

WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Water and sewerage services

Section 31 – Laying of water mains and communication pipes by persons other than Scottish Water

122. This section inserts three new sections, 23A, 23B and 23C, in the 1980 Act.
123. Section 23A relates to laying of mains and communication pipes by persons other than Scottish Water. It provides for Scottish Water to authorise another person to lay a main or communication pipe and clarifies the arrangements for subsequently vesting the main or pipe. It provides a power for Scottish Water to authorise another person to lay a main or communication pipe where this involves road works or crossing a third party's land (section 23A(1)), and transfers to the authorised person the requirements to give reasonable notice to interested parties and the procedure for responding to objections provided in section 23 of the 1980 Act (section 23A(2)). Section 23A(3) provides for a main or communication pipe which connects to a main which is vested in Scottish Water to vest in Scottish Water. An exception to this is provided for where Scottish Water has made a determination during the construction of the main or communication pipe, vesting the main or pipe and its management, maintenance and renewal instead in the person who has laid it (section 23A(4)), and giving notice of this determination (section 23A(5)). Where a main or communication pipe is laid by a person other than for or on behalf of Scottish Water and the consequent main does not connect to another main which is vested in Scottish Water, section 23A(6) provides that it vests in the person who laid the main.
124. However, section 23A(7) provides that, despite a main or communication pipe not connecting with a main vested in Scottish Water or a determination having been made by Scottish Water that the main or pipe should vest in the person who laid it, Scottish Water may enter into an agreement for the main or pipe to vest in it instead. Section 23A(8) provides that where the main or communication pipe which is intended to vest in Scottish Water connects to a public main, such an agreement is only valid if the main meets the construction standards provided by section 23B, and is subject to any conditions and security Scottish Water require under section 23C.
125. Section 23B relates to construction standards for mains and communication pipes to vest in Scottish Water. It provides a regulation-making power for the Scottish Ministers to prescribe the standards referred to in section 23A which a main or communication pipe not laid by or on behalf of Scottish Water must meet for it to vest in Scottish Water. These standards can include those specified in other enactments, e.g. those that are legally binding on Scottish Water (section 23B(2)). The regulations under this section may make provision for different standards for different cases or types of case, and before making the regulations, the Scottish Ministers must consult Scottish

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

Water and any other persons they consider appropriate (sections 23B(3) and (4)). Regulations under this section will be made by statutory instrument and subject to negative procedure in the Scottish Parliament (section 101(2) of the 1980 Act).

126. Section 23C relates to vesting conditions for mains and communication pipes. It sets out arrangements for an agreement between Scottish Water and the person who laid the main to include payments to either party, and a regulation-making power for the Scottish Ministers to make detailed provision relating to how costs and liabilities in vesting conditions should be determined.
127. Section 23C(1) provides that Scottish Water may require conditions (“vesting conditions”) to be included in an agreement under section 23A(7) between Scottish Water and another person to allow a main or communication pipe to vest in Scottish Water. These conditions may include a payment from Scottish Water to the person who laid the main or pipe to cover the costs of laying it, and a liability on that person to pay Scottish Water in respect of expenses they incur, either through maintaining, repairing or renewing the mains or pipe, connecting it to a public main, or other work that Scottish Water considers necessary as a consequence of connecting the main or communication pipe. Section 23C(2) provides a regulation making power for the Scottish Ministers in relation to these vesting conditions. The regulations can specify provision which should be included in an agreement, and cases where section 23C(1) does not apply, or applies only with modifications. Section 23C(3) provides further detail as to provision which may be made in these regulations: they may provide for how a sum which Scottish Water should contribute in respect of the costs of laying the main or communication pipe should be determined; they may set out the matters, criteria and methods of calculation for determining the liability of the person who laid the mains or pipe; when sums due under vesting conditions should be paid; and the security Scottish Water is entitled to require under section 23A(8)(b). Section 23C(4) clarifies that these regulations can make different provision for different cases or types of case. Regulations under this section will be made by statutory instrument and subject to negative procedure in the Scottish Parliament in terms of section 101(2) of the 1980 Act.