

# **WATER RESOURCES (SCOTLAND) ACT 2013**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 3 – Scottish Water’s Functions**

##### ***Section 23 – Value of water resources***

37. This section amends section 25 (Scottish Water’s general powers) of the 2002 Act to clarify that section 25(1) of that Act extends to allowing Scottish Water to engage in any activity that it considers will assist in the development of the value of Scotland’s water resources.

##### ***Section 24 – Development of assets***

38. This section inserts a new section 50A into the 2002 Act which places a duty on Scottish Water to take reasonable steps to develop the commercial value of its assets and expertise, although only so far as it considers that this is not inconsistent with the economic, efficient and effective exercise of its functions. In complying with this duty, Scottish Water must have regard to any guidance issued by the Scottish Ministers. Assets in this section are defined as property, rights and other assets (whether tangible or intangible). For example, this might include technological expertise, water treatment works and land.

##### ***Section 25 – Supporting renewable energy***

39. This section inserts a new section 51A into the 2002 Act which places a duty on Scottish Water to take reasonable steps to promote the use of its assets (both tangible and intangible) for the generation of renewable energy, although only so far as it considers that this is not inconsistent with the economic, efficient and effective exercise of its functions. In complying with this duty, Scottish Water must have regard to any guidance issued by the Scottish Ministers.

##### ***Section 26 – Meaning of core functions***

40. This section amends the definition of Scottish Water’s core functions in section 70 (interpretation) of the 2002 Act. Currently, Scottish Water’s core functions are its functions under or by virtue of the 1968 Act, the 1980 Act, the 2002 Act, and any other enactment (with the exception of its functions under section 25(1) and (2) of the 2002 Act). This section alters the definition of “core functions” in the 2002 Act so that it is confined to functions of Scottish Water under the 1968 and 1980 Acts, and other functions which relate to the provision of water or sewerage services (whether under the 2002 Act or otherwise).

##### ***Section 27 – Subsidiaries of Scottish Water***

41. This section inserts new sections 42A and 42B into the 2002 Act. The new section 42A enables the Scottish Ministers to pay grants directly to, or lend directly to, a subsidiary of Scottish Water (as well as to Scottish Water itself). It also allows a subsidiary of

Scottish Water to borrow from any other person. However, Scottish Water's consent is required to any subsidiary borrowing from the Scottish Ministers or any person other than Scottish Water itself. The section does not, however, apply to the water and sewerage undertaking established by Scottish Water under section 13 of the 2005 Act (currently 'Scottish Water Business Stream Limited'), even if that entity is a subsidiary of Scottish Water.

42. Section 42(4) and (5) of the 2002 Act provide that Scottish Water's net borrowings in each financial year must not exceed the limit to be set in a Budget Act. In light of the fact that, under new section 42A, subsidiaries of Scottish Water may now borrow, new section 42B provides that the net amount of sums borrowed by Scottish Water and any subsidiary of it must not exceed the amount specified in a Budget Act. Section 42(4) and (5) of the 2002 Act are repealed by this section.
43. A "subsidiary" for the purposes of new sections 42A and 42B of the 2002 Act is defined by reference to section 1159 of the [Companies Act 2006 \(c. 46\)](#), which provides that a company is a subsidiary of another company if that other company (a) holds a majority of the voting rights in it, (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it (or is a subsidiary of a company that is itself a subsidiary of that other company).

#### ***Section 28 – Water and sewerage undertaking***

44. This section amends section 14 of the 2005 Act to enable the Scottish Ministers to, by order, specify the circumstances in which the undertaking established under section 13 of that Act (currently 'Scottish Water Business Stream Limited') may, with the consent of Scottish Water, borrow money from the Scottish Ministers or other persons.

#### ***Section 29 – Errors in metering***

45. This section amends section 54 of the 1980 Act, which makes provision regarding water meter accuracy, to alter the error threshold above which Scottish Water must refund any overpayments (or the customer make up any underpayments) resulting from the inaccuracy. The amended section provides that where a water meter registers incorrectly to any degree exceeding 2.5% (for high flow rate) or 6% (for low flow rate), a refund or payment (as appropriate) must be made. Those rates are substituted for the existing error threshold in the 1980 Act of 5%. The Scottish Ministers are required through regulations to define what constitutes high and low flow rates (and regulations may also amend either of the percentage figures).