

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Provision of Water and Sewerage Services

Scottish Water: water and sewerage services undertaking

Section 13: Water and sewerage services undertaking

51. Section 13 enables the Scottish Ministers to require Scottish Water to separate its retail functions from its wholesale functions, by creating a separate business undertaking. In this way it will be possible for this retail arm to be treated in the same way as any other service provider, under the licensing regime and by Scottish Water.
52. Subsection (1) provides that Scottish Water must comply with a requirement made on it to secure the establishment of a business undertaking. Subsection (2) provides that the Scottish Ministers may require Scottish Water to take such steps as Ministers specify for the purposes of, or in connection with, the establishment and development of, or Scottish Water's interest in, the undertaking; and to take these steps, or any particular steps, by such date as Ministers specify. Subsection (3) provides that it is for Scottish Water to determine, subject to Scottish Ministers' approval, whether the undertaking will be a subsidiary, company, or partnership, or be established through such other arrangements as it considers appropriate.
53. Subsection (4) provides that the functions of the undertaking established under subsection (1) are to become a water services provider and a sewerage services provider, and thereafter to carry out the functions authorised by those licences. Subsection (5) requires the undertaking to apply to become a water services and sewerage services provider as soon as reasonably practicable after it is established.
54. Subsection (6) confers an order-making power on the Scottish Ministers to prescribe that paragraphs 1 and 2 of schedule 2 to the Act, which make provision for licence applications and licence conditions, have effect subject to such modifications as are specified in the order, in relation to the first application for a licence made by the undertaking established under section 13. Section 34 of the Act provides that an order under this subsection is subject to negative procedure in the Parliament.
55. Subsection (7) allows the new undertaking to engage in any activity which it considers is not inconsistent with its activities as a water and sewerage services provider. The intention here is to ensure that the undertaking has the same freedom as any other licensed provider to offer its customers services in addition to those provided pursuant to its licence.
56. Subsection (8) requires Scottish Water to treat the new undertaking in the same way as it treats any other licensed water or sewerage services provider.
57. Subsection (9) confirms that references to Scottish Water in any enactment will henceforth be understood not to include the new undertaking established by this section,

*These notes relate to the Water Services etc. (Scotland) Act
2005 (asp 3) which received Royal Assent on 17 March 2005*

to ensure that responsibility for all Scottish Water's statutory functions apply to Scottish Water as the public (wholesale) water supplier and sewerage provider in exercise of its core functions.