

# **WATER INDUSTRY (SCOTLAND) ACT 2002**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 1 – Water Industry Commissioner and Customer Panels**

##### ***Section 1 – Water Industry Commissioner for Scotland***

6. This section continues in existence the Water Industry Commissioner for Scotland established by section 67A of the 1994 Act (which was inserted by section 12 of the Water Industry Act 1999 (“the 1999 Act”)).
7. Subsection (2) gives the Commissioner the general function of promoting the interests of customers of Scottish Water in relation to the provision of services by it in the exercise of its core functions. This is similar to the Commissioner’s general function under the 1994 Act in relation to the existing authorities. Scottish Water’s “core functions” are all its statutory functions, but excluding its new general power under section 25(1) and the ancillary power under section 25(2) so far as relating to that power (see section 70(2)).
8. Subsection (3) gives the Scottish Ministers a power of direction over the Commissioner, equivalent to that provided in the 1994 Act (under section 67A(4)).
9. Subsection (4) gives effect to Part 1 of schedule 1 which makes detailed provision as to the appointment of the Commissioner and as to the Commissioner’s staff, status and accounts which essentially is a restatement of the current provision as to those matters set out in Schedule 9A to the 1994 Act.

##### ***Section 2 – Water Customer Consultation Panels***

10. This section provides for the establishment of Water Customer Consultation Panels to replace the Water Industry Consultative Committees established by section 67A(2) of the 1994 Act. Those Committees will cease to exist by virtue of the repeal of section 67A of the 1994 Act by the Act.
11. Subsection (1) provides that the Scottish Ministers shall establish the Panels by an order, which must specify, or make provision for determining, the area of Scotland for which each Panel is responsible and the number of Panel members (subsection (2)).
12. The Panels are to represent the views and interests of the customers of Scottish Water (in respect of Scottish Water’s core functions) in the area for which the Panel is responsible and must publish reports on matters they consider relevant to the interests of those customers and make any recommendations they consider appropriate to the Commissioner about the promotion of the interests of those customers (subsections (3) and (4)). The Commissioner must have regard to any representations made by the Panels, and to their reports and recommendations, in exercising the Commissioner’s functions in relation to Scottish Water (subsection (5)).

13. Subsection (6) gives effect to Part 2 of schedule 1, which makes detailed provisions as to the membership of the Panels, remuneration of their members, provision of administrative support to them, and their proceedings.
14. An order under subsection (1) is to be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### ***Section 3 – Functions of the Commissioner***

15. This section is based on section 68 of the 1994 Act as amended by the 1999 Act. Subsection (1) requires the Commissioner to investigate complaints about Scottish Water made by its current, potential or former customers (in respect of its core functions). Such complaints can be made direct to the Commissioner or through the Customer Panels, which are required to pass any complaints on to the Commissioner (subsection (2)). The Commissioner need not investigate any complaint which is not pursued with Scottish Water or which he judges is vexatious or frivolous (subsection (3)). The Commissioner can make representations to Scottish Water on behalf of a complainer (subsection (4)).
16. Subsection (5) places a new duty on the Commissioner to report back to a Customer Panel on any complaint referred to the Commissioner by the Panel under subsection (2), either by providing a report on the investigation the Commissioner has carried out or by giving the Panel reasons why the Commissioner decided not to investigate such a complaint.
17. Subsection (6) gives the Commissioner a duty to advise the Scottish Ministers on any matter that appears to relate to Scottish Water's standards of service or the manner in which it conducts its customer relations (in respect of its core functions).
18. Subsection (7) gives the Commissioner a general ancillary power to do anything that may aid the exercise of the functions of the Commissioner.

### ***Section 4 – Power of the Commissioner to require information***

19. This section, which is based on section 69 of the 1994 Act as amended by the 1999 Act, places a duty on Scottish Water to provide the Commissioner with information, where it is reasonable that the Commissioner should require the information to carry out the Commissioner's functions (subsection (1)).
20. Subsection (2) provides for the Commissioner or Scottish Water to refer to the Scottish Ministers for a final decision in any disagreements over whether information sought by the Commissioner is sought reasonably.

### ***Section 5 – Annual reports by, and information from, the Commissioner***

21. This section provides for the Commissioner to make annual reports and provide information. Subsection (1), which is based on section 70 of the 1994 Act as amended by the 1999 Act, requires the Commissioner to submit an annual report to the Scottish Ministers at the end of each financial year on the exercise of the Commissioner's functions and to provide Ministers with any further information on these that they require. Subsection (2) requires the Commissioner's annual report to summarise action taken by him in the course of the year in connection with Customer Panel recommendations, representations or reports and, where he has decided to take no action, a summary of the reasons. Subsection (3) provides that Commissioner's annual report must set out any Ministerial directions given to the Commissioner during the year.

### ***Section 6 – Funding of the Commissioner***

22. This section sets out how the Commissioner will be funded and is based on section 71 of the 1994 Act as amended by the 1999 Act and [SI 1999/1820](#).

*These notes relate to the Water Industry (Scotland) Act  
2002 (asp 3) which received Royal Assent on 1 March 2002*

23. Subsection (1) gives the Scottish Ministers power to pay grants to the Commissioner, should they choose to do so. Subsection (2) gives the Scottish Ministers powers to direct Scottish Water to make payments to the Commissioner in respect of the Commissioner's expenses.