

# **WATER INDUSTRY (SCOTLAND) ACT 2002**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 – Drinking Water Quality Regulator**

##### ***Section 7 – Drinking Water Quality Regulator for Scotland***

24. Subsection (1) provides for the appointment by the Scottish Ministers of a Drinking Water Quality Regulator for Scotland who will have the general functions of ensuring that drinking water quality duties are complied with by public water suppliers and of supervising the enforcement by local authorities of such duties (subsection (2)).
25. Subsections (3) to (5) make provision for the Regulator to authorise other persons to discharge on behalf of the Regulator any of the functions of the Regulator. The Scottish Ministers are given power to issue directions to the Regulator, with which the Regulator must comply (subsection (6)). Subsection (7) defines terms related to the Regulator's functions for the purposes of this Part of the Act. In particular, it defines "drinking water quality duty" to mean such duties under Part VIA of the Water (Scotland) Act 1980, under this Act and such other enactments as the Scottish Ministers may specify by order. It also defines "public water supplier" to mean Scottish Water.
26. An order under subsection (7) is to be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

##### ***Section 8 – Power to obtain information***

27. This section gives the Regulator power to serve notices requiring the provision of information relating to the quality of water supplied by a public water supplier and the production of documents. The Regulator may serve such a notice on the public water supplier itself, its officers or employees or any other persons believed to be in possession of relevant information or documents. The Regulator cannot require a person to disclose anything that they would not be required to disclose during legal proceedings in the Court of Session (subsection (3)).
28. Subsection (4) gives "document" a broad meaning for the purposes of this section so that it covers any medium in which information is stored; but documents stored otherwise than in legible form must be provided in a legible form. Subsection (5) enables copies to be taken of documents produced under this section.
29. Subsection (6) provides for it to be an offence not to comply, without reasonable excuse, with a requirement in a notice under this section or intentionally to alter, suppress or destroy a document required to be produced. Subsection (7) establishes penalties for those found guilty of the offence. At present the statutory maximum fine for a summary conviction is £5,000 and this is subject to periodic revision. In the case of conviction on indictment, the fine would be an amount without limit which the Court, having regard to the circumstances, considered appropriate.

***Section 9 – Powers of entry, inspection etc.***

30. Subsections (1) to (4) confer a number of powers to enable the Regulator to establish whether drinking water quality duties are being complied with. These are powers of entry to the premises of public water suppliers and of those receiving supplies from a supplier and, if entry to those premises is not sufficient, powers of entry to the premises of other persons (subsection (2)), power to carry out inspections, measurements and tests on the premises or of substances, articles and documents found there (subsection (2)(b)) and power to remove such substances etc. for the purpose of carrying out such inspections etc. (subsection (2)(c)) and power to remove samples from the premises (subsection (2)(d)). Subsection (3) provides that the powers in subsection (2) cannot be exercised in relation to the premises described in subsection (2) (a) (iii) unless the Regulator is satisfied that the information he requires cannot be obtained by exercise of his powers in relation to the premises referred to in subparagraphs (2) (a) (i) and (ii).
31. The owners and occupiers of premises being entered are required to give the Regulator such assistance and information as the Regulator requires (subsection (4)). Refusal or failure to comply is an offence, as is obstruction of a person exercising the powers of entry etc. conferred by this section (subsection (5)). Subsection (6) specifies the penalties for these offences.

***Section 10 – Enforcement notices***

32. Subsection (1) gives the Regulator power to serve an enforcement notice on a public water supplier whom the Regulator believes has contravened or is contravening a drinking water quality duty. Such a notice may be served where the Regulator believes that the contravention is likely to recur or continue and that the water supplier is not taking appropriate steps to rectify the contravention or prevent it recurring. Subsection (2) gives the Regulator power to consult the relevant local authority and Health Board when considering whether to serve a notice.
33. Subsection (3) requires that an enforcement notice contain details of the alleged contravention, the Regulator's reasons for believing it to be a contravention, the date by which it is to be rectified, any particular steps the Regulator wants the supplier to take (including any dates by which those steps must be taken (subsection (4)) for that purpose and the date on which the notice takes effect, which may be no earlier than the last day for bringing an appeal against the notice under section 11(2) (subsection (5)).
34. Subsection (6) requires the Regulator, before serving an enforcement notice on a public water supplier, to give the public water supplier a copy of the proposed notice and time to make representations to the Regulator about it. The Regulator must take into account any representations arising from an advance notice of enforcement before proceeding to enforcement (subsection (7)).

***Section 11 – Enforcement notices: further provisions***

35. Subsection (1) provides for publicising enforcement notices by requiring the Regulator to send copies to the Commissioner and to any local authority or Health Board consulted under section 10(2), and for the Regulator to publish the notice so as to bring it to the attention of persons affected.
36. Subsections (2) to (5) make provision for a public water supplier to appeal to the sheriff against an enforcement notice. The appeal must be lodged within 14 days of the notice having been served. Pending determination of an appeal, a notice is suspended. The sheriff's decision on the appeal is final.
37. Subsection (6) introduces a requirement, where a water supplier has been served with an enforcement notice, for the water supplier to consult the relevant Health Board, and to have regard to the Board's views when dealing with the contravention. This

duty is suspended during the period when any appeal against the notice remains extant (subsection (7)).

### ***Section 12 – Failure to comply with enforcement notices***

38. This section makes provision for circumstances where a public water supplier fails to comply with the terms of an enforcement notice. Subsections (2) and (3) give the Regulator power to enter any premises and carry out the work necessary to achieve compliance and then to recover from the water supplier the cost of carrying out that work. Anyone who intentionally obstructs those seeking to achieve compliance is guilty of an offence (subsection (4)). If things required by the enforcement notice to be done by a certain date are not done in time, the water supplier is guilty of an offence (subsection (5)) and continued failures to comply could lead to the water supplier being guilty of further offences in this respect (subsection (7)). The penalty for the offences created under this section are, on summary conviction, a fine not exceeding the statutory maximum and on conviction on indictment, a fine.

### ***Section 13 – Emergencies***

39. This section makes provision for circumstances where a contravention of a drinking water quality duty by a public water supplier is causing a significant risk to public health or to the quality of the public drinking water supply such that urgent remedial action is needed. In such a case the Regulator can serve an emergency notice requiring the water supplier to take remedial action by a specified date (subsection (2)). Additionally, the Regulator is given the same power as section 12 gives in relation to enforcement notices, i.e. power to enter any premises to carry out work to address the emergency and then to recover the cost of carrying out the work (subsection (3)). There is similar supplementary provision in subsections (4) to (8) to that set out in section 12(3) to (7).

### ***Section 14 – Variation and withdrawal of notices***

40. This section empowers the Regulator to withdraw enforcement and emergency notices or to vary them, but not so as to impose more stringent requirements, which would require further enforcement or emergency notices to be issued.

### ***Section 15 – Register of enforcement and emergency notices***

41. This section requires the Regulator to keep, and make available for inspection by anyone at any reasonable time, a register of all enforcement and emergency notices issued. Subsection (2) provides details that must be specified in the register in relation to each notice. Subsection (3) gives the Scottish Ministers power to make an order prescribing the manner in which the register is to be kept and further information which it is to contain in addition to that required by subsection (2). Subsection (4) clarifies what is meant by “compliance date” in subsection (2).

### ***Section 16 – Power to require information from local authorities***

42. This section requires local authorities to provide the Regulator with information about their enforcement of the drinking water quality duties that they are responsible for enforcing. Local authorities have duties under Part VIA of the Water (Scotland) Act 1980 to ensure compliance with drinking water quality duties by private water suppliers. If a local authority and the Regulator are in dispute over whether information is sought reasonably, they can refer the matter for decision to the Scottish Ministers (subsection (2)).

### ***Section 17 – Annual reports***

43. This section requires the Regulator to prepare an annual report for each calendar year on the exercise of the Regulator’s functions and to submit the report to the Scottish Ministers.

***Section 18 – Powers of entry etc.: further provision***

44. This section gives effect to schedule 2 which contains further provision regulating the exercise of the powers of entry conferred by sections 9(1), 12(2)(a) and 13(3)(a) for various purposes.