
Changes to legislation: There are currently no known outstanding effects for the Water Industry (Scotland) Act 2002, SCHEDULE 3. (See end of Document for details)

SCHEDULE 3 **S** (introduced by section 20)

SCOTTISH WATER: STATUS, CONSTITUTION, PROCEEDINGS ETC.

Status

- 1 Scottish Water—
- (a) is not to be regarded as a servant or agent of the Crown,
 - (b) does not have any 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 (1) Scottish Water is to consist of a board comprising—
- (a) not fewer than 5, nor more than 8, non-executive members, and
 - (b) not fewer than 3, nor more than 5, executive members.
- (2) The number of non-executive members must exceed the number of executive members by at least 2.
- (3) The non-executive members are to be appointed by the Scottish Ministers from amongst persons who appear to them to have knowledge or experience relevant to the functions of Scottish Water.
- (4) One of the non-executive members to be appointed under sub-paragraph (3) must be a person appearing to the Scottish Ministers to have special knowledge of the interests of the employees of Scottish Water.
- (5) Before inviting applications for appointment as that member, the Scottish Ministers must consult such persons representing those employees as they think fit as to—
- (a) the particular knowledge of such interests, and
 - (b) any other attributes,
- that persons seeking such appointment should possess.
- (6) The chief executive of Scottish Water is to be one of its executive members and the other executive members are to be appointed by Scottish Water, with the approval of the Scottish Ministers, from amongst its other employees.

Tenure and removal from office

- 3 (1) Each member other than the chief executive—
- (a) is to be appointed for such period as is specified in the appointment,
 - (b) may, by written notice to—
 - (i) in the case of a non-executive member, the Scottish Ministers,
 - (ii) in the case of an executive member, Scottish Water,resign as a member,
 - (c) in other respects, holds and vacates office on such terms and conditions as—
 - (i) in the case of a non-executive member, the Scottish Ministers,
 - (ii) in the case of an executive member, Scottish Water with the approval of the Scottish Ministers,may determine,

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- (d) after ceasing to hold office is eligible for reappointment as a member.
- (2) The Scottish Ministers may remove a non-executive member, and Scottish Water may, with the approval of the Scottish Ministers, remove an executive member, 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 Scottish Water for a period longer than 3 consecutive months without the permission of Scottish Water, or
 - (iii) is otherwise unable or unfit to discharge the member’s functions as a member or is unsuitable to continue as a member.
- (3) Without prejudice to its powers under sub-paragraph (2), Scottish Water may, with the approval of the Scottish Ministers, remove an executive member from office if it considers it necessary or expedient to do so in connection with the management of the affairs of Scottish Water.
- (4) An executive member ceases to hold office as such on ceasing to be an employee of Scottish Water.
- (5) A person who ceases to be an executive member does not, by reason only of that, cease to be an employee of Scottish Water.

Chairing

- 4 (1) The Scottish Ministers—
 - (a) must appoint one of the non-executive members to chair the board, and
 - (b) may, after consulting that member, appoint another non-executive member to act as deputy to that member.
- (2) The member appointed to chair the board 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 non-executive member of Scottish Water.
- (5) Where a non-executive member—
 - (a) is appointed to chair the board 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 non-executive member is to be vacated.

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Remuneration, allowances and pensions

- 5
- (1) Scottish Water must pay to those of its members holding an office specified in sub-paragraph (5) such remuneration as the Scottish Ministers may determine.
 - (2) Scottish Water must pay to those members and the other members such allowances as the Scottish Ministers may determine in respect of expenses properly incurred in the performance of their duties.
 - (3) Where a person ceases to be a non-executive member otherwise than on the expiry of that person's term of office, the Scottish Ministers may, if they think there are special circumstances, direct Scottish Water to pay to the person such amount of compensation as they may determine.
 - (4) The Scottish Ministers may direct Scottish Water to pay—
 - (a) such pension, allowance or gratuity to, or in respect of, any person who holds or has held any office specified in sub-paragraph (5),
 - (b) such contribution or other payment towards provision for such pension, allowance or gratuity,as they consider appropriate.
 - (5) The offices referred to in sub-paragraphs (1) and (4)(a) are—
 - (a) non-executive member,
 - (b) member appointed to chair the board, and
 - (c) member appointed to act as deputy to that member.

Chief executive and other staff

- 6
- (1) The Scottish Ministers must, after consultation with the member appointed, or to be appointed, to chair the board (if there is a person holding, or as the case may be designated to hold, that office), make the first appointment of chief executive of Scottish Water on such terms and conditions as the Scottish Ministers may determine.
 - (2) Scottish Water 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.
 - (3) Scottish Water may appoint on such terms and conditions as it may with the approval of the Scottish Ministers determine such other employees as it considers appropriate.
 - (4) Scottish Water 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.
 - (5) Such arrangements—
 - (a) may include the establishment and administration, by Scottish Water or otherwise, of one or more pension schemes, and
 - (b) must, in any case, be approved by the Scottish Ministers.
 - (6) The reference in sub-paragraph (4) 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.

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Committees

- 7 (1) Scottish Water may establish committees for or in connection with the exercise of such of its functions as it may determine.
- (2) Employees of Scottish Water who are not members of Scottish Water may be appointed to be members of any committee established by it.

Proceedings

- 8 The quorum of Scottish Water and any committee established under paragraph 7(1), and the arrangements for its meetings and meetings of any such committee, are to be such as Scottish Water may determine.

Delegation of powers

- 9 (1) Anything authorised or required under any enactment to be done by Scottish Water may be done by any of its committees which, or by any of its members or employees who, are authorised (whether generally or specifically) for the purpose by it.
- (2) Nothing in sub-paragraph (1) prevents Scottish Water from doing anything that a committee, member or employee has been authorised or required to do.

Validity of proceedings and actings

- 10 The validity of any proceedings or actings of Scottish Water is not affected by—
- (a) any vacancy among its members, or
 - (b) any defect in the appointment of a member.

Transitory arrangements: initial appointments

- 11 (1) Until the first appointment of the non-executive member mentioned in sub-paragraph (4) of paragraph 2—
- (a) sub-paragraph (1)(a) of that paragraph has effect as if for “5” there were substituted “4”,
 - (b) sub-paragraph (2) of that paragraph has effect as if for “2” there were substituted “1”, and
 - (c) the constitution of Scottish Water, and the validity of any of its proceedings or actings, may not be questioned by reason only that sub-paragraph (4) of that paragraph has not been complied with.
- (2) Sub-paragraph (1)(c) of this paragraph is without prejudice to paragraph 10.
- 12 (1) The Scottish Ministers may appoint, on such terms and conditions as they may determine, persons to act as executive members until the appointment of the first executive members by Scottish Water under paragraph 2(6).
- (2) A person appointed by the Scottish Ministers under sub-paragraph (1)—
- (a) must be a person who is expected to become an employee of Scottish Water (whether by virtue of section 23 or paragraph 6(3) of this schedule),
 - (b) is to be treated (except for the purposes of paragraph 3 of this schedule) as an executive member whilst acting as such,
 - (c) may resign office by written notice to the Scottish Ministers,
 - (d) may be removed from office by the Scottish Ministers,

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- (e) in other respects, holds and vacates offices in accordance with the terms and conditions of the appointment.

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