

WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Water and sewerage services

Section 29 – Duty to provide water and sewerage services

106. This section amends section 1 of the Sewerage (Scotland) Act 1968 (“the 1968 Act”) and section 6 of the Water (Scotland) Act 1980 (“the 1980 Act”) to make further provision regarding Scottish Water’s duty to provide water and sewerage services at reasonable cost.
107. The 1968 and 1980 Acts, as amended by other enactments including the Water Industry (Scotland) Act 2002, set out Scottish Water’s core duties to provide, respectively, public sewerage services and water supplies. The 1968 Act makes general provision for sewerage and trade effluent. The Act sets out the duties and powers of Scottish Water, and the rights and obligations of owners and occupiers, in relation to sewerage provision and also includes arrangements for the vesting of sewers, drains and works. The provision on trade effluent includes the right to discharge into public sewers, control of discharges and agreements in lieu of applications for consent. There are other miscellaneous and general provisions in the 1968 Act covering such matters as the powers of Scottish Water to execute works, require information and enter premises.
108. The 1980 Act consolidates previous enactments relating to water supply in Scotland. It confers functions on Scottish Water, and on the Scottish Ministers, in relation to the conservation, protection and effective use of water resources and in relation to the provision of water supplies throughout Scotland for domestic and non-domestic purposes. The 1980 Act confers order making powers on the Scottish Ministers, for example, regarding acquisition of water by Scottish Water. It also confers powers on Scottish Water relating to restriction of water supply and usage, survey and acquisition of land, acquisition of water rights, carrying out of works, breaking open of streets, laying pipes and the making of byelaws. The Act also sets out the rights and duties of owners and occupiers, including the option to take a supply of water by meter in certain circumstances. It also makes provision for offences, including the offence of polluting water, and penalties.
109. Section 1 of the 1968 Act imposes a duty on Scottish Water to provide sewerage, provided it is practicable to do so at reasonable cost (subsection (3)). Section 29(2) of the Act inserts four new subsections after subsection (3) of section 1 of the 1968 Act. New subsection (3A) allows the Scottish Ministers to specify cases or types of cases to which subsection (3) does not apply, with the effect that Scottish Water must comply with the duties set out in subsections (1) and (2) despite this requiring actions which are not practicable at reasonable cost. New subsection (3B) specifies that in determining reasonable cost for the purpose of subsection (3) the costs to be taken into account include such costs as Scottish Water considers necessary in consequence of the

*These notes relate to the Water Environment and Water Services
(Scotland) Act 2003 (asp 3) which received Royal Assent on 5 March 2003*

connection. New subsection (3C) allows the Scottish Ministers to determine reasonable cost for the purposes of section 1 of the 1968 Act in regulations. New subsection (3D) specifies that the regulations may, in particular, make provision as regards the matters and criteria to be considered and the method of calculation to be adopted in determining reasonable cost, and that different provisions may be made for different cases or types of case.

110. Subsections (3) and (4) of section 29 insert references to regulations under the new subsection (3C) in subsections (4) and (6) of section 1 of the 1968 Act. The effect of the amendment to section 1(4) is that an aggrieved person can appeal to the Scottish Ministers on the grounds that a determination of reasonable cost has not been made properly in accordance with the regulations, whereupon the Scottish Ministers will determine the issue, following consultation with Scottish Water, and Scottish Water must give effect to that determination. The effect of the amendment to section 1(6) is that the power to make regulations under new subsection (3C) is exercisable by statutory instrument, subject to negative procedure.
111. Subsection (6) of section 29 amends section 6(2) of the 1980 Act to make Scottish Water's duty to supply water under that subsection subject to the new subsection (2A) added by subsection (7), so that Scottish Water is not required to take pipes to a connection point for buildings where an agreement is in force between Scottish Water and another person for them to carry out this action. Subsection (7) also adds new subsections (2A) to (2E) to section 6. Subsection (2B) provides that the Scottish Ministers can specify cases or types of cases where the duties in Section 6(1) and (2) of the 1980 Act apply despite requiring actions which are not practicable at reasonable cost. Subsection (2C) specifies that in determining reasonable cost for the purpose of subsection (2), the costs to be taken into account include such costs as Scottish Water considers necessary in consequence of the connection. Subsection (2D) enables the Scottish Ministers to define reasonable cost for the purposes of section 6 of the 1980 Act in regulations. Subsection (2E) specifies that those regulations, may in particular, make provision as to matters to be taken into account, the criteria to be applied and the method of calculation to be adopted in for deciding what is reasonable cost. The regulations will be made by statutory instrument and subject to negative procedure in the Scottish Parliament, in accordance with section 101(2) of the 1980 Act (as amended by the Scotland Act).
112. Subsection (8) of section 29 amends subsection (3) of section 6 of the 1980 Act so that the issues which the Scottish Ministers can be requested to determine include whether a reasonable cost has been properly determined in accordance with regulations under subsection (2D).