

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Water Industry (Scotland) Act 2002, SCHEDULE A1. (See end of Document for details)*

## <sup>F1</sup>SCHEDULE A1 (introduced by section 1(4))

### WATER INDUSTRY COMMISSION FOR SCOTLAND

#### Textual Amendments

- F1** Sch. A1 inserted (20.6.2005 for the insertion of Sch. A1 paras. 1-7, 1.7.2005 in so far as not already in force) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#), s. 37(2), [sch. 1](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 1, sch. 2

#### *Status*

- 1 (1) The Commission is a body corporate.
- (2) The Commission—
- (a) is not a servant or agent of the Crown,
  - (b) has no status, immunity or privilege of the Crown,
- and its property is not to be regarded as property of, or held on behalf of, the Crown.

#### *Membership*

- 2 The Commission is to consist of the following members—
- (a) not fewer than 3, nor more than 5, ordinary members, and
  - (b) the person holding the post of chief executive.

#### *Tenure and removal from office*

- 3 (1) Each ordinary member—
- (a) is to be appointed by the Scottish Ministers for such period as is specified in the appointment,
  - (b) may, by written notice to the Scottish Ministers, resign as a member,
  - (c) in other respects, holds and vacates office on such terms and conditions as the Scottish Ministers may determine, and
  - (d) after ceasing to hold office is eligible for reappointment as a member.
- (2) The Scottish Ministers may remove an ordinary member from office and the Commission may, with the approval of the Scottish Ministers, remove the member who is the chief executive from office if satisfied that—
- (a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or
  - (b) the member—
    - (i) is incapacitated by physical or mental illness,
    - (ii) has been absent from meetings of the Commission for a period longer than 3 consecutive months without the permission of the Commission, or
    - (iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

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### *Disqualification*

- 4 A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is a member of—
- (a) the House of Lords,
  - (b) the House of Commons,
  - (c) the Scottish Parliament, or
  - (d) the European Parliament.

### *Chairing*

- 5 (1) The Scottish Ministers—
- (a) must appoint one of the ordinary members to chair meetings of the Commission, and
  - (b) may, after consulting that member, appoint another ordinary member to act as deputy to that member.
- (2) The member appointed to chair the meetings and any member appointed to act as deputy to that member hold and vacate office as such in accordance with the terms of their appointments.
- (3) A member so appointed may, by written notice to the Scottish Ministers, resign from office as such.
- (4) A member so appointed vacates office on ceasing to be a member of the Commission.
- (5) Where a member—
- (a) is appointed to chair meetings or to act as deputy to the member so appointed, or
  - (b) ceases to hold office as such,
- the Scottish Ministers may vary the terms of the member's appointment so as to alter the date on which office as a member is to be vacated.

### *Remuneration, allowances and pensions*

- 6 (1) The Commission must pay to each ordinary member such remuneration as the Scottish Ministers may determine.
- (2) The Commission must pay to each ordinary member and the chief executive such allowances as the Scottish Ministers may determine in respect of expenses properly incurred in the performance of their duties as a member.
- (3) Where a person ceases to be an ordinary member otherwise than on the expiry of that person's term of appointment, the Scottish Ministers may, if they think there are special circumstances, direct the Commission to pay to the person such amount of compensation as they may determine.
- (4) The Scottish Ministers may direct the Commission to pay—
- (a) such pension, allowance or gratuity to, or in respect of, any person who is or has been an ordinary member,
  - (b) such contribution or other payment towards provision for such pension, allowance or gratuity,
- as they consider appropriate.

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### *Chief executive*

- 7
- (1) The Commission is to employ a chief executive.
  - (2) The Scottish Ministers are to appoint the first chief executive of the Commission on such terms and conditions as the Scottish Ministers may determine.
  - (3) Before making the appointment of the first chief executive, the Scottish Ministers must consult the member of the Commission appointed, or to be appointed, to chair the meetings of the Commission (if there is a person holding, or as the case may be designated to hold, that office).
  - (4) The Commission may, with the approval of the Scottish Ministers, make subsequent appointments to the post of chief executive on such terms and conditions as it may with the approval of the Scottish Ministers determine.
  - (5) The chief executive is to be appointed from amongst persons who appear—
    - (a) as regards the first appointment, to the Scottish Ministers, and
    - (b) thereafter, to the Commission,to have knowledge, skills or experience relevant to the functions of the Commission.
  - (6) The Commission may, with the approval of the Scottish Ministers—
    - (a) vary any terms and conditions of a person's appointment to the post of chief executive, or
    - (b) terminate a person's appointment to the post of chief executive if the Commission is satisfied that the person is not adequately discharging the functions of that post.

### *Staff*

- 8
- (1) All staff employed, immediately before the coming into force of this sub-paragraph, by the Water Industry Commissioner for Scotland are transferred to the employment of the Commission.
  - (2) The contract of employment of a person transferred by virtue of sub-paragraph (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 Commission.
  - (3) Without prejudice to sub-paragraph (2), where a person becomes a member of staff of the Commission under sub-paragraph (1)—
    - (a) all the rights, powers, duties and liabilities of the Water Industry Commissioner for Scotland under or in connection with that person's contract of employment are by virtue of this sub-paragraph transferred to the Commission on the date of transfer, and
    - (b) anything done before that date by or in relation to the Water Industry Commissioner for Scotland in respect of that contract of employment or that person is to be treated from that date as having been done by, or in relation to, the Commission.
  - (4) Sub-paragraphs (1) to (3) do not prejudice the right of any person to terminate that 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

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taken to have occurred by reason only that the identity of that person's employer changes by virtue of those sub-paragraphs.

- (5) The Commission may, with the consent of the Scottish Ministers as to numbers, terms and conditions, appoint such other employees as it considers appropriate.
- (6) The Commission must, as regards such of its employees as it may with the approval of the Scottish Ministers determine, make such arrangements as it considers appropriate for providing, to or in respect of those employees, pensions, allowances or gratuities.
- (7) Such arrangements—
  - (a) may include the establishment and administration, by the Commission or otherwise, of one or more pension schemes, and
  - (b) must, in any case, be approved by the Scottish Ministers.
- (8) The reference in sub-paragraph (6) to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.

#### *Transfer of property and liabilities*

- 9 (1) All property (including rights) and liabilities, subsisting immediately before the coming into force of this paragraph, of the Water Industry Commissioner for Scotland are transferred to the Commission.
- (2) Sub-paragraph (1) 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.

#### *Committees*

- 10 (1) The Commission may establish committees for or in connection with the exercise of such of its functions as it may determine.
- (2) Any committee established under this paragraph must be chaired by a person who is an ordinary member of the Commission.
- (3) Employees of the Commission who are not members of the Commission may be appointed to be members of any committee established by it.

#### *Delegation of powers*

- 11 (1) Anything authorised or required under any enactment to be done by the Commission may be done by any of its committees which, or by any of its members or employees who, are authorised (whether generally or specifically) by it for the purpose.
- (2) Nothing in sub-paragraph (1) prevents the Commission from doing anything that a committee, member or employee has been authorised or required to do.

#### *Proceedings*

- 12 (1) The Commission may regulate its own procedure (including any quorum) and that of any of its committees.
- (2) The validity of any proceedings or actings of the Commission is not affected by—

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- (a) any vacancy among its members, or
- (b) any defect in the appointment of a member.

#### *General powers*

- 13 (1) The Commission may do anything which appears necessary or expedient for the purpose of, or in connection with, the exercise of its functions including, in particular—
- (a) entering into contracts; and
  - (b) acquiring and disposing of property.
- (2) But the Commission may not acquire or dispose of land without the consent of the Scottish Ministers.

#### *Accounts*

- 14 The Commission must—
- (a) prepare for each financial year, in accordance with directions given by the Scottish Ministers, an account of the Commission's income and expenditure, and
  - (b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.]

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