



# Water Industry (Scotland) Act 2002

## 2002 asp 3

### PART 3

#### SCOTTISH WATER

##### *Charges*

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

- (1) Scottish Water may fix, demand and recover charges for any goods supplied or services provided by it.
- (2) Subsection (1)—
  - (a) is subject to sections 9A and 47 of the 1980 Act (no charge for water in certain circumstances), and
  - (b) does not apply in a case where Scottish Water has power otherwise than under that subsection to fix charges for goods or services.
- (3) The power conferred by subsection (1) is exercisable—
  - (a) in relation to charges for services provided in the exercise of Scottish Water's core functions, by or in accordance with a charges scheme under section 31, and
  - (b) in that or any other case, by or in accordance with an agreement with the person to be charged.
- (4) Subject to sections 31 to 36, Scottish Water may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to it to be appropriate.

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

- (1) The Scottish Ministers may by order fix maximum charges which a person other than Scottish Water may recover from another such person in respect of the supply of water to, the provision of sewerage to, or the disposal of sewage for that other person with the help of services provided by Scottish Water.

- (2) For the purposes of this section, water is supplied to, sewerage provided to, or sewage disposed of for a person with the help of services provided by Scottish Water if—
- (a) a facility for that person to have access to a supply of water provided by Scottish Water in pipes, or to make use of sewerage which is, or facilities for the disposal of sewage which are, provided by Scottish Water is made available to that person otherwise than by Scottish Water,
  - (b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by Scottish Water, or
  - (c) that person is provided with sewerage, or with facilities for the disposal of sewage, by a person who, for the purposes of providing the sewerage or facilities, makes use of sewerage or of such facilities provided, directly or indirectly, by Scottish Water.
- (3) An order under this section may make different provision in relation to different persons, circumstances or localities and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.
- (4) Where a person pays a charge in respect of anything to which an order under this section relates and the amount paid exceeds the maximum charge fixed by the order, the amount of the excess is recoverable by that person from the person to whom the charge was paid.

### **31 Charges schemes**

- (1) Scottish Water must, in accordance with this section, make a scheme (referred to in this Act as a “charges scheme”) which fixes the charges to be paid for services provided by it in the exercise of its core functions and which may also make provision with respect to the times and methods of payment of the charges fixed by the scheme.
- (2) Subsection (1) does not apply in relation to services as respects which conditions as to payment may be imposed under section 29(3)(j) of the 1968 Act (conditions relating to the reception, treatment and disposal of trade effluent).
- (3) A charges scheme may—
- (a) make different provision for different cases, or classes of case, including different provision in relation to different circumstances or localities,
  - (b) contain supplemental, consequential and transitional provisions for the purposes of the scheme,
  - (c) revoke or amend a previous scheme.
- (4) A charges scheme comes into force only when it is approved in accordance with section 32 and has effect as so approved.
- (5) Scottish Water in making a charges scheme, and the Commissioner and the Scottish Ministers in considering whether to approve such a scheme, must have regard to any advice published under section 33 in force at the time of the making of the scheme.
- (6) Nothing in any charges scheme affects any power of Scottish Water to enter into an agreement with any person in any particular case determining the charges to be made for services provided by Scottish Water.

## **32 Approval of charges schemes**

- (1) Scottish Water must send a charges scheme made by it under section 31 to the Commissioner.
- (2) The Commissioner may approve the scheme—
  - (a) without modifications, or
  - (b) with such modifications as are agreed by the Commissioner and Scottish Water.
- (3) Where—
  - (a) the Commissioner is not prepared to give approval under subsection (2)(a), and
  - (b) Scottish Water does not agree to some or all of the modifications proposed by the Commissioner under subsection (2)(b),the Commissioner must send the scheme (with any modifications to it agreed by the Commissioner and Scottish Water) to the Scottish Ministers.
- (4) Where 3 months have elapsed since the Commissioner has received a charges scheme by virtue of subsection (1) and the Commissioner has neither—
  - (a) given approval under subsection (2), nor
  - (b) sent the scheme to the Scottish Ministers under subsection (3),Scottish Water may require the Commissioner to send it to the Scottish Ministers.
- (5) The Scottish Ministers may approve a scheme sent to them under subsection (3) or (4)—
  - (a) without modifications or further modifications, or
  - (b) with such modifications as, after consulting Scottish Water and the Commissioner, they think fit.
- (6) Where the Commissioner approves a charges scheme under subsection (2), the Commissioner must send a copy of the scheme as so approved to the Scottish Ministers.
- (7) Where the Scottish Ministers approve a charges scheme under subsection (5), they must send a copy of the scheme as so approved to the Commissioner.

## **33 Commissioner's advice on charges**

- (1) The Commissioner must, when required by the Scottish Ministers, advise them on the matters to be taken into, or left out of, account by Scottish Water in fixing charges in charges schemes.
- (2) The advice is to apply in relation to charges schemes made during such period as the Scottish Ministers may specify (in this section referred to as “the period of the advice”).
- (3) In preparing advice, the Commissioner is to have regard to—
  - (a) the economy, efficiency and effectiveness with which Scottish Water is using its resources in exercising its core functions,
  - (b) the likely cost to Scottish Water, for the period of the advice, of exercising the functions specified in subsection (4),

- (c) the likely resources, other than income from charges for goods and services, available to Scottish Water for the period of the advice,
  - (d) any guidance issued to Scottish Water by the Scottish Ministers, and
  - (e) any directions given under section 44 or 56.
- (4) The functions referred to in subsection (3)(b) are the core functions of Scottish Water so far as consisting of—
- (a) complying with any duty to which it is subject by virtue of any enactment,
  - (b) complying with any such duty to which it will, or is likely to, become subject during the period of the advice,
  - (c) providing services to its customers at the same standard, and protection of the environment at the same level, as those at the time when the advice is given, or at such other standard or level as the Scottish Ministers may specify, and
  - (d) extending, in accordance with requirements made by the Scottish Ministers, the provision of public sewers and supplies of water to premises or areas not in receipt of such provision.
- (5) The Scottish Ministers must, within 3 months of receiving from the Commissioner advice under subsection (1)—
- (a) accept the advice, with or without modifications, or
  - (b) reject the advice and substitute their own advice for it.
- (6) Where the Scottish Ministers accept the Commissioner's advice with modifications or reject it, they must give reasons for doing so.
- (7) The Commissioner must publish advice as accepted, modified or substituted under subsection (5), together with any reasons given under subsection (6).

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

When a charges scheme is approved in accordance with section 32, Scottish Water must—

- (a) make arrangements for allowing any person to—
  - (i) inspect the scheme at any reasonable time,
  - (ii) obtain a copy of it, or any 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.

### **35 Liability of occupiers etc. for charges**

- (1) Supplies of water provided by Scottish Water to any premises and the provision and maintenance by Scottish Water of communication pipes and supply pipes for the purposes of such supplies are to be treated for the purposes of this Act as services provided to the occupier for the time being of those premises.
- (2) The provision of sewerage, and the disposal of sewage, provided by Scottish Water are to be treated for the purposes of this Act as provision to, or as disposal for, the occupier for the time being of any premises which—
  - (a) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with a public sewer provided for foul water or surface water or both, or

- (b) are premises the occupier of which has, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.
- (3) Subject to subsection (5), in relation to any period during which premises referred to in subsection (1) or (2) are unoccupied, references to the occupier in the subsection in question are to be construed as references to the owner of the premises.
- (4) Subsections (1) to (3) do not apply so far as provision to the contrary is made by any agreement to which Scottish Water is a party.
- (5) Charges which, under section 29, are fixed in relation to any premises by reference to volume may be imposed so that a person remains liable, in relation to those premises, to pay charges for—
  - (a) a supply of water, and
  - (b) provision of sewerage or disposal of sewage,provided by Scottish Water after the person has ceased to be occupier of the premises.
- (6) A person is liable by virtue of subsection (5) for any charges fixed in relation to any premises by Scottish Water only where that person fails to inform Scottish Water of the ending of that person's occupation of the premises at least 48 hours before that person ceases to occupy them.
- (7) The charges for which a person may be liable by virtue of subsection (5) are charges in respect of a period ending no later than whichever of the following first occurs after the person ceases to occupy the premises—
  - (a) where the person informs Scottish Water of the ending of that person's occupation, the 28th day after informing Scottish Water,
  - (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined,
  - (c) any day on which any other person informs the authority that that other person has become the new occupier of the premises.
- (8) In calculating the period of 48 hours referred to in subsection (6) any time falling on—
  - (a) a Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80),is to be disregarded.
- (9) In subsection (1), “communication pipes” and “supply pipes” have the same meanings as in the 1980 Act.

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

- (1) In the application of section 35 to services which are the subject of a determination under section 37(1)(a), references in section 35(1) and (2) to the occupier of premises are references to the person—
  - (a) who is liable under or by virtue of sections 75 to 77 of the Local Government Finance Act 1992 (c. 14) to pay council tax (within the meaning of section 70(1) of that Act) in respect of the premises, or
  - (b) who would be so liable but for the premises being an exempt dwelling (within the meaning of Part II of that Act).

- (2) Without prejudice to subsections (3) and (4) of section 35, the Scottish Ministers may, after consulting such persons as they think fit, by order make provision, in relation to such premises or description of premises as the order may specify, as to the persons who are, for the purposes of subsections (1) and (2) of that section, to be treated as being, or as not being, occupiers of the premises.
- (3) Section 35(3) and subsection (2) of this section do not apply in a case to which subsection (1) of this section applies.

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

- (1) The Scottish Ministers may by order determine—
  - (a) that as respects specified services provided, within a financial year specified in the order, by Scottish Water to dwellings, or to such description of dwellings as the order may specify—
    - (i) within the area of a local authority, or
    - (ii) within such part of that area as the order may specify,
 the authority and not Scottish Water is to demand and recover charges payable for those services under a charges scheme, and
  - (b) that the authority is, at such intervals as may be so specified, to make such payments to Scottish Water (to which no other amount is to be payable under the charges scheme for the services provided) as may be so specified or as may be determined in accordance with the provisions of the order.
- (2) In subsection (1), “specified services” means services specified, or of a description specified, in the order.
- (3) An order under subsection (1) may include provision as to—
  - (a) forms and procedures which the local authority is to adopt in demanding payment,
  - (b) circumstances in which a customer of Scottish Water who is aggrieved by a decision or calculation of the local authority may appeal—
    - (i) except in a case specified by virtue of sub-paragraph (ii), to a valuation appeal committee (constituted under section 29 of the 1994 Act), or
    - (ii) in such cases as the order may specify, to a body constituted under the order (or under a previous such order) to consider appeals as respects any such case,
  - (c) procedures to be followed in any appeal by virtue of paragraph (b),
  - (d) the provision, for the purposes of this section, of information by Scottish Water to the local authority,
  - (e) the keeping by the local authority of accounts and records as respects their functions by virtue of this section and the exhibition of, or of copies of, such accounts and records to Scottish Water.
- (4) Schedule 4 makes provision about recovery by a local authority of unpaid charges.
- (5) In this section and section 38, “dwelling” has the same meaning as in Part II of the Local Government Finance Act 1992 (c. 14).

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

- (1) This section applies in relation to any dwellings to which Scottish Water provides services which are the subject of a determination under section 37(1)(a).
- (2) Where, in relation to any such dwellings, Scottish Water serves a notice under this subsection on the relevant local authority, the services which are the subject of the determination, so far as provided to dwellings to which the notice relates, are to be treated for so long as the notice remains in force as if they were not subject to the determination.
- (3) A notice under subsection (2) may be withdrawn in whole or in part by Scottish Water by serving a further notice on the relevant local authority.
- (4) The Scottish Ministers may by regulations make provision as to—
  - (a) the form and content of a notice under subsection (2) or (3),
  - (b) when such a notice comes into force,
  - (c) (either or both) the maximum and minimum numbers of dwellings to which such a notice may relate,
  - (d) such other matters in relation to such a notice as the Scottish Ministers think necessary or expedient.
- (5) Regulations under subsection (4) may also make provision for the payment by Scottish Water to the relevant local authority of a sum, specified in or calculated in accordance with the regulations, in respect of any reasonable administrative expenses incurred by the authority in consequence of the service of a notice under subsection (2) or (3).
- (6) In this section, “the relevant local authority” means the local authority which—
  - (a) is, by virtue of the determination under section 37(1)(a), responsible for demanding and recovering charges payable for services provided by Scottish Water to the dwellings to which the notice under subsection (2) or (3) relates and which are the subject of the determination, or
  - (b) was, until the notice came into force, so responsible.

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

Sections 29(1) and 37 are without prejudice to—

- (a) the duties of Scottish Water under section 6 of the 1980 Act (which include the duty to maintain a supply of wholesome water provided to meet a requirement for domestic purposes),
- (b) the entitlements of any person under section 12 of the 1968 Act (which include the entitlement of an occupier of premises to drain into public sewers to which the drains or private sewers of the owner of the premises are connected).

### **40 Reduced charges**

- (1) The Scottish Ministers may by regulations provide that a person who—
  - (a) is, under a charges scheme, liable to pay an amount to Scottish Water or, by virtue of section 37, to a local authority, and
  - (b) fulfils such conditions as are specified in the regulations,is instead exempt from such liability or liable to pay the reduced amount referred to in subsection (2).

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*Status: This is the original version (as it was originally enacted).*

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- (2) The reduced amount is an amount—
  - (a) less than the amount it would be but for the regulations, and
  - (b) determined in accordance with rules specified in the regulations.
- (3) The conditions and rules to be specified in regulations under subsections (1)(b) and (2)(b) respectively may be determined by reference to such factors as the Scottish Ministers think fit.