of land held by it in any manner, to whomsoever and for whatever purpose it wishes.
- (2) But Scottish Water may not, except with the consent of the Scottish Ministers, dispose of land under subsection (1) for a consideration less than the best that could reasonably be expected to be obtained on the open market.

#### *General duties*

#### **49 Interests of customers**

The Scottish Ministers, when exercising their functions under or by virtue of this Act, the 1968 Act or the 1980 Act and Scottish Water, when exercising its functions, must have regard to the interests of every person who is a customer or potential customer of Scottish Water and especially of such of those persons as—

- (a) are likely, by reason of a persistent disability or medical condition or of family circumstances, to require to have a much greater supply of water, or to make much greater use of facilities for the disposal of sewage, than might ordinarily have been expected, or
- (b) are ordinarily resident in a rural or remote part of Scotland.

#### **50 Economy, efficiency and effectiveness**

Scottish Water must, in exercising its functions, seek to ensure that its resources are used economically, efficiently and effectively.

#### **51 Sustainable development**

- (1) Scottish Water must, in exercising its functions, act in the way best calculated to contribute to the achievement of sustainable development.
- (2) Subsection (1) applies so far as is consistent with the purposes of any enactment relating to the functions of Scottish Water.
- (3) In complying with subsection (1) Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.

#### **52 Public access to land held by Scottish Water**

- (1) The Scottish Ministers, in exercising their functions under or by virtue of this Act, the 1968 Act or the 1980 Act and Scottish Water, in exercising its functions, must have regard to the desirability of preserving for the public any freedom of access (including access for recreational purposes) to land held by Scottish Water.
- (2) This section is without prejudice to section 53(1) and (2)(a).

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### **53 Environmental matters**

- (1) The Scottish Ministers, in exercising their functions under or by virtue of this Act, the 1968 Act or the 1980 Act and Scottish Water, in exercising its functions, must have regard to the matters specified in subsection (2).
- (2) Those matters are—
  - (a) the desirability of preserving for the public any freedom of access (including access for recreational purposes) to areas of forest, woodland, mountains, moor, bog, cliff, foreshore, loch or reservoir and to other places of natural beauty, and
  - (b) the desirability of protecting and conserving—
    - (i) buildings,
    - (ii) sites, and
    - (iii) objects,of archaeological, architectural, historic or scientific interest and of maintaining the availability to the public of any facility for visiting or inspecting any such building, site or object.
- (3) The Scottish Ministers and Scottish Water must, in exercising the functions referred to in subsection (1), further—
  - (a) the conservation and enhancement of natural beauty and the conservation of flora and fauna, and
  - (b) the conservation of geological or physiographical features of special interest.
- (4) Subsection (3) applies so far as is consistent with the purposes of any enactment relating to the functions of the Scottish Ministers or, as the case may be, Scottish Water (whether or not functions under or by virtue of this Act, the 1968 Act or the 1980 Act).

### **54 Protection of natural heritage**

- (1) Scottish Natural Heritage (“SNH”) must by notice in writing notify Scottish Water of any area of land in Scotland which is a protected area.
- (2) An area of land is a protected area if—
  - (a) it has been designated under section 6(2) of the Natural Heritage (Scotland) Act 1991 (c.28) (“the 1991 Act”) as a Natural Heritage Area,
  - (b) it is an area in respect of which notification has been given by SNH under section 28(1) (areas of special scientific interest) of the Wildlife and Countryside Act 1981 (c.69), or
  - (c) it is a European site within the meaning of Regulation 10 of the Conservation (Natural Habitats, etc.) Regulations 1994 (S.I.1994/2716).
- (3) Where SNH has given notice under subsection (1) in respect of an area of land and—
  - (a) in the case of an area mentioned in subsection (2)(a), the designation referred to in that subsection is cancelled or varied under section 6(7) of the 1991 Act,
  - (b) in the case of an area mentioned in subsection (2)(b), the notification ceases to have effect,
  - (c) in the case of an area mentioned in subsection (2)(c), the area ceases to be a European site,SNH must by notice in writing advise Scottish Water of that fact.

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- (4) Where Scottish Water has received notice under subsection (1), it must (unless SNH has given notice under subsection (3) to the effect that the area of land in question is no longer a protected area) consult SNH before commencing any scheme, work, operation or activity which is likely to prejudice significantly the qualities by reference to which the area of land was designated as a Natural Heritage Area or notified as an area of special scientific interest or, as the case may be, is a European site.
- (5) Before commencing any scheme, work, operation or activity which appears to Scottish Water to be likely to affect adversely an area of land designated as a National Park under the National Parks (Scotland) Act 2000 (asp 10), Scottish Water must consult the National Park authority for the National Park.
- (6) Subsections (4) and (5) do not apply in relation to anything to be done by Scottish Water in an emergency but particulars of what is done and of the emergency must be notified by Scottish Water to SNH or, as the case may be, the National Park authority as soon as is practicable after the thing is done.

## 55 Consultation with Health Boards

- (1) Where it appears to Scottish Water that (whether or not as a result of any act or omission by it) services provided by it in the exercise of its core functions give rise to, or are likely to give rise to, a significant risk to public health in relation to the area of any Health Board, Scottish Water must—
  - (a) consult the Health Board, and
  - (b) exercise its core functions with a view to reducing or eliminating the risk to public health, having regard to any views expressed by the Health Board.
- (2) This section is without prejudice to section 11(6).

### *Miscellaneous*

VALID FROM 08/03/2002

## 56 Directions

- (1) The Scottish Ministers must give Scottish Water directions—
  - (a) as to the exercise of its powers under section 25 and schedule 3, and
  - (b) otherwise as to how its affairs are to be managed and conducted.
- (2) Directions under subsection (1) may be of a general or specific character and may, in particular, include provision—
  - (a) as to the nature and allocation of the responsibilities of the members and employees of Scottish Water,
  - (b) requiring Scottish Water to obtain the approval of, or to consult, the Scottish Ministers before exercising such of its powers, or exercising them in such ways, as the directions may specify,
  - (c) for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

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- (3) The Scottish Ministers may give Scottish Water other directions of a general or specific character as to the exercise of its functions.
- (4) Before giving any direction under this section, the Scottish Ministers must consult Scottish Water.
- (5) Scottish Water must comply with directions given under this Part.

#### Commencement Information

- II** S. 56 wholly in force at 1.4.2002; s. 56 not in force at Royal Assent see s. 72(1); s. 56 in force at 8.3.2002 for certain purposes by [S.S.I. 2002/118](#), [art. 2\(2\)](#), [Sch.](#); s. 56 in force at 1.4.2002 insofar as not already in force by [S.S.I. 2002/118](#), [art. 2\(3\)](#)

## 57 Information and reports

- (1) Scottish Water must provide the Scottish Ministers with such information relating to the exercise of its functions as they may require.
- (2) For that purpose Scottish Water must—
  - (a) permit any person authorised to do so by the Scottish Ministers to inspect and make copies of its accounts and other records, and
  - (b) provide that person with such explanations in relation to those accounts and records as the person or the Scottish Ministers may require.
- (3) Scottish Water must prepare—
  - (a) a report on its activities during the period from the beginning of each financial year to 30th September in that year, and
  - (b) a report on its activities during the whole of each financial year, as soon as practicable after the end of the period to which the report relates.
- (4) A report prepared under subsection (3)(a) must include a statement of accounts for the period to which the report relates; and subsection (2) of section 45 applies to such a statement of accounts as it applies to a statement of accounts prepared in accordance with that section.
- (5) A report prepared under subsection (3)(b) must include—
  - (a) a description of the manner in which Scottish Water has complied, during the period to which the report relates, with its duties under sections 26, 28, 50 and 51, and
  - (b) the reasons for any failure, during that period, to comply with its duties under sections 26 and 28.
- (6) Scottish Water must—
  - (a) send a copy of each report prepared under subsection (3) to the Scottish Ministers, the Commissioner and the Convener of the Water Customer Consultation Panels, and
  - (b) publish the report.
- (7) A report prepared under subsection (3) must set out any directions under section 56 which have been given to Scottish Water during the period to which the report relates.

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- (8) The Scottish Ministers must lay a copy of a report sent to them under subsection (6) before the Parliament.

## **58 Records**

- (1) This section applies to all records (in whatever form or medium)—
- (a) transferred to Scottish Water by virtue of this Act,
  - (b) created or acquired by it in the exercise of any of its functions, or
  - (c) otherwise in its keeping.
- (2) Scottish Water must, after consulting the Keeper of the Records of Scotland, make arrangements for the preservation and management of the records and must ensure that the records are preserved and managed in accordance with those arrangements.
- (3) Scottish Water may from time to time revise those arrangements but before making any material change must consult the Keeper.
- (4) Despite subsection (2), Scottish Water may dispose of records which in its opinion are not worthy of preservation.
- (5) Scottish Water—
- (a) must ensure that the Keeper has, at all reasonable hours, unrestricted access to the records preserved by it,
  - (b) may afford facilities for any person to inspect and, on payment of a reasonable fee, to obtain copies of or extracts from those records.
- (6) Nothing in subsection (5)(b) permits infringement of copyright or contravention of conditions subject to which records are in the keeping of Scottish Water.
- (7) If any enactment makes provision relating to records of a specific kind which is inconsistent with subsections (1) to (6), those subsections are subject to that enactment.

## **59 Validity of actings**

The validity of any actings of Scottish Water is not affected by any failure to comply with a duty imposed on it under or by virtue of this Part.

## **60 Private legislation**

- (1) Scottish Water may, if it thinks fit—
- (a) with the consent of the Scottish Ministers, promote private legislation in the Scottish Parliament,
  - (b) oppose private legislation in the Parliament of the United Kingdom or the Scottish Parliament.
- (2) An application for consent under subsection (1)(a) must be accompanied by a concise summary of the purposes of the proposed legislation.
- (3) Such consent must be withheld if the Scottish Ministers consider that the powers sought by the private legislation could be obtained by means of an order under the 1968 Act or, as the case may be, the 1980 Act.

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**61 Supply of goods and services to and by local authorities**

The Local Authorities (Goods and Services) Act 1970 (c.39) has effect as if Scottish Water were both a local authority and a public body for the purposes of that Act.

**62 Information from local authorities and assessors**

- (1) The Scottish Ministers may by regulations require a local authority or an assessor to provide Scottish Water with relevant information in such form as the regulations may specify.
- (2) For the purposes of subsection (1), information is relevant if—
  - (a) it is information falling within subsection (3), and
  - (b) its possession by Scottish Water would, in the opinion of the Scottish Ministers, be likely to assist Scottish Water to make a charges scheme or to collect, or arrange to have collected, such charges as may be fixed by a charges scheme made by it.
- (3) Information falls within this subsection if it is held—
  - (a) by the local authority in connection with their—
    - (i) setting, levying or collecting council tax or council water charges (within the meaning of Part II of the Local Government Finance Act 1992 (c.14)) or the non-domestic water rate or non-domestic sewerage rate (as defined in paragraphs (c) and (d) of section 99(2) of that Act before the repeal of those paragraphs by the 1994 Act), or
    - (ii) levying or collecting the non-domestic rate (as for the time being defined in section 37(1) of the Local Government (Scotland) Act 1975 (c.30), or
  - (b) as the case may be, by the assessor in connection with the assessor's functions under any enactment.
- (4) In this section—

“assessor” is to be construed in accordance with section 27 of the 1994 Act,  
“information” includes, in particular, a copy of the whole, or of any part of, a valuation roll or valuation list.

**PART 4**

MISCELLANEOUS AND GENERAL

VALID FROM 01/04/2002

*Miscellaneous*

**63 Register of trade effluents: confidential information**

After section 37B of the 1968 Act insert—

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### **“37C Exclusion from register of commercially confidential information**

- (1) Despite subsection (2) of section 37A of this Act, Scottish Water shall not enter in the register maintained under that section information relating to the affairs of any individual or business if—
  - (a) it determines, on the application of the person providing the information, that it is commercially confidential (as regards that or any other person), and
  - (b) the information is not information which is required to be entered in the register in pursuance of a direction under subsection (4) below.
- (2) If, on an application under subsection (1) above, Scottish Water fails to make a determination within the period of 21 days beginning with the date of the application, it shall be treated as having determined that the information is commercially confidential.
- (3) Where, on an application under subsection (1) above, Scottish Water determines that information is not commercially confidential, the information shall not be entered on the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned.
- (4) The Scottish Ministers may give Scottish Water directions as to specified information, or descriptions of information, which the public interest requires to be included in the register regardless of whether the information is commercially confidential.
- (5) Information excluded from the register by virtue of subsection (1) above shall be treated as ceasing to be commercially confidential for the purposes of this section on the expiry of the period of 4 years beginning with the date of the determination by virtue of which it was excluded unless Scottish Water determines, on the application of the person who provided the information, that it is still commercially confidential.
- (6) Subsection (2) above applies in relation to an application under subsection (5) above as it applies in relation to an application under subsection (1) above.
- (7) The Scottish Ministers may, by order made by statutory instrument, substitute (whether in all cases or in such descriptions of case as the order may specify) for the period for the time being specified in subsection (2) above such other period as they consider appropriate.
- (8) A statutory instrument containing an order under subsection (7) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (9) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any person, if its inclusion in the register would prejudice to an unreasonable degree the commercial interests of that person.”



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## 64 Works in connection with metering

After section 24A of the 1980 Act insert—

### “24B Works in connection with metering

- (1) This section applies where, in relation to any premises (“the premises concerned”), the conditions specified in subsection (2) are satisfied.
- (2) The conditions referred to in subsection (1) are that—
  - (a) Scottish Water is supplying or proposes to supply water to the premises,
  - (b) such supply is or is to be by meter, and
  - (c) there is a service pipe which is connected with a water main vested in Scottish Water and by which a supply of water is or could be provided to those premises.
- (3) Where this section applies, Scottish Water may serve a notice on the owner of the premises concerned requiring the execution, within such period of not less than 3 months as the notice shall specify, of such of the works mentioned in subsection (4) as the notice may specify.
- (4) The works referred to in subsection (3) are, in relation to the premises concerned—
  - (a) works consisting of the installation and connection of any meter for use in determining the quantity of water supplied to the premises,
  - (b) where a supply of water is or could be provided by the service pipe referred to in subsection (2)(c) to other premises as well as the premises concerned, works consisting of the installation, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for the premises concerned, but only to the extent that such a pipe will constitute a supply pipe and is not required to be laid in a road,
  - (c) works for the purpose of maintaining, repairing, disconnecting or removing—
    - (i) any meter which has been installed for use in determining the quantity of water supplied to the premises, or
    - (ii) any pipes or apparatus installed in the course of any works specified in this section, and
  - (d) any other works appearing to Scottish Water to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c), including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.
- (5) In the case of any of the works mentioned in paragraph (a) of subsection (4) and paragraph (c)(i) of that subsection so far as relating to maintenance and repair of a meter, Scottish Water may execute the works itself instead of requiring the owner, under subsection (3), to execute the works.
- (6) If an owner upon whom a notice has been served under subsection (3) fails to comply with it, Scottish Water may itself execute the works which the owner was required by the notice to execute.

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- (7) Where Scottish Water has served a notice under that subsection requiring the execution of the works mentioned in paragraph (b) of subsection (4), it shall, within 14 days after those works have been executed, lay so much of the separate service pipe referred to in that paragraph as will constitute a communication pipe or a supply pipe to be laid in a road and shall make all necessary connections.
- (8) Scottish Water may recover from the owner of the premises concerned any expenses reasonably incurred by it in executing any works under subsection (5), (6) or (7).
- (9) Subsection (8) is without prejudice to the rights and obligations, as between themselves, of the owner and occupier of the premises.”

## **65 Contravention of water byelaws: penalties and proceedings**

- (1) Section 72 (general provisions as to byelaws) of the 1980 Act is amended as follows.
- (2) In subsection (3) (maximum level of penalty), for “level 4” substitute “ level 5 ”.
- (3) After that subsection, insert—
  - “(3A) Subject to subsection (3B), proceedings for any offence against such byelaws may be commenced at any time—
    - (a) within 6 months after the date on which evidence sufficient in the opinion of the procurator fiscal to justify the proceedings came to the procurator fiscal’s knowledge, or
    - (b) where such evidence was reported to the procurator fiscal by Scottish Water, within 6 months after the date on which it came to Scottish Water’s knowledge.
  - (3B) No such proceedings shall be commenced more than 3 years after—
    - (a) the date of the commission of the offence, or
    - (b) in the case of a continuing offence, the last date on which the offence was committed.
  - (3C) Subsection (3) of section 136 (time limit for certain offences) of the Criminal Procedure (Scotland) Act 1995 (c.46) applies for the purposes of this section as it applies for the purposes of that section.
  - (3D) For the purposes of subsection (3A), a certificate signed by or on behalf of the procurator fiscal or, as the case may be, Scottish Water, and stating the date on which evidence such as is mentioned in that subsection came to the procurator fiscal’s or, as the case may be, Scottish Water’s knowledge shall be conclusive evidence of that fact.
  - (3E) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.”

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VALID FROM 08/03/2002

### General

#### 66 Offences by bodies corporate and partnerships

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager, secretary, member or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Act which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

#### 67 Crown application

- (1) This Act binds the Crown, but nothing in this section is to be taken as in any way affecting Her Majesty in her private capacity.
- (2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public authority or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- (4) The powers conferred by section 47 are exercisable in relation to land forming part of the Crown Estate only with the consent of the Crown Estate Commissioners.

#### 68 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power—
  - (a) to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) to make different provision for different purposes and different areas.
- (3) An order under section 24(3) or 69 may modify any enactment, instrument or document.

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- (4) A statutory instrument containing an order or regulations under this Act (except sections 41(5) and 72(1) and, where subsection (5) of this section applies, sections 24(3) and 69) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under section 24(3) or 69 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft has been laid before, and approved by resolution of, the Parliament.
- (6) No order is to be made under section 41(5) unless a draft has been laid before, and approved by resolution of, the Parliament.

## 69 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

## 70 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1968 Act” means the Sewerage (Scotland) Act 1968 (c.47),
  - “the 1980 Act” means the Water (Scotland) Act 1980 (c.45),
  - “the 1994 Act” means the Local Government etc. (Scotland) Act 1994 (c.39),
  - “charges scheme” has the meaning given by section 31(1),
  - “the Commissioner” means the Water Industry Commissioner for Scotland established by section 67A(1) of the 1994 Act and continued in existence by section 1(1) of this Act,
  - “financial year” means a period of 12 months ending with 31st March,
  - “local authority” means a council constituted under section 2 of the 1994 Act,
  - “new water and sewerage authorities” means the bodies established by section 62(1) of the 1994 Act and—
    - (a) a reference to a new water and sewerage authority is a reference to any of those bodies,
    - (b) “water area” and “sewerage area”, in relation to any such authority, are to be construed in accordance with that section,
  - “the Parliament” means the Scottish Parliament.
- (2) In this Act, references to core functions, in relation to Scottish Water, are to its functions under or by virtue of the 1968 Act, the 1980 Act, this Act and any other enactment, but excluding its functions under subsection (1) of section 25 of this Act and subsection (2) of that section so far as relating to subsection (1).

VALID FROM 01/04/2002

## 71 Modification of enactments

- (1) Schedules 5 and 6 make modifications of, respectively, the 1968 Act and the 1980 Act.

**Status:** Point in time view as at 01/03/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Water Industry (Scotland) Act 2002 is up to date with all changes known to be in force on or before 05 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) Schedule 7 makes modifications of other enactments.

## 72 Commencement and short title

- (1) The provisions of this Act, other than this section and sections 66 to 70, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Water Industry (Scotland) Act 2002.

### Subordinate Legislation Made

- P1** [S. 72\(1\)](#) power fully exercised: different dates appointed for specified provisions and purposes by [S.S.I. 2002/118](#), [art. 2](#), [Sch.](#) (with savings in [art. 3](#))

**Status:**

Point in time view as at 01/03/2002. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Water Industry (Scotland) Act 2002 is up to date with all changes known to be in force on or before 05 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.