Water Services etc. (Scotland) Act 2005

2005 asp 3

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 9th February 2005 and received Royal Assent on 17th March 2005

An Act of the Scottish Parliament to establish the Water Industry Commission for Scotland; to create offences in relation to the unauthorised use of the public water and sewerage systems; to provide for licensing the provision of certain water and sewerage services; to amend the system for fixing charges for services provided by Scottish Water; to make provision as to Scottish Water's functions; to make provision in relation to coal mine water pollution; and for connected purposes.

PART 1

WATER INDUSTRY COMMISSION AND CUSTOMER PANELS

1 Water Industry Commission for Scotland

(1) For section 1 (Water Industry Commissioner for Scotland) of the 2002 Act there is substituted—

"**1 Water Industry Commission for Scotland**

(1) There is established a body to be known as the Water Industry Commission for Scotland (referred to in this Act as "the Commission").

(2) The Commission has the general function of promoting the interests of persons (taken as a whole) whose premises—

(a) are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both, or

(b) might reasonably become connected to either or both of those systems,

relating to the provision to them of water and sewerage services.

(3) The Scottish Ministers may, after consulting the Commission, give the Commission directions of a general or specific character as to the financial management or administration of the Commission; and the Commission must comply with any such directions.

(4) Schedule A1 makes further provision about the Commission.”.

(2) In section 4 (power of the Commissioner to require information) of that Act, for subsection (2) there is substituted—

“(2) Subsection (1) does not authorise the Commission 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.

(3) Where Scottish Water considers that it is entitled to withhold information from the Commission—

(a) because it is not reasonably sought, or

(b) by virtue of subsection (2),

it must intimate that fact to the Commission in writing.”.

(3) In section 5 (annual reports by the Commissioner etc.) of that Act, at the end there is added—

“(4) The Scottish Ministers must lay before the Parliament a copy of each report submitted to them under subsection (1)(a).”.

(4) Schedule 1 inserts schedule A1 into that Act.

Commencement Information

I1 S. 1 in force at 1.7.2005 in so far as not already in force by S.S.I. 2005/351, art. 2, **Sch. 2**

I2 S. 1(1) in force at 20.6.2005 for specified purposes by S.S.I. 2005/351, art. 2, **Sch. 1**

I3 S. 1(4) in force at 20.6.2005 for specified purposes by S.S.I. 2005/351, art. 2, **Sch. 1**

2 Dissolution of office of Commissioner

The office of Water Industry Commissioner for Scotland is dissolved on such date as the Scottish Ministers may by order appoint.

Commencement Information

I4 S. 2 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

[F1]3 Customer Panels

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Textual Amendments

F1 S. 3 repealed (15.8.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7)(8), **Sch. 2 para. 21**; S.S.I. 2011/278, art. 2(d)

Commencement Information

I5 S. 3 in force at 1.4.2006 by S.S.I. 2006/167, art. 2, **Sch. 1**

PART 2

PROVISION OF WATER AND SEWERAGE SERVICES

Offences

4 Public water supply system: offences

(1) Any person who introduces water into the public water supply system is guilty of an offence.

(2) Any person who uses the public water supply system for the purposes of supplying water to the premises of another person is guilty of an offence.

(3) Any person who makes arrangements for or in relation to the supply of water to the premises of another person through the public water supply system is guilty of an offence.

(4) Subsections (1) to (3) do not apply to—
- (a) Scottish Water; or
- (b) another person if (and to the extent that) the person is acting on behalf of Scottish Water or under its authority.

(5) Subsections (2) and (3) do not apply to a person if (and to the extent that) the person is supplying water with the help of services provided by Scottish Water as described in section 30 of the 2002 Act.

(6) Subsection (3) does not apply to a water services provider where the provider is acting as authorised by the water services licence held by the provider.

(7) The Scottish Ministers may by regulations—
- (a) specify other circumstances in which subsection (1), (2) or (3) does not apply; or
- (b) specify that subsection (1), (2) or (3) does not apply—
  - (i) to such other person or to such category of person; and
  - (ii) to such extent and subject to such conditions,

  as may be specified in the regulations.

(8) The Scottish Ministers are to consult—
- (a) Scottish Water;
- (b) the Commission; and
- (c) such other persons as they consider appropriate,

on any regulations they propose to make under subsection (7).

(9) It is competent to make regulations under subsection (7) only if the effect of the regulations would not be prejudicial to the exercise of Scottish Water's core functions as respects the supply of water.

(10) A person who is guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding £20,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(11) A person who is guilty of an offence under subsection (2) or (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(12) Any contract or other agreement which involves a contravention of subsection (1), (2) or (3) is unenforceable.

Commencement Information

I6 S. 4(1)-(5)(7)-(12) in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

I7 S. 4(6) in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

5 Public sewerage system: offences

(1) Any person who draws sewage from the public sewerage system is guilty of an offence.

(2) Any person who uses the public sewerage system for the disposal of sewage from the premises of another person is guilty of an offence.

(3) Any person who makes arrangements for or in relation to the provision of sewerage to, or disposal of sewage from, the premises of another person through the public sewerage system is guilty of an offence.

(4) Subsections (1) to (3) do not apply to—
- (a) Scottish Water; or
- (b) another person if (and to the extent that) the person is acting on behalf of Scottish Water or under its authority.

(5) Subsections (2) and (3) do not apply to a person if (and to the extent that) the person is providing sewerage, or disposing of sewage, with the help of services provided by Scottish Water as described in section 30 of the 2002 Act.

(6) Subsection (3) does not apply to a sewerage services provider where the provider is acting as authorised by the sewerage services licence held by the provider.

(7) The Scottish Ministers may by regulations—
- (a) specify other circumstances in which subsection (1), (2) or (3) does not apply; or
- (b) specify that subsection (1), (2) or (3) does not apply—
  - (i) to such other person or to such category of person; and
  - (ii) to such extent and subject to such conditions,

  as may be specified in the regulations.

(8) The Scottish Ministers are to consult—
- (a) Scottish Water;
- (b) the Commission; and
- (c) such other persons as they consider appropriate,

on any regulations they propose to make under subsection (7).

(9) It is competent to make regulations under subsection (7) only if the effect of the regulations would not be prejudicial to the exercise of Scottish Water's core functions as respects the provision of sewerage and disposal of sewage.

(10) A person who is guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding £20,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(11) A person who is guilty of an offence under subsection (2) or (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(12) Any contract or other agreement which involves a contravention of subsection (1), (2) or (3) is unenforceable.

(13) In this Part, "sewage" is to be construed in accordance with section 59(1) (interpretation) of the 1968 Act.

Commencement Information

I8 S. 5(1)-(5)(7)-(13) in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

I9 S. 5(6) in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Licensing of services to eligible premises

6 Licence authorisation

(1) The Commission may, subject to section 7 and paragraphs 1 and 2 of schedule 2, grant a licence authorising a person—
- (a) to—
  - (i) make arrangements with the occupier of any eligible premises for or in relation to the supply of water to the premises through the public water supply system; and
  - (ii) fix, demand and recover charges for or in relation to the supply of water to any premises in respect of which the person has made such arrangements; and
- (b) to make such arrangements with Scottish Water and such other persons as are necessary for the purposes of or in connection with the things mentioned in paragraph (a).

(2) A licence granted under subsection (1) is in this Act referred to as a "water services licence"; and a person who holds a water services licence is in this Act referred to as a "water services provider".

(3) The Commission may, subject to section 7 and paragraphs 1 and 2 of schedule 2, grant a licence authorising a person—
- (a) to—
  - (i) make arrangements with the occupier of any eligible premises for or in relation to the provision of sewerage to, or the disposal of sewage from, the premises through the public sewerage system; and
  - (ii) fix, demand and recover charges for or in relation to the provision of sewerage to, and disposal of sewage from, any premises in respect of which the person has made such arrangements; and

(b) to make such arrangements with Scottish Water and such other persons as are necessary for the purposes of or in connection with the things mentioned in paragraph (a).

(4) A licence granted under subsection (3) is in this Act referred to as a "sewerage services licence"; and a person who holds a sewerage services licence is in this Act referred to as a "sewerage services provider".

(5) The references in subsections (1) and (3) to the occupier of premises are, if the premises are unoccupied, to be construed as references to the owner of the premises.

Commencement Information

I10 S. 6 in force at 7.9.2006 for specified purposes by S.S.I. 2006/445, art. 2, **Sch.**

I11 S. 6 in force at 8.1.2007 in so far as not already in force by S.S.I. 2006/599, art. 2, **Sch.**

7 Granting of licences

(1) The Commission may grant a water services licence or a sewerage services licence only if satisfied that the applicant has the ability to perform adequately the activities authorised by the licence.

(2) In assessing an applicant's ability so to perform those activities, the Commission is to have special regard to the following factors (in so far as relevant in relation to the performance of those activities)—

(a) knowledge, expertise and experience; and

(b) financial acumen and business viability,

and such other matters as the Scottish Ministers may by order specify.

(3) The Commission may issue guidance (either generally or in a particular case or category of case) in relation to the things mentioned in subsection (2).

(4) A water services licence and a sewerage services licence—

(a) must be in writing; and

(b) unless revoked or suspended, continues in force for such period as may be specified in or determined by or under the licence.

(5) As soon as practicable after refusing an application for a water services licence or a sewerage services licence, the Commission is to intimate the refusal to—

(a) the applicant; and

(b) Scottish Water.

(6) As soon as practicable after granting a water services licence or a sewerage services licence, the Commission is to send a copy of the licence to—

(a) the person to whom it is granted; and

(b) Scottish Water.

Commencement Information

I12 S. 7 in force at 7.9.2006 for specified purposes by S.S.I. 2006/445, art. 2, **Sch.**

I13 S. 7 in force at 8.1.2007 in so far as not already in force by S.S.I. 2006/599, art. 2, **Sch.**

8 Compliance with licences

(1) The Commission is to—

(a) monitor compliance with the terms and conditions of water services licences and sewerage services licences; and

(b) take such steps as it considers are necessary for the purposes of ensuring that the terms and conditions of such licences are complied with.

(2) The Commission may give directions to any water services provider or sewerage services provider for the purpose of ensuring that the provider complies with the terms and conditions of the provider's licence; and the provider must comply with any such directions.

(3) The Commission may issue guidance (either generally or in a particular case or category of case) in relation to compliance with the terms and conditions of water services licences and sewerage services licences.

(4) Scottish Water must report to the Commission any contravention of a term or condition of a water services licence or a sewerage services licence which appears to it to have occurred or be occurring.

Commencement Information

I14 S. 8 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

9 Fees relating to licences

(1) The Commission may, for the purpose mentioned in subsection (2), make a scheme (a "fees scheme") which specifies—

(a) the matters relating to water services and sewerage services licences in respect of which fees are payable; and

(b) the amounts of fees payable (and, as appropriate, the persons by whom they are payable) in respect of each of those matters.

(2) The purpose is securing that the fees payable in accordance with the scheme are sufficient to meet the costs incurred by the Commission in exercising its functions relating to water services and sewerage services licences.

(3) A fees scheme may, in particular—

(a) impose on licence-holders fees by way of annual levies; and

(b) specify fees by reference to maximum amounts.

(4) A fees scheme may make provision with respect to the times and methods of payment of the fees specified by the scheme.

(5) A fees scheme may—

(a) make different provision for different cases or types of case;

(b) revoke or amend a previous scheme.

(6) The Commission must—

(a) send any fees scheme to the Scottish Ministers for approval; and

(b) publish a summary of the scheme (and, in doing so, invite representations for the purposes of subsection (7)).

(7) The Scottish Ministers—

(a) must have regard to any representations about a fees scheme which are made to them within 4 weeks of publication of the summary of it under subsection (6)(b); and

(b) may approve a fees scheme with or without modifications.

(8) If the Scottish Ministers approve a fees scheme with modifications, they must give their reasons for doing so.

(9) When a fees scheme has been approved under subsection (7), the Commission—

(a) must—

(i) make arrangements for allowing any person to obtain a copy of the scheme on payment of such reasonable fee (if any) as the Commission may determine; and

(ii) publicise those arrangements and publish the scheme; and

(b) may charge and recover fees in accordance with the scheme.

Commencement Information

I15 S. 9 in force at 20.6.2005 for specified purposes by S.S.I. 2005/351, art. 2, **Sch. 1**

I16 S. 9 in force at 8.1.2007 in so far as not already in force by S.S.I. 2006/599, art. 2, **Sch.**

10 Licensed providers to give information

(1) Water services providers and sewerage services providers must provide the Commission with such information (including information in the form of a document) as it reasonably requires in the exercise of its functions.

(2) Subsection (1) does not authorise the Commission to require the disclosure of anything that a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(3) Any person who fails, without reasonable excuse, to provide information required by the Commission under subsection (1) is guilty of an offence.

(4) A person who is guilty of an offence under subsection (3) is liable—

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

(b) on indictment, to a fine.

Commencement Information

I17 S. 10 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

11 Participation of licensed providers

(1) The Commission is (so far as is consistent with the exercise of its function under section 1(2) of the 2002 Act) to exercise its functions relating to water services and sewerage services licences for the purposes of securing the participation—

(a) in an orderly manner; and

(b) in a manner that is not detrimental to the exercise of Scottish Water's core functions,

of water services and sewerage services providers in the provision of water and sewerage services.

(2) The Commission may give directions of a specific or general character to—

(a) Scottish Water; or

(b) any—

(i) water services or sewerage services provider; or

(ii) person in whose favour it intends to grant a water services or sewerage services licence,

as to steps to be taken for the purposes mentioned in subsection (1).

(3) Directions under subsection (2) may, in particular, relate to—

(a) any costs attributable to the participation of water services and sewerage services providers in the provision of water and sewerage services; and

(b) the provision or exchange of information about customers of water services or sewerage services providers.

(4) Before giving directions under subsection (2), the Commission must consult any person to whom the directions are to be given.

(5) Any person to whom directions are given under subsection (2) must comply with the directions.

Commencement Information

I18 S. 11 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

[F2 11A Complaints about licensed providers

(1) Subsections (2) to (4) apply where a water services provider or, as the case may be, a sewerage services provider (" the provider ") has requested (in writing) that the Scottish Public Services Ombudsman ("the Ombudsman") investigate complaints made about the provider by occupiers of premises served by the provider.

(2) Subject to subsection (4), the Scottish Public Services Ombudsman Act 2002 applies to such complaints as it applies to complaints made under that Act about a listed authority.

(3) For the purposes of subsection (2), the provider is to be treated as a listed authority and the complainer as the person aggrieved.

(4) Paragraph 7 of schedule 4 to the Scottish Public Services Ombudsman Act 2002 (Ombudsman not to investigate contractual or commercial transactions relating to a listed authority) does not apply.

(5) Subsections (6) to (9) apply where—

(a) the provider has—

(i) requested (in writing) that the Ombudsman may not investigate any new complaints relating to the provider,

(ii) sent a copy of that request to the Commission, and

(b) the Commission has agreed to that request and notified the Ombudsman accordingly.

(6) The Ombudsman may not investigate any new complaints relating to the provider from the date that the Ombudsman receives notification under subsection (5)(b).

(7) The Ombudsman is to continue investigating any undetermined complaints about the provider which have been made to the Ombudsman prior to the Ombudsman's receipt of notification under subsection (5)(b).

(8) For the purpose of enabling an undetermined complaint to continue to be dealt with, subsections (2) and (3) continue to apply and have effect as they applied and had effect immediately before the Ombudsman received notification under subsection (5)(b).

(9) For the purpose of subsection (7), a complaint is determined by the Ombudsman if the Ombudsman—

(a) has decided to conduct an investigation in relation to the complaint and that investigation is concluded, or

(b) has decided not to conduct an investigation in relation to the complaint.**]**

Textual Amendments

F2 S. 11A inserted (15.8.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), **ss. 131**, 134(7), 134(8); S.S.I. 2011/278, art. 2(c)

12 Licences and compliance: further provision

Schedule 2 makes further provision regarding licences and compliance with licences.

Commencement Information

I19 S. 12 in force at 7.9.2006 for specified purposes by S.S.I. 2006/445, art. 2, **Sch.**

I20 S. 12 in force at 8.1.2007 in so far as not already in force by S.S.I. 2006/599, art. 2, **Sch.**

Scottish Water: water and sewerage services undertaking

13 Water and sewerage services undertaking

(1) Scottish Water must, in accordance with any requirements made under subsection (2), secure the establishment of a business undertaking for the purposes of this section.

(2) The Scottish Ministers may require Scottish Water to—

(a) take such steps for the purposes of or in connection with—

(i) the establishment and development of the undertaking; and

(ii) Scottish Water's interest in the undertaking,

as the Scottish Ministers may specify; and

(b) take the steps, or any particular steps, by such date as they may specify.

(3) It is, subject to the approval of the Scottish Ministers, for Scottish Water to determine whether the undertaking is—

(a) to be—

(i) a subsidiary ([F3as defined in section 1159 of the Companies Act 2006]) of Scottish Water;

(ii) a company ([F4as defined in section 1(1) of that Act]) formed by Scottish Water (on its own or with others); or

(iii) a partnership; or

(b) to be established through such other arrangements as Scottish Water considers it appropriate to make.

(4) The functions of the undertaking are—

(a) to become a water services provider and a sewerage services provider; and

(b) thereafter, to perform the activities authorised by the water services and sewerage services licences held by it.

(5) Accordingly, the undertaking must (as soon as reasonably practicable after it is established) apply for a water services licence and a sewerage services licence.

(6) The Scottish Ministers may by order provide that paragraphs 1 and 2 of schedule 2 have effect—

(a) as regards an initial application by the undertaking for a licence; and

(b) following such an application, as regards the granting of the licence and the incorporation in it of conditions,

with or subject to such modifications as the order may specify.

(7) The undertaking may engage in any activity which it considers is not inconsistent with the performance of the activities authorised by the water services and sewerage services licences held by it.

(8) After the undertaking is established, Scottish Water must not treat it any more or less favourably than it treats—

(a) in relation to services as respects the supply of water, other water services providers; and

(b) in relation to services as respects the provision of sewerage and the disposal of sewage, other sewerage services providers.

(9) Any reference in any enactment to Scottish Water is to be construed as not including the undertaking.

Textual Amendments

F3 Words in s. 13(3)(a)(i) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 248(a)** (with art. 10)

F4 Words in s. 13(3)(a)(ii) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 248(b)** (with art. 10)

Commencement Information

I21 S. 13 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

14 Financing, borrowing and guarantees

(1) In such circumstances as the Scottish Ministers may by order specify, the Scottish Ministers may, with the consent of Scottish Water, make grants to the business undertaking established under section 13(1) of such amounts as the Scottish Ministers may determine.

(2) In such circumstances as the Scottish Ministers may by order specify, the undertaking—

(a) may, with the consent of Scottish Water, borrow from the Scottish Ministers (and they may lend to it) sums of such amounts as the Scottish Ministers may determine;

(b) may not, except as described in subsection (4)(b), borrow money from any other person apart from Scottish Water.

(3) In any financial year, the net amount of sums borrowed under subsection (2)(a) must not exceed the amount specified for that year for the purposes of this subsection in a Budget Act.

(4) In subsection (3), "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 Scottish Water, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

(5) Any loans made under subsection (2)(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 specify.

(6) In such circumstances as the Scottish Ministers may by order specify, the Scottish Ministers may guarantee, in such manner as they consider appropriate, the discharge of any financial obligation in connection with any sums borrowed as described in subsection (4)(b).

(7) Immediately after a guarantee is given under subsection (6), the Scottish Ministers must lay a statement of the guarantee before the Parliament.

(8) Where any sums are paid out in fulfilment of a guarantee under subsection (6), the undertaking must make to the Scottish Ministers, at such times and in such manner as they may from time to time specify—

(a) payments of such amounts as they may so specify in or towards repayment of those sums; and

(b) payments of interest, at such rate as they may so specify, on the amount outstanding for the time being in respect of those sums.

(9) In such circumstances as the Scottish Ministers may by order specify, the Scottish Ministers may, with the consent of Scottish Water, subscribe for share or loan capital of the undertaking.

(10) Any—

(a) grants under subsection (1) may be made;

(b) loans under subsection (2)(a) may be made;

(c) guarantees under subsection (6) may be given; and

(d) subscriptions for share or loan capital under subsection (9) may be made,

subject to such conditions as the Scottish Ministers consider it appropriate to impose.

Commencement Information

I22 S. 14 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

15 Transfer of staff etc. to the undertaking

(1) Scottish Water must, following a requirement made by the Scottish Ministers to do so, transfer such of its staff to the employment of the business undertaking established under section 13(1) as are necessary for the purposes of or in connection with the matters mentioned in subsection (8).

(2) The contract of employment of a person transferred by virtue of subsection (1)—

(a) is not terminated by the transfer; and

(b) has effect from the date of transfer as if originally made between the person and the undertaking.

(3) Without prejudice to subsection (2), where a person is transferred to the employment of the undertaking by virtue of subsection (1)—

(a) all the rights, powers, duties and liabilities of Scottish Water under or in connection with the person's contract of employment are transferred to the undertaking on the date of transfer; and

(b) anything done before that date by or in relation to Scottish Water in respect of the person or that contract is to be treated from that date as having been done by or in relation to the undertaking.

(4) Subsections (1) to (3) do not affect any right of any person to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those subsections.

(5) Scottish Water must, following a requirement made by the Scottish Ministers to do so, transfer such of its property (including rights) and liabilities to the undertaking as are necessary for the purposes of or in connection with the matters mentioned in subsection (8).

(6) A transfer by virtue of subsection (5) may be—

(a) to such extent; and

(b) subject to such conditions,

as Scottish Water may, with the consent of the Scottish Ministers, determine.

(7) A transfer by virtue of subsection (5)—

(a) has effect in relation to any property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or prohibit the transfer of the property or liabilities; and

(b) has the effect of vesting in the undertaking any property or liabilities to which it applies.

(8) For the purpose of subsections (1) and (5), those matters are—

(a) applications by the undertaking for water services and sewerage services licences; and

(b) the performance by the undertaking of its activities.

Commencement Information

I23 S. 15 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Scottish Water: services via licensed providers

16 Scottish Water to provide services

(1) Where a water services provider has made arrangements with the occupier of eligible premises for the supply of water to the premises, the provider may request Scottish Water to supply (or continue to supply) water through the public water supply system to the premises.

(2) Scottish Water must, so far as is consistent with the exercise of its core functions as respects the supply of water, supply water as so requested subject to agreement between Scottish Water and the provider as to the terms and conditions that are to apply in relation to that supply.

(3) A duty to supply water under subsection (2)—

(a) ceases if—

(i) the arrangements mentioned in subsection (1) have come to an end (unless the duty is continued under section 17(1)); or

(ii) the supply is discontinued under section 18; and

(b) may be superseded by a new duty under subsection (2).

(4) Where a sewerage services provider has made arrangements with the occupier of eligible premises for the provision of sewerage to, or disposal of sewage from, the premises, the provider may request Scottish Water to provide (or continue to provide) sewerage to, or dispose of (or continue to dispose of) sewage from, the premises through the public sewerage system.

(5) Scottish Water must, so far as is consistent with the exercise of its core functions as respects the provision of sewerage and disposal of sewage, provide sewerage and dispose of sewage as so requested subject to agreement between Scottish Water and the provider as to the terms and conditions that are to apply in relation to that provision or disposal.

(6) A duty to provide sewerage or dispose of sewage under subsection (5)—

(a) ceases if the provision or (as the case may be) disposal is discontinued under section 20; and

(b) may be superseded by a new duty under subsection (5).

(7) Where no agreement as is mentioned in subsection (2) or (5) is reached, the Commission, on the application of the provider in question, may determine the terms and conditions that are to apply in relation to the supply or (as the case may be) provision or disposal; and those terms and conditions have effect as if agreed between the provider and Scottish Water.

Commencement Information

I24 S. 16 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

17 Continuation of water services

(1) Where—

(a) water is supplied to premises by Scottish Water under subsection (2) of section 16; and

(b) the arrangements for the supply of water (made between the occupier of the premises and the water services provider who made the related request under subsection (1) of that section in respect of the premises) have come to an end—

(i) by reason of the revocation or suspension of the licence held by the provider; or

(ii) for any other reason (except where the supply is discontinued under section 18),

the duty of Scottish Water under subsection (2) of section 16 to supply water to the premises continues for the period mentioned in subsection (2).

(2) The period is 2 months, or such longer period as Scottish Water agrees to, from the date on which the arrangements mentioned in subsection (1)(b) came to an end.

(3) But the continuation under subsection (1) of a duty to supply water ceases if—

(a) it is superseded by a new duty under subsection (2) of section 16; or

(b) the occupier of the premises notifies Scottish Water that the supply of water is not required.

(4) In section 9 (supply of water for non-domestic purposes) of the 1980 Act, after subsection (2), there is inserted—

"(2A) Where a supply of water has been made to premises under subsection (2) of section 16 of the Water Services etc. (Scotland) Act 2005 (asp 3) but—

(a) the arrangements for the supply (made between the occupier of the premises and the water services provider who made the related request under subsection (1) of that section in respect of the premises) are at an end, or are to come to an end, in consequence of non-payment of charges owed to the provider in relation to the water supplied; or

(b) the supply is discontinued (or is to be discontinued) under section 18(5) of that Act,

Scottish Water shall not be required to give a supply of water to the premises in accordance with subsection (1) if it is of the opinion that there is no reasonable prospect of recovering the charges (or any significant proportion of the charges) which it would be entitled to recover in relation to that supply of water were it given.

(2B) Where Scottish Water decides, by virtue of subsection (2A), not to give a supply of water to premises, the occupier of the premises may by notice require the Water Industry Commission for Scotland to review that decision.

(2C) In a review under subsection (2B), the Commission may, having regard to any representations made to it by the parties—

(a) confirm the decision of Scottish Water; or

(b) direct Scottish Water to give a supply of water to the premises in accordance with subsection (1),

and the determination of the Commission in the review shall be final.”.

Commencement Information

I25 S. 17 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

18 Discontinuation of water services

(1) A water services provider may request Scottish Water to discontinue a supply of water to premises made under subsection (2) of section 16.

(2) At least 14 days before making a request under subsection (1), the provider must serve a notice of the provider's intention to make such a request on—

(a) the occupier of the premises;

(b) Scottish Water; and

(c) the Commission.

(3) The notice must be in such form and contain such particulars as the Scottish Ministers may by order prescribe.

(4) An occupier of premises who has been served with a notice under subsection (2) may, within 10 days of the date of service of the notice, make representations to the provider about the notice; and the provider must have regard to any representations so made.

(5) Where a request is made under subsection (1), Scottish Water is to discontinue the supply of water made under section 16(2) to the premises if the conditions mentioned in subsection (6) are satisfied.

(6) The conditions are that—

(a) the provisions of the code made under section 19 are complied with; and

(b) any supply of water to—

(i) the premises for domestic purposes; or

(ii) any other premises for any purpose,

is not adversely affected by the discontinuation.

(7) In subsection (6)(b)(i), what is a supply of water for domestic purposes is to be construed in accordance with section 7 (supply of water for domestic purposes) of the 1980 Act.

(8) Any reasonable costs incurred by Scottish Water in effecting a discontinuation under this section are to be met by the water services provider who made the request under subsection (1) for the discontinuation.

(9) If there is a dispute between a water services provider and Scottish Water as to reasonable costs incurred in effecting a discontinuation under this section, Scottish Water is to refer the matter to the Commission for determination; and the determination of the Commission in the matter is final.

Commencement Information

I26 S. 18 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

19 Disconnections code

(1) For the purposes of subsection (6)(a) of section 18, the Commission must make a code (a "disconnections code") which contains further provision about discontinuations of supplies of water to premises under that section.

(2) In particular, a disconnections code may specify—

(a) circumstances in which requests under subsection (1) of section 18 may (or may not) be made; and

(b) conditions (in addition to the condition mentioned in subsection (6)(b) of that section) which are to be satisfied before Scottish Water is required under subsection (5) of that section to discontinue a supply of water to premises.

(3) A disconnections code may—

(a) make different provision for different cases or types of case;

(b) revoke or amend a previous code.

(4) In making a disconnections code, the Commission must consult—

(a) Scottish Water;

(b) every water services provider and sewerage services provider;

[[F5](c) the National Consumer Council;]

(d) the Drinking Water Quality Regulator for Scotland; and

(e) such other persons as the Commission considers appropriate.

(5) When a disconnections code is made, the Commission must—

(a) make arrangements for allowing any person to obtain a copy of the code on payment of such reasonable fee (if any) as the Commission may determine; and

(b) publicise those arrangements and publish the code.

Textual Amendments

F5 S. 19(4)(c) substituted (15.8.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7)(8), **Sch. 2 para. 14**; S.S.I. 2011/278, art. 2(d)

Commencement Information

I27 S. 19 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

20 Continuation and discontinuation of sewerage services

(1) Where sewerage is provided to, or sewage is disposed of from, premises by Scottish Water under subsection (5) of section 16, Scottish Water is to continue providing sewerage to, or (as the case may be) disposing of sewage from, the premises even if the arrangements for that provision or disposal (made between the occupier of the premises and the sewerage services provider who made the related request under subsection (4) of that section in respect of the premises) have come to an end.

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

(2) Subsection (1) does not apply in relation to any trade effluent services.

(3) Where—

(a) trade effluent services are provided to premises by Scottish Water under subsection (5) of section 16; and

(b) the arrangements for the provision of the services (made between the occupier of the premises and the sewerage services provider who made the related request under subsection (4) of that section in respect of the premises) have come to an end—

(i) by reason of the revocation or suspension of the licence held by the provider; or

(ii) for any other reason (except where the services are discontinued under subsection (10)),

the duty of Scottish Water under subsection (5) of section 16 to provide trade effluent services to the premises continues for the period mentioned in subsection (4).

(4) The period is 2 months, or such shorter period as Scottish Water with the Commission's consent determines, from the date on which the arrangements mentioned in subsection (3)(b) came to an end.

(5) But the continuation under subsection (3) of a duty to provide trade effluent services ceases if—

(a) it is superseded by a new duty under subsection (5) of section 16; or

(b) the occupier of the premises notifies Scottish Water that the trade effluent services are not required.

(6) A sewerage services provider may request Scottish Water to discontinue any trade effluent services provided to premises under subsection (5) of section 16.

(7) At least 14 days before making a request under subsection (6), the provider must serve a notice of the provider's intention to make such a request on—

(a) the occupier of the premises;

(b) Scottish Water; and

(c) the Commission.

(8) The notice must be in such form and contain such particulars as the Scottish Ministers may by order prescribe.

(9) An occupier of premises who has been served with a notice under subsection (7) may, within 10 days of the date of service of the notice, make representations to the provider about the notice; and the provider must have regard to any representations so made.

(10) Where a request is made under subsection (6), Scottish Water is to discontinue the trade effluent services provided under section 16(5) to the premises if the conditions mentioned in subsection (11) are satisfied.

(11) The conditions are that—

(a) any provision of sewerage to, or disposal of sewage from—

(i) the premises for a purpose otherwise than in respect of trade effluent; or

(ii) any other premises for any purpose,

is not adversely affected by the discontinuation; and

(b) there is no likely risk to public health arising in consequence of the discontinuation.

(12) Any reasonable costs incurred by Scottish Water in effecting a discontinuation under this section are to be met by the sewerage services provider who made the request under subsection (6) for the discontinuation.

(13) If there is a dispute between a sewerage services provider and Scottish Water as to reasonable costs incurred in effecting a discontinuation under this section, Scottish Water is to refer the matter to the Commission for determination; and the determination of the Commission in the matter is final.

(14) This section is without prejudice to any provision in Part II of the 1968 Act relating to trade effluent services.

(15) In this section, "trade effluent services" means the provision of sewerage, or disposal of sewage, in respect of trade effluent.

(16) In subsection (15), "trade effluent" is to be construed in accordance with section 59(1) (interpretation) of the 1968 Act.

Commencement Information
I28 S. 20 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Scottish Water: charges and functions

21 Scottish Water's charges for water and sewerage services

(1) For section 29 (charges for goods and services) of the 2002 Act there is substituted—

"**29 Charges for goods and services**

(1) Scottish Water may—
(a) demand and recover charges for any services provided by it in the exercise of its core functions, and
(b) fix, demand and recover charges for any goods supplied or services provided in exercise of its other functions.

(2) Scottish Water is to exercise the power conferred by subsection (1)(a) in accordance with—
(a) a charges scheme, or
(b) a departure from a charges scheme for which consent has been given under section 29E.

(3) The power conferred by subsection (1)(b) is exercisable by or in accordance with an agreement with the person to be charged.

(4) Subsections (1) to (3) are subject to sections 9A and 47 of the 1980 Act (which provide for no charge for water in certain circumstances).

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

29A Charges schemes

(1) Scottish Water must make a scheme (referred to in this Act as a "charges scheme") which fixes the charges to be paid for services provided by Scottish Water in the exercise of its core functions.

(2) A charges scheme must be made by reference to a determination made under section 29B.

(3) In particular, the scheme must not fix in any case a charge exceeding any maximum charge applying to the case by virtue of the determination.

(4) A charges scheme may make provision with respect to the times and methods of payment of the charges fixed by the scheme.

(5) The Scottish Ministers and the Commission must provide Scottish Water with such information as it reasonably requires for the purposes of making a charges scheme.

(6) Scottish Water must send a charges scheme to the Commission for approval by such date as the Scottish Ministers may direct.

(7) The Commission may approve a charges scheme with or without modifications.

(8) If the Commission approves a charges scheme with modifications, it must give its reasons for doing so.

(9) When a charges scheme is approved by the Commission, Scottish Water must—

(a) make arrangements for allowing any person to—

(i) inspect the scheme at any reasonable time,

(ii) obtain a copy of the scheme or 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.

(10) Following approval of a charges scheme by the Commission, the scheme comes into effect on such date as is specified in the scheme.

29B Determination of maximum charges

(1) The Commission must—

(a) determine in writing maximum amounts of charges by reference to which a charges scheme is to be made, and

(b) send the determination to Scottish Water by such time as the Scottish Ministers may specify.

(2) Maximum amounts determined under subsection (1)(a) apply in relation to such period as the Scottish Ministers may specify.

(3) A determination made under subsection (1)(a) may make different provision for different cases or categories of case.

(4) Before making a determination under subsection (1)(a), the Commission—

(a) must send a draft determination to—
(i) the Scottish Ministers,
(ii) Scottish Water, and
(iii) the Convener of the Water Customer Consultation Panels (representing the Panels as a whole),

(b) must—
(i) publish the draft determination, and
(ii) invite (by way of advertisement or otherwise) representations as regards the draft determination by such time as the Commission may specify, and

(c) must have regard to any representations made to the Commission by virtue of paragraph (a) or (b).

(5) The Scottish Ministers and Scottish Water must provide the Commission with such information as it reasonably requires for the purposes of making a determination under subsection (1)(a).

29C Exercise of functions regarding charges

(1) Scottish Water must exercise its functions under sections 29A and 29F for the purposes of ensuring that subsections (4) and (5) are complied with.

(2) The Commission must—
(a) exercise its functions under sections 29A, 29B and 29F for the purposes of ensuring that subsections (4) and (5) are complied with,
(b) exercise its functions under section 29E for the purposes of ensuring that subsection (5) is complied with, and
(c) in exercising its functions under those sections, have regard to—
(i) any guidance issued to Scottish Water by the Scottish Ministers, and
(ii) any directions given to Scottish Water under section 44 or 56,
so far as relevant in relation to charges schemes.

(3) The Scottish Ministers must—
(a) provide the Commission with such information as it may require for the purpose of subsection (2)(c); and
(b) in particular, send to the Commission copies of any guidance and directions referred to in that subsection when issued or given.

(4) This subsection is complied with if (so far as is consistent with compliance with subsection (5)) a charges scheme gives effect to any statement issued under section 29D.

(5) This subsection is complied with if (so far as is consistent with compliance with section 41(1)) Scottish Water's receipts from the aggregate of—
(a) its income from charges for services provided in the exercise of its core functions, and
(b) the amount of—
(i) any grants paid to it under subsection (1) of section 42,
(ii) money it may borrow under subsection (3) of that section, and
(iii) any other resources reasonably available to it,

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

for the purposes of the exercise of those functions,

is not less than sufficient to meet the expenditure required for the effective exercise of those functions.

29D Statements regarding charges

(1) The Scottish Ministers must—

(a) in respect of a period specified under section 29B(2), and

(b) by reference to such economic or other factors as they consider relevant,

issue to Scottish Water and the Commission a statement of policy regarding charges under a charges scheme.

(2) A statement under subsection (1) is to include provision with respect to harmonisation of charges (that is to say, provision with a view to ensuring that a charges scheme does not fix different charges for similar services provided to persons of a similar category).

(3) A statement under subsection (1) may (so far as is consistent with the provision described in subsection (2)) include provision with respect to—

(a) the funding of particular services by charges for services as a whole,

(b) the proportion of the amount of income requiring to be raised by charges fixed by a charges scheme to be contributed by each category of person to whom Scottish Water provides services,

(c) the fixing of levels of charges by reference to—

(i) different categories of person to whom Scottish Water provides services, or

(ii) liability for council tax under Part II (Council tax: Scotland) of the Local Government Finance Act 1992 (c. 14), and

(d) such other matters as the Scottish Ministers think fit.

(4) In preparing a statement under subsection (1), the Scottish Ministers must have regard to Scottish Water's duty under section 51(1).

(5) Before issuing a statement under subsection (1), the Scottish Ministers must consult—

(a) the Commission,

(b) the Convener of the Water Customer Consultation Panels (representing the Panels as a whole), and

(c) Scottish Water.

29E Departure from certain charges

(1) Scottish Water may, in any particular case, apply to the Commission for its consent to depart from a charges scheme in respect of charges to be paid for services provided to a water services or sewerage services provider.

(2) The Commission may consent to a departure from a charges scheme only if satisfied that—

(a) a customer of the provider has done, or has agreed to, something which reduces or increases the costs incurred by Scottish Water in providing the services to the provider, and

(b) the departure is otherwise justified in the circumstances of the case.

(3) Where the Commission consents to a departure, it may do so subject to such reasonable conditions as it considers are appropriate in the case.

(4) Where the Commission withholds its consent to a departure, it must give its reasons for doing so.

(5) The Commission is to make provision in writing which specifies—

(a) the procedure to be followed for the purposes of determining applications made under subsection (1), and

(b) any matters to be taken into account and the criteria to be applied in—

(i) determining whether a departure from a charges scheme is justified, and

(ii) the fixing, by Scottish Water, of lower or (as the case may be) higher charges to be paid for the services in question where it is determined that a departure is justified.

(6) The Commission may from time to time revise the provision.

(7) In preparing or revising the provision, the Commission must consult—

(a) the Scottish Ministers and Scottish Water, and

(b) such other persons as it thinks fit,

as to the procedure to be followed in considering applications made under subsection (1).

(8) The Commission must send a copy of the provision to—

(a) the Scottish Ministers,

(b) Scottish Water, and

(c) every water services and sewerage services provider.

(9) Scottish Water must publish details of every departure from a charges scheme.

29F Review of determinations and charges

(1) This subsection applies where, since the making of a determination under section 29B(1)(a), there has been or is likely to be material change to—

(a) Scottish Water's income from charges for services provided in the exercise of its core functions,

(b) the amount of—

(i) any grants paid to it under subsection (1) of section 42,

(ii) money it may borrow under subsection (3) of that section, or

(iii) any other resources reasonably available to it,

for the purposes of the exercise of those functions, or

(c) the expenditure required for the effective exercise of those functions.

(2) Where subsection (1) applies, Scottish Water—

(a) may of its own accord,

(b) must, if the Commission requests it to do so,

send to the Commission proposals for revising the maximum amounts of charges determined under section 29B(1)(a).

(3) The Commission—

(a) must, after receipt of the proposals, review those amounts, and

(b) may revise those amounts to such extent as it thinks fit.

(4) In reviewing those amounts, the Commission must take into account all matters affecting the resources available to Scottish Water for the purposes of the exercise of its core functions.

(5) Before revising those amounts, the Commission must—

(a) intimate to the Scottish Ministers that revision of those amounts is under consideration,

(b) invite (by way of advertisement or otherwise) representations as regards revision of those amounts by such time as the Commission may specify, and

(c) have regard to any representations made to the Commission by virtue of paragraph (a) or (b).

(6) The Commission must give its reasons for deciding whether or not to revise those amounts.

(7) Where the Commission revises those amounts, it must send to Scottish Water written notice which specifies the revised amounts.

(8) Scottish Water—

(a) may, after receipt of the notice, revise any charges fixed by the charges scheme by reference to the revised amounts specified in the notice, and

(b) if it does so, must send written notice of the revised charges to the Commission for approval.

(9) The Commission may approve any revised charges with or without modifications.

(10) If the Commission approves any revised charges with modifications, it must give its reasons for doing so.

(11) When revised charges are approved by the Commission, Scottish Water must publish a summary of the revised charges and the date from which they have effect.

(12) The date from which the revised charges have effect is to be determined by the Commission.

29G Effective exercise of core functions

For the purposes of sections 29C(5) and 29F(1), Scottish Water is to be taken to be exercising its core functions effectively if (in discharging its statutory duties and contractual obligations relating to the exercise of those functions) it makes such use of its resources that, year on year, it—

(a) achieves the objectives contained in any directions given by reference to section 56A, and

(b) does so at the lowest reasonable overall cost.".

(2) In section 30 (maximum charges for services provided with help of Scottish Water) of that Act—

(a) in subsection (1), for the words "The Scottish Ministers may by order" there is substituted " A charges scheme must also ";

(b) in subsection (3), for the words "An order under this section" there is substituted " In relation to maximum charges fixed by virtue of subsection (1), the charges scheme "; and

(c) in subsection (4)—

(i) for the words "an order under this section" there is substituted " , by virtue of subsection (1), a charges scheme "; and

(ii) for the word "order" in the second place where it appears there is substituted " scheme ".

(3) Sections 31 to 34 of that Act (which make provision for and in connection with the making of charges schemes by Scottish Water) are repealed.

(4) In section 35 (liability of occupiers etc. for charges) of that Act, after subsection (9) there is added—

"(10) This section does not apply to or in relation to any services provided by Scottish Water under section 16 of the Water Services etc. (Scotland) Act 2005 (asp 3) except where the provision of the service is continued under section 17(1) or 20(1) or (3) of that Act.".

(5) After that section of that Act there is inserted—

"**35A Charges for services arranged by licensed providers**

(1) Supplies of water provided to any premises by Scottish Water under subsection (2) of section 16 of the Water Services etc. (Scotland) Act 2005 (asp 3) are to be treated, for the purposes of sections 29 to 29F, as services provided solely to the water services provider who made the related request under subsection (1) of that section in respect of the premises.

(2) The provision of sewerage to, and disposal of sewage from, any premises by Scottish Water under subsection (5) of that section of that Act are to be treated, for the purposes of sections 29 to 29F, as services provided solely to the sewerage services provider who made the related request under subsection (4) of that section in respect of the premises.

(3) But—

(a) where the supplies of water provided to the premises are continued under subsection (1) of section 17 of that Act, subsection (1) does not apply,

(b) where the provision of sewerage to, or disposal of sewerage from, the premises is continued under subsection (1) or (3) of section 20 of that Act, subsection (2) does not apply.".

(6) Schedule 3 makes provision in relation to certain pre-existing agreements as to charges.

Commencement Information

I29 S. 21(1)-(3) (6) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2** (with art. 3(3))

I30 S. 21(4)(5) in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

22 Scottish Water's functions: powers of the Scottish Ministers

After section 56 (directions) of the 2002 Act there is inserted—

"56A Directions may set objectives

(1) In particular, directions under section 56 may in respect of a period specified under section 29B(2) set objectives as to—

(a) the standard of the services to be provided in the exercise of Scottish Water's core functions, and

(b) the time by which—

(i) a particular standard of any of those services is to be attained,

(ii) any particular work required for or in connection with the provision of those services is (in part or whole) to be commenced or completed.

(2) Different objectives may be set for different cases or categories of case.

(3) In formulating objectives of a type referred to in subsection (1) for inclusion in directions under section 56, the Scottish Ministers must have regard to Scottish Water's duty under section 51(1).

(4) Before giving directions under section 56 which set objectives of a type referred to in subsection (1), the Scottish Ministers must consult the Convener of the Water Customer Consultation Panels (representing the Panels as a whole) on the objectives.

56B Supplementary functions

(1) The Scottish Ministers may by order confer on Scottish Water such additional or supplementary functions relating to the provision of water and sewerage services by Scottish Water as the Scottish Ministers consider appropriate so to confer.

(2) The Scottish Ministers are to consult Scottish Water and the Commission on any order they propose to make under subsection (1).".

Commencement Information

I31 S. 22 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

23 Determinations relating to provision of services

(1) In section 1 (duty of Scottish Water to provide for sewerage) of the 1968 Act—

(a) in subsection (4)—

(i) for the words "Secretary of State" there is substituted " Water Industry Commission for Scotland "; and

(ii) for the word "his" there is substituted " its ";

(b) after that subsection there is inserted—

"(4A) The Commission—

(a) shall prepare a statement which specifies the procedure to be followed for the purposes of its determining questions under subsection (4) above, and

(b) may from time to time revise the statement.

(4B) In preparing or revising the statement, the Commission shall consult Scottish Water and such other persons as it considers appropriate.

(4C) The Commission shall, on payment of such reasonable fee (if any) as the Commission may determine, send a copy of the statement to any person who requests it.";

(c) subsection (5) is repealed; and

(d) in subsection (6), for the words "subsections (3C) and (5)" there is substituted " subsection (3C) ".

(2) In section 6 (duty of Scottish Water to provide water supply) of the 1980 Act—

(a) in subsection (3)—

(i) for the words "Secretary of State" there is substituted " Water Industry Commission for Scotland "; and

(ii) for the word "his" there is substituted " its "; and

(b) after that subsection there is inserted—

"(3A) The Commission—

(a) shall prepare a statement which specifies the procedure to be followed for the purposes of its determining questions under subsection (3), and

(b) may from time to time revise the statement.

(3B) In preparing or revising the statement, the Commission shall consult Scottish Water and such other persons as it considers appropriate.

(3C) The Commission shall, on payment of such reasonable fee (if any) as the Commission may determine, send a copy of the statement to any person who requests it.".

Commencement Information

I32 S. 23 in force at 1.4.2006 by S.S.I. 2006/167, art. 2, **Sch. 1** (with art. 3)

24 Qualification of duty to provide services

(1) In section 1 (duty of Scottish Water to provide for sewerage) of the 1968 Act, after subsection (6) there is added—

"(7) The duties imposed by subsections (1) and (2) above shall not require Scottish Water to do anything which is prejudicial to its compliance with—

(a) any directions given to it under section 56 of the Water Industry (Scotland) Act 2002 (asp 3) so far as setting objectives of a type referred to in section 56A of that Act, or

(b) a statement of policy issued under section 29D of that Act.".

(2) In section 6 (duty of Scottish Water to provide water supply) of the 1980 Act, after subsection (4) there is added—

"(5) The duties imposed by subsections (1), (2) and (4) shall not require Scottish Water to do anything which is prejudicial to its compliance with—

(a) any directions given to it under section 56 of the Water Industry (Scotland) Act 2002 (asp 3) so far as setting objectives of a type referred to in section 56A of that Act, or

(b) a statement of policy issued under section 29D of that Act.".

Commencement Information

I33 S. 24 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

Sewerage nuisance: code of practice

25 Sewerage nuisance: code of practice

(1) The Scottish Ministers may make an order containing a code of practice (referred to in this section and section 26 as a "sewerage code") for the purposes of assessing, controlling and minimising sewerage nuisance.

(2) In this section and section 26, "sewerage nuisance" means—

(a) smells and discharges;

(b) insects; or

(c) any other thing,

emanating from, or present at, any part of the public sewerage system so as to be prejudicial to health (that is to say, injurious, or likely to cause injury, to health) or a nuisance.

(3) A sewerage code may, in particular, set out—

(a) guidance as to the best practicable means of assessing, controlling and minimising sewerage nuisance; and

(b) circumstances in which—

(i) Scottish Water; or

(ii) any other person to whom the code applies,

is to be regarded for the purposes of this section and section 26 as complying, or (as the case may be) not complying, with the code.

(4) In subsection (3)(a), "best practicable means" is to be construed by reference to the following provisions—

(a) "practicable" means reasonably practicable having particular regard to—

(i) local conditions and circumstances;

(ii) the current state of technical knowledge; and

(iii) financial implications; and

(b) "means" includes—

(i) the design, installation, maintenance and manner and periods of operation of plant and machinery; and

(ii) the design, construction and maintenance of buildings and other structures.

(5) A sewerage code is to apply to—

(a) Scottish Water in respect of its core functions relating to the provision of sewerage and the disposal of sewage; and

(b) any other person to the extent that the person is acting on Scottish Water's behalf, or under its authority, in that respect.

(6) Scottish Water and any other person to whom a sewerage code applies must comply with the code.

(7) The Scottish Ministers and every local authority must publicise any sewerage code.

(8) Before making an order under subsection (1), the Scottish Ministers must consult—

(a) Scottish Water;

(b) every local authority; and

(c) such other persons as they consider appropriate,

about the proposed sewerage code.

(9) For the purposes of subsection (5), the provision of sewerage and the disposal of sewage does not include such provision or disposal through any part of the public sewerage system which is regulated by a permit granted by virtue of regulations made under section 2 of the Pollution Prevention and Control Act 1999 (c. 24).

(10) Subsection (9) is subject to any direction made by the Scottish Ministers by virtue of any enactment in relation to the application of a sewerage code to any such part of the public sewerage system.

Commencement Information

I34 S. 25 in force at 10.2.2006 by S.S.I. 2006/40, **art. 2(a)**

26 Monitoring and enforcement

(1) Each local authority must—

(a) monitor compliance in its area with any sewerage code; and

(b) where a complaint of sewerage nuisance is made to it by a person living in its area, investigate the complaint.

(2) Where a local authority is satisfied that Scottish Water or another person to whom a sewerage code applies is—

(a) not complying with; or

(b) likely not to comply with,

the code in a material regard, the authority must serve a notice (an "enforcement notice") on Scottish Water or (as the case may be) that other person.

(3) An enforcement notice—

(a) may require—

(i) the execution of such works; and

(ii) the taking of such other steps,

as are necessary for securing compliance with a sewerage code in any particular respects; and

(b) must specify the date by which the requirements of the notice, or any particular requirements of it, are to be fulfilled.

(4) A person on whom an enforcement notice has been served may, by summary application made within 21 days of the date of service of the notice, appeal to the sheriff against the notice; and the notice is of no effect until the appeal is withdrawn or finally determined.

(5) In an appeal under subsection (4), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.

(6) If a person, without reasonable excuse, contravenes an enforcement notice, the person is guilty of an offence and liable on summary conviction to a fine not exceeding £40,000.

(7) Where an enforcement notice is contravened, the local authority may (whether or not proceedings have been taken for an offence under subsection (6)) take proceedings in the sheriff court for the purposes of securing that the requirements of the notice are fulfilled.

(8) Where an enforcement notice is contravened, the local authority may (whether or not proceedings have been taken for an offence under subsection (6)) take any action it considers necessary in fulfilment of the requirements of the notice.

(9) Any expenses reasonably incurred by a local authority in taking action under subsection (8) may be recovered by the authority from the person on whom the enforcement notice was served.

(10) The functions of a local authority under sections 79 to 81 of the Environmental Protection Act 1990 (c. 43) in respect of statutory nuisance (within the meaning of Part III of that Act) do not apply in relation to any **[**[F6]nuisance—

(a) which constitutes a sewerage nuisance; and

(b) in respect of which a sewerage code applies.**]**

[[F7](10A) Paragraphs 2, 3 and 5 of Schedule 3 to the Environmental Protection Act 1990 (c. 43) apply to the exercise of functions by a local authority under this section as they apply to the exercise of functions under Part III of that Act, with the following modifications—

(a) in paragraph 2(1)(a), for "statutory nuisance" substitute " sewerage nuisance "

(b) in paragraph 2(1)(b) and (4)(b), for "Part III" substitute " section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3) " ;

(c) in paragraph 3(1), for the words from ", on summary conviction" to the end substitute—

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

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

(d) in paragraph 3(2), for the words from ", on summary conviction" to the end substitute—

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

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

(e) in paragraph 5—

(i) for the words "executing Part III" substitute " exercising functions under section 26 of the Water Services etc. (Scotland) Act 2005 " ;

(ii) the words from "(other" to the end are to be disregarded.**]**

(11) This section and section 25 are without prejudice to section 82 (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990.

(12) In this section and section 25, "local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Textual Amendments

F6 Words in s. 26(10) substituted (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 115(2)**, 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

F7 S. 26(10A) inserted (26.1.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), **ss. 115(3)**, 128(2) (with s. 127); S.S.I. 2009/9, art. 2(a), Sch. 1

Commencement Information

I35 S. 26(1)-(9) (11) in force at 22.4.2006 by S.S.I. 2006/167, art. 2, **Sch. 2**

I36 S. 26(10) in force at 22.4.2006 for specified purposes by S.S.I. 2006/167, art. 2, **Sch. 2**

I37 S. 26(12) in force at 10.2.2006 for specified purposes by S.S.I. 2006/40, **art. 2(b)**

I38 S. 26(12) in force at 22.4.2006 in so far as not already in force by S.S.I. 2006/167, art. 2, **Sch. 2**

Definitions for Part

27 Meaning of "eligible premises"

(1) In this Part, "eligible premises" means—

(a) in relation to the supply of water, premises which are (or are to be) connected to the public water supply system; and

(b) in relation to the provision of sewerage or the disposal of sewage, premises which are (or are to be) connected to the public sewerage system,

but not any dwelling.

(2) In subsection (1), "dwelling" means any dwelling within the meaning of Part II (Council tax: Scotland) of the Local Government Finance Act 1992 (c. 14) except the residential part of part residential subjects within the meaning of that Part of that Act.

(3) The Scottish Ministers may by order modify subsection (2) so as to vary the meaning of "dwelling".

Commencement Information

I39 S. 27 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

28 Meaning of "public water supply system"

(1) In this Part, the "public water supply system" means any and all of the mains and other pipes, water treatment works and other similar infrastructure which are (either or both)—

(a) vested in Scottish Water; or

(b) used by Scottish Water (or a person acting on its behalf or under its authority) in connection with the exercise of Scottish Water's core functions as respects the supply of water.

(2) In subsection (1), "mains" is to be construed in accordance with section 109(1) (interpretation) of the 1980 Act.

Commencement Information

I40 S. 28 in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

29 Meaning of "public sewerage system"

(1) In this Part, the "public sewerage system" means any and all of the sewers (and junctions therewith), drains, SUD systems, sewage treatment works and other similar infrastructure which are (either or both)—

(a) vested in Scottish Water; or

(b) used by Scottish Water (or a person acting on its behalf or under its authority) in connection with the exercise of Scottish Water's core functions as respects the provision of sewerage or disposal of sewage.

(2) In subsection (1)—

"sewers", "SUD systems" and "sewage treatment works" are to be construed in accordance with section 59(1) (interpretation) of the 1968 Act; and

"junctions" is to be construed in accordance with section 16 (vesting of sewers and other works) of that Act.

Commencement Information

I41 S. 29 in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

PART 3

COAL MINE WATER POLLUTION

30 Control of water from coal mines

(1) After section 4C of the Coal Industry Act 1994 (c. 21) there is inserted—

"4D Power of the Authority with respect to coal mine water discharge: Scotland

(1) The Authority may take such action as it considers appropriate (if any) for the purpose of preventing, or mitigating the effect of, the discharge of water from a coal mine into or on to any land or into the water environment.

(2) In this section and sections 4E and 4F below—
- (a) "the water environment" has the meaning given by section 3 of the Water Environment and Water Services (Scotland) Act 2003 (asp 3); and
- (b) references to coal mines are to coal mines vested in the Authority.

4E Coal mine water discharge: powers of entry in Scotland

(1) If the Authority is of the opinion that a discharge of water from a coal mine into or on to any land or into the water environment has caused, is causing or is likely to cause—
- (a) serious pollution of the environment; or
- (b) danger to life or health,

the Authority may, for any purpose specified in subsection (2) below, in writing authorise a person to exercise (in accordance with the terms of the authorisation) any of the powers specified in subsection (3) below.

(2) The purposes are—
- (a) to determine the extent of the pollution or of the danger, or the likelihood of serious pollution or such danger;
- (b) to determine whether (and if so how) the Authority should exercise its power under section 4D above;
- (c) to take action under that section.

(3) The powers are—
- (a) to enter—
  - (i) in an emergency, at any time (and, if need be, using reasonable force); or
  - (ii) in any other case, at any reasonable time,

  any premises which the authorised person has reason to believe it is necessary for him to enter;
- (b) to use a vehicle or boat to do so;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
- (e) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air or water or land in, on, or in the vicinity of, the premises;
- (f) to require any person to give him such facilities and assistance with respect to any matters or things within that person's control or in

relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by virtue of this section.

(4) The powers which are conferred in relation to any land by this section include power, for the purposes mentioned in subsection (2) above—

(a) to carry out experimental borings or other works on those premises; and

(b) to install, keep or maintain monitoring and other apparatus there.

(5) Where subsection (6) below applies, any entry to premises by virtue of this section shall (except in an emergency) be effected only—

(a) after the expiry of at least seven days' notice of the proposed entry given to a person who appears to the authorised person to be in occupation of the premises in question; and

(b) either—

(i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant granted under paragraph 2 of Schedule 1C to this Act.

(6) This subsection applies where it is proposed to—

(a) enter any premises used for residential purposes; or

(b) take heavy equipment on to any premises which are to be entered.

(7) Where an authorised person proposes to enter any premises and—

(a) entry has been refused and he reasonably believes that the use of force may be necessary to effect entry; or

(b) he reasonably believes that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry to those premises by virtue of this section shall (except in an emergency) be effected only under the authority of a warrant granted under paragraph 2 of Schedule 1C to this Act.

(8) In this section—

"premises" includes any land, vehicle or vessel, and any plant which is designed to move or be moved (whether or not on roads);

"emergency" means a case in which it appears to the authorised person in question—

(a) that there is an immediate risk of serious pollution of the environment; or

(b) that circumstances exist which are an immediate danger to life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy.

(9) Schedule 1C to this Act makes further provision regarding powers of entry.

4F Coal mine discharge: compulsory acquisition of land in Scotland

(1) The Authority may, with the authorisation of the Scottish Ministers, acquire any land anywhere in Scotland compulsorily if the Authority is of the opinion that—

(a) the acquisition is for the purpose of preventing, or mitigating the effect of, a discharge of water from a coal mine; and

(b) the discharge has caused, is causing or is likely to cause—

(i) serious pollution of the water environment; or

(ii) danger to life or health.

(2) The power to acquire land under subsection (1) above includes power to acquire a servitude or other right in or over land by the creation of a new right.

(3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1) above as if—

(a) this section were contained in an Act in force immediately before the commencement of that Act; and

(b) references in that Act to a local authority were references to the Authority.”.

(2) In section 66 (Crown application) of that Act, after subsection (5) there is added—

“(6) The references in subsection (5) above to a Government department shall, for the purposes of the application of this section to sections 4D to 4F of, and Schedule 1C to, this Act, be treated as including the holder of an office in the Scottish Administration which is not a ministerial office.”.

(3) In section 68 (extent, etc.) of that Act, after subsection (7) there is inserted—

“(7A) Sections 4D to 4F of, and Schedule 1C to, this Act extend to Scotland only.”.

(4) Schedule 4 inserts Schedule 1C into that Act.

Commencement Information

I42 S. 30 in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

PART 4

MISCELLANEOUS AND GENERAL

Miscellaneous

31 Offences by bodies corporate and partnerships

(1) Where an offence under this Act has been committed by a body corporate and has been committed with the consent or connivance of, or is attributable to the neglect of, a director, manager, secretary or other similar officer of the body, or a person purporting

to act in any such capacity, that person as well as the body corporate is guilty of the offence.

(2) Where an offence under this Act has been committed by a Scottish partnership and has been committed with the consent or connivance of, or is attributable to the neglect of, a partner, that partner as well as the partnership is guilty of the offence.

Commencement Information

I43 S. 31 in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

32 Amendments to enactments

Schedule 5 amends enactments for the purposes of and in consequence of this Act.

Commencement Information

I44 S. 32 in force at 1.7.2005 for specified purposes by S.S.I. 2005/351, art. 2, **Sch. 2**
I45 S. 32 in force at 1.4.2006 for specified purposes by S.S.I. 2006/167, art. 2, **Sch. 1**
I46 S. 32 in force at 7.9.2006 for specified purposes by S.S.I. 2006/445, art. 2, **Sch.**
I47 S. 32 in force at 8.1.2007 for specified purposes by S.S.I. 2006/599, art. 2, **Sch.**

33 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 of or in consequence of this Act.

General

34 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 to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
- (b) different provision for different purposes.

(3) A statutory instrument containing an order under—
- (a) section 2, 7(2), 13(6), 14(1), (2), (6) or (9), 18(3), 20(8), 25(1) or 27(3);
- (b) subject to subsection (4)(a), section 33; or
- (c) paragraph 1(1) or (4) or 12(1) or (2)(g) of schedule 2,

is subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing—
- (a) an order under section 33 which amends an Act; or
- (b) regulations under section 4(7) or 5(7),

is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

35 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 2002 Act" means the Water Industry (Scotland) Act 2002 (asp 3);

"the Commission" means the Water Industry Commission for Scotland;

"the Parliament" means the Scottish Parliament.

(2) Any reference in this Act to the core functions of Scottish Water is to be construed by reference to section 70(2) of the 2002 Act.

36 Crown application

This Act binds the Crown.

37 Short title and commencement

(1) This Act may be cited as the Water Services etc. (Scotland) Act 2005.

(2) The provisions of this Act, except sections 33 to 36 and this section, come into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

SCHEDULE 1

(introduced by section 1)

WATER INDUSTRY COMMISSION FOR SCOTLAND

Commencement Information

I48 Sch. 1 in force at 20.6.2005 for specified purposes by S.S.I. 2005/351, art. 2, **Sch. 1**

I49 Sch. 1 in force at 1.7.2005 in so far as not already in force by S.S.I. 2005/351, art. 2, **Sch. 2**

Before schedule 1 (the Commissioner and Customer Panels) to the 2002 Act there is inserted—

"SCHEDULE A1

(introduced by section 1(4))

WATER INDUSTRY COMMISSION FOR SCOTLAND

Status

1 (1) The Commission is a body corporate.

(2) The Commission—

(a) is not a servant or agent of the Crown,

(b) has no status, immunity or privilege of the Crown,

and its property is not to be regarded as property of, or held on behalf of, the Crown.

Membership

2 The Commission is to consist of the following members—

(a) not fewer than 3, nor more than 5, ordinary members, and

(b) the person holding the post of chief executive.

Tenure and removal from office

3 (1) Each ordinary member—

(a) is to be appointed by the Scottish Ministers for such period as is specified in the appointment,

(b) may, by written notice to the Scottish Ministers, resign as a member,

(c) in other respects, holds and vacates office on such terms and conditions as the Scottish Ministers may determine, and

(d) after ceasing to hold office is eligible for reappointment as a member.

(2) The Scottish Ministers may remove an ordinary member from office and the Commission may, with the approval of the Scottish Ministers, remove the member who is the chief executive from office if satisfied that—

(a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or

(b) the member—

(i) is incapacitated by physical or mental illness,

(ii) has been absent from meetings of the Commission for a period longer than 3 consecutive months without the permission of the Commission, or

(iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

Disqualification

4 A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is a member of—

(a) the House of Lords,

(b) the House of Commons,

(c) the Scottish Parliament, or

(d) the European Parliament.

Chairing

5 (1) The Scottish Ministers—

(a) must appoint one of the ordinary members to chair meetings of the Commission, and

(b) may, after consulting that member, appoint another ordinary member to act as deputy to that member.

(2) The member appointed to chair the meetings and any member appointed to act as deputy to that member hold and vacate office as such in accordance with the terms of their appointments.

(3) A member so appointed may, by written notice to the Scottish Ministers, resign from office as such.

(4) A member so appointed vacates office on ceasing to be a member of the Commission.

(5) Where a member—

(a) is appointed to chair meetings or to act as deputy to the member so appointed, or

(b) ceases to hold office as such,

the Scottish Ministers may vary the terms of the member's appointment so as to alter the date on which office as a member is to be vacated.

Remuneration, allowances and pensions

6 (1) The Commission must pay to each ordinary member such remuneration as the Scottish Ministers may determine.

(2) The Commission must pay to each ordinary member and the chief executive such allowances as the Scottish Ministers may determine in respect of expenses properly incurred in the performance of their duties as a member.

(3) Where a person ceases to be an ordinary member otherwise than on the expiry of that person's term of appointment, the Scottish Ministers may, if they think there are special circumstances, direct the Commission to pay to the person such amount of compensation as they may determine.

(4) The Scottish Ministers may direct the Commission to pay—

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

(a) such pension, allowance or gratuity to, or in respect of, any person who is or has been an ordinary member,

(b) such contribution or other payment towards provision for such pension, allowance or gratuity,

as they consider appropriate.

Chief executive

7 (1) The Commission is to employ a chief executive.

(2) The Scottish Ministers are to appoint the first chief executive of the Commission on such terms and conditions as the Scottish Ministers may determine.

(3) Before making the appointment of the first chief executive, the Scottish Ministers must consult the member of the Commission appointed, or to be appointed, to chair the meetings of the Commission (if there is a person holding, or as the case may be designated to hold, that office).

(4) The Commission may, with the approval of the Scottish Ministers, make subsequent appointments to the post of chief executive on such terms and conditions as it may with the approval of the Scottish Ministers determine.

(5) The chief executive is to be appointed from amongst persons who appear—

(a) as regards the first appointment, to the Scottish Ministers, and

(b) thereafter, to the Commission,

to have knowledge, skills or experience relevant to the functions of the Commission.

(6) The Commission may, with the approval of the Scottish Ministers—

(a) vary any terms and conditions of a person's appointment to the post of chief executive, or

(b) terminate a person's appointment to the post of chief executive if the Commission is satisfied that the person is not adequately discharging the functions of that post.

Staff

8 (1) All staff employed, immediately before the coming into force of this sub-paragraph, by the Water Industry Commissioner for Scotland are transferred to the employment of the Commission.

(2) The contract of employment of a person transferred by virtue of sub-paragraph (1)—

(a) is not terminated by the transfer, and

(b) has effect from the date of transfer as if originally made between the person and the Commission.

(3) Without prejudice to sub-paragraph (2), where a person becomes a member of staff of the Commission under sub-paragraph (1)—

(a) all the rights, powers, duties and liabilities of the Water Industry Commissioner for Scotland under or in connection with that person's contract of employment are by virtue of this sub-paragraph transferred to the Commission on the date of transfer, and

(b) anything done before that date by or in relation to the Water Industry Commissioner for Scotland in respect of that contract of employment or that

person is to be treated from that date as having been done by, or in relation to, the Commission.

(4) Sub-paragraphs (1) to (3) do not prejudice the right of any person to terminate that person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of that person's employer changes by virtue of those sub-paragraphs.

(5) The Commission may, with the consent of the Scottish Ministers as to numbers, terms and conditions, appoint such other employees as it considers appropriate.

(6) The Commission must, as regards such of its employees as it may with the approval of the Scottish Ministers determine, make such arrangements as it considers appropriate for providing, to or in respect of those employees, pensions, allowances or gratuities.

(7) Such arrangements—

(a) may include the establishment and administration, by the Commission or otherwise, of one or more pension schemes, and

(b) must, in any case, be approved by the Scottish Ministers.

(8) The reference in sub-paragraph (6) to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.

Transfer of property and liabilities

9 (1) All property (including rights) and liabilities, subsisting immediately before the coming into force of this paragraph, of the Water Industry Commissioner for Scotland are transferred to the Commission.

(2) Sub-paragraph (1) has effect in relation to any property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or prohibit the transfer of the property or liabilities.

Committees

10 (1) The Commission may establish committees for or in connection with the exercise of such of its functions as it may determine.

(2) Any committee established under this paragraph must be chaired by a person who is an ordinary member of the Commission.

(3) Employees of the Commission who are not members of the Commission may be appointed to be members of any committee established by it.

Delegation of powers

11 (1) Anything authorised or required under any enactment to be done by the Commission may be done by any of its committees which, or by any of its members or employees who, are authorised (whether generally or specifically) by it for the purpose.

(2) Nothing in sub-paragraph (1) prevents the Commission from doing anything that a committee, member or employee has been authorised or required to do.

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

Proceedings

12 (1) The Commission may regulate its own procedure (including any quorum) and that of any of its committees.

(2) The validity of any proceedings or actings of the Commission is not affected by—

(a) any vacancy among its members, or

(b) any defect in the appointment of a member.

General powers

13 (1) The Commission may do anything which appears necessary or expedient for the purpose of, or in connection with, the exercise of its functions including, in particular—

(a) entering into contracts; and

(b) acquiring and disposing of property.

(2) But the Commission may not acquire or dispose of land without the consent of the Scottish Ministers.

Accounts

14 The Commission must—

(a) prepare for each financial year, in accordance with directions given by the Scottish Ministers, an account of the Commission's income and expenditure, and

(b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.”.

SCHEDULE 2

(introduced by section 12)

LICENCES AND COMPLIANCE: FURTHER PROVISION

Application for licence

1 (1) An application for a water services licence or a sewerage services licence is to be made to the Commission and is—

(a) to be in such form and made in such manner; and

(b) to contain such information (including information in the form of a document),

as the Scottish Ministers may by order prescribe.

(2) The applicant must provide the Commission with such further information (including information in the form of a document) as it reasonably requires in order to determine the application.

(3) Sub-paragraph (2) does not authorise the Commission to require the disclosure of anything that a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(4) The applicant must, in such manner and within such time from the making of the application as the Scottish Ministers may by order prescribe, publish a notice of the application; and the notice must—

(a) specify such procedure for making representations to the Commission with respect to the application; and

(b) contain such other particulars,

as the Scottish Ministers may so prescribe.

(5) Where the Commission proposes to refuse an application, the Commission is to give the applicant notice—

(a) of that fact (together with its reasons for proposing to refuse the application); and

(b) specifying the date by which the applicant may make representations to the Commission with respect to the proposed refusal.

(6) The Commission is, in determining the application, to have regard to any representations made by virtue of—

(a) sub-paragraph (4)(a); and

(b) sub-paragraph (5)(b).

(7) Any applicant for a water services licence or a sewerage services licence who knowingly or recklessly makes a statement, in connection with the application for the licence, that is false or misleading in a material particular is guilty of an offence.

(8) A person who is guilty of an offence under sub-paragraph (7) is liable—

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

(b) on indictment, to a fine.

(9) A person whose application for a water services licence or sewerage services licence has been refused may, within 14 days of the date on which the refusal was intimated to the person under section 7(5)(a), appeal to the Court of Session against the refusal on a question of law.

(10) Where a water services licence or sewerage services licence has been granted, Scottish Water may, within 14 days of the date on which a copy of the licence was sent to Scottish Water under section 7(6)(b), appeal to the Court of Session against the granting of the licence on a question of law; and the licence is suspended until the appeal is withdrawn or finally determined.

(11) In an appeal under sub-paragraph (9) or (10), the Court may quash or confirm the Commission's decision to refuse the application or (as the case may be) grant the licence; and the decision of the Court in the appeal is final.

Modifications etc. (not altering text)

C1 Sch. 2 para. 1 applied (with modifications) (5.10.2006) by Water Services and Sewerage Services Licences (Scotland) Order 2006 (S.S.I. 2006/464), arts. 1(1), **4**

Commencement Information

I50 Sch. 2 para. 1 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Conditions of licence

2 (1) Each water services licence and sewerage services licence—

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

(a) is, subject to sub-paragraph (10), to have incorporated in it by reference to the standard conditions such of those conditions as are applicable to it; and

(b) may include such ordinary conditions as appear to the Commission to be necessary or expedient for the purposes of or in connection with the activities authorised by the licence.

(2) The Commission is, within 9 months of the coming into force of this sub-paragraph, to determine standard conditions that are to apply to water services licences and sewerage services licences.

(3) The standard conditions are to relate to the obligations of water services providers and sewerage services providers to their customers and to Scottish Water; and the standard conditions may, in particular—

(a) include standard conditions that are to apply to—

(i) all licences; and

(ii) a particular type of licence; and

(b) make provision for—

(i) the standard conditions (or any of them) not to apply to a particular licence or type of licence in such circumstances; and

(ii) the coming into effect and suspension of the standard conditions (or any of them) in such manner and in such circumstances,

as may be specified in the standard conditions.

(4) The Commission is to—

(a) consult the Scottish Ministers on proposals for standard conditions; and

(b) publish the standard conditions.

(5) The Commission—

(a) is from time to time to review the standard conditions; and

(b) may—

(i) modify the standard conditions; and

(ii) make such modification to the conditions of any licence as it considers is necessary or expedient as a consequence of any modification of the standard conditions.

(6) Before making any modification under sub-paragraph (5)(b), the Commission is to—

(a) send a notice of the proposed modification to—

(i) every water services provider and sewerage services provider whose licence would be affected by the modification;

(ii) the Scottish Ministers; and

(iii) Scottish Water; and

(b) publish the notice.

(7) The notice must—

(a) state the reasons why the modification is proposed; and

(b) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposed modification may be made to the Commission.

(8) The Commission is to have regard to any representations made by virtue of sub-paragraph (7)(b).

(9) Where the Commission modifies the standard conditions, the Commission is to publish them as modified.

(10) The Commission may, in granting a particular licence, exclude or modify any of the standard conditions to such extent as it considers appropriate in the circumstances of the case.

(11) Sub-paragraphs (6) to (8) apply to exclusions and modifications under sub-paragraph (10) as they apply to modifications under sub-paragraph (5)(b) (but as if, in the case of an exclusion, the references in sub-paragraphs (6) and (7) to modification were references to exclusion).

(12) Any ordinary condition of a licence may provide for the condition to—

(a) have effect or cease to have effect; or

(b) be modified,

at such time, in such manner and in such circumstances, as the Commission considers appropriate.

(13) The Commission may modify any condition of a particular licence if it considers that the modification is necessary or expedient in the circumstances of the case.

(14) Sub-paragraphs (6) to (8) apply to modifications under sub-paragraph (13) as they apply to modifications under sub-paragraph (5)(b).

(15) Any water services provider or sewerage services provider who is aggrieved by the inclusion of a condition in the licence held by the provider may, within 14 days of the date on which the licence was granted, appeal to the Court of Session against the inclusion of the condition on a question of law.

(16) Any water services provider or sewerage services provider who is aggrieved by a modification of a condition included in the licence held by the provider may, within 14 days of the date on which the modification has effect, appeal to the Court of Session against the making of the modification on a question of law.

(17) In an appeal under sub-paragraph (15) or (16), the Court may quash, confirm or vary the condition; and the decision of the Court in the appeal is final.

Modifications etc. (not altering text)

C2 Sch. 2 para. 2 applied (with modifications) (5.10.2006) by Water Services and Sewerage Services Licences (Scotland) Order 2006 (S.S.I. 2006/464), arts. 1(1), **4**

Commencement Information

I51 Sch. 2 para. 2 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Conditions: sustainable development

3 (1) The Scottish Ministers may issue to the Commission guidance as to how water services and sewerage services providers might, by the manner in which they perform the activities authorised by their licences, reasonably contribute to the achievement of sustainable development.

(2) In exercising its functions under paragraph 2, the Commission is to have regard to any guidance issued under sub-paragraph (1).

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

Commencement Information

I52 Sch. 2 para. 3 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Transfer of licence

4 (1) Any water services licence or sewerage services licence may, subject to sub-paragraphs (2) to (5), be transferred to another person by the provider who holds it ("the transferor"), either in respect of—

(a) all the activities; or

(b) any particular activity or activities,

authorised by the licence.

(2) A transfer of a licence is not valid unless—

(a) the transfer complies with any condition of the licence as to transfer; and

(b) the Commission consents to the transfer.

(3) The Commission may consent to a transfer only if satisfied that—

(a) in a case where the proposed transfer is in respect of all the activities authorised by the licence, the person to whom the transferor proposes to transfer the licence ("the transferee") has the ability to perform adequately those activities; or

(b) in a case where the proposed transfer is in respect of any particular activity or activities authorised by the licence, the transferee has the ability to perform adequately that activity or (as the case may be) those activities.

(4) In assessing the transferee's ability so to perform that activity or those activities, the Commission is to have special regard to—

(a) the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7; and

(b) any other matters specified under that subsection.

(5) In relation to a transfer—

(a) an application for consent is to be made by the transferee; and

(b) sub-paragraphs (1) to (6) of paragraph 1 apply as regards an application for consent as they apply as regards an application for a licence.

(6) Any applicant for consent to a transfer of a licence who knowingly or recklessly makes a statement, in connection with the application for consent, that is false or misleading in a material particular is guilty of an offence.

(7) A person who is guilty of an offence under sub-paragraph (6) is liable—

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

(b) on indictment, to a fine.

(8) The Commission may consent to a transfer subject to such—

(a) modification to any condition of the licence; and

(b) conditions apart from the conditions of the licence,

as it considers it appropriate to make.

(9) As soon as practicable after deciding whether to consent to a transfer, the Commission is to intimate its decision to—
  (a) the transferor and the transferee; and
  (b) Scottish Water.

(10) Where the Commission withholds consent to the transfer, the transferee may, within 14 days of the date on which the decision to do so was intimated to the transferee under sub-paragraph (9)(a), appeal to the Court of Session against the decision on a question of law.

(11) Where the Commission consents to the transfer, Scottish Water may, within 14 days of the date on which the decision to do so was intimated to Scottish Water under sub-paragraph (9)(b), appeal to the Court of Session against the decision on a question of law.

(12) In an appeal under sub-paragraph (10) or (11), the Court may quash or confirm the Commission's decision to withhold consent to the transfer or (as the case may be) to consent to the transfer; and the decision of the Court in the appeal is final.

(13) In this paragraph, "transfer" includes any form of assignation.

Commencement Information
I53 Sch. 2 para. 4 in force at 8.1.2007 by S.S.I. 2006/599, art. 2, **Sch.**

Powers of entry etc.

5 (1) For the purposes of monitoring and ensuring compliance with the terms and conditions of licences under section 8(1), the powers mentioned in sub-paragraph (2) are exercisable by the Commission and any person authorised by the Commission for the purpose of the exercise of those powers.

(2) The powers are—
  (a) power to enter any premises—
    (i) of any water services provider or sewerage services provider;
    (ii) in respect of which such a provider has made arrangements for or in relation to the supply of water or the provision of sewerage or disposal of sewage;
    (iii) of any other person,
  for the purpose of exercising a power mentioned in heads (b) and (c);
  (b) power to carry out such inspection of any document or article found on the premises as the Commission considers necessary; and
  (c) for the purpose of inspecting any such document or article, power to take the document away from the premises.

(3) The power mentioned in head (a) of sub-paragraph (2) entitles the Commission (or a person authorised by the Commission) to demand, as of right, entry—
  (a) to premises referred to in sub-head (i) of that head, at any reasonable time (and without notice); and

(b) to premises referred to in sub-head (ii) or (iii) of that head, at any reasonable time provided that the Commission (or the person) gives 24 hours' notice of the exercise of the power to the occupier of the premises.

(4) The powers mentioned in sub-paragraph (2) must not be exercised in relation to premises referred to in sub-head (iii) of head (a) of that sub-paragraph unless the Commission is satisfied that the exercise of those powers in relation to the premises referred to in sub-heads (i) and (ii) of that head would be insufficient for the purposes referred to in sub-paragraph (1).

(5) The owner and occupier of any premises in respect of which a power mentioned in sub-paragraph (2) is being exercised, and any person on the premises when the power is being exercised, must—

(a) give the person exercising the power such assistance; and

(b) provide that person with such information,

as that person reasonably requires.

Commencement Information

I54 Sch. 2 para. 5 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Powers of entry etc.: further provision

6 (1) A person entitled to enter premises by virtue of the power mentioned in paragraph 5(2)(a)—

(a) may take on to the premises such other persons and such equipment as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and

(b) must, if required to do so, produce written evidence of that entitlement.

(2) A person who enters premises in the exercise of the power mentioned in paragraph 5(2)(a) must leave the premises as effectually secured against trespassers as the person found them.

(3) Where a person exercises the power mentioned in paragraph 5(2)(a), the Commission is to make full compensation to any person who has sustained loss or damage by reason of—

(a) the exercise that power; or

(b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2),

except in so far as the loss or damage is attributable to the fault of the person who sustained it.

(4) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of any power conferred by paragraph 5(1) and (2) is guilty of an offence.

(5) Any person who—

(a) intentionally obstructs a person acting in the exercise of any power conferred by paragraph 5(1) and (2); or

(b) refuses or fails, without reasonable excuse, to comply with a requirement made under paragraph 5(5),

is guilty of an offence.

(6) A person who is guilty of an offence under sub-paragraph (4) or (5) is liable—

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

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

Commencement Information

I55 Sch. 2 para. 6 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Warrants

7 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—

(a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in paragraph 5(2); and

(b) at least one of the conditions mentioned in sub-paragraph (2) is fulfilled in relation to the premises,

the sheriff or justice may grant a warrant authorising the Commission (and any person authorised by the Commission for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.

(2) The conditions are—

(a) that the exercise of the power in relation to the premises has been refused;

(b) that such a refusal may reasonably be expected;

(c) that the premises are unoccupied;

(d) that the occupier is temporarily absent from the premises;

(e) that the case is one of urgency;

(f) that an attempt to gain entry to the premises without the authority of a warrant would defeat the object of the proposed entry.

(3) A sheriff or justice must not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) is fulfilled unless the sheriff or justice is also satisfied—

(a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or

(b) that the giving of such notice would defeat the object of the proposed entry.

(4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.

Commencement Information

I56 Sch. 2 para. 7 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Enforcement notices

8 (1) If it appears to the Commission (whether or not following the exercise of powers under paragraph 5)—

(a) that—

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

(i) a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider and the contravention is likely to recur; or

(ii) such a provider is contravening a term or condition of the licence held by the provider and the contravention is likely to continue or to recur or both; and

(b) that the provider is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence,

the Commission may serve on the provider a notice (in this paragraph and paragraphs 9, 10 and 12 referred to as an "enforcement notice") in respect of the contravention.

(2) An enforcement notice must specify—

(a) the contravention to which it relates;

(b) the Commission'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 provider is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence;

(d) any particular steps which the Commission requires the provider to take for that purpose; and

(e) the date on which the notice is to take effect.

(3) An enforcement notice may specify different dates by which different steps specified under sub-paragraph (2)(d) must be completed.

(4) The date referred to in sub-paragraph (2)(e) must be no earlier than the day following the last day on which an appeal may be made under sub-paragraph (9).

(5) In considering whether to serve an enforcement notice, the Commission must consult—

(a) Scottish Water; and

(b) such other persons as the Commission considers appropriate.

(6) Before serving an enforcement notice on a provider under sub-paragraph (1), the Commission is to—

(a) serve a copy of the proposed notice on the provider; and

(b) specify a period (which is to be not less than 7 days and no more than 28 days from the date of service of the notice) within which the provider may make representations to the Commission about the proposed notice.

(7) The Commission—

(a) is to have regard to any representations made by virtue of sub-paragraph (6)(b); and

(b) may adjust the notice in light of the representations.

(8) The Commission must send a copy of an enforcement notice to—

(a) the Scottish Ministers; and

(b) Scottish Water.

(9) A provider on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service of the notice, appeal to the

sheriff against the notice; and the enforcement notice is of no effect until the appeal is withdrawn or finally determined.

(10) In an appeal under sub-paragraph (9), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.

(11) The Commission may—

(a) withdraw an enforcement notice; or

(b) waive or relax any requirement of an enforcement notice, including substituting a later date for a date specified under sub-paragraph (2)(c) or (3),

and may do so whether or not the notice has taken effect.

(12) The withdrawal of an enforcement notice does not affect the Commission's power to issue a further such notice.

Commencement Information

I57 Sch. 2 para. 8 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Enforcement notices: offences

9 (1) Any water services provider or sewerage services provider, on whom an enforcement notice has been served, who—

(a) fails to rectify, or (as the case may be) fails to take steps to prevent the recurrence of, a contravention specified in the notice—

(i) by the date specified in relation to the contravention under sub-paragraph (2)(c) of paragraph 8; or

(ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date; or

(b) fails to complete a step specified under sub-paragraph (2)(d) of paragraph 8—

(i) by the date specified in relation to that step under sub-paragraph (3) of that paragraph; or

(ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date,

is guilty of an offence.

(2) An offence under sub-paragraph (1) may be charged by reference to any day or longer period of time; and a provider may be convicted of a second or subsequent offence under that sub-paragraph by reference to any period of time following conviction for such an offence.

(3) A person who is guilty of an offence under sub-paragraph (1) is liable—

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

(b) on indictment, to a fine.

Commencement Information

I58 Sch. 2 para. 9 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

Revocation of licences

10 (1) A water services licence or sewerage services licence may be revoked in accordance with this paragraph.

(2) If it appears to the Commission that a water services provider or sewerage services provider, on whom an enforcement notice has been served, has—

(a) failed to rectify, or (as the case may be) failed to take steps to prevent the recurrence of, a contravention specified in the notice—

(i) by the date specified in relation to the contravention under sub-paragraph (2)(c) of paragraph 8; or

(ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date; or

(b) failed to complete a step specified under sub-paragraph (2)(d) of paragraph 8—

(i) by the date specified in relation to that step under sub-paragraph (3) of that paragraph; or

(ii) where a later date has been substituted for that date under sub-paragraph (11)(b) of that paragraph, by that later date,

the Commission may revoke the licence held by the provider by serving on the provider a notice of revocation.

(3) If—

(a) it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider; and

(b) the Commission considers that the provider would fail to comply with the terms of an enforcement notice pertaining to that contravention,

the Commission may revoke the licence by serving on the provider a notice of revocation.

(4) If (having special regard to the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7 and to any other matters specified under that subsection) the Commission considers that a water services provider or sewerage services provider no longer has the ability to perform adequately the activities authorised by the licence held by the provider, the Commission may (whether or not the provider has contravened a term or condition of the licence held by the provider) revoke the licence by serving on the provider a notice of revocation.

(5) The Commission may, following a request made to the Commission by a water services provider or a sewerage services provider for the licence held by the provider to be revoked, revoke the licence by serving on the provider a notice of revocation.

(6) The Commission must not revoke a licence under this paragraph unless satisfied that revocation is reasonable having regard to—

(a) the terms and conditions of the licence;

(b) the provider's responsibilities to the provider's customers; and

(c) any other matters the Commission considers to be relevant.

(7) A notice of revocation must specify—

(a) the reasons why it is served; and

(b) the date (which must be no earlier than the day after the last day on which an appeal against the notice may be made under sub-paragraph (8)) from which the revocation is to have effect.

(8) A provider on whom a notice of revocation has been served under sub-paragraph (2), (3) or (4) may, by summary application made within 14 days of the date of service of the notice, appeal to the sheriff against the notice; and the revocation is of no effect until the appeal is withdrawn or finally determined.

(9) In an appeal under sub-paragraph (8), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.

(10) As soon as practicable after a revocation under this paragraph has effect, the Commission must—

(a) send a copy of the notice of revocation to—

(i) Scottish Water; and

(ii) the Scottish Ministers; and

(b) publish the notice.

Commencement Information

I59 Sch. 2 para. 10 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Penalties for contravention of licence

11 (1) Where it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider, the Commission may impose on the provider a financial penalty of such amount as it considers reasonable in the circumstances of the case.

(2) The Commission—

(a) is to prepare a statement of policy with respect to the imposition of penalties under sub-paragraph (1) and the determination of their amount;

(b) is to keep the statement under review and may revise the statement;

(c) in preparing the statement (and any revised statement), is to consult such persons as it considers appropriate; and

(d) is to publish the statement (and any revised statement) in such manner as it considers appropriate.

(3) Before imposing a penalty under sub-paragraph (1), the Commission is to serve on the provider a notice of its intention to impose the penalty; and the notice must specify the date by which the provider may make representations to the Commission with respect to the penalty.

(4) In imposing a penalty under sub-paragraph (1), the Commission is to have regard to—

(a) the statement of policy under sub-paragraph (2) as published at the time of the contravention to which the penalty relates; and

(b) any representations made by virtue of sub-paragraph (3).

(5) A provider on whom a penalty is imposed under sub-paragraph (1) may, by summary application made within 14 days of the date on which the penalty was imposed,

Status: *Point in time view as at 22/07/2012.*
Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

appeal to the sheriff against the imposition of the penalty or the amount of the penalty; and the penalty is not recoverable until the appeal is withdrawn or finally determined.

(6) In an appeal under sub-paragraph (5), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.

(7) Any penalty imposed under sub-paragraph (1) is recoverable, from the person on whom it was imposed, by the Commission—
- (a) by civil diligence; and
- (b) whether or not that person continues to hold the licence in relation to which the penalty was imposed.

(8) Any sums received by the Commission by virtue of this paragraph must be paid into the Scottish Consolidated Fund.

Commencement Information
I60 Sch. 2 para. 11 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

Register of licences

12 (1) The Commission must keep a register of water services licences and sewerage services licences in such manner as the Scottish Ministers may by order prescribe.

(2) The register must—
- (a) record the particulars of each water services provider and sewerage services provider;
- (b) record the terms and conditions of each water services licence and sewerage services licence;
- (c) record, in relation to any enforcement notice—
  - (i) the particulars of the provider on whom the notice was served;
  - (ii) the date of service of the notice;
  - (iii) the matters specified under sub-paragraph (2) of paragraph 8;
  - (iv) any date specified under sub-paragraph (3) of that paragraph; and
  - (v) anything done under sub-paragraph (11) of that paragraph;
- (d) record, in relation to any notice of revocation served under paragraph 10—
  - (i) the particulars of the provider on whom the notice was served;
  - (ii) the date of service of the notice;
  - (iii) the reasons why it was served; and
  - (iv) the date specified under sub-paragraph (7)(b) of that paragraph;
- (e) record, in relation to any penalty imposed under paragraph 11—
  - (i) the particulars of the provider on whom it was imposed;
  - (ii) the amount; and
  - (iii) the date on which it was imposed;
- (f) record the outcome of any appeal provided for in this schedule; and
- (g) contain such other information as the Scottish Ministers may by order prescribe.

(3) The register must be available for inspection by any person at any reasonable time.

Commencement Information
I61 Sch. 2 para. 12 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**

SCHEDULE 3

(introduced by section 21(6))

CERTAIN PRE-EXISTING AGREEMENTS AS TO CHARGES

1 (1) In this schedule, a "relevant agreement" is an agreement—

(a) between Scottish Water and another person (a "relevant customer") in respect of eligible premises (within the meaning of Part 2)—

(i) by virtue of any of the provisions referred to in sub-paragraph (3) or otherwise; and

(ii) which makes provision as to the charges to be paid (other than under a charges scheme) by the relevant customer for services provided by Scottish Water in the exercise of its core functions; and

(b) extant on the coming into force of this schedule.

(2) For the purposes of sub-paragraph (1)—

(a) an agreement between Scottish Water and another person includes an agreement with the other person to which Scottish Water has become party in consequence of a transfer, by virtue of any enactment or contractual arrangements, of obligations to Scottish Water; and

(b) an agreement which makes provision as to the charges to be paid for services provided by Scottish Water does not include an agreement by virtue of which there is an obligation to which section 47 of the 1980 Act applies.

(3) For the purposes of sub-paragraph (1)(a)(i), the provisions are—

(a) sections 29(2)(b) and (4) and 31(6) of the 2002 Act (as they had effect immediately before their repeal by this Act);

(b) section 29(3)(j) of the 1968 Act (as it had effect immediately before its repeal by this Act).

Commencement Information
I62 Sch. 3 para. 1 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

2 (1) Scottish Water must, within one month of the coming into force of this schedule, send to the Commission written details of every relevant agreement.

(2) The Commission must, following receipt of those details, in each case—

(a) assess the charges payable under the relevant agreement (the "relevant charges") during any period to which a charges scheme applies; and

(b) having regard to—

(i) any costs which reasonably require to be met from the charges fixed in accordance with sub-paragraph (6)(b); and

(ii) such other matters as the Commission considers appropriate,

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Changes to legislation: *There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005. (See end of Document for details)*

determine, for the purposes of sub-paragraph (6)(a), an amount less than the relevant charges.

(3) The Commission must, in each case—

(a) give the relevant customer written notice of the assessment and determination under sub-paragraph (2); and

(b) send a copy of the notice to—

(i) Scottish Water; and

(ii) every water services and sewerage services provider,

by such date as the Scottish Ministers may direct.

(4) The Commission must publish details of every determination under sub-paragraph (2)(b).

(5) This sub-paragraph applies in any case where a water or sewerage services provider makes arrangements for the provision of any services to which relevant charges apply and is accordingly entitled to demand and recover charges from a relevant customer for that provision.

(6) Where sub-paragraph (5) applies—

(a) Scottish Water may, in relation to that provision, demand and recover from the provider charges which must not exceed the amount determined under sub-paragraph (2)(b); and

(b) the charges which the provider may, in relation to that provision, demand and recover from the relevant customer concerned must not exceed the amount of the relevant charges.

(7) Any financial disadvantage to Scottish Water arising as a consequence of differences between—

(a) the amounts determined under sub-paragraph (2)(b); and

(b) the charges which would be recoverable by Scottish Water under a charges scheme in relation to the services to which the determinations apply,

is to be borne by Scottish Water.

(8) Scottish Water is—

(a) in any case where sub-paragraph (5) does not for the time being apply; or

(b) in any case where that sub-paragraph ceases to apply,

to demand and recover relevant charges from the relevant customer for services provided by it to the customer.

Commencement Information

I63 Sch. 3 para. 2 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

3 (1) A charges scheme does not apply in relation to any services to which relevant charges apply except where the relevant agreement concerned expires or is terminated.

(2) For the purposes of sub-paragraph (1), the making of arrangements by a water services or sewerage services provider for the provision of any services to which relevant charges apply does not of itself cause the relevant agreement concerned to expire or terminate.

(3) A relevant agreement may not be renewed on its expiry or termination, nor may its term be extended at any time.

Commencement Information
I64 Sch. 3 para. 3 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

SCHEDULE 4

(introduced by section 30(4))

POWERS OF ENTRY UNDER THE COAL INDUSTRY ACT 1994

Commencement Information
I65 Sch. 4 in force at 20.6.2005 by S.S.I. 2005/351, art. 2, **Sch. 1**

After Schedule 1B to the Coal Industry Act 1994 (c. 21) there is inserted—

"SCHEDULE 1C

SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY: SCOTLAND

Exercise of powers of entry etc.

1 (1) A person entitled to enter premises by virtue of the power mentioned in section 4E(3)(a) of this Act—

(a) may take on to the premises such other persons (including, if the person reasonably believes he is likely to be obstructed, a constable) and such equipment or materials as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and

(b) must, if required to do so, produce written evidence of that entitlement.

(2) A person who enters premises in the exercise of a power conferred by virtue of section 4E of this Act must leave the premises as effectually secured against trespassers as the person found them.

(3) Where a person exercises a power conferred by virtue of section 4E(3)(a) or (4) of this Act, the Authority is to make full compensation to any person who has sustained loss or damage by reason of—

(a) the exercise of that power; or

(b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2) above,

except in so far as the loss or damage is attributable to the fault of the person who sustained it.

(4) Any dispute as to a person's entitlement to compensation under sub-paragraph (3) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbiter, appointed—

(a) by agreement between the Authority and the person who claims to have sustained the loss or damage; or

(b) in default of agreement, by the Scottish Ministers.

(5) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of a power conferred by virtue of section 4E of this Act is guilty of an offence.

(6) A person who is guilty of an offence under sub-paragraph (5) above is liable—

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

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

(7) In this schedule, "premises" has the meaning given by section 4E(8) of this Act.

Warrants

2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—

(a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in section 4E(3) or (4) of this Act; and

(b) at least one of the conditions mentioned in sub-paragraph (2) below is fulfilled in relation to the premises,

the sheriff or justice may grant a warrant authorising the Authority (and any person authorised by the Authority for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.

(2) The conditions are—

(a) that the exercise of the power in relation to the premises has been refused;

(b) that such a refusal may reasonably be expected;

(c) that the premises are unoccupied;

(d) that the occupier is temporarily absent from the premises and the case is one of urgency.

(3) In a case where subsections (5) and (6) of section 4E of this Act apply, a sheriff or justice shall not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) above is fulfilled unless the sheriff or justice is also satisfied that notice required by subsection (5)(a) of that section has been given and that the period of that notice has expired.

(4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.".

SCHEDULE 5

(introduced by section 32)

AMENDMENTS TO ENACTMENTS

Sewerage (Scotland) Act 1968 (c. 47)

1 In section 29 (which makes provision relating to consent to discharge of trade effluent) of the 1968 Act, paragraph (j) of subsection (3) is repealed.

Commencement Information
I66 Sch. 5 para. 1 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

House of Commons Disqualification Act 1975 (c. 24)

2 In the House of Commons Disqualification Act 1975, in Part III of Schedule 1(disqualifying offices), the entry relating to the Water Industry Commissioner for Scotland is repealed.

Commencement Information
I67 Sch. 5 para. 2 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

Race Relations Act 1976 (c. 74)

3 In the Race Relations Act 1976, in Part II of Schedule 1A (bodies and other persons subject to general statutory duty), the entry relating to the Water Industry Commissioner for Scotland is repealed.

Commencement Information
I68 Sch. 5 para. 3 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

Water (Fluoridation) Act 1985 (c. 63)

4 In the Water (Fluoridation) Act 1985, in subsections (2)(b)(i) and (3) of section 4 (publicity and consultation), for the word "Commissioner" in each place where it occurs there is substituted " Commission ".

Commencement Information
I69 Sch. 5 para. 4 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

5 In the Public Finance and Accountability (Scotland) Act 2000, in subsection (7) of section 23 (economy, efficiency and effectiveness examinations), for the word "Commissioner" there is substituted " Commission ".

Commencement Information
I70 Sch. 5 para. 5 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2** (with art. 3(3))

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

6 In the Ethical Standards in Public Life etc. (Scotland) Act 2000—

(a) in section 19 (action on finding of contravention)—

(i) in subsection (4), the words from "and" in the second place where it occurs to the end are repealed; and

(ii) in subsection (5), paragraph (c) and the word "; or" immediately preceding it are repealed;

(b) sections 25 and 26 (which make special provision for the Water Industry Commissioner for Scotland) are repealed;

(c) in section 30 (modification of enactments etc.), the words "or the Water Industry Commissioner for Scotland" are repealed;

(d) in schedule 1 (the Standards Commission for Scotland), in paragraph 3, the words "or the Water Industry Commissioner for Scotland" are repealed; and

(e) in schedule 3 (devolved public bodies), after the entry relating to the State Hospitals Board for Scotland, there is inserted— " The Water Industry Commission for Scotland ".

Commencement Information

I71 Sch. 5 para. 6 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2** (with art. 3(3))

Water Industry (Scotland) Act 2002 (asp 3)

7 (1) In each of the following provisions of the 2002 Act, for the words "Commissioner" and "Commissioner's" wherever occurring there is substituted " Commission " and " Commission's " respectively—

section 3;
section 4(1);
section 5(1) to (3);
section 6;
section 11(1)(a);
section 26(1) to (4) and (7);
section 27;
section 57(6)(a); and
in schedule 1, paragraphs 6(4), 7 and 8.

(2) In section 3 (functions of the Commissioner) of that Act, in subsection (6)—

(a) in paragraph (a), for the words "its customers" there is substituted " persons whose premises are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both "; and

(b) in paragraph (b), for the words "it conducts its relations with its customers or potential or former customers" there is substituted " Scottish Water conducts its relations with those persons or persons whose premises have been, or might reasonably become, connected to either or both of those systems ".

[F8](3) . . . . . .

(4) In section 26 (customer standards codes) of that Act—

(a) in subsection (1)—

(i) in paragraph (a), for the words "its customers" there is substituted " persons whose premises are connected to the public water supply

system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both "; and

(ii) in paragraph (b), for the words "its customers or potential or former customers" there is substituted " those persons or persons whose premises have been, or might reasonably become, connected to either or both of those systems "; and

(b) subsection (2) is repealed.

(5) Section 40 (reduced charges) of that Act is repealed.

(6) In section 49 (interests of customers) of that Act, for the words "who is a customer or potential customer of Scottish Water" there is substituted " whose premises are connected to, or might reasonably become connected to, the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2005 (asp 3)) or both; ".

(7) In section 57 (information and reports) of that Act, in subsection (7)—

(a) the words from "any" to the end become paragraph (a); and

(b) after that paragraph there is inserted ", and

(b) the extent to which Scottish Water has, during that period, complied with any requirements made under section 13(2) or 15(1) or (5) of the Water Services etc. (Scotland) Act 2005 (asp 3).".

(8) In section 68 (orders and regulations) of that Act—

(a) in subsection (4) after the words "41(5)" there is inserted " , 56B "; and

(b) in subsection (6), after the words "41(5)" there is inserted " or 56B ".

(9) In section 70 (interpretation) of that Act, in subsection (1)—

(a) in the definition of "charges scheme", for the words "31(1)" there is substituted " 29A(1) "; and

(b) for the definition of "the Commissioner" there is substituted—

""the Commission" means the Water Industry Commission for Scotland established under section 1(1) of this Act,".

(10) Part 1 (the Commissioner) of schedule 1 to that Act is repealed.

Textual Amendments

F8 Sch. 5 para. 7(3) repealed (15.8.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7)(8), **Sch. 2 para. 21**; S.S.I. 2011/278, art. 2(d)

Commencement Information

I72 Sch. 5 para. 7(1) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**
I73 Sch. 5 para. 7(2) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**
I74 Sch. 5 para. 7(3) in force at 1.4.2006 by S.S.I. 2006/167, art. 2, **Sch. 1**
I75 Sch. 5 para. 7(4) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**
I76 Sch. 5 para. 7(5) in force at 22.7.2012 by S.S.I. 2012/192, **art. 2**
I77 Sch. 5 para. 7(6) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**
I78 Sch. 5 para. 7(7) in force at 7.9.2006 by S.S.I. 2006/445, art. 2, **Sch.**
I79 Sch. 5 para. 7(8) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**
I80 Sch. 5 para. 7(9) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2**

I81 Sch. 5 para. 7(10) in force at 8.1.2007 by S.S.I. 2006/599, art. 2, **Sch.**

Scottish Public Services Ombudsman Act 2002 (asp 11)

8 In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities)—

[F9](a) . . . . . .

(b) in paragraph 55, for the word "Commissioner" there is substituted " Commission ".

Textual Amendments

F9 Sch. 5 para. 8(a) repealed (15.8.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7)(8), **Sch. 2 para. 21**; S.S.I. 2011/278, art. 2(d)

Commencement Information

I82 Sch. 5 para. 8(a) in force at 1.4.2006 by S.S.I. 2006/167, art. 2, **Sch. 1**

I83 Sch. 5 para. 8(b) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2** (with art. 3(3))

Freedom of Information (Scotland) Act 2002 (asp 13)

9 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—

[F10](a) . . . . . .

(b) in paragraph 106, for the word "Commissioner" there is substituted " Commission ".

Textual Amendments

F10 Sch. 5 para. 9(a) repealed (15.8.2011) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7)(8), **Sch. 2 para. 21**; S.S.I. 2011/278, art. 2(d)

Commencement Information

I84 Sch. 5 para. 9(a) in force at 1.4.2006 by S.S.I. 2006/167, art. 2, **Sch. 1**

I85 Sch. 5 para. 9(b) in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2** (with art. 3(3))

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

10 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—

(a) the entry relating to the Water Industry Commissioner for Scotland is repealed; and

(b) after the entry relating to the Scottish Tourist Board there is inserted— " Water Industry Commission for Scotland ".

Commencement Information

I86 Sch. 5 para. 10 in force at 1.7.2005 by S.S.I. 2005/351, art. 2, **Sch. 2** (with art. 3(3))

Status:
Point in time view as at 22/07/2012.

Changes to legislation:
There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005.