

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Miscellaneous and General

General

Section 34: Orders and regulations

201. Section 34(1) provides that the powers to make orders and regulations that the Act confers on the Scottish Ministers are exercisable by statutory instrument. Subsection (2) provides that in exercising such powers, Ministers can make such incidental, consequential, transitional or saving provisions as considered necessary or expedient and can make different provision for different circumstances.
202. Subsections (3) and (4) set out the parliamentary procedure which the various statutory instruments that are capable of being made under the powers in the Act are subject to.
203. Subsection (3) provides that some statutory instruments are subject to negative procedure or annulment. Subsection (4), however, specifies affirmative procedure for some statutory instruments, whereby Ministers cannot make and bring into force a statutory instrument until the instrument has been laid in draft before the Parliament and the Parliament has by resolution approved it. This procedure requires closer Parliamentary scrutiny and is applied to the few provisions in the Act that enable primary legislation to be amended, or enable provisions in the Act to be modified in a significant way.
204. Subsection (3) applies negative procedure to statutory instruments in respect of the following provisions:
 - Section 2: an order to dissolve the Water Industry Commissioner for Scotland.
 - Section 7(2): an order to specify any other factors beyond those at sections 7(2)(a) and 7(2)(b) that the Commission is to take into account in assessing the ability of an applicant for a licence to discharge the licence's terms and conditions.
 - Section 13(6): an order to modify paragraphs 1 and 2 of schedule 2, which govern procedures for the application for a water or sewerage services licence and the conditions of the licence, in relation to the first application for such a licence by the undertaking established by Scottish Water under section 13.
 - Section 14(1): an order to specify circumstances in which Scottish Ministers may make grants to the undertaking established under section 13.
 - Section 14(2): an order to specify circumstances in which the undertaking established under section 13 may borrow from Scottish Ministers and the circumstances in which it may not borrow money from any other person except Scottish Water.

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

- Section 14(6): an order to specify circumstances in which Scottish Ministers may guarantee the discharge of any financial obligation in connection with sums borrowed by the undertaking under section 14(4)(b).
 - Section 14(9): an order specifying circumstances in which Scottish Ministers may subscribe for share or loan capital of the undertaking.
 - Section 18(3): an order prescribing the form and content of the notice that a water services provider must issue, prior to requesting that Scottish Water discontinue the supply of water to premises.
 - Section 20(8): an order prescribing the form and content of a notice that a sewerage services provider must issue, prior to requesting that Scottish Water discontinue provision of trade effluent services to premises.
 - Section 25(1): an order containing a code of practice for the purposes of assessing, controlling and minimising sewerage nuisance.
 - Section 27(3): an order to vary the meaning of “dwelling” for the purposes of the Act’s definition of “eligible premises” at section 27.
 - Section 33: an order to make further provision for the purposes of the Act (where this does not amend primary legislation).
 - Paragraph 1(1) of schedule 2: an order prescribing the form and content of an application for a water services or sewerage services licence.
 - Paragraph 1(4) of schedule 2: an order prescribing the timescales and content of the notice that an applicant for a licence must publish.
 - Paragraph 12(1) of schedule 2: an order specifying the manner in which the Commission must maintain a register of water and sewerage services licences.
 - Paragraph 12(2)(g) of schedule 2: an order specifying any additional information, beyond that at subparagraph (2)(a) to (f), to be included in the Commission’s register of water and sewerage services licences.
205. Subsection (4) applies affirmative procedure to statutory instruments in respect of the following provisions:
- Section 33: an order to make further provision for the purposes of the Act (where this amends primary legislation).
 - Section 4(7): regulations which specify circumstances in which the prohibitions: on common carriage on the public water networks at section 4(1); on using the public water networks to supply services at section 4(2); or on providing services on the public water networks without a licence at section 4(3), do not apply.
 - Section 5(7): regulations which specify the circumstances in which the prohibitions: on common carriage on the public sewerage networks at 5(1); on using the public sewerage networks to supply services at section 5(2); or on providing services on the public sewerage networks without a licence at section 5(3), do not apply.