

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Provision of Water and Sewerage Services

Scottish Water: services via licensed providers

Section 16: Scottish Water to provide services

71. The Act provides for water and sewerage services providers to assume responsibility for providing services to customers in the following way. Firstly, the provider applies for a licence from the Commission. Secondly, and assuming that a licence is granted, the provider makes arrangements with the occupier of eligible premises to provide them with licensed services. Thirdly, the provider agrees specific terms and conditions by which Scottish Water will provide a wholesale supply of water or, as the case may be, sewerage services in respect of the premises provided with such services. Section 16 makes provision for this third step.
72. Subsection (1) enables a water services provider, once it has made arrangements with the occupier of eligible premises (as defined in section 27 of the Act) for the supply of water to those premises, to request Scottish Water to supply water to the premises through the public water supply system (as defined in section 28 of the Act). Subsection (2) places a duty on Scottish Water to comply with this request subject to agreeing terms and conditions with the provider, and subject to the carrying out of the request being consistent with the exercise of Scottish Water's core functions (as defined in section 70(2) of the Water Industry (Scotland) Act 2002). This is to ensure that these new duties on Scottish Water are subject to its wider statutory responsibilities as the public supplier of water.
73. Subsection (3)(a) provides for Scottish Water's duty to supply water under subsection (2) to cease if the arrangements between a provider and the occupier of eligible premises have come to an end. However, this is subject to section 17(1) of the Act which provides that Scottish Water must continue to serve the premises for two months after the arrangements have come to an end, unless it has come to an end under the disconnection provisions in section 18(5). However, subsection (3)(b) provides that Scottish Water's duty to supply water under subsection (2) may be superseded by a new duty, such as, for example, when another licensed provider assumes responsibility for the provision of water services to the premises.
74. Subsections (4) to (6) make equivalent provision to subsections (1) to (3) as respects Scottish Water's duty to provide sewerage services to premises as agreed by the sewerage services provider. However, unlike Scottish Water's duties under subsections (1) to (3) in relation to the water supply, there is no general provision for sewerage services to be disconnected: a duty to provide sewerage services can only be superseded by a new duty, under subsection (5). Trade effluent services may, however, be discontinued by virtue of section 20 of the Act (see paragraphs 89 to 98 below).

75. Where Scottish Water and a water or sewerage services provider cannot come to an agreement under subsections (2) or (5), on the terms and conditions whereby Scottish Water provides the water supply or sewerage services, subsection (7) provides for the Commission to determine the terms and conditions of the supply that Scottish Water is to make to the provider and for these to have effect as if they had been agreed between those parties.

Section 17: Continuation of water services

76. Section 17 makes provision in relation to Scottish Water's duty to provide water services, when the arrangements between a licensed water services provider and the occupier of eligible premises have come to an end.
77. Subsection (1) provides that where the arrangements between the occupier of an eligible premises (as defined in section 27 of the Act) and a water services provider have come to an end, such as, for example, on revocation of a licence, Scottish Water has a continuing duty to supply water to the premises for the period specified in subsection (2). The only exception to this is where the supply is discontinued at the request of a provider under section 18 of the Act where alternative arrangements apply. This is to enable the customers of licensed providers to have a continued supply of water while they seek to secure services from an alternative licensed provider if their arrangement with their existing provider comes to an end for any other reason than those provided in the disconnection code under section 19. In most cases it is anticipated that a customer will be able to make arrangements with a new provider prior to the arrangements with their previous provider having come to an end.
78. Subsection (2) specifies the period for which Scottish Water must continue to supply water, after arrangements between the occupier of premises and a provider have come to an end, as two months or such longer period as Scottish Water agrees to.
79. Subsection (3) provides that the continuing duty to supply under subsection (1), that is to say, in the absence of an agreement between the occupier and a provider, ceases where a new arrangement has been made between a licensed provider and the occupier of eligible premises, which would lead to a new duty under section 16(2) of the Act, or where the occupier of those premises notifies Scottish Water that a supply of water is no longer required.
80. Subsection (4) amends section 9 of the Water (Scotland) Act 1980, by inserting new subsections (2A) to (2C). Section 9(1) of the 1980 Act requires Scottish Water to supply water on reasonable terms and conditions where requested for non-domestic purposes. The new section 9(2A) qualifies the section 9(1) duty so that Scottish Water is not required to make such a supply where arrangements between a licensed provider and the occupier of eligible premises under section 16(2) of the Act have come to an end, where it believes there is no reasonable prospect of recovering charges from a customer. The requirement to supply water for non-domestic purposes can only come to an end if the arrangements between a licensed provider and a customer have ended because of non-payment of charges (section 9(2A)(a) of the 1980 Act), or the supply of water to a premises has been discontinued at the request of the provider (under section 18(5) of the Act) because of non-payment of charges (section 9(2A)(b) of the 1980 Act). The intention of this provision is to ensure that, where a customer is unable to find a water service provider, for example, because of a track record of not paying bills, that Scottish Water should not be required to provide a supply of water to that customer. The new section 9(2B) of the 1980 Act provides that where Scottish Water refuses to provide such a supply, the occupier of the premises has a right to have this reviewed by the Water Industry Commission which, in terms of the new section 9(2C) of the 1980 Act, can either confirm the decision to refuse or direct Scottish Water to give a supply, and its decision is final.

Section 18: Discontinuation of water services

81. Section 18 enables water services providers to request (under subsection (1)) that Scottish Water discontinue the supply of water to a premises provided by Scottish Water under an agreement with the provider as established by section 16(2) of the Act. This provision will allow a water services provider, subject to compliance with the provisions of the disconnection code provided for under section 19, to request the disconnection of a customer, for example, when the customer has not complied with their contract to the provider by not paying their charges.
82. Subsection (2) requires a provider to serve a notice on: the occupier of the premises, Scottish Water, and the Commission, at least 14 days before requesting disconnection intimating its intention to seek disconnection. Subsection (3) gives Ministers the power to specify by order the form the notice will take and its content, and under section 34 an order under this subsection is subject to negative procedure in the Parliament.
83. Subsection (4) gives the occupier of the premises concerned the right to make representations to the provider about the notice within 10 days of it being served, which the provider must have regard to.
84. Subsection (5) requires Scottish Water to discontinue a supply of water as requested if the conditions set out in subsection (6) are satisfied. Accordingly, the disconnections code provided under section 19 of the Act must have been complied with, and the disconnection requested must not adversely affect any supply of water to the premises for domestic purposes, or the supply of water, to any other premises for any purpose. Subsection (7) provides that a supply of water for domestic purposes is defined in accordance with section 7 of the Water (Scotland) Act 1980 (which includes a supply for drinking, washing, cooking, central heating and sanitary purposes).
85. Subsection (8) provides that the water services provider who requested the disconnection should pay any reasonable costs incurred by Scottish Water in carrying out the disconnection. Subsection (9) provides that in the case of any dispute as to reasonable costs in this regard the Commission will determine this and its decision is final.

Section 19: Disconnections code

86. This section makes provision for a disconnections code to be drawn up by the Commission in relation to discontinuations of supplies of water.
87. Subsection (2) provides that a disconnection code may specify circumstances in which requests to Scottish Water to disconnect a premises under section 18 of the Act may or may not be made; and any other conditions which must be satisfied before the disconnection actually takes place (over and above those mentioned in section 18(6)(b) of the Act). The intention behind the code is to ensure that disconnection is only carried out where the circumstances genuinely demand it, and where it will not adversely affect any customers other than the one in respect of whom the disconnection is to be carried out. The code may make different provision for different cases and can be amended or revoked (subsection (3)).
88. Subsection (4) ensures that the Commission, in devising the code, will consult: Scottish Water, all water and sewerage services providers, the Convener of the Water Customer Consultation Panels (on behalf of the Panels), the Drinking Water Quality Regulator for Scotland (appointed by virtue of section 7 of the 2002 Act), and such others as it thinks appropriate. Subsection (5) provides that the Commission must publish the code and publicise arrangements for making a copy of it available to any person who wishes to obtain it.

Section 20: Continuation and discontinuation of sewerage services

89. Section 20 makes provision in relation to Scottish Water's duty to provide sewerage or dispose of sewage when the arrangements between a licensed sewerage services provider and occupier of eligible premises have come to an end. Specific provision is made in relation to "trade effluent services" (as defined in subsection (15)), to permit such services to be discontinued under particular circumstances.
90. Subsection (1) places a duty on Scottish Water to continue providing sewerage, or disposing of sewage from eligible premises (as defined in section 27 of the Act), even if the arrangements between the occupier of the premises and the sewerage services provider have come to an end. However, in contrast to the duty in section 17 as regards the continuing provision of a water supply, no time limit is put on this duty. However, by virtue of subsection (2), the duty does not apply to trade effluent services.
91. Subsection (3) provides that where arrangements between a sewerage services provider and the customer have come to an end, such as, for example, on revocation or suspension of a sewerage provider's licence, Scottish Water has a continuing duty to provide trade effluent services for the period specified in subsection (4) (namely, for 2 months or such shorter period as Scottish Water, with the Water Industry Commission's consent, determines).
92. However, subsection (5) provides that Scottish Water's duty under subsection (3) ceases where a new arrangement has been made between a sewerage services provider and the occupier of eligible premises under section 16(5) of the Act, or if the occupier of the premises notifies Scottish Water that trade effluent services are no longer required.
93. Subsection (6) enables a sewerage services provider to request that Scottish Water discontinue any trade effluent services provided to premises under section 16(5) of the Act. The procedures for this are set out in subsections (7) to (13). Under subsection (7), at least 14 days before making such a request, the provider must serve a notice of its intention to do so on: the occupier of the premises, Scottish Water, and the Commission. Subsection (8) gives Ministers the power to specify by order the form and content of such a notice, and under section 34 of the Act, such an order is subject to negative procedure in the Parliament.
94. Subsection (9) gives the occupier of the premises concerned the right to make representations to the provider about the notice within 10 days of it being served, which the provider must have regard to.
95. Under subsection (10), if the request proceeds, Scottish Water must discontinue the trade effluent services, provided that the conditions set out in subsection (11) are satisfied, namely, that other arrangements for the provision of sewerage or the disposal of sewage in respect of those or other premises is not adversely affected by the discontinuation, and there is no likely risk to public health as a result of the discontinuation.
96. Subsection (12) provides that the sewerage services provider who requested the discontinuation should pay any reasonable costs incurred by Scottish Water in carrying out the discontinuation (which, in the event of a dispute, must be determined by the Commission - see subsection (13)).
97. Subsection (14) provides that section 20 is expressly without prejudice to the existing statutory provisions governing the provision of trade effluent services, as set out in Part II of the Sewerage (Scotland) Act 1968. Part II of that Act makes provision generally for the granting or continuation of consents by Scottish Water in respect of discharges of trade effluent from premises, or for agreements in relation to such discharges. Those consents or agreements can be subject to appropriate conditions, which may include provision as regards their discontinuance in certain circumstances.

*These notes relate to the Water Services etc. (Scotland) Act
2005 (asp 3) which received Royal Assent on 17 March 2005*

98. Subsection (15) defines trade effluent services for the purpose of section 20, in accordance with section 59(1) of the 1968 Act, which provides that ““trade effluent” means any liquid, either with or without particles of matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises, including trade waste waters or waters heated in the course of any trade or industry and, in relation to any trade premises, means any such liquid as aforesaid which is so produced in the course of any trade or industry carried on at those premises”.