Water Services etc. (Scotland) Bill
[AS INTRODUCED]

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Schedule 1—Water Industry Commission for Scotland
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An Act of the Scottish Parliament to establish the Water Industry Commission for Scotland; to create offences in relation to the unauthorised use of the public water and sewerage systems; to provide for licensing the provision of certain water and sewerage services; to amend the system for fixing charges for services provided by Scottish Water; to make provision as to Scottish Water’s functions; to make provision in relation to coal mine water pollution; and for connected purposes.

PART 1
WATER INDUSTRY COMMISSION FOR SCOTLAND

1 Water Industry Commission for Scotland

For section 1 (Water Industry Commissioner for Scotland) of the 2002 Act there is substituted—

“1 Water Industry Commission for Scotland

(1) There is established a body to be known as the Water Industry Commission for Scotland (referred to in this Act as “the Commission”).

(2) The Commission has the general function of promoting the interests of persons (taken as a whole) whose premises—

(a) are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2004 (asp 00)) or both, or

(b) might reasonably become connected to either or both of those systems, relating to the provision to them of water and sewerage services.

(3) The Scottish Ministers may, after consulting the Commission, give the Commission directions of a general or specific character as to the financial management or administration of the Commission; and the Commission must comply with any such directions.

(4) Schedule A1 makes further provision about the Commission.”.
(2) In section 4 (power of the Commissioner to require information) of that Act, for subsection (2) there is substituted—

“(2) Subsection (1) does not authorise the Commission to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(3) Where Scottish Water considers that it is entitled to withhold information from the Commission—

(a) because it is not reasonably sought, or

(b) by virtue of subsection (2),

it must intimate that fact to the Commission in writing.”.

(3) In section 5 (annual reports by the Commissioner etc.) of that Act, at the end there is added—

“(4) The Scottish Ministers must lay before the Parliament a copy of each report submitted to them under subsection (1)(a).”.

(4) Schedule 1 inserts schedule A1 into that Act.

2 Water Industry Commissioner for Scotland

The office of Water Industry Commissioner for Scotland is dissolved on such date as the Scottish Ministers may by order appoint.

3 Determinations relating to provision of certain 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

(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.”.

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**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,
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) 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.

(10) 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.

(11) Any contract or other agreement which involves a contravention of subsection (1), (2) or
(3) is unenforceable.

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—
   (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) 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.

(10) 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.

(11) Any contract or other agreement which involves a contravention of subsection (1), (2) or
     (3) is unenforceable.

(12) In this Part, “sewage” is to be construed in accordance with section 59(1) (interpretation) of the 1968 Act.

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**Licensing of services provided to eligible premises**

6 License authorisation

(1) The Commission may, subject to section 7 and paragraphs 1 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

   (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 paragraphs 1 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”.

7 Granting of licence

(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.

(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 service 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.

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.

9 Commission’s power to obtain information and charge fees

(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.

(5) The Commission may charge such fees, for such matters in relation to water services licences and sewerage services licences, as the Scottish Ministers may by order prescribe.

10 Participation of water and sewerage services 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 the provision or exchange of information about customers of water services or sewerage service 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.

11Licences and compliance: further provision

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

Scottish Water: water and sewerage services subsidiary

12Water and sewerage services subsidiary

(1) The Scottish Ministers may require Scottish Water to secure (within such time as they may in the requirement specify), the establishment of a subsidiary business entity (in this section and section 13 referred to as “the subsidiary”) for the purposes of this section.

(2) The functions of the subsidiary 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.

(3) Accordingly, the subsidiary must (as soon as reasonably practicable after it is established) apply for a water services licence and a sewerage services licence.

(4) The subsidiary 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.

(5) When the subsidiary 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.

(6) Any reference in any enactment to Scottish Water is to be construed as not including the subsidiary.

13Transfer of staff etc. to the subsidiary

(1) The Scottish Ministers may require Scottish Water to transfer such of its staff to the employment of the subsidiary as are necessary for the purposes of or in connection with the matters mentioned in subsection (7).

(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 subsidiary.

(3) Without prejudice to subsection (2), where a person is transferred to the employment of
the subsidiary 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
subsidiary 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 subsidiary.

(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) The Scottish Ministers may require Scottish Water to transfer such of its property
(including rights) and liabilities to the subsidiary as are necessary for the purposes of or
in connection with the matters mentioned in subsection (7).

(6) 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 subsidiary any property or liabilities to which it
applies.

(7) For the purpose of subsections (1) and (5), those matters are—

(a) applications by the subsidiary for water services and sewerage services licences;
and

(b) the performance by the subsidiary of its activities.

Scottish Water: provision of certain services

14 Scottish Water to provide certain 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 15(1)); or
(ii) the supply is discontinued under section 16; 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) may be superseded by a new duty under that subsection.

(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.

15 Continuation of provision of services

(1) Where—
(a) water is supplied to premises by Scottish Water under subsection (2) of section 14; 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 16(5)),
the duty of Scottish Water under subsection (2) of section 14 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 that continuation of that duty ceases if—
(a) it is superseded by a new duty under subsection (2) of section 14; or
(b) the occupier of the premises notifies Scottish Water that the supply of water is not required.
(4) Where sewerage is provided to, or sewage is disposed of from, premises by Scottish Water under subsection (5) of section 14, Scottish Water is to continue providing sewerage 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.

(5) 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 14 of the Water Services etc. (Scotland) Act 2004 (asp 00) 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 16(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.”.

16 Discontinuation of supply of water

(1) A water services provider may request Scottish Water to discontinue a supply of water to premises made under subsection (2) of section 14.

(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 14(2) to the premises provided that the conditions mentioned in subsection (6) are satisfied.

(6) The conditions are that—

(a) the provisions of the code made under section 17 are complied with; and

(b) any supply of water to—

(i) the premises for domestic purposes; or

(ii) any supply of water to any other premises,

is not adversely affected.

(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.

17 Disconnections code

(1) For the purposes of subsection (6)(a) of section 16, 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—

(a) circumstances in which requests under subsection (1) of section 16 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;

(c) the Convener of the Water Customer Consultation Panels; and

(d) 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.

Scottish Water: charges and functions

18 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 approved 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.

(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.
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.

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 the Scottish Ministers and Scottish Water,

(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).

### 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 (3) and (4) are complied with.

(2) The Commission must—

(a) exercise its functions under sections 29A, 29B and 29F for the purposes of ensuring that subsections (3) and (4) are complied with,

(b) exercise its functions under section 29E for the purposes of ensuring that subsection (4) 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 issued to Scottish Water under section 44 or 56, so far as relevant in relation to charges schemes.

(3) This subsection is complied with if (so far as is consistent with compliance with subsection (4)) a charges scheme gives effect to any statement issued under section 29D.

(4) 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 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 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) Before issuing a statement under subsection (1), the Scottish Ministers must consult the Commission and 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 taken action which reduces 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

(ii) the fixing, by Scottish Water, of lower 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 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
(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(4) 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.

(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 14 of the Water Services etc. (Scotland) Act 2004 (asp 00) except where the provision of the service is continued under section 15(1) or (4) 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 14 of the Water Services etc. (Scotland) Act 2004 (asp 00) 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 15 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 (4) of that section, subsection (2) does not apply.”.

(6) Schedule 3 makes provision in relation to certain pre-existing agreements as to charges.

19 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,

(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.

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).”.

Definitions for Part

20 Meaning of “eligible premises”

(1) In this Part, “eligible premises” means—

(a) in relation to the supply of water, premises which are connected to the public water supply system; and

(b) in relation to the provision of sewerage or the disposal of sewage, premises which are 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”.

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)—

(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 supply of water.

(2) In subsection (1), “mains” is to be construed in accordance with section 109(1) (interpretation) of the 1980 Act.

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.

PART 3

COAL MINE WATER POLLUTION

Control of water from coal mines

(1) After section 4C of the Coal Industry Act 1994 (c.21) there is inserted—

“4D Power of the Authority with respect to coal mine water discharge: Scotland

(1) The Authority may take such action as it considers appropriate (if any) for the purpose of preventing, or mitigating the effect of, the discharge of water from a coal mine into or on to any land or into the water environment.

(2) In this section and sections 4E and 4F below—

(a) “water environment” has the meaning given by section 3 of the Water Environment and Water Services (Scotland) Act 2003 (asp 3); and

(b) references to coal mines are to coal mines vested in the Authority.
4E Coal mine water discharge: powers of entry in Scotland

(1) If the Authority is of the opinion that a discharge of water from a coal mine into or on to any land or into the water environment has caused, is causing or is likely to cause—

(a) serious pollution of the environment; or
(b) danger to life or health,
the Authority may, for any purpose specified in subsection (2) below, in writing authorise a person to exercise (in accordance with the terms of the authorisation) any of the powers specified in subsection (3) below.

(2) The purposes are—

(a) to determine the extent of the pollution or of the danger, or the likelihood of serious pollution or such danger;
(b) to determine whether (and if so how) the Authority should exercise its power under section 4D above;
(c) to take action under that section.

(3) The powers are—

(a) to enter—

(i) in an emergency, at any time (and, if need be, using reasonable force); or
(ii) in any other case, at any reasonable time,
any premises which the authorised person has reason to believe it is necessary for him to enter;
(b) to use a vehicle or boat to do so;
(c) to make such examination and investigation as may in any circumstances be necessary;
(d) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
(e) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air or water or land in, on, or in the vicinity of, the premises;
(f) to require any person to give him such facilities and assistance with respect to any matters or things within that person’s control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by virtue of this section.

(4) The powers which are conferred in relation to any land by this section include power, for the purposes mentioned in subsection (2) above—

(a) to carry out experimental borings or other works on those premises; and
(b) to install, keep or maintain monitoring and other apparatus there.

(5) Where subsection (6) below applies, any entry to premises by virtue of this section shall (except in an emergency) be effected only—
(a) after the expiry of at least seven days’ notice of the proposed entry given to a person who appears to the authorised person to be in occupation of the premises in question; and

(b) either—

(i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant granted under paragraph 2 of Schedule 1C to this Act.

(6) This subsection applies where it is proposed to—

(a) enter any premises used for residential purposes; or

(b) take heavy equipment on to any premises which are to be entered.

(7) Where an authorised person proposes to enter any premises and—

(a) entry has been refused and he reasonably believes that the use of force may be necessary to effect entry; or

(b) he reasonably believes that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry to those premises by virtue of this section shall (except in an emergency) be effected only under the authority of a warrant granted under paragraph 2 of Schedule 1C to this Act.

(8) In this section—

“premises” includes any land, vehicle or vessel, and any plant which is designed to move or be moved (whether or not on roads);

“emergency” means a case in which it appears to the authorised person in question—

(a) that there is an immediate risk of serious pollution of the environment; or

(b) that circumstances exist which are an immediate danger to life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy.

(9) Schedule 1C to this Act makes further provision regarding powers of entry.

4F Coal mine discharge: compulsory acquisition of land in Scotland

(1) The Authority may, with the authorisation of the Scottish Ministers, acquire any land anywhere in Scotland compulsorily if the Authority is of the opinion that—

(a) the acquisition is for the purpose of preventing, or mitigating the effect of, a discharge of water from a coal mine; and

(b) the discharge has caused, is causing or is likely to cause—

(i) serious pollution of the water environment; or

(ii) danger to life or health.
(2) The power to acquire land under subsection (1) above includes power to acquire a servitude or other right in or over land by the creation of a new right.

(3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to an acquisition under subsection (1) above as if—

(a) this section were contained in an Act in force immediately before the commencement of that Act; and

(b) references in that Act to a local authority were references to the Authority.”.

(2) In section 66 (Crown application) of that Act, after subsection (5) there is added—

“(6) The references in subsection (5) above to a Government department shall, for the purposes of the application of this section to sections 4D to 4F of, and Schedule 1C to, this Act, be treated as including the holder of an office in the Scottish Administration which is not a ministerial office.”.

(3) In section 68 (extent, etc.) of that Act, after subsection (7) there is inserted—

“(7A) Sections 4D to 4F of, and Schedule 1C to, this Act extend to Scotland only.”.

(4) Schedule 4 inserts Schedule 1C into that Act.

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Miscellaneous**

24 Offences by bodies corporate and partnerships

(1) Where an offence under this Act has been committed by a body corporate and has been committed with the consent or connivance of, or is attributable to the neglect of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, that person as well as the body corporate is guilty of the offence.

(2) Where an offence under this Act has been committed by a Scottish partnership and has been committed with the consent or connivance of, or is attributable to the neglect of, a partner, that partner as well as the partnership is guilty of the offence.

25 Amendments to enactments

Schedule 5 amends enactments for the purposes of and in consequence of this Act.

26 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.
Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—
   (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
   (b) different provision for different purposes.

(3) A statutory instrument containing an order under—
   (a) section 2, 7(2), 9(5), 16(3) or 20(3);  
   (b) subject to subsection (4)(a), section 26; or
   (c) paragraph 1(1), (4) or (7) or 11(1) or (2)(g) of schedule 2,
   is subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing—
   (a) an order under section 26 which amends an Act; or
   (b) regulations under section 4(7) or 5(7),
   is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

Interpretation

(1) In this Act, unless the context otherwise requires—
   “the 1968 Act” means the Sewerage (Scotland) Act 1968 (c.47);
   “the 1980 Act” means the Water (Scotland) Act 1980 (c.45);
   “the 2002 Act” means the Water Industry (Scotland) Act 2002 (asp 3);
   “the Commission” means the Water Industry Commission for Scotland;
   “the Parliament” means the Scottish Parliament.

(2) Any reference in this Act to the core functions of Scottish Water is to be construed by reference to section 70(2) of the 2002 Act.

Crown application

This Act binds the Crown.

Short title and commencement

(1) This Act may be cited as the Water Services etc. (Scotland) Act 2004.

(2) The provisions of this Act, except sections 26 to 29 and this section, come into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes.
SCHEDULE 1  
(introduced by section 1)  
WATER INDUSTRY COMMISSION FOR SCOTLAND

Before schedule 1 (the Commissioner and Customer Panels) to the 2002 Act there is inserted—

“SCHEDULE A1  
(introduced by section 1(4))  
WATER INDUSTRY COMMISSION FOR SCOTLAND

Status

1 (1) The Commission is a body corporate.

2 (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.

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.

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 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—

(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

(a) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.”.
SCHEDULE 2
(introduced by section 11)

LICENCES AND COMPLIANCE: FURTHER PROVISION

Application for licence

1 (1) An application for a water services licence or a sewerage services licence is to be made to the Commission and is—
   (a) to be in such form and made in such manner; and
   (b) to contain such information (including information in the form of a document), as the Scottish Ministers may by order prescribe.

2 (2) The applicant must provide the Commission with such further information (including information in the form of a document) as it reasonably requires in order to determine the application.

3 Sub-paragraph (2) 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.

4 The applicant must, in such manner and within such time from the making of the application as the Scottish Ministers may by order prescribe, publish a notice of the application; and the notice must—
   (a) specify such procedure for making representations to the Commission with respect to the application; and
   (b) contain such other particulars, as the Scottish Ministers may so prescribe.

5 Where the Commission proposes to refuse an application, the Commission is to give the applicant notice—
   (a) of that fact (together with its reasons for proposing to refuse the application); and
   (b) specifying the date by which the applicant may make representations to the Commission with respect to the proposed refusal.

6 The Commission is, in determining the application, to have regard to any representations made by virtue of—
   (a) sub-paragraph (4)(a); and
   (b) sub-paragraph (5)(b).

7 The Scottish Ministers may by order specify circumstances in which sub-paragraphs (4) to (6) do not apply.

8 Any applicant for a water services licence or a sewerage services licence who knowingly or recklessly makes a statement, in connection with the application for the licence, that is false or misleading in a material particular is guilty of an offence.

9 A person who is guilty of an offence under sub-paragraph (8) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum; or
   (b) on indictment, to a fine.
(10) A person whose application for a water services licence or sewerage services licence has been refused may, within 14 days of the date on which the refusal was intimated to the person under section 7(5)(a), appeal to the Court of Session against the refusal.

(11) Where a water services licence or sewerage services licence has been granted, Scottish Water may, within 14 days of the date on which a copy of the licence was sent to Scottish Water under section 7(6)(b), appeal to the Court of Session against the granting of the licence; and the licence is suspended until the appeal is withdrawn or finally determined.

(12) In an appeal under sub-paragraph (10) or (11), the Court may quash or confirm the Commission’s decision to refuse the application or (as the case may be) grant the licence; and the decision of the Court in the appeal is final.

Conditions of licence

2 (1) Each water services licence and sewerage services licence—

(a) is, subject to sub-paragraph (10), to have incorporated in it by reference to the standard conditions such of those conditions as are applicable to it; and

(b) may include such ordinary conditions as appear to the Commission to be necessary or expedient for the purposes of or in connection with the activities authorised by the licence.

(2) The Commission is, within 9 months of the coming into force of this sub-paragraph, to determine standard conditions that are to apply to water services licences and sewerage services licences.

(3) The standard conditions are to relate to the obligations of water services providers and sewerage services providers to their customers and to Scottish Water; and the standard conditions may, in particular—

(a) include standard conditions that are to apply to—

(i) all licences; and

(ii) a particular type of licence; and

(b) make provision for—

(i) the standard conditions (or any of them) not to apply to a particular licence or type of licence in such circumstances; and

(ii) the coming into effect and suspension of the standard conditions (or any of them) in such manner and in such circumstances, as may be specified in the standard conditions.

(4) The Commission is to—

(a) consult the Scottish Ministers on proposals for standard conditions; and

(b) publish the standard conditions.

(5) The Commission—

(a) is from time to time to review the standard conditions; and

(b) may—

(i) modify the standard conditions; and
(ii) make such modification to the conditions of any licence as it considers is necessary or expedient as a consequence of any modification of the standard conditions.

(6) Before making any modification under sub-paragraph (5)(b), the Commission is to—

(a) send a notice of the proposed modification to—

(i) every water services provider and sewerage services provider whose licence would be affected by the modification;

(ii) the Scottish Ministers; and

(iii) Scottish Water; and

(b) publish the notice.

(7) The notice must—

(a) state the reasons why the modification is proposed; and

(b) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposed modification may be made to the Commission.

(8) The Commission is to have regard to any representations made by virtue of sub-paragraph (7)(b).

(9) Where the Commission modifies the standard conditions, the Commission is to publish them as modified.

(10) The Commission may, in granting a particular licence, exclude or modify any of the standard conditions to such extent as it considers appropriate in the circumstances of the case.

(11) Sub-paragraphs (6) to (8) apply to exclusions and modifications under sub-paragraph (10) as they apply to modifications under sub-paragraph (5)(b) (but as if, in the case of an exclusion, the references in sub-paragraphs (6) and (7) to modification were references to exclusion).

(12) Any ordinary condition of a licence may provide for the condition to—

(a) have effect or cease to have effect; or

(b) be modified,

at such time, in such manner, and in such circumstances, as the Commission considers appropriate.

(13) The Commission may modify any condition of a particular licence if it considers that the modification is necessary or expedient in the circumstances of the case.

(14) Sub-paragraphs (6) to (8) apply to modifications under sub-paragraph (13) as they apply to modifications under sub-paragraph (5)(b).

(15) Any water services provider or sewerage services provider who is aggrieved by the inclusion of a condition in the licence held by the provider may, within 14 days of the date on which the licence was granted, appeal to the Court of Session against the inclusion of the condition on the grounds that the condition is unreasonable in the circumstances of the case.
(16) Any water services provider or sewerage services provider who is aggrieved by a modification of a condition included in the licence held by the provider may, within 14 days of the date on which the modification has effect, appeal to the Court of Session against the making of the modification on the grounds that the condition as modified is unreasonable in the circumstances of the case.

(17) In an appeal under sub-paragraph (15) or (16), the Court may quash, confirm or vary the condition; and the decision of the Court in the appeal is final.

**Transfer of licence**

3 (1) Any water services licence or sewerage services licence may, subject to sub-paragraph (2), be transferred to another person by the provider who holds it (“the transferor”), either in respect of—

(a) all the activities; or

(b) any particular activity or activities, authorised by the licence.

(2) A transfer of a licence is not valid unless—

(a) the transfer complies with any condition of the licence as to transfer; and

(b) the Commission consents to the transfer.

(3) The Commission may consent to a transfer only if satisfied that—

(a) in a case where the proposed transfer is in respect of all the activities authorised by the licence, the person to whom the transferor proposes to transfer the licence (“the transferee”) has the ability to perform adequately those activities; or

(b) in a case where the proposed transfer is in respect of any particular activity or activities authorised by the licence, the transferee has the ability to perform adequately that activity or (as the case may be) those activities.

(4) In assessing the transferee’s ability so to perform that activity or those activities, the Commission is to have special regard to—

(a) the factors mentioned in paragraphs (a) and (b) of subsection (2) of section 7; and

(b) any other matters specified under that subsection.

(5) Before consenting to a transfer, the Commission is to—

(a) send a notice of the proposed transfer to Scottish Water; and

(b) publish the notice.

(6) The notice must—

(a) give the particulars of the transferor and transferee;

(b) state the reasons why the transfer is proposed;

(c) specify any modification or condition that the Commission proposes to make under sub-paragraph (8) and state the reasons why it is proposed; and

(d) specify the period (which is to be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposed transfer (including any such modification or condition) may be made to the Commission.
(7) The Commission is to have regard to any representations made by virtue of sub-paragraph (6)(d).

(8) The Commission may consent to a transfer subject to such—
   (a) modification to any condition of the licence; and
   (b) conditions apart from the conditions of the licence,
as it considers it appropriate to make.

(9) As soon as practicable after deciding whether to consent to a transfer, the Commission is to intimate its decision to—
   (a) the transferor and the transferee; and
   (b) Scottish Water.

(10) Where the Commission withholds consent to the transfer, the transferee may, within 14 days of the date on which the withholding of consent was intimated to the transferee under sub-paragraph (9)(a), appeal to the Court of Session against the withholding of consent.

(11) In an appeal under sub-paragraph (10), the Court may quash or confirm the Commission’s decision to withhold consent to the transfer; and the decision of the Court in the appeal is final.

(12) In this paragraph, “transfer” includes any form of assignation.

Powers of entry etc.

(1) For the purposes of monitoring and ensuring compliance with the terms and conditions of licences under section 8(1), the powers mentioned in sub-paragraph (2) are exercisable by the Commission and any person authorised by the Commission for the purpose of the exercise of those powers.

(2) The powers are—
   (a) power to enter any premises—
      (i) of any water services provider or sewerage services provider;
      (ii) in respect of which such a provider has made arrangements for or in relation to the supply of water or the provision of sewerage or disposal of sewage;
      (iii) of any other person,
   for the purpose of exercising a power mentioned in heads (b) and (c);
   (b) power to carry out such inspection of any document or article found on the premises as the Commission considers necessary; and
   (c) for the purpose of inspecting any such document or article, power to take the document away from the premises.

(3) The power mentioned in head (a) of sub-paragraph (2) entitles the Commission (or a person authorised by the Commission) to demand, as of right, entry—
   (a) to premises referred to in sub-head (i) of that head, at any reasonable time (and without notice); and
(b) to premises referred to in sub-head (ii) or (iii) of that head, at any reasonable time provided that the Commission (or the person) gives 24 hours’ notice of the exercise of the power to the occupier of the premises.

(4) The powers mentioned in sub-paragraph (2) must not be exercised in relation to premises referred to in sub-head (iii) of head (a) of that sub-paragraph unless the Commission is satisfied that the exercise of those powers in relation to the premises referred to in sub-heads (i) and (ii) of that head would be insufficient for the purposes referred to in sub-paragraph (1).

(5) The owner and occupier of any premises in respect of which a power mentioned in sub-paragraph (2) is being exercised, and any person on the premises when the power is being exercised, must—

(a) give the person exercising the power such assistance; and

(b) provide that person with such information,

as that person reasonably requires.

Powers of entry etc.: further provision

5 (1) A person entitled to enter premises by virtue of the power mentioned in paragraph 4(2)(a)—

(a) may take on to the premises such other persons and such equipment as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and

(b) must, if required to do so, produce written evidence of that entitlement.

(2) A person who enters premises in the exercise of the power mentioned in paragraph 4(2)(a) must leave the premises as effectually secured against trespassers as the person found them.

(3) Where a person exercises the power mentioned in paragraph 4(2)(a), the Commission is to make full compensation to any person who has sustained loss or damage by reason of—

(a) the exercise that power; or

(b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2), except in so far as the loss or damage is attributable to the fault of the person who sustained it.

(4) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of any power conferred by paragraph 4(1) and (2) is guilty of an offence.

(5) Any person who—

(a) intentionally obstructs a person acting in the exercise of any power conferred by paragraph 4(1) and (2); or

(b) refuses or fails, without reasonable excuse, to comply with a requirement made under paragraph 4(5),

is guilty of an offence.

(6) A person who is guilty of an offence under sub-paragraph (4) or (5) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum; or
(b) on conviction on indictment, to a fine.

Warrants

6 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—

(a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in paragraph 4(2); and
(b) at least one of the conditions mentioned in sub-paragraph (2) is fulfilled in relation to the premises,

the sheriff or justice may grant a warrant authorising the Commission (and any person authorised by the Commission for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.

(2) The conditions are—

(a) that the exercise of the power in relation to the premises has been refused;
(b) that such a refusal may reasonably be expected;
(c) that the premises are unoccupied;
(d) that the occupier is temporarily absent from the premises;
(e) that the case is one of urgency;
(f) that an attempt to gain entry to the premises without the authority of a warrant would defeat the object of the proposed entry.

(3) A sheriff or justice must not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) is fulfilled unless the sheriff or justice is also satisfied—

(a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or
(b) that the giving of such notice would defeat the object of the proposed entry.

(4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.

Enforcement notices

7 (1) If it appears to the Commission (whether or not following the exercise of powers under paragraph 4)—

(a) that—

(i) a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider and the contravention is likely to recur; or
(ii) such a provider is contravening a term or condition of the licence held by the provider and the contravention is likely to continue or to recur or both; and

(b) that the provider is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence,
the Commission may serve on the provider a notice (in this paragraph and paragraphs 8, 9 and 11 referred to as an “enforcement notice”) in respect of the contravention.

(2) An enforcement notice must specify—
   
   (a) the contravention to which it relates;

   (b) the Commission’s reasons for believing (as the case may be) that the contravention—

   (i) has occurred and is likely to recur; or

   (ii) is occurring and is likely to continue or to recur or both;

   (c) the date by which the provider is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence;

   (d) any particular steps which the Commission requires the provider to take for that purpose; and

   (e) the date on which the notice is to take effect.

(3) An enforcement notice may specify different dates by which different steps specified under sub-paragraph (2)(d) must be completed.

(4) The date referred to in sub-paragraph (2)(e) must be no earlier than the day following the last day on which an appeal may be made under sub-paragraph (9).

(5) In considering whether to serve an enforcement notice, the Commission must consult—

   (a) Scottish Water; and

   (b) such other persons as the Commission considers appropriate.

(6) Before serving an enforcement notice on a provider under sub-paragraph (1), the Commission is to—

   (a) serve a copy of the proposed notice on the provider; and

   (b) specify a period (which is to be not less than 7 days and no more than 28 days from the date of service of the notice) within which the provider may make representations to the Commission about the proposed notice.

(7) The Commission—

   (a) is to have regard to any representations made by virtue of sub-paragraph (6)(b); and

   (b) may adjust the notice in light of the representations.

(8) The Commission must send a copy of an enforcement notice to—

   (a) the Scottish Ministers; and

   (b) Scottish Water.

(9) A provider on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service of the notice, appeal to the sheriff against the notice; and the enforcement notice is of no effect until the appeal is withdrawn or finally determined.

(10) In an appeal under sub-paragraph (9), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.

(11) The Commission may—
(a) withdraw an enforcement notice; or

(b) waive or relax any requirement of an enforcement notice, including substituting a
later date for a date specified under sub-paragraph (2)(c) or (3),

and may do so whether or not the notice has taken effect.

(12) The withdrawal of an enforcement notice does not affect the Commission’s power to
issue a further such notice.

Enforcement notices: offences

8 (1) Any water services provider or sewerage services provider, on whom an enforcement
notice has been served, who—

(a) fails to rectify, or (as the case may be) fails to take steps to prevent the recurrence
of, a contravention specified in the notice—

(i) by the date specified in relation to the contravention under sub-paragraph
(2)(c) of paragraph 7; or

(ii) where a later date has been substituted for that date under sub-paragraph
(11)(b) of that paragraph, by that later date; or

(b) fails to complete a step specified under sub-paragraph (2)(d) of paragraph 7—

(i) by the date specified in relation to that step under sub-paragraph (3) of that
paragraph; or

(ii) where a later date has been substituted for that date under sub-paragraph
(11)(b) of that paragraph, by that later date,

is guilty of an offence.

(2) An offence under sub-paragraph (1) may be charged by reference to any day or longer
period of time; and a provider may be convicted of a second or subsequent offence
under that sub-paragraph by reference to any period of time following conviction for
such an offence.

(3) A person who is guilty of an offence under sub-paragraph (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on indictment, to a fine.

Revocation of licences

9 (1) A water services licence or sewerage services licence may be revoked in accordance
with this paragraph.

(2) If it appears to the Commission that a water services provider or sewerage services
provider, on whom an enforcement notice has been served, has—

(a) failed to rectify, or (as the case may be) failed to take steps to prevent the
recurrence of, a contravention specified in the notice—

(i) by the date specified in relation to the contravention under sub-paragraph
(2)(c) of paragraph 7; or

(ii) where a later date has been substituted for that date under sub-paragraph
(11)(b) of that paragraph, by that later date; or
(b) failed to complete a step specified under sub-paragraph (2)(d) of paragraph 7—
   (i) by the date specified in relation to that step under sub-paragraph (3) of that
   paragraph; or
   (ii) where a later date has been substituted for that date under sub-paragraph
   (11)(b) of that paragraph, by that later date,
the Commission may revoke the licence held by the provider by serving on the provider
a notice of revocation.

(3) If—
   (a) it appears to the Commission that a water services provider or a sewerage services
   provider has contravened a term or condition of the licence held by the provider; and
   (b) the Commission considers that the provider would fail to comply with the terms of
   an enforcement notice pertaining to that contravention,
the Commission may revoke the licence by serving on the provider a notice of
revocation.

(4) If (having special regard to the factors mentioned in paragraphs (a) and (b) of subsection
(2) of section 7 and to any other matters specified under that subsection) the
Commission considers that a water services provider or sewerage services provider no
longer has the ability to perform adequately the activities authorised by the licence held
by the provider, the Commission may (whether or not the provider has contravened a
term or condition of the licence held by the provider) revoke the licence by serving on
the provider a notice of revocation.

(5) The Commission may, following a request made to the Commission by a water services
provider or a sewerage services provider for the licence held by the provider to be
revoked, revoke the licence by serving on the provider a notice of revocation.

(6) The Commission must not revoke a licence under this paragraph unless satisfied that
revocation is reasonable having regard to—
   (a) the terms and conditions of the licence;
   (b) the provider’s responsibilities to the provider’s customers; and
   (c) any other matters the Commission considers to be relevant.

(7) A notice of revocation must specify—
   (a) the reasons why it is served; and
   (b) the date (which must be no earlier than the day after the last day on which an
       appeal against the notice may be made under sub-paragraph (8)) from which the
       revocation is to have effect.

(8) A provider on whom a notice of revocation has been served under sub-paragraph (2), (3)
or (4) may, by summary application made within 14 days of the date of the notice,
appeal to the sheriff against the notice; and the revocation is of no effect until the appeal
is withdrawn or finally determined.

(9) In an appeal under sub-paragraph (8), the sheriff may make such order as the sheriff
thinks fit; and the decision of the sheriff in the appeal is final.

(10) As soon as practicable after a revocation under this paragraph has effect, the
Commission must—
(a) send a copy of the notice of revocation to—
   (i) Scottish Water; and
   (ii) the Scottish Ministers; and

(b) publish the notice.

5 **Penalties for contravention of licence**

10 (1) Where it appears to the Commission that a water services provider or a sewerage services provider has contravened a term or condition of the licence held by the provider, the Commission may impose on the provider a financial penalty of such amount as it considers reasonable in the circumstances of the case.

10 (2) The Commission—
   
   (a) is to prepare a statement of policy with respect to the imposition of penalties under sub-paragraph (1) and the determination of their amount;
   
   (b) is to keep the statement under review and may revise the statement;
   
   (c) in preparing the statement (and any revised statement), is to consult such persons as it considers appropriate; and

15 (d) is to publish the statement (and any revised statement) in such manner as it considers appropriate.

(3) Before imposing a penalty under sub-paragraph (1), the Commission is to serve on the provider a notice of its intention to impose the penalty; and the notice must specify the date by which the provider may make representations to the Commission with respect to the penalty.

(4) In imposing a penalty under sub-paragraph (1), the Commission is to have regard to—

   (a) the statement of policy under sub-paragraph (2) as published at the time of the contravention to which the penalty relates; and

25   (b) any representations made by virtue of sub-paragraph (3).

(5) A provider on whom a penalty is imposed under sub-paragraph (1) may, by summary application made within 14 days of the date on which the penalty was imposed, appeal to the sheriff against the imposition of the penalty or the amount of the penalty; and the penalty is not recoverable until the appeal is withdrawn or finally determined.

30 (6) In an appeal under sub-paragraph (5), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.

(7) Any penalty imposed under sub-paragraph (1) is recoverable, from the person on whom it was imposed, by the Commission—

   (a) by civil diligence; and

35   (b) whether or not that person continues to hold the licence in relation to which the penalty was imposed.

(8) Any sums received by the Commission by virtue of this paragraph must be paid into the Scottish Consolidated Fund.
Schedule 3—Certain pre-existing agreements as to charges

Register of licences

11 (1) The Commission must keep a register of water services licences and sewerage services licences in such manner as the Scottish Ministers may by order prescribe.

(2) The register must—

(a) record the particulars of each water services provider and sewerage services provider;

(b) record the terms and conditions of each water services licence and sewerage services licence;

(c) record, in relation to any enforcement notice—

(i) the particulars of the provider on whom the notice was served;

(ii) the date of service of the notice;

(iii) the matters specified under sub-paragraph (2) of paragraph 7;

(iv) any date specified under sub-paragraph (3) of that paragraph; and

(v) anything done under sub-paragraph (11) of that paragraph;

(d) record, in relation to any notice of revocation served under paragraph 9—

(i) the particulars of the provider on whom the notice was served;

(ii) the date of service of the notice;

(iii) the reasons why it was served; and

(iv) the date specified under sub-paragraph (7)(b) of that paragraph;

(e) record, in relation to any penalty imposed under paragraph 10—

(i) the particulars of the provider on whom it was imposed;

(ii) the amount; and

(iii) the date on which it was imposed;

(f) record the outcome of any appeal provided for in this schedule; and

(g) contain such other information as the Scottish Ministers may by order prescribe.

(3) The register must be available for inspection by any person at any reasonable time.

SCHEDULE 3
(introduced by section 18(6))

CERTAIN PRE-EXISTING AGREEMENTS AS TO CHARGES

30 (1) In this schedule, a “relevant agreement” is an agreement—

(a) made between Scottish Water and another person (a “relevant customer”) in respect of eligible premises (within the meaning of Part 2)—

(i) by virtue of any of the provisions referred to in sub-paragraph (2) or otherwise; and

(ii) which makes provision as to the charges to be paid (other than under a charges scheme) by the relevant customer for services provided by Scottish Water in the exercise of its core functions; and
(b) extant on the coming into force of this schedule.

(2) For the purposes of sub-paragraph (1)(a)(i), the provisions are—

(a) sections 29(2)(b) and (4) and 31(6) of the 2002 Act (as they had effect immediately before their repeal by this Act);

(b) section 29(3)(j) of the 1968 Act (as it had effect immediately before its repeal by this Act).

2 (1) Scottish Water must, within one month of the coming into force of this schedule, send to the Commission written details of every relevant agreement.

(2) The Commission must, following receipt of those details, in each case—

(a) assess the charges payable under the relevant agreement (the “relevant charges”) during any period to which a charges scheme applies; and

(b) having regard to—

(i) any costs which reasonably require to be met from the charges fixed in accordance with sub-paragraph (6)(b); and

(ii) such other matters as the Commission considers appropriate,

determine, for the purposes of sub-paragraph (6)(a), an amount less than the relevant charges.

(3) The Commission must, in each case—

(a) give the relevant customer written notice of the assessment and determination under sub-paragraph (2); and

(b) send a copy of the notice to—

(i) Scottish Water; and

(ii) every water services and sewerage services provider,

by such date as the Scottish Ministers may direct.

(4) The Commission must publish details of every determination under sub-paragraph (2)(b).

(5) This sub-paragraph applies in any case where a water or sewerage services provider makes arrangements for the provision of any services to which relevant charges apply and is accordingly entitled to demand and recover charges from a relevant customer for that provision.

(6) Where sub-paragraph (5) applies—

(a) Scottish Water may, in relation to that provision, demand and recover from the provider charges which must not exceed the amount determined under sub-paragraph (2)(b); and

(b) the charges which the provider may, in relation to that provision, demand and recover from the relevant customer concerned must not exceed the amount of the relevant charges.

(7) Any financial disadvantage to Scottish Water arising as a consequence of differences between—

(a) the amounts determined under sub-paragraph (2)(b); and
(b) the charges which would be recoverable by Scottish Water under a charges scheme in relation to the services to which the determinations apply, is to be borne by Scottish Water.

(8) Scottish Water is—

(a) in any case where sub-paragraph (5) does not for the time being apply; or

(b) in any case where that sub-paragraph ceases to apply, to demand and recover relevant charges from the relevant customer for services provided by it to the customer.

3 (1) A charges scheme does not apply in relation to any services to which relevant charges apply except where the relevant agreement concerned expires or is terminated.

(2) For the purposes of sub-paragraph (1), the making of arrangements by a water services or sewerage services provider for the provision of any services to which relevant charges apply does not of itself cause the relevant agreement concerned to expire or terminate.

(3) A relevant agreement may not be renewed on its expiry or termination, nor may its term be extended at any time.

SCHEDULE 4
(introduced by section 23(4))

POWERS OF ENTRY UNDER THE COAL INDUSTRY ACT 1994

After Schedule 1B to the Coal Industry Act 1994 (c.21) there is inserted—

“SCHEDULE 1C
SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY: SCOTLAND

Exercise of powers of entry etc.

1 (1) A person entitled to enter premises by virtue of the power mentioned in section 4E(3)(a) of this Act—

(a) may take on to the premises such other persons (including, if the person reasonably believes he is likely to be obstructed, a constable) and such equipment or materials as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and

(b) must, if required to do so, produce written evidence of that entitlement.

(2) A person who enters premises in the exercise of a power conferred by virtue of section 4E of this Act must leave the premises as effectually secured against trespassers as the person found them.

(3) Where a person exercises a power conferred by virtue of section 4E(3)(a) or (4) of this Act, the Authority is to make full compensation to any person who has sustained loss or damage by reason of—

(a) the exercise that power; or
(b) the carrying out of, or failure to carry out, the duty imposed by sub-
paragraph (2) above,

except in so far as the loss or damage is attributable to the fault of the person
who sustained it.

(4) Any dispute as to a person’s entitlement to compensation under sub-paragraph
(3) above, or as to the amount of any such compensation, shall be referred to
the arbitration of a single arbiter, appointed—

(a) by agreement between the Authority and the person who claims to have
sustained the loss or damage; or

(b) in default of agreement, by the Scottish Ministers.

(5) Any person who makes use of or discloses any trade secret of which the person
has gained knowledge as a result of the exercise of a power conferred by virtue
of section 4E of this Act is guilty of an offence.

(6) A person who is guilty of an offence under sub-paragraph (5) above is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;
or

(b) on conviction on indictment, to a fine.

(7) In this schedule, “premises” has the meaning given by section 4E(8) of this
Act.

Warrants

2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—

(a) there are reasonable grounds for the exercise in relation to any premises
of a power mentioned in section 4E(3) or (4) of this Act; and

(b) at least one of the conditions mentioned in sub-paragraph (2) below is
fulfilled in relation to the premises,

the sheriff or justice may grant a warrant authorising the Authority (and any
person authorised by the Authority for the purpose) to exercise the power in
relation to the premises in accordance with the terms of the warrant and, if
need be, by force.

(2) The conditions are—

(a) that the exercise of the power in relation to the premises has been
refused;

(b) that such a refusal may reasonably be expected;

(c) that the premises are unoccupied;

(d) that the occupier is temporarily absent from the premises and the case is
one of urgency.

(3) In a case where subsections (5) and (6) of section 4E of this Act apply, a sheriff
or justice shall not issue a warrant under this paragraph by virtue of being
satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2)
above is fulfilled unless the sheriff or justice is also satisfied that notice
required by subsection (5)(a) of that section has been given and that the period
of that notice has expired.
(4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.”.

SCHEDULE 5
(introduced by section 25)

AMENDMENTS TO ENACTMENTS

Sewerage (Scotland) Act 1968 (c.47)

1 In section 29 (which makes provision relating to consent to discharge of trade effluent) of the 1968 Act, paragraph (j) of subsection (3) is repealed.

House of Commons Disqualification Act 1975 (c.24)

2 In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (disqualifying offices), the entry relating to the Water Industry Commissioner for Scotland is repealed.

Race Relations Act 1976 (c.74)

3 In the Race Relations Act 1976, in Part II of Schedule 1A (bodies and other persons subject to general statutory duty), the entry relating to the Water Industry Commissioner for Scotland is repealed.

Water (Fluoridation) Act 1985 (c.63)

4 In the Water (Fluoridation) Act 1985, in subsections (2)(b)(i) and (3) of section 4 (publicity and consultation), for the word “Commissioner” in each place where it occurs there is substituted “Commission”.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

5 In the Public Finance and Accountability (Scotland) Act 2000, in subsection (7) of section 23 (economy, efficiency and effectiveness examinations), for the word “Commissioner” there is substituted “Commission”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

6 In the Ethical Standards in Public Life etc. (Scotland) Act 2000—

(a) in section 19 (action on finding of contravention)—

(i) in subsection (4), the words from “and” in the second place where it occurs to the end are repealed; and

(ii) in subsection (5), paragraph (c) and the word “; or” immediately preceding it are repealed;

(b) sections 25 and 26 (which make special provision for the Water Industry Commissioner for Scotland) are repealed;

(c) in section 30 (modification of enactments etc.), the words “or the Water Industry Commissioner for Scotland” are repealed;
(d) in schedule 1 (the Standards Commission for Scotland), in paragraph 3, the words “or the Water Industry Commissioner for Scotland” are repealed; and

(e) in schedule 3 (devolved public bodies), after the entry relating to the State Hospitals Board for Scotland, there is inserted—

“The Water Industry Commission for Scotland”.

Water Industry (Scotland) Act 2002 (asp 3)

7 (1) In each of the following provisions of the 2002 Act, for the words “Commissioner” and “Commissioner’s” wherever occurring there is substituted “Commission” and “Commission’s” respectively—

section 2(4)(b) and (5);
section 3;
section 4(1);
section 5(1) to (3);
section 6;
section 11(1)(a);
section 26(1) to (4) and (7);
section 27;
section 57(6)(a); and
in schedule 1, paragraphs 6(4), 7 and 8.

(2) In section 2 (Water Customer Consultation Panels) of that Act, after subsection (5) there is inserted—

“(5A) Subsections (1) to (5) do not apply in relation to services provided to water services providers or sewerage services providers (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2004 (asp 00)) or customers of such providers.”.

(3) In section 3 (functions of the Commissioner) of that Act, after subsection (6) there is inserted—

“(6A) Subsections (1) to (6) do not apply in relation to services provided to water services providers or sewerage services providers (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2004 (asp 00)) or customers of such providers.”.

(4) In section 26 (customer standards codes) of that Act—

(a) subsection (2) is repealed; and
(b) after subsection (7) there is added—

“(8) This section does not apply in relation to services provided to water services providers or sewerage services providers (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2004 (asp 00)) or customers of such providers.”.

(5) Section 40 (reduced charges) of that Act is repealed.
(6) In section 49 (interests of customers) of that Act, for the words “who is a customer or potential customer of Scottish Water” there is substituted “whose premises are connected to, or might reasonably become connected to, the public water supply system or the public sewerage system (within the meaning of Part 2 of the Water Services etc. (Scotland) Act 2004 (asp 00)) or both;”.

(7) In section 68 (orders and regulations) of that Act—
   (a) in subsection (4) after the words “41(5)” there is inserted “, 56B”; and
   (b) in subsection (6), after the words “41(5)” there is inserted “or 56B”.

(8) In section 70 (interpretation) of that Act, in subsection (1)—
   (a) in the definition of “charges scheme”, for the words “31(1)” there is substituted “29A(1)”; and
   (b) for the definition of “the Commissioner” there is substituted—
       “the Commission” means the Water Industry Commission for Scotland established under section 1(1) of this Act,.”.

(9) Part 1 (the Commissioner) of schedule 1 to that Act is repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)

8 In the Scottish Public Services Ombudsman Act 2002, in paragraph 55 of schedule 2 (listed authorities), for the word “Commissioner” there is substituted “Commission”.

Freedom of Information (Scotland) Act 2002 (asp 13)

9 In the Freedom of Information (Scotland) Act 2002, in paragraph 106 of schedule 1 (Scottish public authorities), for the word “Commissioner” there is substituted “Commission”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

10 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—
   (a) the entry relating to the Water Industry Commissioner for Scotland is repealed; and
   (b) after the entry relating to the Scottish Tourist Board there is inserted—
       “Water Industry Commission for Scotland”. 


Water Services etc. (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish the Water Industry Commission for Scotland; to create offences in relation to the unauthorised use of the public water and sewerage systems; to provide for licensing the provision of certain water and sewerage services; to amend the system for fixing charges for services provided by Scottish Water; to make provision as to Scottish Water’s functions; to make provision in relation to coal mine water pollution; and for connected purposes.

Introduced by: Ross Finnie
On: 11 June 2004
Supported by: Allan Wilson
Bill type: Executive Bill