

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

---

## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 3 – Scottish Water**

##### ***Section 20 – Scottish Water***

45. Subsection (1) establishes Scottish Water as a body corporate. Subsection (2) gives effect to schedule 3, which makes detailed provision as to the constitution etc. of Scottish Water.

##### ***Section 21 – Transfer of functions from new water and sewerage authorities***

46. This section transfers all of the functions of the existing authorities to Scottish Water. This has the effect of making Scottish Water responsible for the discharge of the statutory, or core, water and sewerage functions conferred on the existing authorities, principally by the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980 (“the 1980 Act”).

##### ***Section 22 – Transfer of property and liabilities***

47. Subsection (1) provides for all of the existing authorities’ property and liabilities to transfer to Scottish Water. As a result, the public water and sewerage infrastructure will vest in Scottish Water and Scottish Water will become responsible for discharging all of the existing authorities’ contractual obligations, including those relating to the staff of the existing authorities, all of whom will transfer – under section 23 – to Scottish Water.
48. Subsection (2) makes it clear that property and liabilities can transfer despite any provision that would otherwise prevent or restrict the transfer.

##### ***Section 23 – Transfer of staff***

49. This makes it clear that the [Transfer of Undertakings \(Protection of Employment\) Regulations 1981 \(S.I. 1981/1794\)](#) will apply so as to transfer staff of the existing authorities to Scottish Water, in accordance with the terms of those Regulations, at the same time as the functions and property and liabilities of the existing authorities transfer.

##### ***Section 24 – Dissolution of new water and sewerage authorities etc***

50. Subsection (1) empowers the Scottish Ministers to dissolve the existing authorities on dates to be set by them by order; and that different dates may be set for the dissolution of each authority (subsection (2)). The existing authorities could continue in existence after the transfer of their functions, property, staff etc. to Scottish Water to enable them, for example, to complete final accounts.
51. Subsection (3) gives the Scottish Ministers power by order to make ancillary provisions in connection with the establishment of Scottish Water, the dissolution of the existing

authorities and the transfer to Scottish Water. This power will, in particular, enable the Scottish Ministers to deal with transitional and consequential issues arising from the move to the single authority. For example, the Scottish Ministers will be able to provide that water and sewerage charges made in the name of the existing authorities can be passed to Scottish Water.

52. Orders under this section must be made by statutory instrument and are subject to negative procedure in the Parliament. An order under subsection (3) can textually amend primary legislation but if it does so it will be subject to affirmative procedure (see section 68).

### ***Section 25 – General powers***

53. This section confers on Scottish Water wider general powers than those that the existing authorities have under section 89 of the 1994 Act.
54. Subsection (1) confers on Scottish Water a new general power to engage in any activity (whether in Scotland or elsewhere) that is not inconsistent with the exercise by it of its core water and sewerage functions. Subsection (2) confers on Scottish Water an ancillary power to do anything that will assist it to discharge both its core functions and its general power under subsection (1). Subsections (3) to (5) provide illustrations of the things that Scottish Water can do by virtue of this ancillary power; but the list is not an exhaustive description of what can be done. Subsections (3)(e), (4) and (5) are based on provision made in relation to local authorities by section 1 of the Local Government (Contracts) Act 1997.
55. Subsection (6) makes it clear that the powers conferred on Scottish Water by this section are additional to any other powers they may have; but the powers cannot be used to avoid any express prohibitions or restrictions placed on it elsewhere. It also establishes that the section does not enable Scottish Water to raise funds beyond the restrictions provided for in sections 41 and 42.
56. Scottish Water must exercise its powers under this section in accordance with directions to be given by the Scottish Ministers under section 56.

### ***Section 26 – Customer standards code***

57. This section, which is based on section 66 of the 1994 Act, provides for Scottish Water to prepare and observe a code of practice, referred to as “the customer standards code”, in relation to its core functions.
58. Subsection (1) places a duty on Scottish Water to prepare and then submit to the Commissioner a customer standard code covering customer service standards, procedures for dealing with complaints and the payment of compensation. The first code is to be submitted to the Commissioner by the time Scottish Water submits its first charges scheme to the Commissioner (subsection (2)). The code can be varied from time to time and replaced with a new one (subsection (3)). The code comes into force when it is approved (subsection (4)). The procedure for approval is specified at section 27.
59. Subsection (5) places a duty on Scottish Water to endeavour to observe the approved code; but contravention will not of itself give rise to civil or criminal liability. Scottish Water must inform its customers of the contents of a code (subsection (6)).
60. Subsection (7) places on the Commissioner the duty to monitor Scottish Water’s compliance with an approved code. It also gives the Commissioner the powers to report to the Scottish Ministers on compliance and to require Scottish Water to review a code.

### ***Section 27 – Approval of customer standards code***

61. This section, which is based on provisions at sections 66 and 76 of the 1994 Act, specifies the procedure for approval of Scottish Water’s customer standards code. The

Commissioner must approve the customer standards code as drafted or can agree changes to it with Scottish Water before approving it (subsection (1)), and before approving a code the Commissioner must consult each Customer Panel. Where the Commissioner cannot approve the code without modification, and the Commissioner and Scottish Water cannot reach agreement on modifications to the draft code, it is to be sent to the Scottish Ministers for approval (subsection (2)). Scottish Water can require the Commissioner to send the code to the Scottish Ministers for approval where 3 months after submission it has not been approved by the Commissioner (subsection (3)).

62. Subsection (4) gives the Scottish Ministers power to approve codes sent to them under subsections (2) or (3), after consulting each Customer Panel, either without modification or, after having consulted the Commissioner and Scottish Water, with modification.
63. Subsection (5) requires the Commissioner to send the Scottish Ministers a copy of any code approved by the Commissioner; and subsection (6) requires the Scottish Ministers to send to the Commissioner a copy of any code that they approve.

### ***Section 28 – Consultation code***

64. This section requires Scottish Water to have a code of practice on consultation.
65. Subsection (1) provides that the consultation code should set out the consultation Scottish Water will carry out on any significant activities and proposals for such activities, in respect of their core functions. The code must be submitted to Scottish Ministers for approval.
66. Subsection (2) requires the consultation code to include provision for consultation with those who live, work or have business in the area affected by the activity being consulted on, or those who represent the interests of such persons. The code must also contain provision about how consultation is to be carried out by Scottish Water and provision for Scottish Water to have regard to the views of those consulted.
67. Subsection (3) provides that Scottish Water must consult each Customer Panel before submitting the consultation code to Scottish Ministers, and have regard to their views. Subsection (4) provides for Scottish Ministers to approve the consultation code, and subsection (5) provides that the code only comes into force when Ministers have approved the code.
68. The code can be varied from time to time or replaced with a new one (Subsection (8)). Scottish Water is required to publish the code and provide a copy of it to anyone who asks for it (subsection (6) and must endeavour to comply with it (subsection (7)).

### ***Section 29 – Charges for goods and services***

69. This section is equivalent to section 74 of the 1994 Act, but revised to clarify Scottish Water's powers to charge for goods and services.
70. Subsection (1) is drawn more widely than 74(1)(a) of the 1994 Act and gives Scottish Water a broad general power under which to charge for any goods that it might supply and any services that it might provide.
71. Subsection (2)(a) makes exemptions from the general charging power in subsection (1) in respect of water supplied under the circumstances set out in:
  - section 9A of the Water (Scotland) Act 1980, which ensures that no charge can be made for supplies of water for certain fire-fighting purposes; and
  - section 47 of that Act, which continues any arrangements in force before 16th May 1949 under which no charge was made for supplies of water.

72. Subsection (2)(b) avoids the general power at subsection (1) overlapping with other specific powers to charge by specifying that subsection (1) does not apply where another charging power already exists. Subsection (3) provides that the power under subsection (1) to charge can be exercised:
- in respect of services provided in the exercise of Scottish Water's core functions as provider of water and sewerage services on the public networks, as part of a charges scheme agreed with the Commissioner; and
  - in respect of such services or in any other case, by individual agreements with customers.
73. Subsection (4) provides that where charges are not based on a charges scheme agreed with the Commissioner, the basis for calculating charges is to be a matter for Scottish Water's discretion.

### ***Section 30 – Maximum charges for services provided with help of Scottish Water***

74. This section is based on section 75 of the 1994 Act.
75. Subsection (1) gives the Scottish Ministers the power by order to set maximum charges that a person other than Scottish Water can recover from another person for the supply of water and/or sewerage services that are provided with the help of Scottish Water. Subsection (2) explains the situations where, for the purposes of this provision, water and sewerage services are treated as supplied with the help of Scottish Water. These are:
- where a person has access to services that have been provided by Scottish Water but are made available to the person by someone other than Scottish Water; or
  - where a person is provided with a supply of water or sewerage or a service for sewage disposal by another person who was initially supplied by Scottish Water.
76. Subsection (3) allows the maximum charge imposed to vary according to the person, circumstances or localities involved. It allows the Scottish Ministers to fix a maximum amount either by specifying the maximum amount of the charge or by specifying a method to calculate that amount.
77. Subsection (4) enables a person who pays a charge that is above the maximum amount fixed under subsection (1) to recover the excess amount from the person who had levied the charge.
78. An order under subsection (1) must be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### ***Section 31 – Charges schemes***

79. This section is based on section 76(1) to (4) and (8) of the 1994 Act, as amended by section 13 of, and Part II of Schedule 3 to, the 1999 Act.
80. Subsection (1) requires Scottish Water to make a scheme setting out what it will charge for the provision of services that are part of its core functions. Charges schemes must fix charges paid for services and may also set the times and methods of payment of such charges. This differs from section 76(1) of the 1994 Act in that that subsection empowers rather than requires the existing authorities to make charges schemes. Subsection (2) continues to exempt trade effluent from the scope of charges schemes required at subsection (1). Subsection (3) allows a charges scheme to make different provisions for different classes of customers, including different charges depending on individual circumstances or location. Subsection (4) specifies that a charges scheme comes into force when it has been approved in accordance with section 32.
81. Subsection (5) places a duty on the Commissioner and the Scottish Ministers when approving a charges scheme to consider any advice published under section 33.

82. Subsection (6) allows Scottish Water to enter into individual charge agreements with any person independent of a charges scheme for services provided by Scottish Water.

### ***Section 32 – Approval of charges schemes***

83. This section is based on section 76(5) to (7) of the 1994 Act, as amended by the 1999 Act. It sets out the procedure for approval of charges scheme made by Scottish Water under section 31. The procedure is similar to that set out in section 27 for approval of the customer standards code.

### ***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.

### ***Section 34 – Publication of summary of charges scheme***

90. This section is based on section 77 of the 1994 Act. It places a duty on Scottish Water to make publicly available any charges scheme made by it and approved under section 32 and to publish a summary of the scheme, along with information as to how copies of the scheme can either be inspected or obtained.

### ***Section 35 – Liability of occupiers etc for charges***

91. This section is a substantially amended version of section 78 of the 1994 Act. It makes provision for the basis on which those responsible for premises with water or sewerage services provided by Scottish Water shall be liable for payment of charges.
92. Subsection (1) establishes that where Scottish Water provides premises with water or sewerage services it is deemed to be providing those services to the current occupier



of the premises. It makes clear that it also covers the provision and maintenance of communication and supply pipes (as defined in the Water (Scotland) Act 1980). Subsection (2) makes the same deeming provision in relation to provision of sewerage services to premises. If any premises are unoccupied then the owner is treated as the occupier for the purposes of these deeming provisions (subsection (3)). These deeming provisions can be disapplied by agreement with Scottish Water (subsection (4)).

93. Subsections (5) to (8) make provision for enabling Scottish Water to recover charges from a former occupier of premises even after that occupier has left the premises in cases where the occupier had agreed with Scottish Water to charge by reference to metered consumption of services. Such an occupier remains liable for the charges if they fail to give Scottish Water 48 hours notice that they are about to cease occupying the premises (subsection (6)). Subsection (7) determines the period for which the occupier remains liable. Subsection (8) establishes that references to 48 hours in this section – by excluding weekends and public holidays from the reckoning – effectively mean two working days.

### ***Section 36 – Section 35: meaning of “occupier”***

94. This section provides in cases where the local authorities bill and recover the charges set by Scottish Water under section 37(1)(a) (i.e. in the case of dwellings that are not charged for water and sewerage services by reference to metered consumption), that the occupiers of premises for the purposes of paying charges are to be those liable to pay council tax in respect of the premises or, where the premises are exempt dwellings for council tax purposes, those who would be so liable. For other cases, subsection (2) gives the Scottish Ministers power by order to make provision for particular persons to be treated as being, or not being, the occupiers of particular premises for the purposes of liability for water charges.

### ***Section 37 – Collection of charges by local authority***

95. This section, based on section 79 of the 1994 Act, enables the Scottish Ministers to determine by order that, where Scottish Water provides unmeasured water and sewerage services to dwellings, charges are to be collected by the appropriate local authority for the area concerned and that the authority should make payments to Scottish Water in respect of charges collected (subsection (1)). Such an order need not apply to all the dwellings in an area. Subsection (2) sets the matters that may be included in an order made under subsection (1) and these include provisions as to forms and procedures and appeals.
96. Subsection (3) gives effect to schedule 4, which largely restates Schedule 10 to the 1994 Act (repealed by Schedule 7, paragraph 23 (f)), on recovery of unpaid charges by the local authority.
97. An order under subsection (1) must be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

### ***Section 38 – Suspension of collection of charges by local authority***

98. This section applies to dwellings that are subject to a determination under section 37(1) (a) (i.e. for which the local authorities bill and collect water charges). The section provides a process whereby Scottish Water can give, and subsequently withdraw, wholly or partly, notice to a local authority that it should no longer bill or collect water charges from any such dwellings as are specified in the notice. Where Scottish Water has served such a notice, it will have to bill and collect the water or sewerage charges itself.
99. Subsection (4) provides that Scottish Ministers may make regulations regarding such a notice, and subsection (5) provides that these regulations may provide for a payment to

be made by Scottish Water to the relevant local authority in respect of any reasonable administrative expenses it incurs as a consequence of the notice.

***Section 39 – Primacy of duty to maintain domestic water supply etc.***

100. This section, based on section 80 of the 1994 Act, establishes that the charging powers at sections 29(1) and 37 do not affect Scottish Water's duties to provide water and sewerage services for domestic purposes to those on the public networks. In effect it means that domestic customers cannot be disconnected for not paying their water and sewerage charges.

***Section 40 – Reduced charges***

101. This section is based on section 81 of the 1994 Act.
102. Subsection (1) empowers the Scottish Ministers to make regulations reducing the charges under section 37 to be paid by those to be defined in the regulations, including exempting some from charges altogether. Subsection (2) provides for regulations to specify the reduced amount to be paid or to make rules for determining the reduced amount. The Scottish Ministers can define those who qualify for the reduced charge, and set the rules for calculating the reduced charge, by reference to such factors as they see fit (subsection (3)).
103. Regulations under subsection (1) must be made by statutory instrument and are subject to negative procedure in the Parliament (see section 68).

***Section 41 – Duties and powers relating to finance***

104. This section updates the duties at section 83 of the 1994 Act. In common with the other sections in the Act dealing with Scottish Water's finances, it does so taking account as appropriate of the Public Finance and Accountability (Scotland) Act 2000 and the introduction of resource budgeting and accounting in the public finances.
105. Subsection (1) effectively requires Scottish Water taking one year with another to ensure that it has sufficient income to meet its expenditure. Subsection (2) gives the Scottish Ministers power, by order, to set Scottish Water minimum rates of return as measured against the value of its average net assets that it must achieve. Subsection (3) provides for the Scottish Ministers to place Scottish Water under specified duties of a financial nature. But if such a duty replaces a duty to achieve a rate of return set under subsection (2), the duty must be set out in an order which will be subject to approval of the Scottish Parliament. Subsection (4) gives the Scottish Ministers flexibility as to the periods to be covered by and the content of a duty imposed by them under subsection (3).
106. Subsection (6) requires Scottish Water to ensure that its charges make a proper contribution to the cost of discharging its duties in light of its present and likely future circumstances and of any duty placed on it by subsections (2) or (3).
107. An order under subsection (2) must be made by statutory instrument and is subject to negative procedure in the Parliament. An order under subsection (5) must be made by statutory instrument and is subject to affirmative procedure in the Parliament (see section 68).

***Section 42 – Financing and borrowing***

108. This section is based on section 84 of the 1994 Act. It gives the Scottish Ministers power to pay grants, on such conditions as they think fit, to Scottish Water to cover the costs of carrying out its functions, or of reimbursing the costs to the authority of reducing charges for groups of customers if required to do so under section 40 (subsections (1) and (2)).

109. Subsection (3) gives Scottish Water the power to borrow from the Scottish Ministers on conditions set by them and from others within or beyond the United Kingdom, subject to the approval of the Scottish Ministers. Scottish Water's net borrowings under these powers in each financial year must not exceed the limit to be set for each year in a Budget Act (subsections (4) and (5)). Sums borrowed from the Scottish Ministers are to be repaid as directed by them (subsection (6)).

### ***Section 43 – Guarantees***

110. This section, based on section 85 of the 1994 Act, gives the Scottish Ministers power to guarantee, on whatever terms and conditions they wish, borrowings by Scottish Water and its subsidiaries (subsection (1)). The Scottish Ministers must inform the Scottish Parliament immediately after they issue a guarantee (subsection (2)). Scottish Water must reimburse the Scottish Ministers on terms to be determined by them whenever they are required to honour a guarantee (subsection (3)).
111. Subsection (4) applies the Companies Act definition of “subsidiary”.

### ***Section 44 – Directions as to payment and investment***

112. This section, based on section 86 of the 1994 Act, gives the Scottish Ministers power to direct Scottish Water to pay them any surplus funds held by it, or to invest those funds as Ministers direct, unless by virtue of another provision Scottish Water is required to pay the sum over to the Scottish Ministers anyway.

### ***Section 45 – Accounts and audit***

113. This section, based on section 87 of the 1994 Act, as amended by the Public Finance and Accountability (Scotland) Act 2000, deals with Scottish Water's accounting and audit duties.
114. Subsection (1) requires Scottish Water to keep proper accounting records and to prepare a statement of accounts for each financial year which is to be sent for auditing by the Auditor General for Scotland in accordance with sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000.
115. Subsection (2) requires Scottish Water to prepare its statement of accounts in accordance with directions given by the Scottish Ministers.

### ***Section 46 – Acquisition of land by agreement***

116. This section, based on section 98 of the 1994 Act, gives Scottish Water power to acquire land, wherever situated, by agreement with third parties for the purposes of any of its functions, not just its core water and sewerage functions, or for the provision by others of a public water supply or public sewerage system (subsection (1)).
117. Subsection (2) provides that the provision in subsection (3) only applies for land acquired for the purposes of Scottish Water's core functions. Subsection (3) provides for the incorporation into this section of the Lands Clauses Acts (with specified exceptions), and, as appropriate, sections of the Railway Clauses Consolidation (Scotland) Act 1845 (as originally enacted) and Part IV of Schedule 4 to the Water (Scotland) Act 1980 relating to the payment of compensation on land acquisition.

### ***Section 47 – Compulsory acquisition of land***

118. This section, based on section 99 of the 1994 Act, deals with Scottish Water's power to acquire land compulsorily.
119. Subsection (1) permits the Scottish Ministers to authorise the compulsory acquisition of land (other than water rights) in Scotland by Scottish Water for use in the exercise of its core functions or to allow others to provide public water or sewerage systems.



120. Subsection (2) provides that the exercise by Scottish Water of the powers at subsection (1) is without prejudice to section 17 of the Water (Scotland) Act 1980, which deals with the acquisition of water rights, and subject to section 18 of that Act, which deals with the authorisation of the compulsory acquisition of land necessary for the purposes of an order under section 17.
121. Subsection (3) applies the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to compulsory purchases by Scottish Water as it applies to other statutory undertakers.
122. Subsection (4) gives the Scottish Ministers the power to authorise Scottish Water to acquire land compulsorily, or acquire it by agreement, for the purposes of exchanging it for such land as is mentioned in section 1(2)(b) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (i.e. land forming part of a common or open space or held inalienably by the National Trust for Scotland).

### ***Section 48 – Disposal of land***

123. This section, based on section 100 of the 1994 Act, permits Scottish Water to dispose of any of its land generally, but requires it to get the Scottish Ministers' consent where the proceeds of a disposal would be less than market value.

### ***Section 49 – Interests of customers***

124. This section restates section 65(2)(a)(i) and (ii) of the 1994 Act, but with the additional provision that it refers to disability and remote areas, as well as medical conditions and rural areas. It places duties on the Scottish Ministers and Scottish Water, when discharging their respective functions under the Act, and under the 1968 and the 1980 Acts, to have regard to the needs and interests of customers and potential customers, especially those who have special needs because of a disability or medical condition, or who live in rural or remote areas.

### ***Section 50 – Economy, efficiency and effectiveness***

125. This section places a general duty on Scottish Water to ensure that its resources are used economically, efficiently and effectively.

### ***Section 51 – Sustainable development***

126. This section places a new general duty on Scottish Water in terms of sustainable development. Subsection (2) qualifies the duty so that the Scottish Ministers and Scottish Water need only act in accordance with it where doing so does not run counter to the performance of any enactment relating to the performance of their functions. Subsection (3) provides that Scottish Water must have regard to any guidance issued by Scottish Ministers in complying with this duty.

### ***Section 52 - Public access to land held by Scottish Water***

127. This section places a general duty on Scottish Water to have regard to the desirability of preserving for the public freedom of access to land held by it.

### ***Section 53 – Environmental matters***

128. This section is an amended version of 65(2)(b), (c) and (d) of the 1994 Act.
129. Subsections (1) and (2) place duties on the Scottish Ministers and Scottish Water, when discharging their respective functions under the Act, and under the 1968 and the 1980 Acts, to have regard to the desirability of preserving public access and protecting and conserving particular aspects of the environment. Subsection (3) requires the Scottish Ministers and Scottish Water, in exercising those functions, to further environmental conservation and enhancement of natural beauty.

130. Subsection (4) qualifies the duties on the Scottish Ministers and Scottish Water under subsection (3) so that they need only act to meet them where doing so does not run counter to the purposes of any enactment relating to any of their functions.

#### ***Section 54 – Protection of natural heritage***

131. This section places duties on Scottish Natural Heritage (SNH) and Scottish Water in terms of protecting the natural heritage. It is based on section 73 of the 1994 Act.
132. Subsections (1) to (3) require SNH to notify Scottish Water of areas of land that have been designated under natural heritage protection legislation and of any cancellations or variations of those designations. Subsection (4) requires Scottish Water to consult SNH about works or other activity that it plans to undertake on any sites that have been notified to it by SNH, where the activity planned is likely to impact adversely on the land in question.
133. Subsection (5) requires Scottish Water to consult a National Park Authority where any works or other activity that it plans to undertake could affect land within the National Park.
134. Subsection (6) permits Scottish Water to take action in an emergency on land that would be covered by (4) and (5) without first notifying SNH or a National Park Authority. Where Scottish Water acts in this way it must inform SNH or the relevant National Park Authority of what it has done as soon as is practicable.

#### ***Section 55 – Consultation with Health Boards***

135. This section places a duty on Scottish Water to consult the relevant Health Board when it appears to Scottish Water that services provided by it in the exercise of its core functions are likely to give rise to a significant risk to public health in the Health Board's area. Scottish Water must exercise its core functions so as to seek to reduce or eliminate the risk, having regard to any views expressed by the Health Board. This duty is without prejudice to the duty under section 11(6) requiring a public water supplier served with an enforcement notice to consult the relevant Health Board and have regard to their views.

#### ***Section 56 – Directions***

136. This section revises substantially section 116 of the 1994 Act on the power of the Scottish Ministers to give directions.
137. Subsection (1) places a new duty on the Scottish Ministers to give directions to Scottish Water as to the exercise of its general powers under section 25 and its internal management powers under schedule 3 and also as to how Scottish Water is managed generally. These directions could, for example, cover the responsibilities of the members and staff of Scottish Water and could require prior approval of, or consultation with, the Scottish Ministers, to any proposed course of action (subsection (2)). Subsection (2)(c) clarifies that a direction under this section could allow matters in it to be determined by third parties where that is appropriate.
138. Subsection (3) gives the Scottish Ministers a general power to give directions to Scottish Water, whether general or specific. The Scottish Ministers must consult Scottish Water before giving any directions under this section (subsection (4)).
139. Subsection (5) requires Scottish Water to comply with all directions given by the Scottish Ministers under Part 3.

#### ***Section 57 – Information and reports***

140. This section, which is based on section 118 of the 1994 Act, places duties on Scottish Water in terms of providing information and making reports.

141. Subsection (1) requires Scottish Water to provide the Scottish Ministers with any information about it that the Scottish Ministers require. For that purpose Scottish Water must make available or give access to any information requested of it by anyone authorised to do so by the Scottish Ministers (subsection (2)).
142. Subsection (3) requires Scottish Water to produce a half-year and full annual reports of its activities. The half-year report must include a statement of accounts for the period covered by it (subsection (4)).
143. Subsection (5) provides that Scottish Water's annual report must include reports on its performance against the customer standards code, consultation code and its duties on economy, effectiveness and efficiency and sustainable development.
144. Subsection (6) provides that Scottish Water must submit its half-year and annual reports to the Scottish Ministers, the Commissioner and the Convener of the Water Customer Consultation Panels and must publish them. Subsection (8) provides that the Scottish Ministers must lay the reports before the Scottish Parliament.

### ***Section 58 – Records***

145. This section is a restatement of the provisions at section 119 of the 1994 Act, requiring Scottish Water to consult the Keeper of the Records of Scotland about arrangements for preserving and managing its records and to allow the Keeper reasonable access to the records.

### ***Section 59 – Validity of actings***

146. This section provides that failure to comply with any duty imposed under Part 3 of the Act does not affect the validity of Scottish Water's actings.

### ***Section 60 – Private legislation***

147. This section, which is based on section 121 of the 1994 Act, gives Scottish Water power to promote, in the Scottish Parliament only, and oppose in the Westminster and Scottish Parliaments, private legislation. It may promote private legislation only with the consent of the Scottish Ministers, who must withhold their consent if the powers being sought by Scottish Water could be achieved by means of an order under the 1968 Act or the 1980 Act.

### ***Section 61 – Supply of goods and services to and by local authorities.***

148. This replaces section 122 of the 1994 Act. The effect of the provision is that Scottish Water can provide goods and service to local authorities and can arrange for other public bodies to provide goods and services to it.

### ***Section 62 – Information from local authorities and assessors***

149. This section restates section 123 of the 1994 Act and enables provision to be made for Scottish Water to obtain from local authorities and assessors information that would help it set and recover its charges under a charges scheme.
150. Subsection (1) gives the Scottish Ministers power to make regulations requiring local authorities or assessors to supply Scottish Water with relevant information. Relevant information is information held by local authorities in connection with council tax, council water charges, non-domestic water and sewerage rates and non-domestic rates and information held by assessors in connection with their functions, but only such information as would help Scottish Water in setting and collecting its own charges under a charges scheme (subsections (2) and (3)).
151. Regulations under subsection (1) must be made by statutory instrument and are subject to negative procedure in the Parliament (see section 68).