

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule A1: Water Industry Commission for Scotland

Paragraph 1: Status

210. Paragraph 1 provides that the Commission is a body corporate. Sub-paragraph (2) provides that the Commission does not form part of the Crown.

Paragraph 2: Membership

211. Paragraph 2 provides that the Commission is to be made up of 3-5 ordinary members and a chief executive. This means that the majority of the membership of the Commission will be non-executive. Paragraph 5 provides that a person is to be appointed to chair the Commission from amongst the ordinary members.

Paragraph 3: Tenure and removal from office

212. Paragraph 3 provides for the appointment and vacation of office for Commission members. Members are to be appointed by the Scottish Ministers, who will also determine their terms and conditions. Sub-paragraph (2) provides that Ministers may remove ordinary members from office; and that the Commission may remove the chief executive from office with the approval of Ministers. Removal from office under this paragraph of members or the chief executive may only happen under certain specified circumstances, such as bankruptcy, incapacity by physical or mental illness, prolonged absence from Commission meetings without permission, or otherwise being unable, or unfit to discharge the functions of a member or unsuitable to continue as a member.

Paragraph 4: Disqualification

213. Paragraph 4 disqualifies members of the House of Lords, the House of Commons, the Scottish Parliament or the European Parliament from being appointed as members of the Commission.

Paragraph 5: Chairing

214. This paragraph requires the Scottish Ministers to appoint a person to chair the Commission from among its ordinary members. Sub-paragraph (3) provides that this person may resign by giving written notice to Ministers. Sub-paragraph (4) states that they cease to chair the Commission on ceasing to be a member of the Commission.

Paragraph 6: Remuneration, allowances and pensions

215. Sub-paragraph (1) provides for Scottish Ministers to determine the remuneration to be paid to ordinary members of the Commission, and sub-paragraph (2) provides further for them to determine allowances in respect of expenses to be paid to ordinary members and to the chief executive.

216. Sub-paragraph (3) provides that Scottish Ministers may, under special circumstances, direct the Commission to pay compensation to an ordinary member who has ceased to hold the office otherwise than on the expiry of the terms of their appointment. Sub-paragraph (4) provides that Scottish Ministers may direct the Commission to pay pensions, allowances or gratuities, or contributions to these, to ordinary members as Ministers consider appropriate.

Paragraph 7: Chief executive

217. **Paragraph 7** requires the Commission to employ a chief executive and makes provision regarding their appointment and employment.
218. Sub-paragraph (2) provides that Scottish Ministers will appoint the first chief executive of the Commission and determine the appointee's terms and conditions. Sub-paragraph (3) ensures that before they do this, Scottish Ministers will consult the chairman or prospective chairman of the Commission, if that person has been identified.
219. Sub-paragraph (4) provides that the Commission will appoint subsequent chief executives on such terms and conditions as they determine, subject to the approval of Ministers.
220. Sub-paragraph (5) requires that the chief executive has knowledge, skills or experience relevant to the functions of the Commission.
221. Sub-paragraph (6) enables the Commission, with the approval of Ministers, to vary the terms and conditions of the chief executive or to terminate such an appointment where satisfied that the chief executive is not adequately discharging the functions of that post.

Paragraph 8: Staff

222. Sub-paragraph (1) provides that all the staff of the Water Industry Commissioner for Scotland will transfer to the Commission once it is established.
223. Sub-paragraph (2) provides for the contract of employment of any staff transferred under sub-paragraph (1) not to be terminated by the transfer, but to continue as if originally made between the member of staff and the Commission.
224. Sub-paragraph (3) provides that when staff are transferred to the Commission, the Commission 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 continues to have effect after the transfer.
225. Sub-paragraph (4) states that the transfer under these provisions does not affect any person's right to terminate their contract of employment if the 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 is not in itself sufficient to constitute such a change.
226. Sub-paragraphs (5), (6) and (7) provide that the Commission may employ other staff, and determine their terms and conditions and the arrangements for pensions, allowances or gratuities. Ministers must approve all such recruitment and arrangements. Sub-paragraph (8) provides that reference to provision of pensions, allowances or gratuities, includes provision by way of compensation for loss of office or employment.

Paragraph 9: Transfer of property and liabilities

227. **Paragraph 9(1)** provides that all property (including rights) and liabilities of the Water Industry Commissioner for Scotland will transfer to the Commission. Sub-paragraph (2) provides that sub-paragraph (1) will have effect despite any provision which might otherwise prevent, penalise or prohibit the transfer of such property and liabilities.

Paragraph 10: Committees

228. Paragraph 10 provides for the Commission to establish committees for or in connection with any of its functions. These must be chaired by an ordinary member of the Commission (sub-paragraph (2)), and may include employees of the Commission who are not members of the Commission (sub-paragraph (3)), as well as the chief executive.

Paragraph 11: Delegation of powers

229. Paragraph 11 enables any function of the Commission to be delegated to any of its authorised committees; but that this authorisation does not prevent the Commission itself from doing anything it has authorised a committee to do.

Paragraph 12: Proceedings

230. Paragraph 12 states that the Commission may determine its own procedures, and that any vacancy among its members or defect in the appointment of a member does not affect the validity of its proceedings.

Paragraph 13: General powers

231. Paragraph 13(1) provides that the Commission may enter into contracts and acquire or dispose of property, if this is necessary or expedient in the exercise of its functions; but the Scottish Ministers' consent is required where land is acquired or disposed of (sub-paragraph (2)).

Paragraph 14: Accounts

232. Paragraph 14 provides that the Commission will prepare accounts for each financial year, and send these to the Auditor General for auditing, in accordance with directions from Scottish Ministers. By virtue of this provision the Commission is also subject to provision under the Public Finance and Accountability (Scotland) Act 2000 giving the Auditor General powers to audit and examine any part of the Commission's expenditure.