



# Water Services etc. (Scotland) Act 2005

## 2005 asp 3

### 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,

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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**

- I1** S. 4(1)-(5)(7)-(12) in force at 20.6.2005 by [S.S.I. 2005/351](#), art. 2, [Sch. 1](#)
- I2** 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—

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- (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**

- I3** S. 5(1)-(5)(7)-(13) in force at 20.6.2005 by [S.S.I. 2005/351](#), art. 2, [Sch. 1](#)
- I4** 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 [F1 paragraphs 1, 1A 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

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- (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 [F2 paragraphs 1, 1A 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.

#### **Textual Amendments**

- F1** Words in s. 6(1) substituted (20.11.2015) by [Water Act 2014 \(c. 21\), ss. 7\(3\)\(a\), 94\(3\)](#); S.S.I. 2015/360, art. 2(b)
- F2** Words in s. 6(3) substituted (20.11.2015) by [Water Act 2014 \(c. 21\), ss. 7\(3\)\(b\), 94\(3\)](#); S.S.I. 2015/360, art. 2(b)

#### **Commencement Information**

- I5** S. 6 in force at 7.9.2006 for specified purposes by [S.S.I. 2006/445, art. 2, Sch.](#)
- I6** 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.

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- (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**

**I7** S. 7 in force at 7.9.2006 for specified purposes by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

**I8** 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**

**I9** S. 8 in force at 7.9.2006 by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

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## 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

**I10** S. 9 in force at 20.6.2005 for specified purposes by [S.S.I. 2005/351](#), art. 2, [Sch. 1](#)

**I11** 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.](#)

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## 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

**I12** 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.

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#### **Commencement Information**

**I13** S. 11 in force at 7.9.2006 by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

### **[<sup>F3</sup>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**

**F3** 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)



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## 12 Licences and compliance: further provision

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

### Commencement Information

**I14** S. 12 in force at 7.9.2006 for specified purposes by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

**I15** 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 (<sup>F4</sup>as defined in section 1159 of the Companies Act 2006) of Scottish Water;
    - (ii) a company (<sup>F5</sup>as 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.

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- (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

- F4** 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)
- F5** 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

- I16** 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.
- [<sup>F6</sup>(2) In such circumstances as the Scottish Ministers may by order specify, the undertaking may borrow—
- (a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,
  - (b) money from any other person, whether—
    - (i) in sterling or otherwise,
    - (ii) the person is in the United Kingdom or elsewhere.
- (2A) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).]
- (3) In any financial year, the net amount of sums borrowed under subsection [<sup>F7</sup>(2)] 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

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- (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 [F8(2)(b) or] (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.

#### Textual Amendments

- F6** S. 14(2)(2A) substituted for s. 14(2) (10.6.2013 for specified purposes, 21.12.2013 in so far as not already in force) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 28(2)**, 56(1), 56(2); S.S.I. 2013/163, art. 3, Sch.; S.S.I. 2013/342, art. 2(a)
- F7** Word in s. 14(3) substituted (10.6.2013 for specified purposes, 21.12.2013 in so far as not already in force) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 28(3)**, 56(1), 56(2); S.S.I. 2013/163, art. 3, Sch.; S.S.I. 2013/342, art. 2(a)
- F8** Words in s. 14(6) inserted (10.6.2013 for specified purposes, 21.12.2013 in so far as not already in force) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 28(4)**, 56(1), 56(2); S.S.I. 2013/163, art. 3, Sch.; S.S.I. 2013/342, art. 2(a)

#### Commencement Information

- I17** S. 14 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, Sch.

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## 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**

**I18** S. 15 in force at 7.9.2006 by S.S.I. 2006/445, art. 2, Sch.

*Status: Point in time view as at 10/11/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

### *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**

**I19** S. 16 in force at 7.9.2006 by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

## **17 Continuation of water services**

- (1) Where—

*Status: Point in time view as at 10/11/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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**

**I20** S. 17 in force at 7.9.2006 by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

*Status: Point in time view as at 10/11/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

## **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**

**I21** 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—

*Status: Point in time view as at 10/11/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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;
  - [<sup>F9</sup>(c) [<sup>F10</sup>Consumer Scotland];]
  - (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

**F9** 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)

**F10** Words in s. 19(4)(c) substituted (10.11.2022) by [The Consumer Scotland \(Transfer of Functions\) Regulations 2022 \(S.S.I. 2022/296\)](#), reg. 1(1), [sch. para. 2\(2\)](#) (with reg. 3)

#### Commencement Information

**I22** 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.
- (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—



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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

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- (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.

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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

**I23** S. 20 in force at 7.9.2006 by [S.S.I. 2006/445](#), art. 2, [Sch.](#)

### *[<sup>F11</sup>Contractual matters*

#### Textual Amendments

**F11** Ss. 20A, 20B and cross-heading inserted (10.6.2013 for specified purposes, 1.4.2016 in so far as not already in force) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), [ss. 32, 56\(1\)\(2\)](#); [S.S.I. 2013/163](#), art. 3, [Sch.](#); [S.S.I. 2016/14](#), art. 2

## 20A Deemed contracts

- (1) Subsection (4) applies as respects the circumstances specified in subsection (2) or (3).
- (2) The circumstances are that water is supplied to eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—
- (a) a water services provider, and
  - (b) the occupier of the premises.
- (3) The circumstances are that sewerage is provided to, or sewage is disposed of from, eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—
- (a) a sewerage services provider, and
  - (b) the occupier of the premises.
- (4) The relevant parties are deemed to have made arrangements with each other for the provision to the premises of the services to which subsection (2) or (as the case may be) (3) relates.
- (5) The terms and conditions set by a scheme made under section 20B are incorporated into the arrangements—
- (a) as if they were agreed by the relevant parties, and
  - (b) so far as they are relevant having regard to the purposes or areas to which they extend.
- (6) The arrangements are effective as from the later of—
- (a) the day on which the premises began to receive those services,
  - (b) the day on which the occupier acquired the premises,
  - (c) the day on which section 32 of the Water Resources (Scotland) Act 2013 came into force.

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (7) Sections 16 to 20 have effect in relation to the arrangements as if they were made ordinarily between the relevant parties.
- (8) In this section—
- (a) the references to the relevant parties are to—
    - (i) the water services or (as the case may be) sewerage services provider that is designated in accordance with a scheme made under section 20B, and
    - (ii) the occupier of the premises,
  - (b) the references to the occupier of premises are, if the premises are unoccupied, to be construed as references to the owner of the premises.

## **20B Commission's scheme**

- (1) The Commission must make a scheme setting out the terms and conditions to be incorporated into any arrangements deemed by section 20A(4) to have been made.
- (2) A scheme under this section may—
- (a) specify the basis on which a particular water or sewerage services provider is to be designated in connection with section 20A(8)(a)(i),
  - (b) in respect of the services to which section 20A(2) or (as the case may be) (3) relates—
    - (i) fix the maximum charges that may be recovered by the water or sewerage services provider so designated,
    - (ii) allow the water or sewerage services provider so designated to set the particular charges that are to be recovered by it.
- (3) A scheme under this section may—
- (a) make different provision for different purposes or areas,
  - (b) for future application, revise an earlier such scheme.
- (4) Before making a scheme under this section, the Commission must consult—
- (a) every water or sewerage services provider,
  - (b) Scottish Water, and
  - (c) [<sup>F12</sup>Consumer Scotland].
- (5) As soon as practicable after the Commission makes a scheme under this section, it must—
- (a) in a manner appropriate for bringing the scheme to the attention of persons likely to be affected by it, publish a notice stating its effect,
  - (b) send a copy of the scheme to—
    - (i) every water or sewerage services provider,
    - (ii) Scottish Water, and
    - (iii) any other person who requests it.]

### **Textual Amendments**

- F12** Words in s. 20B(4)(c) substituted (10.11.2022) by [The Consumer Scotland \(Transfer of Functions\) Regulations 2022 \(S.S.I. 2022/296\)](#), reg. 1(1), [sch. para. 2\(3\)](#) (with reg. 3)

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

## **[<sup>F13</sup>20C Notification of occupancy**

- (1) Subsection (2) applies to any premises—
  - (a) to which water is supplied under section 16(2), or
  - (b) to which sewerage is provided, or from which sewage is disposed of, under section 16(5).
- (2) The owner of the premises must give the water or sewerage services provider the required information if there is a change in occupancy because they—
  - (a) are occupied by a new occupier, or
  - (b) have fallen vacant.
- (3) In subsection (2), “ required information ” means—
  - (a) address of the premises,
  - (b) identity of the new occupier or (as the case may be) fact that the premises have fallen vacant,
  - (c) day on which the change in occupancy occurred.
- (4) The Scottish Ministers may by regulations—
  - (a) make rules for timing and procedure in connection with subsections (1) and (2),
  - (b) by addition, modify the list in subsection (3).

### **Textual Amendments**

**F13** Ss. 20C, 20D inserted (10.6.2013 for specified purposes, 1.1.2017 in so far as not already in force) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 33(2), 56(1)(2)**; [S.S.I. 2013/163](#), art. 3, sch.; [S.S.I. 2016/327](#), art. 2

## **20D Liability for charges**

- (1) Subsection (2) applies if, without reasonable excuse, an owner of any premises to which section 20C(1) relates fails to comply with section 20C(2) (except where the new occupier is the owner or the premises have fallen vacant).
- (2) The new occupier's liability (if any) to the water or sewerage services provider for the relevant charges becomes shared jointly and severally with the owner.
- (3) In subsection (2), “ relevant charges ” means charges arising by virtue of any arrangements to which section 16(1) or (as the case may be) (4) relates.
- (4) The Scottish Ministers may by regulations make rules for—
  - (a) timing and procedure in connection with subsections (1) and (2),
  - (b) exempting an owner from liability under subsections (1) and (2) where, although information supplied by the owner is inaccurate or incomplete, the owner has taken prescribed steps to ensure its accuracy or completeness.]

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

### Textual Amendments

**F13** Ss. 20C, 20D inserted (10.6.2013 for specified purposes, 1.1.2017 in so far as not already in force) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 33(2)**, 56(1)(2); S.S.I. 2013/163, art. 3, sch.; S.S.I. 2016/327, art. 2

### *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).

### **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.

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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).

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

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### **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,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

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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



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- (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

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- (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.

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(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**

**I24** S. 21(1)-(3) (6) in force at 1.7.2005 by [S.S.I. 2005/351](#), [art. 2](#), [Sch. 2](#) (with [art. 3\(3\)](#))

**I25** 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,

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- (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**

**I26** 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

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- (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**

**I27** 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.”.

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

### Commencement Information

**I28** 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.

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*Changes to legislation: There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2. (See end of Document for details)*

- (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) [<sup>F14</sup>or by an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014].
- (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.

#### Textual Amendments

**F14** Words in s. 25(9) inserted (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\), s. 61\(2\), Sch. 3 para. 9](#); S.S.I. 2014/160, art. 2(1)(2), Sch.

#### Commencement Information

**I29** 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.

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- (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 [<sup>F15</sup>nuisance—
  - (a) which constitutes a sewerage nuisance; and
  - (b) in respect of which a sewerage code applies.]
- [<sup>F16</sup>(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.]



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- (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

- F15** 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**
- F16** 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

- I30** S. 26(1)-(9) (11) in force at 22.4.2006 by [S.S.I. 2006/167](#), art. 2, **Sch. 2**
- I31** S. 26(10) in force at 22.4.2006 for specified purposes by [S.S.I. 2006/167](#), art. 2, **Sch. 2**
- I32** S. 26(12) in force at 10.2.2006 for specified purposes by [S.S.I. 2006/40](#), **art. 2(b)**
- I33** 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—
- in relation to the supply of water, premises which are (or are to be) connected to the public water supply system; and
  - 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

- I34** 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)—
- vested in Scottish Water; or

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- (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**

**I35** 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**

**I36** S. 29 in force at 20.6.2005 by [S.S.I. 2005/351](#), art. 2, [Sch. 1](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Part 2.