



# Water Industry (Scotland) Act 2002

## 2002 asp 3

### PART 3

#### SCOTTISH WATER

##### *Finances*

#### **41 Duties and powers relating to finance**

- (1) Scottish Water must exercise its functions so as to secure that, taking one year with another, its income is not less than sufficient to meet its expenditure.
- (2) The Scottish Ministers may by order direct Scottish Water to exercise its functions, during any period specified in the order, with a view to securing that it achieves in respect of that period a rate of return on the value of its average net assets (as for the time being defined for the purposes of this section by the Scottish Ministers) which is not less than the rate specified in the order as the rate of return which the Scottish Ministers consider it is reasonable for Scottish Water to achieve.
- (3) Without prejudice to subsection (1), the Scottish Ministers may, after consulting Scottish Water, determine that Scottish Water is (in addition to or in place of a duty imposed by virtue of subsection (2)) subject to a specified duty of a financial nature; and different determinations may be so made in relation to different functions of Scottish Water.
- (4) A determination under subsection (3) may—
  - (a) relate to a period beginning before the date on which it is made,
  - (b) contain incidental or supplemental provisions,
  - (c) be varied by a subsequent determination under that subsection.
- (5) A determination under subsection (3) must be made by order where—
  - (a) the duty specified in it is in place of a duty imposed by virtue of subsection (2),  
or
  - (b) it varies a previous determination made by order.
- (6) Scottish Water must secure that its charges make a proper contribution to its duties, as respect financial matters, under this Act, taking into account—

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- (a) its present circumstances and future prospects, and
- (b) any duty imposed on it by virtue of subsection (2) or (3).

#### 42 [F1 **Financing and borrowing: Scottish Water**]

- (1) The Scottish Ministers may pay to Scottish Water grants of such amounts as they may determine—
  - (a) in respect of the exercise of its functions and its administrative expenses,
  - (b) for the purpose of meeting, or alleviating, any loss it may sustain by virtue of regulations made under section 40.
- (2) A grant under subsection (1) may be made subject to such conditions as the Scottish Ministers think fit.
- (3) For the purpose of the exercise of any of its functions, Scottish Water may—
  - (a) subject to such conditions as the Scottish Ministers think fit, borrow from them, and they may lend to it, sums of such amounts as they may determine, and
  - (b) with the consent of the Scottish Ministers, borrow money, whether in sterling or otherwise, from any person or body, whether in the United Kingdom or elsewhere.
- F2(4) .....
- F2(5) .....
- (6) Any loans made in pursuance of subsection (3)(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 direct.

#### **Annotations:**

##### **Amendments (Textual)**

- F1** S. 42 title substituted (21.12.2013) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 27(3)**, 56(1)(2); S.S.I. 2013/342, art. 2(a)
- F2** S. 42(4)(5) repealed (21.12.2013) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 27(2)**, 56(1)(2); S.S.I. 2013/342, art. 2(a)

#### [F3 **42A Financing and borrowing: subsidiaries**]

- (1) The Scottish Ministers may pay to a subsidiary of Scottish Water grants of such amounts as they may determine.
- (2) A subsidiary of Scottish Water 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.
- (3) A grant or loan in pursuance of subsection (1) or (as the case may be) (2)(a) may be made subject to such conditions as the Scottish Ministers think fit.

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- (4) A loan made in pursuance of subsection (2)(a) is to be repaid to the Scottish Ministers at such times and by such methods (and interest on the loan is to be paid to them at such times and at such rates) as they may from time to time direct.
- (5) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).
- (6) This section does not apply where the subsidiary is an undertaking established under section 13(1) of the Water Services etc. (Scotland) Act 2005.
- (7) In this section and section 42B(1), “subsidiary” is as defined in section 1159 of the Companies Act 2006.

**Annotations:**

**Amendments (Textual)**

- F3** Ss. 42A, 42B inserted (21.12.2013) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 27(1)**, 56(1)(2); S.S.I. 2013/342, art. 2(a)

**42B Borrowing: Budget Acts**

- (1) In any financial year, the net amount of sums borrowed by Scottish Water and any subsidiary of Scottish Water in pursuance of sections 42 and 42A (taken together) must not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- (2) In subsection (1), “net amount” means amount of sums borrowed in the financial year less—
  - (a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and
  - (b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.]

**Annotations:**

**Amendments (Textual)**

- F3** Ss. 42A, 42B inserted (21.12.2013) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), **ss. 27(1)**, 56(1)(2); S.S.I. 2013/342, art. 2(a)

**43 Guarantees**

- (1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by Scottish Water or any subsidiary of Scottish Water.
- (2) Immediately after a guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.
- (3) Where any sum is paid out in fulfilment of a guarantee under this section, Scottish Water must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—

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- (a) payments of such amounts as they may so direct in or towards repayment of the sums so paid out, and
  - (b) payments of interest, at such rate as they may so direct, on the amount outstanding for the time being in respect of sums so paid out.
- (4) In subsection (1), “subsidiary” [<sup>F4</sup>has the meaning given by section 1159 of the Companies Act 2006].

**Annotations:**

**Amendments (Textual)**

- F4** Words in s. 43(4) 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. 200(3)** (with art. 10)

**44 Directions as to payment and investment**

- (1) The Scottish Ministers may, after consulting Scottish Water, direct it to pay to them, on a date specified in the direction, a sum specified in, or calculated in accordance with, the direction, being a sum not required for the exercise of its functions.
- (2) The Scottish Ministers may, after consulting Scottish Water, direct it to invest, in such manner as may be specified in the direction, a sum specified in, or calculated in accordance with, the direction, being a sum not immediately required for the exercise of its functions.
- (3) A direction under subsection (1) or (2) is not competent in relation to any sum which is payable to the Scottish Ministers under or by virtue of any other provision of this Act.

**45 Accounts and audit**

- (1) Scottish Water must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its affairs and its income and expenditure, and
  - (c) send the statement of accounts, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.
- (2) Every statement of accounts prepared by Scottish Water in accordance with this section must comply with any direction given by the Scottish Ministers relating to—
  - (a) the information to be contained in the statement of accounts,
  - (b) the manner in which that information is to be presented, or
  - (c) the methods and principles according to which the statement of accounts is to be prepared.

**Changes to legislation:**

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