

WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 - General

Section 35 – Crown application

132. This section makes provision for the application of the Act to Crown bodies. Part 1 will, in line with the Directive and subject to subsection (3), apply equally to bodies of water on Crown held land and activities carried on by Crown bodies as it applies to other bodies of water and activities by other persons. Subsection (2) ensures that the textual amendments made to the 1968 and 1980 Acts by Part 2 apply to the Crown to the same extent as those Acts. Subsection (3) makes it clear that subordinate legislation under the Act is not required to bind the Crown.
133. Subsection (4) provides that the Crown will not be criminally liable for any contravention of the Act's provisions but allows the Court of Session to declare any act of the Crown in contravention of the Act's provisions unlawful, upon application by the public body or office holder responsible for enforcing the provision in question.
134. Subsection (5) provides that any provision made by or under this Act applies to persons in the service of the Crown as it applies to other persons.

Section 36 – Orders and regulations

135. This section prescribes the procedure for the making of orders and regulations under the Act.
136. Subsection (2) as read with subsection (3) allows the Scottish Ministers, amongst other things, to make any changes to existing enactments or other documents (such as administrative guidance) that are necessary to bring them into line with the provisions of the Act or regulations made under the Act. Subsection (4) lists those orders and regulations made under specified provisions of the Act which are subject to negative procedure.
137. Regulations made under section 8, 19, 20, 22 or 23 can be subject to affirmative or negative procedure, at the choice of the Scottish Ministers (subsection (5)), although they must be made by affirmative procedure if they textually amend primary legislation (subsection (6)). Regulations made under section 19 are not subject to this proviso as there are no circumstances in which those regulations will textually amend other Acts. Subsection (6) also makes clear that orders under section 4 or 24, regulations under section 25 or orders under section 37 which make textual amendments will be subject to affirmative procedure. Regulations made under paragraph 20(4) of schedule 2 which concerns the up-rating of fines for offences committed, will be subject to negative procedure.

*These notes relate to the Water Environment and Water Services
(Scotland) Act 2003 (asp 3) which received Royal Assent on 5 March 2003*

Section 37 – Ancillary provision

138. This section enables the Scottish Ministers by order to make incidental, supplemental, consequential, transitional, transitory or saving provision, if appropriate.

Section 38 – Commencement and short title

139. This section provides that all of the provisions of the Act, except Part 3, shall come into force when Scottish Ministers by order appoint. Part 3 comes into force on Royal Assent. The section also provides for the short title of the Act.