

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Provision of Water and Sewerage Services

Offences

Section 4: Public water supply system: offences

23. **Section 4** prohibits any person from introducing water into the public water supply system (as defined by section 28 of the Act) or using the public water supply system to carry water to the premises of another person. It also prohibits making arrangements for or in relation to the supply of water to the premises of another person, except as authorised by a licence. To achieve this, subsections (1) to (3) create offences, and these are subject to the exceptions in subsections (4) to (6).
24. Subsections (1) and (2) prohibit common carriage by making it an offence for anyone to introduce water into the public water supply system or to use that system for the purpose of supplying water to premises connected to the system.
25. Subsection (3) prohibits the making of any arrangements for or in relation to the supply of water through the public water supply system to the premises of customers connected to that system.
26. Subsection (4) exempts Scottish Water or someone acting on its behalf or under its authority from the offences introduced in the preceding subsections, allowing them to introduce water to the public water supply system, use the system for the purpose of supplying water and make arrangements in connection with supplying water.
27. Subsection (5), by way of an exemption from the offences at subsections (2) and (3), allows a person supplying water with the help of services provided by Scottish Water as described at section 30 of the 2002 Act, to use the public water supply system to supply water to premises connected to the system and to make arrangements to supply water to the premises of another person.
28. Subsection (6) provides that licensed providers of water or sewerage services are not caught by the prohibition at subsection (3). (Section 6 of the Act establishes a system for licensing "water services providers" and "sewerage services providers".)
29. Subsections (7) and (8) allow Ministers to specify in regulations other circumstances where the prohibitions in subsections (1), (2) and (3) will not apply. These give Ministers powers, which could be used if, for example, it emerged in practice that the prohibitions were catching activities which Ministers did not intend to prohibit. Ministers are required to consult on any regulations that they propose to make under subsection (7), and section 34 provides for these regulations to be subject to affirmative procedure in the Parliament. Subsection (9) qualifies the power to make regulations under subsection (7) by providing that it can only be exercised where the effect of any

such regulations is not prejudicial to the exercise of Scottish Water's core functions regarding the supply of water.

30. Subsections (10) and (11) set out the penalties for anyone committing an offence under this section, setting greater penalties for offences under subsection (1), which prohibits introducing water into the public water supply system: up to two years in prison, an unlimited fine, or both (subsection (10)). Subsection (11) specifies penalties for anyone guilty of the offences at subsections (2) and (3) of using the public water supply system to supply customers, or arranging for a supply to be made, of up to an unlimited fine. In both cases there is provision for treating offences in two ways, summary conviction (i.e. where convicted by a Sheriff sitting without a jury), where lesser maximum penalties apply, or conviction on indictment (i.e. where convicted by a jury in the Sheriff Court or the High Court). The statutory maximum fine referred to in subsection (11)(a) is currently £5,000. Subsection (12) provides that any agreement in breach of the prohibitions is unenforceable.

Section 5: Public sewerage system: offences

31. **Section 5** makes provisions prohibiting common carriage and other activities for or in relation to the public sewerage system that parallel those at section 4 in relation to the public water supply system. Subsections (1) to (3) create offences, and these are subject to the exceptions in subsections (4) to (6).
32. Subsections (1) to (3) prohibit common carriage on the public sewerage system (as defined by section 29 of the Act). They also prohibit the making of arrangements for or in relation to the provision of sewerage to, or the disposal of sewage from the premises of another person, except as authorised by a licence.
33. Subsections (4) to (6) set out the circumstances in which the prohibitions in subsections (1) to (3) do not apply. Subsections (7) and (8) provide for Ministers to make regulations specifying other circumstances in which the prohibitions will not apply. Section 34 provides for these regulations to be subject to affirmative procedure in the Parliament. Subsection (9) qualifies the power to make regulations by providing that it can only be exercised where the effect of any such regulations is not prejudicial to the exercise of Scottish Water's core functions regarding the provision of sewerage and disposal of sewage. Subsections (10) and (11) provide for the same range of penalties in respect of the prohibitions concerning the provision of sewerage services as are available at section 4(10) and (11) in respect of water supply services. Subsection (12) provides that any agreement in breach of the prohibitions is unenforceable.