

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Provision of Water and Sewerage Services

Scottish Water: water and sewerage services undertaking

Section 15: Transfer of staff etc. to the undertaking

65. Section 15 provides for the transfer of staff, property and liabilities from Scottish Water to the new undertaking established under section 13 for the purposes that the undertaking is established to perform. It makes provision for the protection of the terms and conditions of employment of staff who are transferred to the undertaking.
66. Subsection (1) requires Scottish Water to comply with a requirement by the Scottish Ministers to transfer staff to the new undertaking for the purposes of it applying for water services and sewerage services licences and enabling the undertaking to carry out its activities as a licensed provider (these purposes are specified in subsection (8)).
67. Subsection (2) provides that the contract of employment of any staff transferred under subsection (1) will not be terminated by the transfer, but will continue as if originally made between the person and the undertaking.
68. Subsection (3) provides that when staff are transferred to the undertaking, the undertaking will take on all rights, powers, duties and liabilities in relation to the contracts of employment of these staff and that anything done in relation to employees or their contracts before the transfer will continue to have effect after the transfer.
69. Subsection (4) states that the transfer under these provisions does not affect any person's right to terminate their contract of employment if their terms and conditions can be shown to have been changed substantially to their detriment. However, the fact that the identity of the person's employer has changed does not in itself constitute such a change.
70. Subsection (5) requires Scottish Water to comply with a requirement by the Scottish Ministers to transfer such property (including rights) and liabilities to the undertaking as necessary for the purposes specified in subsection (8). Subsection (6) provides that such a transfer may be to such extent and subject to such conditions as Scottish Water, with the consent of Scottish Ministers, may determine. Subsection (7) provides for the transfer of property and liabilities to have effect despite any provision which might otherwise prevent the transfer, and that the property and liabilities which are transferred are vested in the undertaking.