

WATER INDUSTRY (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

Part 3 – Scottish Water

Section 33 – Commissioner’s advice on charges

84. This section, which follows closely section 75A of the 1994 Act, as inserted by section 13 of the 1999 Act, provides for the Commissioner to advise the Scottish Ministers on the amount of charge income needed by Scottish Water during a particular period.
85. Subsection (1) requires the Commissioner to provide the Scottish Ministers when they ask for it with advice on the matters to be taken into or left out of account in setting charges. The advice should cover whatever period the Scottish Ministers specify (subsection (2)).
86. Subsection (3) sets out the factors that will have a bearing on the amount of charge income required by Scottish Water and to which the Commissioner must have regard in framing the advice.
87. Subsection (4) identifies the aspects of Scottish Water’s core functions whose costs to Scottish Water the Commissioner must bear in mind in framing the advice. Paragraphs (a) to (c) of the subsection provide functions that were set out at section 75A(4) of the 1994 Act. Paragraph (d) is a new and additional function, covering the first time provision of water and sewerage services. As a result the cost to Scottish Water of making such provision in accordance with the Scottish Ministers’ requirements will be a factor in the Commissioner’s advice.
88. Subsection (5) gives the Scottish Ministers 3 months in which to consider the advice submitted to them by the Commissioner. By the end of that period they must have accepted it, with or without any modifications they judge necessary, or have rejected it substituting advice of their own. Subsection (6) requires the Scottish Ministers to give their reasons for modifying or rejecting advice and for substituting their own advice.
89. Subsection (7) requires the Commissioner to publish the advice submitted to the Scottish Ministers along with any modification or substitution made by the Ministers and Ministers’ reasons for the modification or substitution. It follows that in practice the Commissioner can only publish this material once the process established in this section has been completed.