



Water Industry (Scotland) Act 2002

2002 asp 3

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Water Industry (Scotland) Act 2002

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 14th February 2002 and received Royal Assent on 1st March 2002

An Act of the Scottish Parliament to make further provision in relation to the Water Industry Commissioner for Scotland and to provide for the establishment of Water Customer Consultation Panels; to make further provision in relation to the regulation of the quality of drinking water; to make provision for the establishment of Scottish Water, the transfer to Scottish Water of the functions of the water and sewerage authorities established by section 62(1) of the Local Government etc. (Scotland) Act 1994 and the dissolution of those authorities and in relation to the functions of Scottish Water; to make further amendments of the law relating to water and sewerage; and for connected purposes.

PART 1

WATER INDUSTRY COMMISSIONER AND CUSTOMER PANELS

1 Water Industry Commissioner for Scotland

(1) There is to continue to be a Water Industry Commissioner for Scotland (referred to in this Act as the "Commissioner").

(2) The Commissioner has the general function of promoting the interests of customers of Scottish Water in relation to the provision of services by it in the exercise of its core functions.

(3) The Scottish Ministers may, after consulting the Commissioner, give the Commissioner directions of a general or specific character as to the exercise of the Commissioner's functions; and the Commissioner must comply with any such direction.

(4) Part 1 of schedule 1 makes further provision about the Commissioner.

2 Water Customer Consultation Panels

(1) The Scottish Ministers shall by order establish panels of individuals to be known as Water Customer Consultation Panels (each referred to in this Part as a "Customer Panel").

(2) An order under subsection (1) must, in relation to each Customer Panel established by it, specify, or make provision for determining-

- (a) the area for which the Panel is established, and
- (b) the number of members of the Panel.

(3) Each Customer Panel is to have the general function of representing the views and interests of the customers of Scottish Water in the Panel's area in relation to the provision of services by Scottish Water in the exercise of its core functions.

(4) A Customer Panel must-

(a) publish reports on any matter it considers relevant to the interests of those customers in relation to such provision,

(b) make such recommendations as it considers appropriate to the Commissioner as to the promotion of the interests of those customers in relation to such provision, either generally or in relation to any specific matter.

(5) In exercising functions in relation to Scottish Water, the Commissioner must have regard to-

- (a) any representations made to the Commissioner by a Customer Panel,
- (b) any reports published under subsection (4)(a), and
- (c) any recommendations made under subsection (4)(b).

(6) Part 2 of schedule 1 makes further provision about the Customer Panels.

3 Functions of the Commissioner

(1) The Commissioner must investigate any complaint made to the Commissioner or a Customer Panel by a current, potential or former customer of Scottish Water as respects any of its core functions.

(2) A Customer Panel must refer to the Commissioner any such complaint which is made to it.

(3) The Commissioner need not investigate a complaint under subsection (1) if-

- (a) the complainer has not pursued the complaint with Scottish Water, or
- (b) it appears to the Commissioner that the complaint is vexatious or frivolous.

(4) The Commissioner may, on behalf of the complainer in a complaint investigated under subsection (1), make representations to Scottish Water about any matter-

- (a) to which the complaint relates, or
- (b) which appears to the Commissioner to be relevant to the subject matter of the complaint.

(5) Where the Commissioner investigates a complaint referred by a Customer Panel under subsection (2), or decides not to investigate such a complaint, the Commissioner must send to the Panel a report of the investigation or, as the case may be, a statement of the reasons for not investigating the complaint.

(6) The Commissioner is to advise the Scottish Ministers on any matter which appears to the Commissioner or to them to relate to-

- (a) the standard of service provided by Scottish Water to its customers, or
- (b) the manner in which it conducts its relations with its customers or potential or former customers,
in the exercise of its core functions.

(7) The Commissioner has power to do anything which is calculated to facilitate, or is incidental or conducive to, the exercise of the Commissioner's functions.

4 Power of the Commissioner to require information

(1) Scottish Water must, on being requested to do so by the Commissioner, provide the Commissioner with such information held by it as the Commissioner may reasonably seek in the exercise of the Commissioner's functions.

(2) Where Scottish Water and the Commissioner cannot agree as to whether information is sought reasonably, either of them may refer the matter to the Scottish

Ministers, whose decision is final.

5 Annual reports by, and information from, the Commissioner

(1) The Commissioner must-

(a) as soon as practicable after the end of each financial year, submit to the Scottish Ministers, and publish, a report on the exercise of the Commissioner's functions during that year, and

(b) provide the Scottish Ministers with such information regarding the exercise of those functions as they may require.

(2) A report under subsection (1)(a) must include a summary of-

(a) action taken by the Commissioner during the year to which the report relates in response to such representations, reports and recommendations as are mentioned in section 2(5), and

(b) where the Commissioner has decided during that year not to take any action in response to any such representation, report or recommendation, the reasons for that decision.

(3) A report under subsection (1)(a) must set out any directions under section 1 which have been given to the Commissioner during the period to which the report relates.

6 Funding of the Commissioner

(1) The Scottish Ministers may make grants to the Commissioner in respect of the Commissioner's expenses.

(2) Scottish Water must make to the Commissioner, in respect of the Commissioner's expenses, payments of such amounts, and at such times, as the Scottish Ministers may direct.

PART 2

DRINKING WATER QUALITY REGULATOR

Appointment

7 Drinking Water Quality Regulator for Scotland

(1) The Scottish Ministers may appoint a person to be known as the Drinking Water Quality Regulator for Scotland (in this Part referred to as the "Regulator") to exercise the functions conferred on the Regulator by this Part.

(2) The Regulator is to have the general functions of-

(a) seeking to ensure that the drinking water quality duties imposed on a public water supplier are complied with, and

(b) supervising the enforcement by local authorities of the drinking water quality duties which it is their responsibility to enforce.

(3) Any person authorised by the Regulator for the purpose (an "authorised person") may exercise, on behalf of the Regulator, any function of the Regulator.

(4) In relation to the exercise by an authorised person of a function of the Regulator which that person is authorised to exercise, references in this Part to the Regulator are, so far as necessary, to be construed as, or as including, references to the authorised person.

(5) An authorisation given for the purposes of subsection (3) does not prevent the Regulator from exercising any function to which the authorisation relates.

(6) The Scottish Ministers may, after consulting the Regulator, give the Regulator directions of a general or specific character as to the exercise of the Regulator's functions; and the Regulator must comply with any such direction.

(7) In this Part-

"drinking water quality duty" means a duty in relation to the quality of water imposed on a water supplier by, under or by virtue of-

(a) Part VIA of the 1980 Act,

(b) this Act, or

(c) such other enactment relating to the quality of water supplied by a water supplier as the Scottish Ministers may by order specify,

"public water supplier" means Scottish Water.

Public water suppliers: general powers of Regulator

8 Power to obtain information

(1) The Regulator may serve on a person a notice requiring the person-

(a) to provide the Regulator, or a person authorised by the Regulator, at a time and place and in the form and manner specified in the notice, with such information relating to the quality of water supplied by a public water supplier as may be specified or described in the notice, or

(b) to produce to the Regulator, or to a person authorised by the Regulator, at a time and a place specified in the notice, any documents relating to that matter which are specified or described in the notice and are in that person's custody or under that person's control.

(2) A notice under subsection (1) may be served on-

(a) the public water supplier,

(b) an officer or employee of the public water supplier,

(c) any other person whom the Regulator has reason to believe is or may be in possession of relevant information or documents.

(3) Nothing in this section authorises the Regulator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(4) References in this section to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

(5) Where by virtue of this section documents are produced to any person, that person may take copies of or make extracts from them.

(6) A person who-

(a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under subsection (1), or

(b) intentionally alters, suppresses or destroys a document which that person has been required by such a notice to produce,
is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable-

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

9 Powers of entry, inspection etc.

(1) For the purpose of establishing whether any drinking water quality duty to which a public water supplier is subject has been, is being or is likely to be complied with, the Regulator may exercise the powers specified in subsection (2).

(2) Those powers are-

(a) power to enter-

(i) any premises of the water supplier,

(ii) any premises to which a supply of water is provided by the water supplier,

(iii) any premises of any other person,

for the purpose of exercising any of the powers specified in paragraphs (b) to (d),

(b) power to carry out such inspections, measurements and tests on those premises or of substances, articles or documents found there as the Regulator thinks necessary,

(c) for the purpose of carrying out such inspections, measurements and tests as the Regulator thinks necessary, power to take away from those premises substances, articles or documents found there,

(d) power to take away from those premises such samples of water, land, substances or articles as the Regulator thinks necessary.

(3) The powers specified in subsection (2) must not be exercised in relation to premises referred to in paragraph (a)(iii) of that subsection unless the Regulator is satisfied that the exercise of those powers in relation to the premises referred to in paragraph (a)(i) and (ii) of that subsection would be insufficient for the purpose specified in subsection (1).

(4) The owner and occupier of any premises in relation to which the Regulator exercises the powers specified in subsection (2) and any person on such premises when those powers are being exercised must-

- (a) give the Regulator such assistance, and
- (b) provide the Regulator with such information, as the Regulator may reasonably require.

(5) A person who-

- (a) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4), or
 - (b) intentionally obstructs a person acting in the exercise of any power conferred by subsection (1),
- is guilty of an offence.

(6) A person guilty of an offence under subsection (5) is liable-

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

Enforcement of duties of public water suppliers

10 Enforcement notices

(1) Where the Regulator reasonably believes (whether or not following the exercise of the Regulator's powers under section 9)-

- (a) that a public water supplier has contravened any drinking water quality duty and the contravention is likely to recur, or
 - (b) that a public water supplier is contravening any drinking water quality duty and the contravention is likely to continue or to recur or both,
- and (in either case) that the water supplier is not taking appropriate steps for the purpose of rectifying the contravention or (as the case may be) preventing its recurrence, the Regulator may serve on the water supplier an enforcement notice.

(2) In considering whether to serve an enforcement notice the Regulator may consult-

- (a) the local authority for any area affected by the contravention, and
- (b) the Health Board for any such area.

(3) An enforcement notice must specify-

- (a) the contravention to which it relates,
- (b) the Regulator's reasons for believing (as the case may be) that the contravention-
 - (i) has occurred and is likely to recur, or
 - (ii) is occurring and is likely to continue or to recur or both,
- (c) the date by which the water supplier is required to rectify the contravention or (as the case may be) take steps to prevent its recurrence,
- (d) any particular steps which the Regulator requires the water supplier to take for that purpose, and
- (e) the date on which the notice is to take effect.

(4) An enforcement notice may specify different dates by which different steps specified under subsection (3)(d) must be completed.

(5) The date referred to in subsection (3)(e) must be no earlier than the day following the last day on which an appeal may be brought under section 11(2).

(6) Before serving an enforcement notice on a public water supplier under subsection (1), the Regulator must serve a copy of the proposed notice on the water supplier and specify a period, which must expire no less than 7 days and no more than 28 days from the date of service of the notice, within which the water supplier may make representations to the Regulator about the proposed notice.

(7) The Regulator must take into account any representations in relation to the proposed enforcement notice duly made by the water supplier and may adjust the notice in light of those representations.

11 Enforcement notices: further provisions

(1) The Regulator must-

- (a) send a copy of an enforcement notice to the Commissioner and to any local authority or Health Board consulted by the Regulator under section 10(2), and
- (b) arrange for the notice to be published in such manner as the Regulator thinks appropriate for bringing it to the attention of persons affected, or who may be affected, by the contravention.

(2) A public water supplier on whom an enforcement notice has been served may, by summary application made within 14 days of the date of service, appeal to the sheriff against the notice.

(3) Where an appeal is brought under subsection (2) the enforcement notice is of no effect until the appeal is withdrawn or finally determined.

(4) On an appeal under subsection (2) the sheriff may make such order as the sheriff thinks fit.

(5) The decision of the sheriff on such an appeal is final.

(6) A public water supplier on whom an enforcement notice has been served-

(a) must consult the Health Board for any area affected by the contravention to which the notice relates, and

(b) must, in rectifying the contravention or taking steps to prevent its recurrence, have regard to any views expressed by the Health Board.

(7) The duty under subsection (6) does not apply during any period in which the enforcement notice is of no effect by virtue of subsection (3).

12 Failure to comply with enforcement notices

(1) This section applies where, in relation to an enforcement notice, a public water supplier-

(a) fails to rectify, or (as the case may be) to take steps to prevent the recurrence of, a contravention specified in the notice by the date specified in relation to the contravention under subsection (3)(c) of section 10, or

(b) fails to complete a step specified under subsection (3)(d) of that section by a date specified in relation to that step under subsection (4),

(or, in either case, by such later date as the Regulator may have substituted under section 14(1)(b)).

(2) Where this section applies, the Regulator may-

(a) enter any premises and carry out the work necessary to rectify or prevent the recurrence of the contravention or, as the case may be, to complete the step, and

(b) recover from the water supplier any expenses which the Regulator reasonably incurs in carrying out, or securing the carrying out, of that work.

(3) The expenses which may be recovered under subsection (2)(b) include such proportion of the Regulator's administrative expenses (including expenses incurred in establishing the contravention and in connection with the enforcement notice) as the Regulator considers appropriate.

(4) A person who intentionally obstructs a person acting in the exercise of any power conferred by subsection (2)(a) is guilty of an offence.

(5) If, at any time after a date referred to in subsection (1), anything which the enforcement notice requires the water supplier to do by that date has not been done, the water supplier is guilty of an offence.

(6) A person guilty of an offence under subsection (4) or (5) is liable-

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

(7) An offence under subsection (5) may be charged by reference to any day or longer period of time and a public water supplier may be convicted of a second or subsequent offence under that subsection by reference to any period of time following conviction for such an offence.

13 Emergencies

(1) Where the Regulator reasonably believes-

- (a) that a public water supplier has contravened or is contravening any drinking water quality duty,
 - (b) that as a result of the contravention there is a significant risk to public health or the quality of a public drinking water supply, and
 - (c) that urgent action is necessary to reduce or remove that risk,
- the Regulator may take action in accordance with this section.

(2) The Regulator may serve on the water supplier an emergency notice requiring the water supplier, by such date as the notice may specify, to take such steps as the notice may specify, being steps which the Regulator considers necessary for the purpose of reducing or removing the risk referred to in subsection (1)(b).

(3) Without prejudice to subsection (2), the Regulator may-

- (a) enter any premises and carry out such work as the Regulator considers necessary for the purpose mentioned in that subsection, and
- (b) recover from the water supplier any expenses which the Regulator reasonably incurs in carrying out, or securing the carrying out, of that work.

(4) The expenses which may be recovered under subsection (3)(b) include such proportion of the Regulator's administrative expenses (including expenses incurred in establishing the contravention and in connection with the emergency notice) as the Regulator considers appropriate.

(5) A person who intentionally obstructs a person acting in the exercise of any power conferred by subsection (3)(a) is guilty of an offence.

(6) If, at any time after the date specified in the emergency notice (or such later date as the Regulator may have substituted under section 14(1)(b)), anything which the notice requires the water supplier to do has not been done, the water supplier is guilty of an offence.

(7) A person guilty of an offence under subsection (5) or (6) is liable-

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

(8) An offence under subsection (6) may be charged by reference to any day or longer period of time and a public water supplier may be convicted of a second or subsequent offence under that subsection by reference to any period of time following conviction for such an offence.

14 Variation and withdrawal of notices

(1) The Regulator may-

- (a) withdraw an enforcement notice or an emergency notice,
- (b) waive or relax any requirement of an enforcement notice or an emergency notice, including substituting a later date for a date specified under section 10(3)(c) or (4) or, as the case may be, section 13(2).

(2) The powers in subsection (1) may be exercised whether or not the notice has taken effect.

(3) The withdrawal of an enforcement notice or an emergency notice does not affect the Regulator's power to issue a further such notice.

15 Register of enforcement notices and emergency notices

(1) The Regulator must keep a register of enforcement notices and emergency notices.

(2) The register must, in relation to each such notice, specify-

- (a) the name and address of the water supplier on whom the notice was served,
- (b) the date of service,
- (c) the compliance date, and
- (d) in the case of an enforcement notice, the date specified under section 10(3)(e).

(3) The Scottish Ministers may by order make provision as to-

- (a) the manner in which the register is to be kept,
- (b) the information, in addition to that required by subsection (2), which the register is to contain.

(4) In subsection (2)(c), "the compliance date" means-

- (a) in relation to an enforcement notice, the date specified under section 10(3)(c),
 - (b) in relation to an emergency notice, the date specified under section 13(2),
- and, in either case, includes any date substituted for that date under section 14(1)(b).

(5) The register must be made available for inspection by any person at any reasonable time.

Supervision of local authority enforcement

16 Power to require information from local authorities

(1) A local authority must, on being requested to do so by the Regulator, provide the Regulator with such information held by it as the Regulator may reasonably seek in relation to the enforcement by the local authority of the drinking water quality duties which it is the authority's responsibility to enforce.

(2) Where a local authority and the Regulator cannot agree whether information is being sought reasonably, either of them may refer the matter to the Scottish Ministers, whose decision is final.

Supplementary

17 Annual reports

The Regulator must, as soon as practicable after the end of each calendar year, submit to the Scottish Ministers, and publish, a report on the exercise of the Regulator's functions during that year.

18 Powers of entry etc.: further provision

(1) Schedule 2 makes further provision about the exercise of powers of entry etc. conferred by sections 9(1), 12(2)(a) and 13(3)(a).

(2) References in this Part to a power conferred by any of those provisions include references to such a power exercisable by virtue of a warrant under that schedule.

19 Interpretation of Part 2

In this Part-

"drinking water quality duty" has the meaning given by section 7(7),

"emergency notice" means a notice under section 13(2),

"enforcement notice" means a notice under section 10(1),

"public water supplier" has the meaning given by section 7(7),

"Regulator" means the Drinking Water Quality Regulator for Scotland.

PART 3

SCOTTISH WATER

Establishment

20 Scottish Water

(1) There is established a body corporate to be known as Scottish Water, with the functions conferred on it by or under this Act and any other enactment.

(2) Schedule 3 makes further provision about the status, constitution, proceedings etc. of Scottish Water.

21 Transfer of functions from new water and sewerage authorities

The functions of each of the new water and sewerage authorities are transferred to Scottish Water.

22 Transfer of property and liabilities

(1) The property and liabilities to which the new water and sewerage authorities are entitled or subject are transferred to Scottish Water.

(2) Subsection (1) has effect in relation to property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

23 Transfer of staff

The Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I.1981/1794) apply to the transfer of functions by section 21, whether or not they would so apply apart from this section.

24 Dissolution of new water and sewerage authorities etc.

(1) The new water and sewerage authorities are dissolved on such date as the Scottish Ministers may by order specify.

(2) Different dates may be specified in relation to different such authorities.

(3) Without prejudice to section 69, the Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they think necessary or expedient in consequence of or in connection with-

- (a) the establishment of Scottish Water,
- (b) the transfer of functions, property, liabilities and staff of the new water and sewerage authorities,
- (c) the dissolution of those authorities.

General powers

25 General powers

(1) Scottish Water may engage in any activity (whether in Scotland or elsewhere) which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions (within the meaning of section 70(2)).

(2) Scottish Water may do anything (whether in Scotland or elsewhere) which it considers is necessary or expedient for the purpose of or in connection with its functions (including any activity in which it engages by virtue of subsection (1)).

(3) The power in subsection (2) includes, in particular, power to-

(a) form or promote (whether alone or with others) companies (within the meaning of the Companies Act 1985 (c.6)),

(b) subscribe for share or loan capital of any person,

(c) guarantee the discharge of any obligation (whether financial or not) of any person,

(d) form partnerships, enter into arrangements or agreements and co-operate in any way with any person,

(e) enter into a contract with any person for the provision or making available of assets or services, or both (whether or not together with goods) whether by Scottish Water or by that person.

(4) Where-

(a) under subsection (2), Scottish Water enters into a contract such as is referred to in subsection (3)(e) (a "provision contract"), and

(b) in connection with the provision contract, a person (the "financier") makes a loan to, or provides any other form of finance for, a party to the provision contract other than Scottish Water,

the power in subsection (2) also includes power to enter into a contract with the financier, or any insurer of or trustee for the financier, in connection with the provision contract.

(5) In subsection (3)(e), "assets" means assets of any description (whether tangible or intangible), including (in particular) land, buildings, roads, works, plant, machinery, vehicles, vessels, apparatus, equipment and computer software.

(6) This section is without prejudice to any power otherwise exercisable by Scottish Water but does not enable Scottish Water-

(a) to do anything in contravention of any express prohibition, restriction or limitation on its powers which is contained in any other enactment,

(b) to raise money (whether by borrowing or otherwise) in a manner which is not authorised apart from this section.

Codes of practice

26 Customer standards code

(1) In relation to services provided in the exercise of its core functions, Scottish Water must prepare and submit to the Commissioner a code of practice (a "customer standards code") making provision-

- (a) as to its standards of performance in providing services to its customers,
- (b) for procedures for dealing with complaints by its customers or its potential or former customers,
- (c) as respects the circumstances in which it will pay compensation if or in so far as those standards are not attained,
- (d) as respects such matters as are incidental to the provision made under paragraphs (a) to (c), and such supplemental matters (if any) as it thinks fit.

(2) The customer standards code must be submitted to the Commissioner no later than the date on which Scottish Water first sends a charges scheme to the Commissioner under section 32(1).

(3) Subject to subsection (1), Scottish Water may from time to time-

- (a) vary, or
 - (b) revoke and replace,
- its customer standards code, and must submit the varied or new code to the Commissioner.

(4) A customer standards code submitted to the Commissioner under subsection (1) or (3) comes into force only when it is approved in accordance with section 27.

(5) Scottish Water must endeavour to comply with its approved customer standards code; but contravention of that code does not of itself give rise to any criminal or civil liability.

(6) Scottish Water must publish the approved customer standards code and provide a copy of the code to any person who requests it.

(7) The Commissioner-

- (a) must monitor the compliance by Scottish Water with its approved customer standards code,
- (b) may advise the Scottish Ministers on such compliance, and
- (c) may require Scottish Water to review its customer standards code, or any provision of it, in such respects as the Commissioner may specify.

27 Approval of customer standards code

(1) The Commissioner may, after consulting each Water Customer Consultation Panel, approve a customer standards code submitted under section 26(1) or (3)-

- (a) without modifications, or
- (b) with such modifications as are agreed by the Commissioner and Scottish Water.

(2) Where-

(a) the Commissioner is not prepared to give approval under subsection (1)(a), and

(b) Scottish Water does not agree to some or all of the modifications proposed by the Commissioner under subsection (1)(b),
the Commissioner must send the code (with any modifications to it agreed by the Commissioner and Scottish Water) to the Scottish Ministers.

(3) Where 3 months have elapsed since the Commissioner has received a customer standards code by virtue of section 26(1) or (3) and the Commissioner has neither-

- (a) given approval under subsection (1) of this section, nor
- (b) sent the scheme to the Scottish Ministers under subsection (2) of this section, Scottish Water may require the Commissioner to send it to the Scottish Ministers.

(4) The Scottish Ministers may, after consulting each Water Customer Consultation Panel, approve a code sent to them under subsection (2) or (3)-

- (a) without modifications or further modifications, or
- (b) with such modifications as, after consulting Scottish Water and the Commissioner, they think fit.

(5) Where the Commissioner approves a customer standards code under subsection (1), the Commissioner must send a copy of the code as so approved to the Scottish Ministers.

(6) Where the Scottish Ministers approve a customer standards code under subsection (4), they must send a copy of the code as so approved to the Commissioner.

28 Consultation code

(1) Scottish Water must prepare and submit to the Scottish Ministers a code of practice (a "consultation code") making provision as to the consultation which it will carry out in relation to-

- (a) proposals for, and
- (b) the undertaking of, any significant activity in the exercise of its core functions.

(2) The consultation code must, in particular, make provision-

(a) as to consultation with persons who live, work or carry on business in any area significantly affected by such an activity, or who represent the interests of such persons,

(b) as to the manner of such consultation, the information to be provided to consultees and the time to be allowed for consultees to express views,

(c) for Scottish Water to have regard to the views of the persons consulted in pursuance of the code,

and may make different provision in relation to different cases or descriptions of case.

(3) Before submitting the consultation code to the Scottish Ministers, Scottish Water-

(a) must consult each Water Customer Consultation Panel on the code and have regard to any comments on it made by any Panel, and

(b) may adjust the code in light of those comments.

(4) The Scottish Ministers may approve the consultation code-

(a) without modifications, or

(b) with such modifications as, after consulting Scottish Water, they think fit.

(5) A consultation code submitted to the Scottish Ministers under subsection (1) comes into force only when it is approved in accordance with subsection (4).

(6) Scottish Water must publish the approved consultation code and provide a copy of the code to any person who requests it.

(7) Scottish Water must endeavour to comply with the approved consultation code; but contravention of the code does not of itself give rise to any criminal or civil liability.

(8) Subject to subsection (1), Scottish Water may from time to time-

(a) vary, or

(b) revoke or replace,

the consultation code; and this section applies to the varied or new code as it does to the original code.

Charges

29 Charges for goods and services

(1) Scottish Water may fix, demand and recover charges for any goods supplied or services provided by it.

(2) Subsection (1)-

(a) is subject to sections 9A and 47 of the 1980 Act (no charge for water in certain circumstances), and

(b) does not apply in a case where Scottish Water has power otherwise than under that subsection to fix charges for goods or services.

(3) The power conferred by subsection (1) is exercisable-

(a) in relation to charges for services provided in the exercise of Scottish Water's core functions, by or in accordance with a charges scheme under section 31, and

(b) in that or any other case, by or in accordance with an agreement with the person to be charged.

(4) Subject to sections 31 to 36, Scottish Water may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to it to be appropriate.

30 Maximum charges for services provided with help of Scottish Water

(1) The Scottish Ministers may by order fix maximum charges which a person other than Scottish Water may recover from another such person in respect of the supply of water to, the provision of sewerage to, or the disposal of sewage for that other person with the help of services provided by Scottish Water.

(2) For the purposes of this section, water is supplied to, sewerage provided to, or sewage disposed of for a person with the help of services provided by Scottish Water if-

(a) a facility for that person to have access to a supply of water provided by Scottish Water in pipes, or to make use of sewerage which is, or facilities for the disposal of sewage which are, provided by Scottish Water is made available to that person otherwise than by Scottish Water,

(b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by Scottish Water, or

(c) that person is provided with sewerage, or with facilities for the disposal of sewage, by a person who, for the purposes of providing the sewerage or facilities, makes use of sewerage or of such facilities provided, directly or indirectly, by Scottish Water.

(3) An order under this section may make different provision in relation to different persons, circumstances or localities and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.

(4) Where a person pays a charge in respect of anything to which an order under this section relates and the amount paid exceeds the maximum charge fixed by the order, the amount of the excess is recoverable by that person from the person to whom the charge was paid.

31 Charges schemes

(1) Scottish Water must, in accordance with this section, make a scheme (referred to in this Act as a "charges scheme") which fixes the charges to be paid for services provided by it in the exercise of its core functions and which may also make provision with respect to the times and methods of payment of the charges fixed by the scheme.

(2) Subsection (1) does not apply in relation to services as respects which conditions as to payment may be imposed under section 29(3)(j) of the 1968 Act (conditions relating to the reception, treatment and disposal of trade effluent).

(3) A charges scheme may-

(a) make different provision for different cases, or classes of case, including different provision in relation to different circumstances or localities,

(b) contain supplemental, consequential and transitional provisions for the purposes of the scheme,

(c) revoke or amend a previous scheme.

(4) A charges scheme comes into force only when it is approved in accordance with section 32 and has effect as so approved.

(5) Scottish Water in making a charges scheme, and the Commissioner and the Scottish Ministers in considering whether to approve such a scheme, must have regard to any advice published under section 33 in force at the time of the making of the scheme.

(6) Nothing in any charges scheme affects any power of Scottish Water to enter into an agreement with any person in any particular case determining the charges to be made for services provided by Scottish Water.

32 Approval of charges schemes

(1) Scottish Water must send a charges scheme made by it under section 31 to the Commissioner.

(2) The Commissioner may approve the scheme-

(a) without modifications, or

(b) with such modifications as are agreed by the Commissioner and Scottish Water.

(3) Where-

(a) the Commissioner is not prepared to give approval under subsection (2)(a),
and

(b) Scottish Water does not agree to some or all of the modifications proposed by the Commissioner under subsection (2)(b),

the Commissioner must send the scheme (with any modifications to it agreed by the Commissioner and Scottish Water) to the Scottish Ministers.

(4) Where 3 months have elapsed since the Commissioner has received a charges scheme by virtue of subsection (1) and the Commissioner has neither-

- (a) given approval under subsection (2), nor
 - (b) sent the scheme to the Scottish Ministers under subsection (3),
- Scottish Water may require the Commissioner to send it to the Scottish Ministers.

(5) The Scottish Ministers may approve a scheme sent to them under subsection (3) or (4)-

- (a) without modifications or further modifications, or
- (b) with such modifications as, after consulting Scottish Water and the Commissioner, they think fit.

(6) Where the Commissioner approves a charges scheme under subsection (2), the Commissioner must send a copy of the scheme as so approved to the Scottish Ministers.

(7) Where the Scottish Ministers approve a charges scheme under subsection (5), they must send a copy of the scheme as so approved to the Commissioner.

33 Commissioner's advice on charges

(1) The Commissioner must, when required by the Scottish Ministers, advise them on the matters to be taken into, or left out of, account by Scottish Water in fixing charges in charges schemes.

(2) The advice is to apply in relation to charges schemes made during such period as the Scottish Ministers may specify (in this section referred to as "the period of the advice").

(3) In preparing advice, the Commissioner is to have regard to-

- (a) the economy, efficiency and effectiveness with which Scottish Water is using its resources in exercising its core functions,
- (b) the likely cost to Scottish Water, for the period of the advice, of exercising the functions specified in subsection (4),
- (c) the likely resources, other than income from charges for goods and services, available to Scottish Water for the period of the advice,
- (d) any guidance issued to Scottish Water by the Scottish Ministers, and
- (e) any directions given under section 44 or 56.

(4) The functions referred to in subsection (3)(b) are the core functions of Scottish Water so far as consisting of-

- (a) complying with any duty to which it is subject by virtue of any enactment,
- (b) complying with any such duty to which it will, or is likely to, become subject during the period of the advice,
- (c) providing services to its customers at the same standard, and protection of the environment at the same level, as those at the time when the advice is given, or at such other standard or level as the Scottish Ministers may specify, and
- (d) extending, in accordance with requirements made by the Scottish Ministers, the provision of public sewers and supplies of water to premises or areas not in receipt of such provision.

(5) The Scottish Ministers must, within 3 months of receiving from the Commissioner advice under subsection (1)-

- (a) accept the advice, with or without modifications, or
 - (b) reject the advice and substitute their own advice for it.
- (6) Where the Scottish Ministers accept the Commissioner's advice with modifications or reject it, they must give reasons for doing so.

(7) The Commissioner must publish advice as accepted, modified or substituted under subsection (5), together with any reasons given under subsection (6).

34 Publication of summary of charges scheme

When a charges scheme is approved in accordance with section 32, Scottish Water must-

- (a) make arrangements for allowing any person to-
 - (i) inspect the scheme at any reasonable time,
 - (ii) obtain a copy of it, or any part of it, on payment of such reasonable fee (if any) as Scottish Water may determine, and
- (b) publicise those arrangements and publish a summary of the scheme.

35 Liability of occupiers etc. for charges

(1) Supplies of water provided by Scottish Water to any premises and the provision and maintenance by Scottish Water of communication pipes and supply pipes for the purposes of such supplies are to be treated for the purposes of this Act as services provided to the occupier for the time being of those premises.

(2) The provision of sewerage, and the disposal of sewage, provided by Scottish Water are to be treated for the purposes of this Act as provision to, or as disposal for, the occupier for the time being of any premises which-

- (a) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with a public sewer provided for foul water or surface water or both, or
- (b) are premises the occupier of which has, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.

(3) Subject to subsection (5), in relation to any period during which premises referred to in subsection (1) or (2) are unoccupied, references to the occupier in the subsection in question are to be construed as references to the owner of the premises.

(4) Subsections (1) to (3) do not apply so far as provision to the contrary is made by any agreement to which Scottish Water is a party.

(5) Charges which, under section 29, are fixed in relation to any premises by reference to volume may be imposed so that a person remains liable, in relation to those premises, to pay charges for-

(a) a supply of water, and
(b) provision of sewerage or disposal of sewage,
provided by Scottish Water after the person has ceased to be occupier of the premises.

(6) A person is liable by virtue of subsection (5) for any charges fixed in relation to any premises by Scottish Water only where that person fails to inform Scottish Water of the ending of that person's occupation of the premises at least 48 hours before that person ceases to occupy them.

(7) The charges for which a person may be liable by virtue of subsection (5) are charges in respect of a period ending no later than whichever of the following first occurs after the person ceases to occupy the premises-

(a) where the person informs Scottish Water of the ending of that person's occupation, the 28th day after informing Scottish Water,
(b) any day on which any meter would normally have been read in order for the amount of the charges to be determined,
(c) any day on which any other person informs the authority that that other person has become the new occupier of the premises.

(8) In calculating the period of 48 hours referred to in subsection (6) any time falling on-

(a) a Saturday or Sunday,
(b) Christmas Day or Good Friday, or
(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c.80),
is to be disregarded.

(9) In subsection (1), "communication pipes" and "supply pipes" have the same meanings as in the 1980 Act.

36 Section 35: meaning of "occupier"

(1) In the application of section 35 to services which are the subject of a determination under section 37(1)(a), references in section 35(1) and (2) to the occupier of premises are references to the person-

(a) who is liable under or by virtue of sections 75 to 77 of the Local Government Finance Act 1992 (c.14) to pay council tax (within the meaning of section 70(1) of that Act) in respect of the premises, or

(b) who would be so liable but for the premises being an exempt dwelling (within the meaning of Part II of that Act).

(2) Without prejudice to subsections (3) and (4) of section 35, the Scottish Ministers may, after consulting such persons as they think fit, by order make provision, in relation to such premises or description of premises as the order may specify, as to the persons who are, for the purposes of subsections (1) and (2) of that section, to be treated as being, or as not being, occupiers of the premises.

(3) Section 35(3) and subsection (2) of this section do not apply in a case to which subsection (1) of this section applies.

37 Collection of charges by local authority

(1) The Scottish Ministers may by order determine-

(a) that as respects specified services provided, within a financial year specified in the order, by Scottish Water to dwellings, or to such description of dwellings as the order may specify-

(i) within the area of a local authority, or

(ii) within such part of that area as the order may specify,

the authority and not Scottish Water is to demand and recover charges payable for those services under a charges scheme, and

(b) that the authority is, at such intervals as may be so specified, to make such payments to Scottish Water (to which no other amount is to be payable under the charges scheme for the services provided) as may be so specified or as may be determined in accordance with the provisions of the order.

(2) In subsection (1), "specified services" means services specified, or of a description specified, in the order.

(3) An order under subsection (1) may include provision as to-

(a) forms and procedures which the local authority is to adopt in demanding payment,

(b) circumstances in which a customer of Scottish Water who is aggrieved by a decision or calculation of the local authority may appeal-

(i) except in a case specified by virtue of sub-paragraph (ii), to a valuation appeal committee (constituted under section 29 of the 1994 Act), or

(ii) in such cases as the order may specify, to a body constituted under the order (or under a previous such order) to consider appeals as respects any such case,

(c) procedures to be followed in any appeal by virtue of paragraph (b),
(d) the provision, for the purposes of this section, of information by Scottish Water to the local authority,
(e) the keeping by the local authority of accounts and records as respects their functions by virtue of this section and the exhibition of, or of copies of, such accounts and records to Scottish Water.

(4) Schedule 4 makes provision about recovery by a local authority of unpaid charges.

(5) In this section and section 38, "dwelling" has the same meaning as in Part II of the Local Government Finance Act 1992 (c.14).

38 Suspension of collection of charges by local authority

(1) This section applies in relation to any dwellings to which Scottish Water provides services which are the subject of a determination under section 37(1)(a).

(2) Where, in relation to any such dwellings, Scottish Water serves a notice under this subsection on the relevant local authority, the services which are the subject of the determination, so far as provided to dwellings to which the notice relates, are to be treated for so long as the notice remains in force as if they were not subject to the determination.

(3) A notice under subsection (2) may be withdrawn in whole or in part by Scottish Water by serving a further notice on the relevant local authority.

(4) The Scottish Ministers may by regulations make provision as to-

(a) the form and content of a notice under subsection (2) or (3),
(b) when such a notice comes into force,
(c) (either or both) the maximum and minimum numbers of dwellings to which such a notice may relate,
(d) such other matters in relation to such a notice as the Scottish Ministers think necessary or expedient.

(5) Regulations under subsection (4) may also make provision for the payment by Scottish Water to the relevant local authority of a sum, specified in or calculated in accordance with the regulations, in respect of any reasonable administrative expenses incurred by the authority in consequence of the service of a notice under subsection (2) or (3).

(6) In this section, "the relevant local authority" means the local authority which-

(a) is, by virtue of the determination under section 37(1)(a), responsible for demanding and recovering charges payable for services provided by Scottish Water to the

dwellings to which the notice under subsection (2) or (3) relates and which are the subject of the determination, or

(b) was, until the notice came into force, so responsible.

39 Primacy of duty to maintain domestic water supply etc.

Sections 29(1) and 37 are without prejudice to-

(a) the duties of Scottish Water under section 6 of the 1980 Act (which include the duty to maintain a supply of wholesome water provided to meet a requirement for domestic purposes),

(b) the entitlements of any person under section 12 of the 1968 Act (which include the entitlement of an occupier of premises to drain into public sewers to which the drains or private sewers of the owner of the premises are connected).

40 Reduced charges

(1) The Scottish Ministers may by regulations provide that a person who-

(a) is, under a charges scheme, liable to pay an amount to Scottish Water or, by virtue of section 37, to a local authority, and

(b) fulfils such conditions as are specified in the regulations,
is instead exempt from such liability or liable to pay the reduced amount referred to in subsection (2).

(2) The reduced amount is an amount-

(a) less than the amount it would be but for the regulations, and

(b) determined in accordance with rules specified in the regulations.

(3) The conditions and rules to be specified in regulations under subsections (1)(b) and (2)(b) respectively may be determined by reference to such factors as the Scottish Ministers think fit.

Finances

41 Duties and powers relating to finance

(1) Scottish Water must exercise its functions so as to secure that, taking one year with another, its income is not less than sufficient to meet its expenditure.

(2) The Scottish Ministers may by order direct Scottish Water to exercise its functions, during any period specified in the order, with a view to securing that it achieves in respect of that period a rate of return on the value of its average net assets (as for the time being defined for the purposes of this section by the Scottish Ministers) which is not less than the rate specified in the order as the rate of return which the Scottish Ministers consider it is reasonable for Scottish Water to achieve.

(3) Without prejudice to subsection (1), the Scottish Ministers may, after consulting Scottish Water, determine that Scottish Water is (in addition to or in place of a duty imposed by virtue of subsection (2)) subject to a specified duty of a financial nature; and different determinations may be so made in relation to different functions of Scottish Water.

(4) A determination under subsection (3) may-

- (a) relate to a period beginning before the date on which it is made,
- (b) contain incidental or supplemental provisions,
- (c) be varied by a subsequent determination under that subsection.

(5) A determination under subsection (3) must be made by order where-

(a) the duty specified in it is in place of a duty imposed by virtue of subsection (2), or

(b) it varies a previous determination made by order.

(6) Scottish Water must secure that its charges make a proper contribution to its duties, as respect financial matters, under this Act, taking into account-

- (a) its present circumstances and future prospects, and
- (b) any duty imposed on it by virtue of subsection (2) or (3).

42 Financing and borrowing

(1) The Scottish Ministers may pay to Scottish Water grants of such amounts as they may determine-

- (a) in respect of the exercise of its functions and its administrative expenses,
- (b) for the purpose of meeting, or alleviating, any loss it may sustain by virtue of regulations made under section 40.

(2) A grant under subsection (1) may be made subject to such conditions as the Scottish Ministers think fit.

(3) For the purpose of the exercise of any of its functions, Scottish Water may-

- (a) subject to such conditions as the Scottish Ministers think fit, borrow from them, and they may lend to it, sums of such amounts as they may determine, and
- (b) with the consent of the Scottish Ministers, borrow money, whether in sterling or otherwise, from any person or body, whether in the United Kingdom or elsewhere.

(4) In any financial year the net amount of sums borrowed by Scottish Water must not exceed the amount specified for that year for the purposes of this section in a Budget Act.

(5) In subsection (4), "net amount" means the amount of sums borrowed in the financial year less-

(a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and

(b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

(6) Any loans made in pursuance of subsection (3)(a) are to be repaid to the Scottish Ministers at such times and by such methods, and interest on the loans is to be paid to them at such times and at such rates, as they may from time to time direct.

43 Guarantees

(1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by Scottish Water or any subsidiary of Scottish Water.

(2) Immediately after a guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.

(3) Where any sum is paid out in fulfilment of a guarantee under this section, Scottish Water must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct-

(a) payments of such amounts as they may so direct in or towards repayment of the sums so paid out, and

(b) payments of interest, at such rate as they may so direct, on the amount outstanding for the time being in respect of sums so paid out.

(4) In subsection (1), "subsidiary" is to be construed in accordance with section 736 of the Companies Act 1985 (c.6).

44 Directions as to payment and investment

(1) The Scottish Ministers may, after consulting Scottish Water, direct it to pay to them, on a date specified in the direction, a sum specified in, or calculated in accordance with, the direction, being a sum not required for the exercise of its functions.

(2) The Scottish Ministers may, after consulting Scottish Water, direct it to invest, in such manner as may be specified in the direction, a sum specified in, or calculated in accordance with, the direction, being a sum not immediately required for the exercise of its functions.

(3) A direction under subsection (1) or (2) is not competent in relation to any sum which is payable to the Scottish Ministers under or by virtue of any other provision of this Act.

45 Accounts and audit

(1) Scottish Water must-

- (a) keep proper accounts and accounting records,
- (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its affairs and its income and expenditure, and
- (c) send the statement of accounts, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.

(2) Every statement of accounts prepared by Scottish Water in accordance with this section must comply with any direction given by the Scottish Ministers relating to-

- (a) the information to be contained in the statement of accounts,
- (b) the manner in which that information is to be presented, or
- (c) the methods and principles according to which the statement of accounts is to be prepared.

Land transactions

46 Acquisition of land by agreement

(1) Scottish Water may under this subsection-

- (a) for the purposes of any of its functions, or
- (b) for the purpose of the provision, by some person other than itself, of-
 - (i) a supply of water to the public, or
 - (ii) a system, to which the public is to have access, of drains, sewers or sewage treatment works,

acquire by agreement any land (other than water rights) wherever situated.

(2) Subsection (3) applies in relation to any acquisition of land under subsection (1) for the purposes of any of the core functions of Scottish Water or for the purpose mentioned in paragraph (b) of that subsection.

(3) In relation to any such acquisition of land, the Lands Clauses Acts (except in so far as they relate to acquisition other than by agreement and to access to the special Act and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19)), and-

- (a) in a case where the acquisition is-
 - (i) in relation to Scottish Water's functions under or by virtue of the 1968 Act, or
 - (ii) for the purpose of the provision of a system such as is mentioned in paragraph (b)(ii) of subsection (1) of this section,
- sections 6 and 70 to 78 of the Railways Clauses Consolidation (Scotland) Act 1845 (c.33) (as originally enacted and not as amended by section 15 of the Mines (Working Facilities and Support) Act 1923 (c.20)), and
- (b) in any other case, section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (as referred to in paragraph (a)) and Part IV of Schedule 4 to the 1980 Act, are hereby incorporated with this section; and, in construing those Acts for the purposes of that subsection, this section is to be taken to be the special Act and Scottish

Water is to be taken to be the promoter of the undertaking or company as the case may require.

47 Compulsory acquisition of land

(1) Scottish Water may-

(a) for the purposes of any of its core functions, or
(b) for the purpose specified in section 46(1)(b),
be authorised by the Scottish Ministers to purchase compulsorily under this subsection land (other than water rights) situated in Scotland.

(2) Subsection (1) is-

(a) without prejudice to any order under section 17 (acquisition of water rights) of the 1980 Act, and

(b) subject to section 18 (authorisation of compulsory acquisition of land necessary for purposes of order under section 17) of that Act.

(3) Scottish Water is, in respect of all of its core functions, a statutory undertaker for the purposes of section 120(1)(b) of the Local Government, Planning and Land Act 1980 (c.65) (persons to whose compulsory acquisition of an interest in land the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) in certain circumstances applies).

(4) Scottish Water may be authorised by the Scottish Ministers to purchase compulsorily, or may acquire by agreement, land in Scotland for giving in exchange for such land as is mentioned in section 1(2)(b) of that Act of 1947.

(5) This section is subject to section 67(4).

48 Disposal of land

(1) Scottish Water may dispose of land held by it in any manner, to whomsoever and for whatever purpose it wishes.

(2) But Scottish Water may not, except with the consent of the Scottish Ministers, dispose of land under subsection (1) for a consideration less than the best that could reasonably be expected to be obtained on the open market.

General duties

49 Interests of customers

The Scottish Ministers, when exercising their functions under or by virtue of this Act, the 1968 Act or the 1980 Act and Scottish Water, when exercising its functions, must have regard to the interests of every person who is a customer or potential customer

of Scottish Water and especially of such of those persons as-

(a) are likely, by reason of a persistent disability or medical condition or of family circumstances, to require to have a much greater supply of water, or to make much greater use of facilities for the disposal of sewage, than might ordinarily have been expected, or

(b) are ordinarily resident in a rural or remote part of Scotland.

50 Economy, efficiency and effectiveness

Scottish Water must, in exercising its functions, seek to ensure that its resources are used economically, efficiently and effectively.

51 Sustainable development

(1) Scottish Water must, in exercising its functions, act in the way best calculated to contribute to the achievement of sustainable development.

(2) Subsection (1) applies so far as is consistent with the purposes of any enactment relating to the functions of Scottish Water.

(3) In complying with subsection (1) Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.

52 Public access to land held by Scottish Water

(1) The Scottish Ministers, in exercising their functions under or by virtue of this Act, the 1968 Act or the 1980 Act and Scottish Water, in exercising its functions, must have regard to the desirability of preserving for the public any freedom of access (including access for recreational purposes) to land held by Scottish Water.

(2) This section is without prejudice to section 53(1) and (2)(a).

53 Environmental matters

(1) The Scottish Ministers, in exercising their functions under or by virtue of this Act, the 1968 Act or the 1980 Act and Scottish Water, in exercising its functions, must have regard to the matters specified in subsection (2).

(2) Those matters are-

(a) the desirability of preserving for the public any freedom of access (including access for recreational purposes) to areas of forest, woodland, mountains, moor, bog, cliff, foreshore, loch or reservoir and to other places of natural beauty, and

(b) the desirability of protecting and conserving-

(i) buildings,

(ii) sites, and

(iii) objects,
of archaeological, architectural, historic or scientific interest and of maintaining the availability to the public of any facility for visiting or inspecting any such building, site or object.

(3) The Scottish Ministers and Scottish Water must, in exercising the functions referred to in subsection (1), further-

(a) the conservation and enhancement of natural beauty and the conservation of flora and fauna, and

(b) the conservation of geological or physiographical features of special interest.

(4) Subsection (3) applies so far as is consistent with the purposes of any enactment relating to the functions of the Scottish Ministers or, as the case may be, Scottish Water (whether or not functions under or by virtue of this Act, the 1968 Act or the 1980 Act).

54 Protection of natural heritage

(1) Scottish Natural Heritage ("SNH") must by notice in writing notify Scottish Water of any area of land in Scotland which is a protected area.

(2) An area of land is a protected area if-

(a) it has been designated under section 6(2) of the Natural Heritage (Scotland) Act 1991 (c.28) ("the 1991 Act") as a Natural Heritage Area,

(b) it is an area in respect of which notification has been given by SNH under section 28(1) (areas of special scientific interest) of the Wildlife and Countryside Act 1981 (c.69), or

(c) it is a European site within the meaning of Regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I.1994/2716).

(3) Where SNH has given notice under subsection (1) in respect of an area of land and-

(a) in the case of an area mentioned in subsection (2)(a), the designation referred to in that subsection is cancelled or varied under section 6(7) of the 1991 Act,

(b) in the case of an area mentioned in subsection (2)(b), the notification ceases to have effect,

(c) in the case of an area mentioned in subsection (2)(c), the area ceases to be a European site,

SNH must by notice in writing advise Scottish Water of that fact.

(4) Where Scottish Water has received notice under subsection (1), it must (unless SNH has given notice under subsection (3) to the effect that the area of land in question is no longer a protected area) consult SNH before commencing any scheme, work, operation or activity which is likely to prejudice significantly the qualities by reference to which the area of land was designated as a Natural Heritage Area or notified

as an area of special scientific interest or, as the case may be, is a European site.

(5) Before commencing any scheme, work, operation or activity which appears to Scottish Water to be likely to affect adversely an area of land designated as a National Park under the National Parks (Scotland) Act 2000 (asp 10), Scottish Water must consult the National Park authority for the National Park.

(6) Subsections (4) and (5) do not apply in relation to anything to be done by Scottish Water in an emergency but particulars of what is done and of the emergency must be notified by Scottish Water to SNH or, as the case may be, the National Park authority as soon as is practicable after the thing is done.

55 Consultation with Health Boards

(1) Where it appears to Scottish Water that (whether or not as a result of any act or omission by it) services provided by it in the exercise of its core functions give rise to, or are likely to give rise to, a significant risk to public health in relation to the area of any Health Board, Scottish Water must-

- (a) consult the Health Board, and
- (b) exercise its core functions with a view to reducing or eliminating the risk to public health, having regard to any views expressed by the Health Board.

(2) This section is without prejudice to section 11(6).

Miscellaneous

56 Directions

(1) The Scottish Ministers must give Scottish Water directions-

- (a) as to the exercise of its powers under section 25 and schedule 3, and
- (b) otherwise as to how its affairs are to be managed and conducted.

(2) Directions under subsection (1) may be of a general or specific character and may, in particular, include provision-

- (a) as to the nature and allocation of the responsibilities of the members and employees of Scottish Water,
- (b) requiring Scottish Water to obtain the approval of, or to consult, the Scottish Ministers before exercising such of its powers, or exercising them in such ways, as the directions may specify,

(c) for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

(3) The Scottish Ministers may give Scottish Water other directions of a general or specific character as to the exercise of its functions.

(4) Before giving any direction under this section, the Scottish Ministers must consult Scottish Water.

(5) Scottish Water must comply with directions given under this Part.

57 Information and reports

(1) Scottish Water must provide the Scottish Ministers with such information relating to the exercise of its functions as they may require.

(2) For that purpose Scottish Water must-

(a) permit any person authorised to do so by the Scottish Ministers to inspect and make copies of its accounts and other records, and

(b) provide that person with such explanations in relation to those accounts and records as the person or the Scottish Ministers may require.

(3) Scottish Water must prepare-

(a) a report on its activities during the period from the beginning of each financial year to 30th September in that year, and

(b) a report on its activities during the whole of each financial year, as soon as practicable after the end of the period to which the report relates.

(4) A report prepared under subsection (3)(a) must include a statement of accounts for the period to which the report relates; and subsection (2) of section 45 applies to such a statement of accounts as it applies to a statement of accounts prepared in accordance with that section.

(5) A report prepared under subsection (3)(b) must include-

(a) a description of the manner in which Scottish Water has complied, during the period to which the report relates, with its duties under sections 26, 28, 50 and 51, and

(b) the reasons for any failure, during that period, to comply with its duties under sections 26 and 28.

(6) Scottish Water must-

(a) send a copy of each report prepared under subsection (3) to the Scottish Ministers, the Commissioner and the Convener of the Water Customer Consultation Panels, and

(b) publish the report.

(7) A report prepared under subsection (3) must set out any directions under section 56 which have been given to Scottish Water during the period to which the report relates.

(8) The Scottish Ministers must lay a copy of a report sent to them under subsection (6) before the Parliament.

58 Records

(1) This section applies to all records (in whatever form or medium)-

- (a) transferred to Scottish Water by virtue of this Act,
- (b) created or acquired by it in the exercise of any of its functions, or
- (c) otherwise in its keeping.

(2) Scottish Water must, after consulting the Keeper of the Records of Scotland, make arrangements for the preservation and management of the records and must ensure that the records are preserved and managed in accordance with those arrangements.

(3) Scottish Water may from time to time revise those arrangements but before making any material change must consult the Keeper.

(4) Despite subsection (2), Scottish Water may dispose of records which in its opinion are not worthy of preservation.

(5) Scottish Water-

(a) must ensure that the Keeper has, at all reasonable hours, unrestricted access to the records preserved by it,

(b) may afford facilities for any person to inspect and, on payment of a reasonable fee, to obtain copies of or extracts from those records.

(6) Nothing in subsection (5)(b) permits infringement of copyright or contravention of conditions subject to which records are in the keeping of Scottish Water.

(7) If any enactment makes provision relating to records of a specific kind which is inconsistent with subsections (1) to (6), those subsections are subject to that enactment.

59 Validity of actings

The validity of any actings of Scottish Water is not affected by any failure to comply with a duty imposed on it under or by virtue of this Part.

60 Private legislation

(1) Scottish Water may, if it thinks fit-

(a) with the consent of the Scottish Ministers, promote private legislation in the Scottish Parliament,

(b) oppose private legislation in the Parliament of the United Kingdom or the Scottish Parliament.

(2) An application for consent under subsection (1)(a) must be accompanied by a concise summary of the purposes of the proposed legislation.

(3) Such consent must be withheld if the Scottish Ministers consider that the powers sought by the private legislation could be obtained by means of an order under the 1968 Act or, as the case may be, the 1980 Act.

61 Supply of goods and services to and by local authorities

The Local Authorities (Goods and Services) Act 1970 (c.39) has effect as if Scottish Water were both a local authority and a public body for the purposes of that Act.

62 Information from local authorities and assessors

(1) The Scottish Ministers may by regulations require a local authority or an assessor to provide Scottish Water with relevant information in such form as the regulations may specify.

(2) For the purposes of subsection (1), information is relevant if-

- (a) it is information falling within subsection (3), and
- (b) its possession by Scottish Water would, in the opinion of the Scottish Ministers, be likely to assist Scottish Water to make a charges scheme or to collect, or arrange to have collected, such charges as may be fixed by a charges scheme made by it.

(3) Information falls within this subsection if it is held-

- (a) by the local authority in connection with their-
 - (i) setting, levying or collecting council tax or council water charges (within the meaning of Part II of the Local Government Finance Act 1992 (c.14)) or the non-domestic water rate or non-domestic sewerage rate (as defined in paragraphs (c) and (d) of section 99(2) of that Act before the repeal of those paragraphs by the 1994 Act), or
 - (ii) levying or collecting the non-domestic rate (as for the time being defined in section 37(1) of the Local Government (Scotland) Act 1975 (c.30), or
- (b) as the case may be, by the assessor in connection with the assessor's functions under any enactment.

(4) In this section-

"assessor" is to be construed in accordance with section 27 of the 1994 Act,
"information" includes, in particular, a copy of the whole, or of any part of, a valuation roll or valuation list.

PART 4

MISCELLANEOUS AND GENERAL

Miscellaneous

63 Register of trade effluents: confidential information

After section 37B of the 1968 Act insert-

"37C Exclusion from register of commercially confidential information

(1) Despite subsection (2) of section 37A of this Act, Scottish Water shall not enter in the register maintained under that section information relating to the affairs of any individual or business if-

(a) it determines, on the application of the person providing the information, that it is commercially confidential (as regards that or any other person), and

(b) the information is not information which is required to be entered in the register in pursuance of a direction under subsection (4) below.

(2) If, on an application under subsection (1) above, Scottish Water fails to make a determination within the period of 21 days beginning with the date of the application, it shall be treated as having determined that the information is commercially confidential.

(3) Where, on an application under subsection (1) above, Scottish Water determines that information is not commercially confidential, the information shall not be entered on the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned.

(4) The Scottish Ministers may give Scottish Water directions as to specified information, or descriptions of information, which the public interest requires to be included in the register regardless of whether the information is commercially confidential.

(5) Information excluded from the register by virtue of subsection (1) above shall be treated as ceasing to be commercially confidential for the purposes of this section on the expiry of the period of 4 years beginning with the date of the determination by virtue of which it was excluded unless Scottish Water determines, on the application of the person who provided the information, that it is still commercially confidential.

(6) Subsection (2) above applies in relation to an application under subsection (5) above as it applies in relation to an application under subsection (1) above.

(7) The Scottish Ministers may, by order made by statutory instrument, substitute (whether in all cases or in such descriptions of case as the order may specify) for the period for the time being specified in subsection (2) above such other period as

they consider appropriate.

(8) A statutory instrument containing an order under subsection (7) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(9) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any person, if its inclusion in the register would prejudice to an unreasonable degree the commercial interests of that person."

64 Works in connection with metering

After section 24A of the 1980 Act insert-

"24B Works in connection with metering

(1) This section applies where, in relation to any premises ("the premises concerned"), the conditions specified in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1) are that-

(a) Scottish Water is supplying or proposes to supply water to the premises,
(b) such supply is or is to be by meter, and
(c) there is a service pipe which is connected with a water main vested in Scottish Water and by which a supply of water is or could be provided to those premises.

(3) Where this section applies, Scottish Water may serve a notice on the owner of the premises concerned requiring the execution, within such period of not less than 3 months as the notice shall specify, of such of the works mentioned in subsection (4) as the notice may specify.

(4) The works referred to in subsection (3) are, in relation to the premises concerned-

(a) works consisting of the installation and connection of any meter for use in determining the quantity of water supplied to the premises,

(b) where a supply of water is or could be provided by the service pipe referred to in subsection (2)(c) to other premises as well as the premises concerned, works consisting of the installation, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for the premises concerned, but only to the extent that such a pipe will constitute a supply pipe and is not required to be laid in a road,

(c) works for the purpose of maintaining, repairing, disconnecting or removing-
(i) any meter which has been installed for use in determining the quantity of water supplied to the premises, or

(ii) any pipes or apparatus installed in the course of any works specified in this section, and

(d) any other works appearing to Scottish Water to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c), including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.

(5) In the case of any of the works mentioned in paragraph (a) of subsection (4) and paragraph (c)(i) of that subsection so far as relating to maintenance and repair of a meter, Scottish Water may execute the works itself instead of requiring the owner, under subsection (3), to execute the works.

(6) If an owner upon whom a notice has been served under subsection (3) fails to comply with it, Scottish Water may itself execute the works which the owner was required by the notice to execute.

(7) Where Scottish Water has served a notice under that subsection requiring the execution of the works mentioned in paragraph (b) of subsection (4), it shall, within 14 days after those works have been executed, lay so much of the separate service pipe referred to in that paragraph as will constitute a communication pipe or a supply pipe to be laid in a road and shall make all necessary connections.

(8) Scottish Water may recover from the owner of the premises concerned any expenses reasonably incurred by it in executing any works under subsection (5), (6) or (7).

(9) Subsection (8) is without prejudice to the rights and obligations, as between themselves, of the owner and occupier of the premises."

65 Contravention of water byelaws: penalties and proceedings

(1) Section 72 (general provisions as to byelaws) of the 1980 Act is amended as follows.

(2) In subsection (3) (maximum level of penalty), for "level 4" substitute "level 5".

(3) After that subsection, insert-

"(3A) Subject to subsection (3B), proceedings for any offence against such byelaws may be commenced at any time-

(a) within 6 months after the date on which evidence sufficient in the opinion of the procurator fiscal to justify the proceedings came to the procurator fiscal's knowledge, or

(b) where such evidence was reported to the procurator fiscal by Scottish Water, within 6 months after the date on which it came to Scottish Water's knowledge.

(3B) No such proceedings shall be commenced more than 3 years after-

- (a) the date of the commission of the offence, or
- (b) in the case of a continuing offence, the last date on which the offence was committed.

(3C) Subsection (3) of section 136 (time limit for certain offences) of the Criminal Procedure (Scotland) Act 1995 (c.46) applies for the purposes of this section as it applies for the purposes of that section.

(3D) For the purposes of subsection (3A), a certificate signed by or on behalf of the procurator fiscal or, as the case may be, Scottish Water, and stating the date on which evidence such as is mentioned in that subsection came to the procurator fiscal's or, as the case may be, Scottish Water's knowledge shall be conclusive evidence of that fact.

(3E) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved."

General

66 Offences by bodies corporate and partnerships

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of-

- (a) any director, manager, secretary, member or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,
that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under this Act which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

67 Crown application

(1) This Act binds the Crown, but nothing in this section is to be taken as in any way affecting Her Majesty in her private capacity.

(2) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public authority or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a

contravention.

(3) Despite subsection (2), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(4) The powers conferred by section 47 are exercisable in relation to land forming part of the Crown Estate only with the consent of the Crown Estate Commissioners.

68 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power-

(a) to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

(b) to make different provision for different purposes and different areas.

(3) An order under section 24(3) or 69 may modify any enactment, instrument or document.

(4) A statutory instrument containing an order or regulations under this Act (except sections 41(5) and 72(1) and, where subsection (5) of this section applies, sections 24(3) and 69) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) No order under section 24(3) or 69 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft has been laid before, and approved by resolution of, the Parliament.

(6) No order is to be made under section 41(5) unless a draft has been laid before, and approved by resolution of, the Parliament.

69 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

70 Interpretation

(1) In this Act, unless the context otherwise requires-

"the 1968 Act" means the Sewerage (Scotland) Act 1968 (c.47),

"the 1980 Act" means the Water (Scotland) Act 1980 (c.45),

"the 1994 Act" means the Local Government etc. (Scotland) Act 1994 (c.39),
"charges scheme" has the meaning given by section 31(1),
"the Commissioner" means the Water Industry Commissioner for Scotland established by section 67A(1) of the 1994 Act and continued in existence by section 1(1) of this Act,

"financial year" means a period of 12 months ending with 31st March,

"local authority" means a council constituted under section 2 of the 1994 Act,

"new water and sewerage authorities" means the bodies established by section 62(1) of the 1994 Act and-

(a) a reference to a new water and sewerage authority is a reference to any of those bodies,

(b) "water area" and "sewerage area", in relation to any such authority, are to be construed in accordance with that section,

"the Parliament" means the Scottish Parliament.

(2) In this Act, references to core functions, in relation to Scottish Water, are to its functions under or by virtue of the 1968 Act, the 1980 Act, this Act and any other enactment, but excluding its functions under subsection (1) of section 25 of this Act and subsection (2) of that section so far as relating to subsection (1).

71 Modification of enactments

(1) Schedules 5 and 6 make modifications of, respectively, the 1968 Act and the 1980 Act.

(2) Schedule 7 makes modifications of other enactments.

72 Commencement and short title

(1) The provisions of this Act, other than this section and sections 66 to 70, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Water Industry (Scotland) Act 2002.

SCHEDULE 1

WATER INDUSTRY COMMISSIONER AND CUSTOMER PANELS: FURTHER
PROVISION

PART 1

THE COMMISSIONER

Appointment

1 (1) The Commissioner is to be appointed by the Scottish Ministers on such terms and conditions as they may determine.

(2) Those terms and conditions may include arrangements for the payment of pensions, allowances or gratuities to, or in respect of, persons who have ceased to hold office as Commissioner.

Staff

2 (1) The Commissioner may, with the consent of the Scottish Ministers as to numbers, terms and conditions, appoint staff.

(2) The Commissioner may make arrangements for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a member of staff of the Commissioner and may in particular-

(a) make contributions or payments towards provision for such pensions, gratuities or allowances,

(b) establish and administer one or more pension schemes.

(3) Arrangements under sub-paragraph (2) are subject to the approval of the Scottish Ministers.

Status

3 The Commissioner and the Commissioner's staff are not to be regarded as servants or agents of the Crown and do not have any status, immunity or privilege of the Crown.

Accounts

4 The Commissioner must-

(a) prepare, for each financial year, in accordance with directions given by the Scottish Ministers, an account of the Commissioner's income and expenditure, and

(b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.

PART 2

CUSTOMER PANELS

Convener

5 (1) The Scottish Ministers are to appoint, on such terms and conditions as they may determine, an individual to be known as the Convener of the Water Customer Consultation Panels (referred to in this schedule as the "Convener").

(2) The Convener is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown.

Membership

6 (1) The Convener is to be a member of each Customer Panel.

(2) The other members of a Customer Panel are to be appointed by the Convener in accordance with procedures, and on terms and conditions, approved by the Scottish Ministers.

(3) The Convener must, in accordance with those procedures, appoint one of the other members to be deputy convener of the Panel.

(4) Before appointing the other members under sub-paragraph (2), the Convener must consult the Commissioner and such bodies representing consumer interests as the Scottish Ministers may direct.

Remuneration and allowances

7 The Commissioner must pay to the Convener and to the deputy convener and ordinary members of a Customer Panel-

- (a) such remuneration, and
 - (b) such allowances (if any) in respect of expenses properly incurred in the performance of their duties,
- as the Scottish Ministers may determine.

Administrative support

8 The Commissioner is to provide the Convener and each Customer Panel, or ensure that they are provided, with the property, staff and services required for their purposes in accordance with arrangements approved by the Scottish Ministers.

Proceedings

9 (1) The proceedings of a Customer Panel must be conducted in accordance with arrangements-

- (a) determined by the Convener after consulting the other members of the Panel, and
- (b) approved by the Scottish Ministers.

(2) The validity of any proceedings of a Customer Panel is not affected by any vacancy among its members or by any defect in the appointment of a member.

SCHEDULE 2

DRINKING WATER QUALITY REGULATOR: FURTHER PROVISION AS TO POWERS OF ENTRY ETC.

Notice of entry

1 (1) The Regulator is entitled to demand entry into any premises as of right by virtue of section 9(1), 12(2)(a) or 13(3)(a) (in this schedule referred to as "the relevant provisions") only at a reasonable time, except in an emergency.

(2) Unless the premises are premises of a public water supplier, the Regulator must give 24 hours' notice of the intended entry to the occupier of the premises.

Warrant to exercise right or power

2 (1) If a sheriff or a justice of the peace is satisfied, by evidence on oath, that-

(a) there are reasonable grounds for the exercise in relation to any premises of a power conferred by the relevant provisions, and

(b) one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

the sheriff or justice may by warrant authorise the Regulator and any person authorised by the Regulator for the purpose to exercise the power in relation to those premises in accordance with the warrant and, if need be, by force.

(2) The conditions mentioned in sub-paragraph (1) are-

(a) that the exercise of the power in relation to the premises has been refused,

(b) that such a refusal is reasonably apprehended,

(c) that the premises are unoccupied,

(d) that the occupier is temporarily absent from the premises,

(e) that the case is one of urgency,

(f) that an application for admission to the premises would defeat the object of the proposed entry.

(3) A sheriff or justice must not issue a warrant under this schedule by virtue only of being satisfied that a condition specified in sub-paragraph (2)(a) or (b) is fulfilled unless the sheriff or justice is also satisfied-

(a) that notice of the intention to apply for the warrant has been given to the occupier of the premises, or

(b) that the giving of such notice would defeat the object of the proposed entry.

(4) A warrant under this schedule continues in force until the purposes for which the warrant was issued have been fulfilled.

Evidence of authority

3 A person entitled to exercise any power conferred by the relevant provisions must, if required to do so, produce written evidence of that entitlement.

Supplementary powers

4 A person entitled to enter any premises by virtue of any power conferred by the relevant provisions is entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take on to the premises such other persons and such equipment as may be necessary.

Duty to secure premises

5 A person who enters any premises in the exercise of any power conferred by the relevant provisions must leave the premises as effectually secured against trespassers as that person found them.

Compensation

6 (1) Where any person exercises any power conferred by the relevant provisions, the Scottish Ministers must make full compensation to any person who has sustained loss or damage by reason of-

(a) the exercise by the person of that power or of any power to take any person or equipment on to the premises in relation to which the power is exercised, or
(b) the performance of, or failure of the person to perform, the duty imposed by paragraph 5.

(2) Compensation is not payable by virtue of sub-paragraph (1) in respect of any loss or damage if the loss or damage-

(a) is attributable to the default of the person who sustained it, or
(b) is loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.

(3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, is to be referred to the arbitration of a single arbiter appointed by agreement between the Scottish Ministers and the person who claims to have sustained the loss or damage or, in default of agreement, by the President of the Lands Tribunal for Scotland.

Commercially confidential information

7 (1) Any person who enters any premises in the exercise of any power conferred by the relevant provisions and who makes use of or discloses any information obtained by that person on those premises with regard to any manufacturing process or trade secret is guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) is liable-

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

Interpretation

8 For the purposes of paragraphs 5 and 6 a person enters any premises in the exercise of a power conferred by the relevant provisions despite a failure (whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with-

- (a) any requirement to enter those premises at a reasonable time or after giving notice of intended entry, or
- (b) the requirement imposed by paragraph 3.

SCHEDULE 3

SCOTTISH WATER: STATUS, CONSTITUTION, PROCEEDINGS ETC.

Status

1 Scottish Water-

- (a) is not to be regarded as a servant or agent of the Crown,
 - (b) does not have any status, immunity or privilege of the Crown,
- and its property is not to be regarded as property of, or held on behalf of, the Crown.

Membership

2 (1) Scottish Water is to consist of a board comprising-

- (a) not fewer than 5, nor more than 8, non-executive members, and
- (b) not fewer than 3, nor more than 5, executive members.

(2) The number of non-executive members must exceed the number of executive members by at least 2.

(3) The non-executive members are to be appointed by the Scottish Ministers from amongst persons who appear to them to have knowledge or experience relevant to the functions of Scottish Water.

(4) One of the non-executive members to be appointed under sub-paragraph (3) must be a person appearing to the Scottish Ministers to have special knowledge of the interests of the employees of Scottish Water.

(5) Before inviting applications for appointment as that member, the Scottish Ministers must consult such persons representing those employees as they think fit as to-

- (a) the particular knowledge of such interests, and
 - (b) any other attributes,
- that persons seeking such appointment should possess.

(6) The chief executive of Scottish Water is to be one of its executive members and the other executive members are to be appointed by Scottish Water, with the approval of the Scottish Ministers, from amongst its other employees.

Tenure and removal from office

3 (1) Each member other than the chief executive-

- (a) is to be appointed for such period as is specified in the appointment,
- (b) may, by written notice to-
 - (i) in the case of a non-executive member, the Scottish Ministers,
 - (ii) in the case of an executive member, Scottish Water,
- (c) in other respects, holds and vacates office on such terms and conditions

as-

- (i) in the case of a non-executive member, the Scottish Ministers,
 - (ii) in the case of an executive member, Scottish Water with the approval of the Scottish Ministers,
- may determine,
- (d) after ceasing to hold office is eligible for reappointment as a member.

(2) The Scottish Ministers may remove a non-executive member, and Scottish Water may, with the approval of the Scottish Ministers, remove an executive member, from office if satisfied that-

(a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or

(b) the member-

- (i) is incapacitated by physical or mental illness,
- (ii) has been absent from meetings of Scottish Water for a period longer than 3 consecutive months without the permission of Scottish Water, or
- (iii) is otherwise unable or unfit to discharge the member's functions as a member or is unsuitable to continue as a member.

(3) Without prejudice to its powers under sub-paragraph (2), Scottish Water may, with the approval of the Scottish Ministers, remove an executive member from office if it considers it necessary or expedient to do so in connection with the management of the affairs of Scottish Water.

(4) An executive member ceases to hold office as such on ceasing to be an employee of Scottish Water.

(5) A person who ceases to be an executive member does not, by reason only of that, cease to be an employee of Scottish Water.

Chairing

4 (1) The Scottish Ministers-

(a) must appoint one of the non-executive members to chair the board, and
(b) may, after consulting that member, appoint another non-executive member to act as deputy to that member.

(2) The member appointed to chair the board and any member appointed to act as deputy to that member hold and vacate office as such in accordance with the terms of their appointments.

(3) A member so appointed may, by written notice to the Scottish Ministers, resign from office as such.

(4) A member so appointed vacates office on ceasing to be a non-executive member of Scottish Water.

(5) Where a non-executive member-

(a) is appointed to chair the board or to act as deputy to the member so appointed, or

(b) ceases to hold office as such,
the Scottish Ministers may vary the terms of the member's appointment so as to alter the date on which office as a non-executive member is to be vacated.

Remuneration, allowances and pensions

5 (1) Scottish Water must pay to those of its members holding an office specified in sub-paragraph (5) such remuneration as the Scottish Ministers may determine.

(2) Scottish Water must pay to those members and the other members such allowances as the Scottish Ministers may determine in respect of expenses properly incurred in the performance of their duties.

(3) Where a person ceases to be a non-executive member otherwise than on the expiry of that person's term of office, the Scottish Ministers may, if they think there are special circumstances, direct Scottish Water to pay to the person such amount of compensation as they may determine.

(4) The Scottish Ministers may direct Scottish Water to pay-

- (a) such pension, allowance or gratuity to, or in respect of, any person who holds or has held any office specified in sub-paragraph (5),
- (b) such contribution or other payment towards provision for such pension, allowance or gratuity,
as they consider appropriate.

(5) The offices referred to in sub-paragraphs (1) and (4)(a) are-

- (a) non-executive member,
 - (b) member appointed to chair the board, and
 - (c) member appointed to act as deputy to that member.
- Chief executive and other staff*

6 (1) The Scottish Ministers must, after consultation with the member appointed, or to be appointed, to chair the board (if there is a person holding, or as the case may be designated to hold, that office), make the first appointment of chief executive of Scottish Water on such terms and conditions as the Scottish Ministers may determine.

(2) Scottish Water may, with the approval of the Scottish Ministers, make subsequent appointments to the post of chief executive on such terms and conditions as it may with the approval of the Scottish Ministers determine.

(3) Scottish Water may appoint on such terms and conditions as it may with the approval of the Scottish Ministers determine such other employees as it considers appropriate.

(4) Scottish Water must, as regards such of its employees as it may with the approval of the Scottish Ministers determine, make such arrangements as it considers appropriate for providing, to or in respect of those employees, pensions, allowances or gratuities.

(5) Such arrangements-

(a) may include the establishment and administration, by Scottish Water or otherwise, of one or more pension schemes, and

(b) must, in any case, be approved by the Scottish Ministers.

(6) The reference in sub-paragraph (4) to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.

Committees

7 (1) Scottish Water may establish committees for or in connection with the exercise of such of its functions as it may determine.

(2) Employees of Scottish Water who are not members of Scottish Water may be appointed to be members of any committee established by it.

Proceedings

8 The quorum of Scottish Water and any committee established under paragraph 7(1), and the arrangements for its meetings and meetings of any such committee, are to be such as Scottish Water may determine.

Delegation of powers

9 (1) Anything authorised or required under any enactment to be done by Scottish Water may be done by any of its committees which, or by any of its members or employees who, are authorised (whether generally or specifically) for the purpose by it.

(2) Nothing in sub-paragraph (1) prevents Scottish Water from doing anything that a committee, member or employee has been authorised or required to do.

Validity of proceedings and actings

10 The validity of any proceedings or actings of Scottish Water is not affected by-

- (a) any vacancy among its members, or
- (b) any defect in the appointment of a member.

Transitory arrangements: initial appointments

11 (1) Until the first appointment of the non-executive member mentioned in sub-paragraph (4) of paragraph 2-

(a) sub-paragraph (1)(a) of that paragraph has effect as if for "5" there were substituted "4",

(b) sub-paragraph (2) of that paragraph has effect as if for "2" there were substituted "1", and

(c) the constitution of Scottish Water, and the validity of any of its proceedings or actings, may not be questioned by reason only that sub-paragraph (4) of that paragraph has not been complied with.

(2) Sub-paragraph (1)(c) of this paragraph is without prejudice to paragraph 10.

12 (1) The Scottish Ministers may appoint, on such terms and conditions as they may determine, persons to act as executive members until the appointment of the

first executive members by Scottish Water under paragraph 2(6).

(2) A person appointed by the Scottish Ministers under sub-paragraph (1)-

- (a) must be a person who is expected to become an employee of Scottish Water (whether by virtue of section 23 or paragraph 6(3) of this schedule),
- (b) is to be treated (except for the purposes of paragraph 3 of this schedule) as an executive member whilst acting as such,
- (c) may resign office by written notice to the Scottish Ministers,
- (d) may be removed from office by the Scottish Ministers,
- (e) in other respects, holds and vacates offices in accordance with the terms and conditions of the appointment.

SCHEDULE 4

RECOVERY BY LOCAL AUTHORITY OF UNPAID CHARGES

1 This schedule applies to any sum which has become payable to a local authority by virtue of section 37 and has not been paid (including a sum forming part of a larger sum which has become payable and the other part of which has been paid).

2 (1) Any sum to which this schedule applies may be recovered by the local authority by diligence-

(a) authorised by a summary warrant granted under sub-paragraph (2), or

(b) in pursuance of a decree granted in an action for payment.

(2) The sheriff, on an application by the authority which is accompanied by a certificate from them containing such particulars as may be prescribed by the Scottish Ministers by regulations, must grant a summary warrant in a form provided for by Act of Sederunt authorising the recovery, by way of any of the diligences mentioned in sub-paragraph (3), of the amount of the sum remaining due and unpaid along with a surcharge of 10 per cent of that amount.

(3) The diligences referred to in sub-paragraph (2) are-

(a) an earnings arrestment,

(b) an arrestment and action of furthcoming or sale.

(4) It is incompetent for the sheriff to grant a summary warrant under sub-paragraph (2) in respect of any sum to which this schedule applies if an action has already been raised for the recovery of that sum; and, without prejudice to sub-paragraph (5), on the raising of an action for the recovery of any such sum, any existing summary warrant, in so far as it relates to the recovery of that sum, ceases to

have effect.

(5) It is incompetent to raise an action for the recovery of any sum to which this schedule applies if, in pursuance of a summary warrant, any of the diligences mentioned in sub-paragraph (3) for the recovery of that sum has been executed.

(6) The Scottish Ministers may by order substitute another percentage for the percentage which is for the time being mentioned in sub-paragraph (2).

3 No misnomer or inaccurate description of any person or place, or mistake of informality, in any notice or other document or communication relating to a demand for, or the recovery of, charges payable to the local authority by virtue of section 37 or in any proceedings for the payment of such charges prejudices such recovery.

4 (1) The sheriff officer's fees, together with the outlays necessarily incurred by the sheriff officer, in connection with the execution of a summary warrant under paragraph 2 are chargeable against the debtor.

(2) But no fees are chargeable by the sheriff officer against the debtor for collecting, and accounting to the local authority for, the sums paid to the sheriff officer by the debtor in satisfaction of an amount owing to the authority by way of charges payable to them by virtue of section 37.

SCHEDULE 5

MODIFICATIONS OF SEWERAGE (SCOTLAND) ACT 1968

1 The Sewerage (Scotland) Act 1968 (c.47) is amended as follows.

2 In each of the following provisions, for "a sewerage authority" wherever the expression occurs substitute "Scottish Water"-

section 1(2)(a) and (3),

section 3(1), (2) and (3),

section 3A(1),

section 4,

section 7(1) and (3),

section 10(1),

section 11(1), (2) and (3),

section 12(3), (4) and (8),
section 14(1) and (6),
section 15(1) and (4),
section 16(1) and (3),
section 16A(1),
section 17(2) and (4),
section 20(1), (4) and (5),
section 22(1), (2A) and (3),
section 23,
section 24,
section 25,
section 26,
section 27(1),
section 28(1),
section 29(1),
section 30(1),
section 32(1),
section 36(1),
section 37(1) and (3),
section 37A(1) and (3),
section 38(1),
section 39,
section 44,
section 45(1),
section 48(1),
section 53.

3 In each of the following provisions, for "the sewerage authority" wherever the expression occurs substitute "Scottish Water"-

section 1(2)(b) and (4),

section 3(2),

section 3A(2),

section 11(4),

section 12(8),

section 15(1),

section 16(2),

section 16A(2),

section 17(3),

section 20(4),

section 21(1),

section 23,

section 31,

section 32(2),

section 33(2),

section 34,

section 35,

section 36(2),

section 37(4) and (6),

section 42(2),

section 48(3),

section 51(2) and (4).

4 In each of the following provisions, for "the authority" wherever the expression occurs substitute "Scottish Water"-

section 1(4),

section 3A(2),

section 4,
section 8(1),
section 10(2),
section 11(1),
section 12(3),
section 14(1) and (5),
section 16(1)(b) and (2),
section 20(1) and (3),
section 21(1),
section 24(1) and (2),
section 26,
section 27(1), (3), (4) and (5),
section 28(2),
section 29(3) and (6),
section 31,
section 32(3), (5) and (7),
section 35,
section 36(2),
section 37(4), (5), (6) and (7),
section 37A(2),
section 38(2),
section 45(1),
section 48(1),
section 51(3).

5
of their area)-

In section 1 (duty of sewerage authority to provide for sewerage

(a) in subsection (1)-

Water",
(i) for "each of the sewerage authorities" substitute "Scottish

(ii) for "their", in both places where it occurs, substitute "its",
occurs, substitute "its",
(b) in subsection (2)(a), for "their", in the first place where it

(c) in subsection (4), before "private provider", in the second
and third places where the expression occurs, insert "the".

6 In section 2 (maintenance of public sewers and other works)-

Water",
(a) for "each of the sewerage authorities" substitute "Scottish

(b) for "them" substitute "it",

(c) for the words from "Part" to the end substitute "the Water
Industry (Scotland) Act 2002 (asp 3)".

7 In section 3 (construction etc. of public sewers and public
sewage treatment works)-

(a) in subsection (1)-

(i) the words "within or outwith their area" are repealed,

(ii) in paragraph (b), for "them" substitute "it",

(b) in subsection (2), for "their" substitute "its",

(c) subsection (4) is repealed.

8 In section 3A (authorisation of construction of certain private
sewers)-

(a) in subsection (1)-

(i) for "their" in each place where it occurs substitute "its",

(ii) for "them" substitute "it",

(b) in subsection (2)-

(i) for "their" substitute "its",

(ii) for "they" in the first place where it occurs substitute "it",

(iii) for "them" in both places where it occurs substitute "it",

(iv) for "they think" substitute "it thinks".

9 In section 4 (power of sewerage authority to close or alter
public sewers etc.)-

(a) for "they think" substitute "it thinks",

(b) for "them" substitute "it",

(c) for the words from "Part" to "1994" substitute "the Water
Industry (Scotland) Act 2002 (asp 3)",

(d) for "they" in the second place where it occurs substitute "it",

(e) for "their" substitute "its".

10 Section 6 (functions outwith area of a sewerage authority) is
repealed.

- 11 authorities)-
In section 7 (agreements between roads and sewerage authorities)-
(a) subsection (2) is repealed,
(b) in subsection (3)-
(i) the words from "and" where it first occurs to "thereto" are repealed,
(ii) for "any authority" substitute "a roads authority or Scottish Water",
(iii) for "authorities concerned" substitute "authority concerned and Scottish Water".
- 12 premises)-
In section 8 (agreements as to provision of sewers etc. for new premises)-
(a) in subsection (1)-
(i) for "a sewerage authority are" substitute "Scottish Water is",
(ii) for "their" substitute "its",
(iii) for "they" substitute "it",
(iv) for "them" substitute "it",
(b) in subsection (2)-
(i) for "an authority" substitute "Scottish Water",
(ii) for "the authority have" substitute "it has".
- 13 In section 9 (loan of temporary sanitary conveniences), for-
(a) "the sewerage authority concerned", and
(b) in the proviso, "the sewerage authority", substitute "Scottish Water".
- 14 In section 10 (emptying of septic tanks)-
(a) in subsection (1), for "their" in each place where it occurs substitute "its",
(b) in subsection (2), for "they think" substitute "it thinks",
(c) in subsection (4), for the words from "Part" to "1994" substitute "the Water Industry (Scotland) Act 2002 (asp 3)".
- 15 public sewers etc.)-
In section 11 (duty of sewerage authority to keep map showing public sewers etc.)-
(a) for "their" wherever it occurs substitute "its",
(b) in subsection (1)-
(i) for "them" substitute "it",
(ii) for the words from "Part" to "1994" substitute "the Water Industry (Scotland) Act 2002 (asp 3)",
(iii) for "they have" substitute "it has",
(c) in subsection (3)-
(i) for "they consider" substitute "it considers",

- (ii) for "the authority" substitute "it",
(iii) for "they do" substitute "it does".
- 16 In section 12 (rights of owners and occupiers to connect with and drain into public sewers etc.)-
- (a) in subsection (1)-
(i) the words "within the area of a sewerage authority" are repealed,
(ii) for "that authority" substitute "Scottish Water",
(b) in subsection (2), for "an authority" substitute "Scottish Water",
(c) in subsection (3)-
(i) for "them" in the second place where it occurs substitute "it",
(ii) for "they think" substitute "it thinks",
(d) in subsection (4), for "their" in both places where it occurs substitute "its",
(e) in subsection (6)-
(i) for "the sewerage authority who granted it" substitute "Scottish Water",
(ii) for "them" in both places where it occurs substitute "it",
(f) in subsection (7)-
(i) for "the sewerage authority who granted the permission" substitute "Scottish Water",
(ii) for "them" substitute "it",
(g) in subsection (8), for "them" substitute "it".
- 17 Section 13 (rights of owners and occupiers to connect with and drain into sewers etc. of another sewerage authority) is repealed.
- 18 In section 14 (direction by sewerage authority as to manner of construction of works)-
- (a) in subsection (1)-
(i) the words "or that subsection as applied by section 13 above" are repealed,
(ii) for "they consider" substitute "it considers",
(iii) for "they have" substitute "it has",
(iv) for "them" substitute "it",
(b) in subsection (2), for the words from "the sewerage" to the end substitute "Scottish Water",
(c) in subsection (4)-
(i) for the words "the sewerage authority who issued it" substitute "Scottish Water",
(ii) for "them" in both places where it occurs substitute "it",
(d) in subsection (5)-

(i) for the words "An authority who issue a direction under subsection (1) above" substitute "Where Scottish Water has issued a direction under subsection (1) above, it",

- (ii) for "they" substitute "it",
- (iii) for "their" substitute "its".

19 In section 15 (owner or occupier to remedy defects in drains and other works)-

(a) in subsection (1)-

(i) after "their" insert "or, as the case may be, its",

(ii) for "the authority in question" substitute "the local authority or, as the case may be, Scottish Water",

(b) in subsection (3)-

(i) before "authority" in both places where it occurs insert "local",

(ii) after "notice" in the second place where it occurs insert "or, where the notice was served by Scottish Water, that body",

(iii) after "them" in both places where it occurs insert "or, as the case may be, it",

(iv) after "question" insert "or, as the case may be, Scottish Water",

(v) after "think" insert "or it thinks",

(c) in subsection (4)(c)-

(i) before "authority" insert "local",

(ii) after "notice" insert "or, where the notice was served by Scottish Water, that body",

20 In section 16 (vesting of sewers and other works in sewerage authority)-

(a) in subsection (1)-

(i) for "them" in each place where it occurs substitute "it",

(ii) for "their" in each place where it occurs substitute "its",

(iii) in paragraph (cc), for "they enter" substitute "it enters",

(b) in subsection (2), for "1st April 1996" substitute "the date when section 21 of the Water Industry (Scotland) Act 2002 (asp 3) comes into force",

(c) in subsection (3), for "the authority who" substitute "Scottish Water which".

21 In section 16A (vesting of certain private sewers)-

(a) in subsection (1), for "their" substitute "its",

(b) in subsection (2)-

(i) for "they think" substitute "it thinks",

(ii) for "them" substitute "it".

22 In section 17 (sewerage authority may take over private sewage treatment works)-

- (a) in subsection (1)-
(i) for the words from "a sewerage" to "situated" substitute "Scottish Water",
(ii) for "the works" where that expression first occurs substitute "any private sewage treatment works",
(iii) for "them" substitute "it",
(b) in subsection (2)-
(i) for "their" substitute "its",
(ii) for "they think" substitute "it thinks",
(iii) for "them" substitute "it",
(iv) the words from "and shall" to "situated" are repealed,
(c) in subsection (4), for "them" substitute "it".
- 23 In section 20 (compensation for loss etc. resulting from exercise of powers under this Act)-
(a) in subsection (1), for "their" substitute "its",
(b) in subsection (3), for "an authority" substitute "Scottish Water",
(c) in subsection (4), for "their" substitute "its".
- 24 In section 21(1) (buildings not to interfere with sewers), for "they have" substitute "it has".
- 25 In section 23 (restriction on working minerals), for "section 98(1)(b) of the Local Government etc. (Scotland) Act 1994" substitute "section 46(1)(b)(ii) of the Water Industry (Scotland) Act 2002 (asp 3)".
- 26 In section 27 (procedure on application for consent to new discharge)-
(a) in subsection (4)-
(i) paragraph (a) and the following "and" are repealed,
(ii) the words "the second authority or" are repealed,
(b) subsection (6) is repealed.
- 27 In section 28 (time to dispose of application), for "them" in each place where it occurs substitute "it".
- 28 In section 29 (decision on application)-
(a) in subsection (1)-
(i) for "their" in each place where it occurs substitute "its",
(ii) for "they" in each place where it occurs substitute "it",
(b) in subsection (2)-
(i) for "the authority have" substitute "Scottish Water has",
(ii) for "their" in each place where it occurs substitute "its",
(iii) for "they" substitute "it",
(c) in subsection (3)-

- (i) for "their" substitute "its",
(ii) in paragraph (h), for "are" substitute "is",
(iii) in paragraph (j), for "them" substitute "it", and for "their" substitute "its",
- 29 Water".
In section 30(1) (intimation of decision)-
- 30 (a) for "their" substitute "its",
(b) the words "authority or" are repealed.
In section 32 (review of consents, conditions and refusals)-
- 31 (a) in subsection (1), for "them" substitute "it",
(b) in subsection (2)-
(i) for "they propose" substitute "it proposes",
(ii) for "their" substitute "its",
(iii) for "the authority" substitute "it",
(c) in subsection (4), the words "authority or" are repealed.
In section 36 (review of continuation of existing discharge)-
- 32 (a) in subsection (1), for "they" substitute "it",
(b) in subsection (4)-
(i) for "the authority have" substitute "Scottish Water has",
(ii) for "them" substitute "it".
(iii) for "the authority" in the second place where that expression occurs substitute "Scottish Water".
In section 37 (agreements as respects trade premises)-
- 33 (a) in subsection (1)-
(i) for "their" substitute "its",
(ii) for "the authority" substitute "it",
(b) in subsection (3), for "the authority" substitute "it",
(c) in subsection (5)(c), for "their" substitute "its".
In section 37A (register for purposes of Part II)-
- 34 (a) in subsection (2), for "their" in each place where it occurs substitute "its",
(b) in subsection (3), for "them" in each place where it occurs substitute "it".
In section 38 (power to extend Part II to other effluents), in subsection (3), for "and such sewerage authorities" substitute ", Scottish Water and such".
- 35 In section 39 (sewerage authority to have right to sewage)-
(a) for "their" substitute "its",
(b) for "them" substitute "it".

- 36 In section 41 (breaking open of roads etc.)-
- (a) for "a sewerage authority or" substitute "Scottish Water or any",
- (b) in the proviso, for "they" substitute "Scottish Water or, as the case may be, that person".
- 37 In section 42(1) (execution of works by sewerage authorities for other persons)-
- (a) for "the sewerage authority concerned" substitute "Scottish Water",
- (b) for "their" substitute "its".
- 38 In section 44 (power of sewerage authorities to require information as to ownership etc. of premises)-
- (a) for "them" in each place where it occurs substitute "it",
- (b) for "their" substitute "its".
- 39 In section 48(1) (powers of entry)-
- (a) in paragraph (d), for "them" substitute "it",
- (b) in paragraph (dd), for "section 98(1)(b) of the Local Government etc. (Scotland) Act 1994" substitute "section 46(1)(b)(ii) of the Water Industry (Scotland) Act 2002 (asp 3)",
- (c) in paragraph (e), for "their" substitute "its",
- (d) in paragraph (f)(ii), for "section 98(1)(b)" substitute "section 46(1)(b)(ii)".
- 40 In section 55(2) (application of Act to Crown), for the words from "the sewerage" to "situated" substitute "Scottish Water".
- 41 In section 59 (interpretation)-
- (a) for the definition of "area" substitute-
- ""area", in relation to Scottish Water, means the area comprising all of the local government areas established by virtue of section 1 of the Local Government etc. (Scotland) Act 1994 (c.39);",
- (b) in the definitions of-
- (i) "private sewage treatment works",
- (ii) "public drain",
- (iii) "public sewage treatment works", and
- (iv) "public sewer",
- for "a sewerage authority" substitute "Scottish Water",
- (c) the definition of "sewerage authority" is repealed.

SCHEDULE 6

MODIFICATIONS OF WATER (SCOTLAND) ACT 1980

- 1 The Water (Scotland) Act 1980 (c.45) is amended as follows.
- 2 In section 1 (general duties of Scottish Ministers and of water authorities), for "the water authorities" substitute "Scottish Water".
- 3 (1) Section 6 (duty of authority to provide supply) is amended as follows.
- (2) In subsection (1)-
- (a) for "every water authority" substitute "Scottish Water",
- (b) for "their" substitute "its".
- (3) In subsection (2)-
- (a) for "every water authority" substitute "Scottish Water",
- (b) for "their" in both places where it occurs substitute "its",
- (c) for "a water authority" substitute "Scottish Water".
- (4) In subsection (3)-
- (a) for "the water authority concerned" substitute "Scottish Water",
- (b) for "the authority" substitute "Scottish Water".
- (5) In subsection (4)-
- (a) for "Every water authority" substitute "Scottish Water",
- (b) for "them" in each place where it occurs substitute "it",
- (c) for "they think" substitute "it thinks",
- (d) for "they consider" substitute "it considers",
- (e) for "their" substitute "its".
- 4 In section 8 (water supplied for domestic purposes to be wholesome)-
- (a) for "Every water authority" substitute "Scottish Water",
- (b) for "their" in both places where it occurs substitute "its".
- 5 (1) Section 9 (supply of water for non-domestic purposes) is amended as follows.
- (2) In subsection (1)-
- (a) for "a water authority" substitute "Scottish Water",
- (b) for "their" substitute "its",
- (c) for "them" substitute "it".
- (3) In subsection (2)-
- (a) for "A water authority" substitute "Scottish Water",
- (b) for "their" substitute "its".

(4) In subsection (3)-

(a) for "The water authority" substitute "Scottish Water",

(b) for "them" substitute "it",

(c) for "the authority" in both places where the expression occurs substitute "Scottish Water".

(5) In subsection (4), for "the authority are" substitute "Scottish Water is".

(6) In subsection (5)-

(a) for "a water authority are" substitute "Scottish Water is",

(b) for "the authority" substitute "Scottish Water",

(c) for "them" substitute "it".

6 In section 9A (no charge for supply of water for extinguishing fires etc.), for "a water authority" substitute "Scottish Water".

7 In section 10 (compensation for damage resulting from exercise of powers)-

(a) in subsection (1)-

(i) for "water authority" substitute "Scottish Water",

(ii) after "them" insert "or it",

(iii) after "their" insert "or its",

(b) in subsection (1A)-

(i) for "a water authority's" substitute "Scottish Water's",

(ii) for "them" substitute "it".

8 (1) Section 11 (power of Scottish Ministers on default of authority) is amended as follows.

(2) In subsection (1)-

(a) for "a water authority have" substitute "Scottish Water has",

(b) for "they are" substitute "it is",

(c) for "their limits of supply, or have" substitute "its limits of supply, or has",

(d) for "they have" substitute "it has",

(e) for "their" in the second place where it occurs substitute "its",

(f) for "any authority have" substitute "Scottish Water has".

(3) In subsection (2)-

(a) for "the authority in question" substitute "Scottish Water",

(b) for "them" in both places where it occurs substitute "it",

(c) for "their" in both places where it occurs substitute "its".

(4) In subsection (3)-

fails",

- (a) for the words from "the authority" to "fail" substitute "Scottish Water

- (b) for "that order" substitute "an order made under subsection (2)",

- (c) paragraph (a) and the following "and" are repealed.

- (5) Subsections (4) to (7) are repealed.

9
repealed.

Section 12 (supply of water to premises outwith limits of supply) is

10 (1) Section 13 (supply of water in bulk) is amended as follows.

- (2) In subsection (1)-

- (a) for "A water authority" substitute "Scottish Water",

- (b) the words "whether a water authority or not" are repealed,

- (c) for "the authority" substitute "Scottish Water",

- (d) the words from "and, where" to the end are repealed.

- (3) Subsection (2) is repealed.

- (4) In subsection (3)-

- (a) the words "or order" are repealed,

- (b) for "a water authority" substitute "Scottish Water",

- (c) the words "either within or outside their limits of supply" are repealed,

- (d) for "them" substitute "it".

- (5) Subsections (4) and (5) are repealed.

- (6) In subsection (6), for "a water authority" substitute "Scottish Water".

11 In section 13A (supply of water for use outwith Scotland)-

- (a) in subsection (1)-

- (i) for "A water authority" substitute "Scottish Water",

- (ii) for "they are" substitute "it is",

- (iii) for "them" in both places where it occurs substitute "it",

- (iv) for "their" substitute "its",

- (v) for "they think" substitute "it thinks",

- (b) in subsection (2)-

- (i) for "a water authority" substitute "Scottish Water",

- (ii) the words "either within or outwith their limits of supply" are repealed,

- (iii) for "them" substitute "it".

12
water)-

In section 14 (power of water authority to give guarantee for supply of

- (a) for "A water authority" substitute "Scottish Water",

- (b) for "the authority" substitute "Scottish Water".

13 (1) Section 16 (powers of survey and search for water on land) is amended as follows.

(2) For subsection (1) substitute-

"(1) The Scottish Ministers may, on application made to them by Scottish Water, authorise it to survey, in accordance with this section-

(a) any land which it proposes to acquire for the purposes of its water undertaking or proposed water undertaking; or

(b) any land in, on or over which it is proposed to lay a water main."

(3) In subsection (2), for "the authority" substitute "Scottish Water".

(4) In subsection (3)-

(a) for "an authority are" substitute "Scottish Water is",

(b) for "the authority" substitute "Scottish Water".

(5) In subsection (8)-

(a) for "the authority on whose behalf the works were carried out" substitute "Scottish Water",

(b) for "they" substitute "it".

14 (1) Section 17 (acquisition of water rights) is amended as follows.

(2) In subsection (1), for "A water authority" substitute "Scottish Water".

(3) In subsection (2)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "them" substitute "it",

(c) for "the authority" substitute "Scottish Water".

(4) In subsection (3)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "the authority" in both places where the expression occurs substitute "Scottish Water",

(c) in subsection (4), for "a water authority" substitute "Scottish Water".

15 In section 18(1) (compulsory acquisition of land for water works)-

(a) for "an authority to which that section applies" substitute "Scottish Water",

(b) for "an authority" in the second place where the expression occurs substitute "Scottish Water",

(c) for "section 99 of the Local Government etc. (Scotland) Act 1994" substitute "section 47 of the Water Industry (Scotland) Act 2002 (asp 3)".

16 In section 21 (power to carry out works)-

(a) for "they" substitute "it",

(b) for "a water authority" in the first place where the expression occurs substitute "Scottish Water",

(c) in paragraph (b), the words "other than a water authority" are repealed,

(d) in paragraph (c), for "the authority" substitute "Scottish Water",

(e) in paragraph (e)-

(i) for "them" substitute "it",

(ii) for "their" substitute "its".

17 In section 22 (power to break open roads)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "they are" substitute "it is".

18 (1) Section 23 (power to lay mains etc.) is amended as follows.

(2) In subsection (1)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "their" substitute "its".

(3) After subsection (1) insert-

"(1ZA) Section 192 of the Local Government (Scotland) Act 1973 (c.65) (service of notices) shall apply to notices served by Scottish Water under subsection (1) above relating to land as it applies to notices served by a local authority relating to premises."

(4) In subsection (1A)-

(a) for "the water authority" substitute "Scottish Water",

(b) for "the authority" substitute "Scottish Water".

(5) In subsection (2)-

(a) for "an authority" substitute "Scottish Water",

(b) for "their" substitute "its",

(c) for "they" substitute "it".

(6) In subsection (3)-

(a) for "A water authority" substitute "Scottish Water",

(b) for "their" substitute "its".

19 follows.
(1) Section 24A (keeping of map showing water mains etc.) is amended as follows.

(2) In subsection (1)-

- (a) for "A water authority" substitute "Scottish Water",
- (b) for "their" substitute "its",
- (c) for "them" substitute "it",
- (d) for "Part II of the Local Government etc. (Scotland) Act 1994" substitute "the Water Industry (Scotland) Act 2002 (asp 3)",
- (e) for "the authority" in both places where the expression occurs substitute "Scottish Water".

(3) In subsection (2)-

- (a) for "A water authority" substitute "Scottish Water",
 - (b) for "their" in each place where it occurs substitute "its",
 - (c) for "they consider" substitute "it considers",
 - (d) for "the authority" substitute "Scottish Water",
 - (e) for "they do" substitute "it does".
- (4) In subsection (3), for "the water authority" substitute "Scottish Water".

20 In section 25(1) (power of authority to provide public wells)-

- (a) for "a water authority" substitute "Scottish Water",
 - (b) for "their" in the second place where it occurs substitute "its".
- 21 In section 26 (power to close, or restrict use of, wells)-

- (a) for "or a water authority are" substitute "are or Scottish Water is",
 - (b) in paragraph (a)-
 - (i) for "their" in the second place where it occurs substitute "its",
 - (ii) after "them" insert "or, as the case may be, it",
 - (iii) after "they" insert "or, as the case may be, it".
- 22 In section 28 (water works code)-

- (a) in subsection (1), for "a water authority" substitute "Scottish Water",
 - (b) in subsection (2), for "the water authority" substitute "Scottish Water".
- 23 In section 29 (applications of enactments by order)-

- (a) in subsection (1), the words "13 or" are repealed,
- (b) in subsection (2), for "any water authority" substitute "Scottish Water",
- (c) in subsection (3), for "the authority concerned" substitute "Scottish

Water".

24 In section 31(1) (consultation with authorities in England)-

- (a) for "a water authority" substitute "Scottish Water",
- (b) for "that water authority" substitute "Scottish Water",
- (c) for "the water authority" substitute "Scottish Water",
- (d) for "they consider" substitute "it considers".

25 In section 32(1) (power of water undertakers to supply water to water authorities), for "a water authority" in both places where the expression occurs substitute "Scottish Water".

26 (1) Section 33 (temporary discharge of water into watercourses) is amended as follows.

(2) In subsection (1)-

(a) for the words "a water authority who are carrying out or are" substitute "where Scottish Water is carrying out or is",

(b) for "their" in the first place where it occurs substitute "its",

(c) after "undertaking" insert ", it",

(d) the words "whether within or outside their limits of supply" are repealed,

(e) for "the authority" substitute "Scottish Water".

(3) In subsection (3)-

(a) for "the water authority" in both places where the expression occurs substitute "Scottish Water",

(b) for "their" substitute "its",

(c) for "them" substitute "it".

(4) In subsection (4)-

(a) for "the authority propose" substitute "Scottish Water proposes",

(b) for "them" in each place where it occurs substitute "it".

(5) In subsection (6)(b), for "the authority" substitute "Scottish Water".

(6) In subsection (7)-

(a) for "the authority are" substitute "Scottish Water is",

(b) for "the authority" in the second and third places where the expression occurs substitute "Scottish Water",

(c) for "them" substitute "it",

(d) for "they are" substitute "it is".

(7) In subsection (8)-

(a) for "the authority discharge" substitute "Scottish Water discharges",

(b) for "they" substitute "it".

(8) In subsection (9)-

(a) for "The authority" substitute "Scottish Water",

(b) for "them" substitute "it".

(9) In subsection (11), for "the authority" substitute "Scottish Water".

- 27 In section 34 (persons supplying water to supply to authority)-
- (a) for "a water authority" substitute "Scottish Water",
 - (b) for "that authority" substitute "Scottish Water",
 - (c) for "they" where it first occurs substitute "it",
 - (d) for "the authority" substitute "Scottish Water".
- 28 In section 35 (power to supply water fittings)-
- (a) in subsection (1)-
 - (i) for "A water authority" substitute "Scottish Water",
 - (ii) for "they supply or propose" substitute "it supplies or proposes",
 - (iii) for "their" substitute "its",
 - (iv) for "them" substitute "it",
 - (v) for "The authority" substitute "Scottish Water",
 - (b) in subsection (2), for "the authority" in each place where the expression occurs substitute "Scottish Water",
 - (c) in subsection (5)-
 - (i) for "the authority" in both places where the expression occurs substitute "Scottish Water",
 - (ii) for "the water authority" substitute "Scottish Water".
- 29 In section 36 (power to execute work on behalf of owner or occupier), for "A water authority" substitute "Scottish Water".
- 30 In section 38(1) (entry of premises)-
- (a) for "a water authority" substitute "Scottish Water",
 - (b) for "the authority" in each place where the expression occurs substitute "Scottish Water",
 - (c) for paragraph (a) substitute-
 - "(aa) where the conditions set out in subsection (2) of section 24B are satisfied in relation to the premises, for the purpose of carrying out any survey or tests to determine-
 - (i) whether the carrying out of any works by virtue of paragraph (a) or (b) of subsection (4) of that section is practicable,
 - (ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out, or
 - (iii) how any works specified in that subsection should be carried out;
 - (ab) for the purpose of inspecting, examining or testing-
 - (i) any meter which is on the premises and which is used by Scottish Water for measuring the quantity of water supplied, or
 - (ii) any pipes or apparatus installed in the course of any works which were carried out for any purpose which is connected with the installation, connection, testing, maintenance or repair of any such meter;
 - (ac) for the purpose of ascertaining from any such meter the quantity of water supplied to the premises;"

- 31 In section 41A (supply of water by meter)-
- (a) in paragraph (a), for "the authority" substitute "Scottish Water",
 - (b) in paragraph (b), for "the water authority" substitute "Scottish Water".
- 32 (1) Section 50 (power to require supply by meter) is amended as follows.
- (2) The existing provision becomes subsection (1).
 - (3) In that subsection-
 - (a) for "A water authority" substitute "Scottish Water",
 - (b) the word "or" following paragraph (c) is repealed.
 - (4) At the end of that subsection insert "; or
 - (e) any other premises specified, or of a description specified, in an order made by the Scottish Ministers.
- (2) Before making an order under subsection (1)(e) the Scottish Ministers shall consult such persons as they think fit.
- (3) The power to make such an order shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of the Scottish Parliament."
- 33 In section 51 (power to require supplies for refrigerating apparatus etc. to be taken by meter)-
- (a) for "a water authority" substitute "Scottish Water",
 - (b) for "the authority" substitute "Scottish Water".
- 34 In section 52 (power to require supply for hose pipe to be taken by meter)-
- (a) for "a water authority supply" substitute "Scottish Water supplies",
 - (b) for "the authority" substitute "Scottish Water".
- 35 In section 53(1) (provision as to supply to tents, vans, sheds, etc.)-
- (a) for "a water authority" substitute "Scottish Water",
 - (b) in paragraph (a)-
 - (i) for "the authority" substitute "Scottish Water",
 - (ii) for "them" in each place where it occurs substitute "it",
 - (c) in paragraph (b), for "the authority" substitute "Scottish Water".
- 36 In section 54 (register of meter to be evidence)-
- (a) in subsection (1), for "a water authority supply" substitute "Scottish Water supplies",

(b) in subsection (3), for "the authority" in both places where the expression occurs substitute "Scottish Water".

37 (1) Section 55 (charges for water supplied by meter) is amended as follows.

(2) In subsection (1)-

(a) for "Every water authority" substitute "Scottish Water",

(b) for "they are" substitute "it is",

(c) for "the authority" substitute "Scottish Water".

(3) In subsection (2)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "them" substitute "it".

(4) Subsections (3) and (4) are repealed.

38 In section 56 (provision as to supply of water to agricultural subjects)-

(a) in subsection (1)-

(i) for "the water authority" substitute "Scottish Water",

(ii) for "they" substitute "it",

(iii) for "their" substitute "its",

(b) in subsection (2)-

(i) for "a water authority supply" substitute "Scottish Water supplies",

(ii) for "supply" in the second place where it occurs substitute "supplies",

(iii) for "the authority" substitute "Scottish Water".

39 (1) Section 58 (termination of right to supply of water on special terms) is amended as follows.

(2) In subsection (1)-

(a) for "a water authority are" substitute "Scottish Water is",

(b) for "the authority" substitute "Scottish Water".

(3) In subsection (2), for "the water authority" substitute "Scottish Water".

(4) In subsection (4)-

(a) for "any water authority" substitute "Scottish Water",

(b) the words "or a water authority" are repealed.

(5) In subsection (5), for "The water authority" substitute "Scottish Water".

(6) Subsection (6) is repealed.

(7) In subsection (7), for "a water authority" substitute "Scottish Water".

40 In section 59 (limitation of liability of water authority to supply water on special terms), for "a water authority" substitute "Scottish Water".

41 In section 63 (provision of water supply for new buildings and houses)-

(a) in subsection (1A), for the words from "the water" to the end substitute "Scottish Water",

(b) in subsection (2)-

(i) for "the water authority" substitute "Scottish Water",

(ii) for "the authority" substitute "Scottish Water",

(iii) for "their" substitute "its".

42 In section 68(1) (agreements as to drainage)-

(a) for "A water authority" substitute "Scottish Water",

(b) for "the authority consider" substitute "Scottish Water considers",

(c) for "they are" substitute "it is",

(d) for "the authority" substitute "Scottish Water".

43 In section 69 (power to restrict use of hose pipes)-

(a) in subsection (1)-

(i) for "a water authority are" substitute "Scottish Water is",

(ii) for "them" in both places where it occurs substitute "it",

(iii) for "they" in the first place where it occurs substitute "it",

(iv) for "they think" substitute "it thinks",

(v) for "their" substitute "its",

(b) in subsection (2)-

(i) for "The authority" substitute "Scottish Water",

(ii) for "the authority" substitute "it".

44 (1) Section 70 (byelaws for preventing misuse of water) is amended as follows.

(2) In subsection (1)-

(a) for "A water authority" substitute "Scottish Water",

(b) for "them" substitute "it".

(3) In subsection (2)-

(a) for "the authority" substitute "Scottish Water",

(b) for "them" substitute "it".

(4) In subsection (3), for "the authority" substitute "Scottish Water".

(5) In subsection (4)-

(a) for "a water authority consider" substitute "Scottish Water considers",

45
follows.

- (b) for "them" substitute "it",
 - (c) for "they" substitute "it",
 - (d) for "the authority" substitute "Scottish Water".
- (1) Section 71 (byelaws for preventing pollution of water) is amended as follows.

(2) In subsection (1)-

- (a) for "a water authority" substitute "Scottish Water",
- (b) for "them" substitute "it",
- (c) for "they are" substitute "it is",
- (d) for "they" in the second place where it occurs substitute "it",
- (e) for "they deem" substitute "it deems".

(3) In subsection (2)-

- (a) for "the water authority" substitute "Scottish Water",
- (b) for "they consider" substitute "it considers",
- (c) for "their" substitute "its".

(4) In subsection (3)-

(a) for "The water authority" substitute "Scottish Water",
(b) for "the local authority" in both places where that expression occurs substitute "Scottish Water".

(5) In subsection (4)-

(a) for "the local authority" in both places where that expression occurs substitute "Scottish Water",

(b) for "them" substitute "it".

(6) Subsection (5) is repealed.

(7) In subsection (6), for "the authorities" substitute "Scottish Water".

46 In section 72(2) (general provision as to byelaws)-

(a) for the words from "a water" to "those" in the first place where it occurs substitute "Scottish Water to enforce such",

(b) for "the authority" substitute "Scottish Water".

47 In section 73 (power of Scottish Ministers to require the making of byelaws)-

(a) in subsection (1)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the authority do" substitute "Scottish Water does",

(b) in subsection (2)-

(i) for "an authority" in both places where the expression occurs substitute "Scottish Water",

(ii) for "the authority" in the first place where the expression occurs substitute "Scottish Water",

(iii) for "the authority do" substitute "Scottish Water does",

(c) in subsection (3), for "the authority concerned" substitute "Scottish Water".

48 (1) Section 76 (acquisition of land for protection of water) is amended as follows.

(2) In subsection (1)-

(a) for the words "Local Government etc. (Scotland) Act 1994" substitute "Water Industry (Scotland) Act 2002 (asp 3)",

(b) for "a water authority" substitute "Scottish Water",

(c) for "their" substitute "its",

(d) for "the authority" substitute "Scottish Water",

(e) for "they are" substitute "it is".

(3) In subsection (2)-

(a) for "A water authority" substitute "Scottish Water",

(b) for "them" substitute "it",

(c) for "they have" substitute "it has",

(d) for "the authority" in each place where the expression occurs substitute "Scottish Water",

(e) for "they are" substitute "it is".

(4) In subsection (3)-

(a) for "A water authority proposing" substitute "Where Scottish Water proposes",

(b) after "(2)" insert "it",

(c) the words "whether within or outside their limits of supply" are repealed,

(d) for "the authority" substitute "Scottish Water",

(e) for "any authority" substitute "Scottish Water",

(f) for "that authority" substitute "Scottish Water".

49 (1) Section 76A (duties of water authorities with respect to water quality) is amended as follows.

(2) In subsection (1)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "that authority" substitute "Scottish Water".

(3) In subsection (2)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "the authority's" substitute "Scottish Water's".

(4) In subsection (3)-

(a) for "a water authority" substitute "Scottish Water",
(b) for "the authority's" in both places where the expression occurs substitute "Scottish Water's",

(c) for "the authority" substitute "Scottish Water".

(5) In subsection (4)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "the authority" substitute "Scottish Water".

50 follows. (1) Section 76B (regulations for preserving water quality) is amended as follows.

(2) In subsection (1)-

(a) for "a water authority" in both places where the expression occurs substitute "Scottish Water",

(b) for "that authority" in each place where the expression occurs substitute "Scottish Water".

(3) In subsection (2)-

(a) for "water authorities" in each place where the expression occurs substitute "Scottish Water",

(b) for "their" substitute "its".

(4) In subsection (3)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "that authority" substitute "Scottish Water".

(5) In subsection (4)-

(a) for "a water authority" in both places where the expression occurs substitute "Scottish Water",

(b) for "the authority" substitute "Scottish Water".

51 In section 76C (offence of supplying water unfit for human consumption)-

(a) in subsection (1)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the authority" substitute "Scottish Water",

(b) in subsection (2), for "the water authority" in both places where the expression occurs substitute "Scottish Water".

52 In section 76D (provision of water where piped supplies insufficient or unwholesome)-

(a) in subsection (1)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the authority" substitute "Scottish Water",

(iii) for "the water authority" in each place where the expression occurs substitute "Scottish Water",

(b) in subsection (2)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the water authority" substitute "Scottish Water".

53

In section 76E (enforcement of sections 76A to 76D)-

(a) in subsection (1), for "water authorities" substitute "Scottish Water",

(b) in subsection (4)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the water authority have" substitute "Scottish Water has",

(iii) for "are" in the third place where it occurs substitute "is",

(iv) for "them" substitute "it".

54

In section 76F (general functions of local authorities in relation to water quality)-

(a) in subsection (2)-

(i) for "any water authority" substitute "Scottish Water and the Drinking Water Quality Regulator for Scotland",

(ii) for "that water authority" in both places where the expression occurs substitute "Scottish Water",

(b) in subsection (3)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the water authority" substitute "Scottish Water, to notify the Drinking Water Quality Regulator for Scotland of that fact and".

55

In section 76G(6)(a) (remedial powers of local authorities in relation to private supplies), for "a water authority" substitute "Scottish Water".

56

In section 76H(5)(b) (effect, confirmation and variation of notice under section 76G)-

(a) for "a water authority" substitute "Scottish Water",

(b) for "their" substitute "its".

57

In section 76I(2) (incidental powers of local authorities), for "a water authority" in both places where the expression occurs substitute "Scottish Water".

58

In section 76L (interpretation etc. of Part VIA), in the definition of "private supply", for "a water authority" substitute "Scottish Water".

59

In section 100(2) (orders), for the words from "all" to the end substitute "Scottish Water".

60

In section 103 (notices to be in writing), for "water authority" in both places where the expression occurs substitute "Scottish Water".

- 61 In section 107 (repeal, amendment and adaptation of local enactments)-
- (a) in subsection (1)(b)-
 - (i) for "a water authority" substitute "Scottish Water",
 - (ii) in sub-paragraph (i), for "the applicant" substitute "Scottish Water",
 - (iii) sub-paragraph (ii) is repealed,
 - (b) in subsection (5), for "a water authority" substitute "Scottish Water".
- 62 In section 109 (interpretation)-
- (a) in subsection (1)-
 - (i) for the definition of "area" substitute-
""area", in relation to Scottish Water, means the area comprising all of the local government areas established by virtue of section 1 of the Local Government etc. (Scotland) Act 1994 (c.39);",
 - (ii) for the definition of "limits of supply" substitute-
""limits of supply", in relation to Scottish Water, means the area of Scottish Water;"
 - (iii) the definition of "water authority" is repealed,
 - (iv) in the definition of "supply of water in bulk" for "the water authority taking the supply" substitute "Scottish Water",
 - (b) in subsection (3), for "the water authority" substitute "Scottish Water".
- 63 In section 110(2) (further provisions as to communication pipes etc.)-
- (a) for "the water authority" substitute "Scottish Water",
 - (b) for "the authority" substitute "Scottish Water".
- 64 (1) Schedule 1 (procedure for making orders and making and confirming byelaws) is amended as follows.
- (2) In paragraph 1-
 - (a) for "Applicants" substitute "Where Scottish Water proposes to apply",
 - (b) after "applies" insert "it",
 - (c) for "they desire" substitute "it desires".
 - (3) In paragraph 2-
 - (a) for "the applicants" substitute "Scottish Water",
 - (b) in sub-paragraph (i), the words "water authority and" are repealed,
 - (c) in sub-paragraph (ii), for "the applicants" substitute "Scottish Water".
 - (4) In paragraph 3-
 - (a) for "The applicants" substitute "Scottish Water",
 - (b) for "they are" substitute "it is",
 - (c) the words from "naming" to "order" in the second place where it occurs are repealed.

(5) In paragraph 4-

(a) for "The applicants" substitute "Scottish Water",

(b) for "they think" substitute "it thinks".

(6) In paragraph 5, for "the applicants" in both places where the expression occurs substitute "Scottish Water".

(7) In paragraph 8-

(a) for "the applicants" substitute "Scottish Water",

(b) the words from "and the" to the end are repealed.

(8) In paragraph 11, in sub-paragraph (i), for "the water authority and" substitute "Scottish Water and on the".

(9) In paragraph 12, the words from "naming" to "order" in the second place where it occurs are repealed.

(10) In paragraph 14, for the words "the authority to whom the order relates" substitute "Scottish Water".

(11) In paragraph 15, after "from" in the second place where it occurs insert "Scottish Water or".

(12) In paragraph 17, for the words from "the authority" to the end substitute "Scottish Water".

(13) In paragraph 19-

(a) for "A water authority who propose" substitute "Where Scottish Water proposes",

(b) after "applies" insert "it",

(c) for "their" substitute "its",

(d) the words "water authority and" are repealed,

(e) for "the water authority" in the second place where that expression occurs substitute "Scottish Water".

(14) In paragraph 20-

(a) for "The water authority" substitute "Scottish Water",

(b) for "they propose" substitute "it proposes".

(15) In paragraph 23, for the words from "the authority" to the end substitute "Scottish Water".

(16) In paragraph 24, the words from "shall be" to "and" are repealed.

Water".

(17) In paragraph 26, for "the water authority" substitute "Scottish

(18) In paragraph 27-

- (a) for "The water authority" substitute "Scottish Water",
- (b) for "they" substitute "it".

(19) In paragraph 30-

- (a) for "the water authority" substitute "Scottish Water",
- (b) for "the authority" substitute "Scottish Water".

(20) In paragraph 31, for "the authority" in both places where the expression occurs substitute "Scottish Water".

65 In Schedule 2 (orders under section 17 authorising compulsory acquisition of land)-

(a) in paragraph 4-

- (i) for "the water authority" substitute "Scottish Water",
- (ii) for "they" substitute "it",

(b) in paragraph 6, for "the water authority" in both places where the expression occurs substitute "Scottish Water".

66 (1) Schedule 3 (provisions as to breaking open roads and laying communication and supply pipes) is amended as follows.

(2) In paragraph 1-

- (a) for "a water authority" substitute "Scottish Water",
- (b) in the proviso, for "they" substitute "it".

(3) In paragraph 2(2)-

- (a) for "the authority propose" substitute "Scottish Water proposes",
- (b) for "they" substitute "it",
- (c) for "the authority" substitute "Scottish Water".

(4) In paragraph 4-

(a) in sub-paragraph (1)-

- (i) for "A water authority" substitute "Scottish Water",
- (ii) for "they deem" substitute "it deems",
- (iii) in the proviso, for "the authority" substitute "Scottish Water",
- (b) in sub-paragraph (2), for "the authority" substitute "Scottish Water".

(5) In paragraph 5-

- (a) for "any water authority" substitute "Scottish Water",
- (b) for "the authority" substitute "Scottish Water".

(6) In paragraph 6-

- (a) in sub-paragraph (1)-
 - (i) for "the authority" substitute "Scottish Water",
 - (ii) for "they" in the first place where it occurs substitute "it",
 - (iii) for "they think" substitute "it thinks",
- (b) in sub-paragraph (2)-
 - (i) for "the water authority" substitute "Scottish Water",
 - (ii) for "the authority" in the first place where the expression occurs substitute "Scottish Water",
 - (iii) for "they are" substitute "it is",
 - (iv) for "them" in each place where it occurs substitute "it",
 - (v) for "the authority lay" substitute "Scottish Water lays",
- (c) in sub-paragraph (3)-
 - (i) for "an authority to whom such a notice as aforesaid is given", substitute "where such a notice as aforesaid is given to Scottish Water, it",
 - (ii) for "them" in both places where it occurs substitute "it",
 - (iii) for "their" in both places where it occurs substitute "its",
 - (iv) for "they make" substitute "it makes",
 - (v) for "the authority" substitute "Scottish Water",
 - (vi) for "they" in the second and third places where it occurs substitute "it".

(7) In paragraph 7-

- (a) in sub-paragraph (1)-
 - (i) for "the authority" substitute "Scottish Water",
 - (ii) for "them" substitute "it",
- (b) in sub-paragraph (2)-
 - (i) for "the authority give" substitute "Scottish Water gives",
 - (ii) for "three months" substitute "such period of not less than three months as the notice shall specify",
 - (iii) for "the authority" in the second place where the expression occurs substitute "Scottish Water",
- (c) in sub-paragraph (3)-
 - (i) for "the authority" substitute "Scottish Water",
 - (ii) for "themselves" substitute "itself",
- (d) in sub-paragraph (4)-
 - (i) for "the authority" substitute "Scottish Water",
 - (ii) for "they are" in both places where the expression occurs substitute "it is",
 - (iii) for "them" in both places where it occurs substitute "it",
- (e) in sub-paragraph (5)-
 - (i) for "the authority" in the first place where the expression occurs substitute "Scottish Water",
 - (ii) for "the authority have" substitute "Scottish Water has".

(8) In paragraph 9-

(a) in sub-paragraph (1), for "the authority" in both places where the expression occurs substitute "Scottish Water",

(b) in sub-paragraph (2), for "the authority deem" substitute "Scottish Water deems".

67 In Schedule 10 (amendment of enactments), Part I is repealed.

SCHEDULE 7

MODIFICATIONS OF OTHER ENACTMENTS

Fire Services Act 1947 (c.41)

1 In section 36(2) (application to Scotland) of the Fire Services (Scotland) Act 1947, for "a water authority within the meaning of the Water (Scotland) Act 1980" substitute "Scottish Water".

Rivers (Prevention of Pollution) (Scotland) Act 1951 (c.66)

2 In section 35(1) (interpretation) of the Rivers (Prevention of Pollution) (Scotland) Act 1951-

(a) the definition of "sewerage authority" is repealed, and

(b) in the definition of "stream", in paragraph (b), for "a sewerage authority" substitute "Scottish Water".

Flood Prevention (Scotland) Act 1961 (c.41)

3 (1) The Flood Prevention (Scotland) Act 1961 is amended as follows.

(2) In section 4(2) (flood prevention schemes), for "a sewerage or water authority" substitute "Scottish Water".

(3) In section 12(1)(b) (contributions to and by local authorities), for "a sewerage or water authority" substitute "Scottish Water".

(4) In section 15(1) (interpretation), the definitions of "sewerage authority" and "water authority" are repealed.

Local Government (Scotland) Act 1966 (c.51)

4 In section 46(1) (general interpretation) of the Local Government (Scotland) Act 1966, in the definition of "water undertaking", for "a local water authority" substitute "Scottish Water".

Countryside (Scotland) Act 1967 (c.86)

5

(1) The Countryside (Scotland) Act 1967 is amended as follows.

(2) In section 61 (improvement of waterways for purposes of open-air recreation)-

(a) in subsection (5), for "every water authority having" substitute "Scottish Water so far as it has",

(b) in subsection (6)-

(i) for "any water authority" substitute "Scottish Water",

(ii) for "the authority" substitute "Scottish Water",

(c) in subsection (8), for "to every water authority which has refused its consent" substitute ", where it has refused its consent, to Scottish Water".

(3) In section 63 (provision of recreational facilities by water authorities)-

(a) in subsection (1)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "them" substitute "it",

(iii) for "the authority have" substitute "Scottish Water has",

(b) in subsection (2)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the authority have" substitute "Scottish Water has",

(iii) for "they do" substitute "it does",

(iv) for "the authority are" substitute "Scottish Water is",

(c) in subsection (4)-

(i) for "A water authority" substitute "Scottish Water",

(ii) for "they" substitute "it",

(iii) for "the authority" substitute "Scottish Water",

(d) in subsection (5)-

(i) for "A water authority" substitute "Scottish Water",

(ii) for "they think" substitute "it thinks",

(iii) for "them" substitute "it",

(iv) for "the authority" substitute "it",

(e) in subsection (6), for "a water authority" in both places where the expression occurs substitute "Scottish Water",

(f) in subsection (7)-

(i) for "A water authority" substitute "Scottish Water",

(ii) for "the authority" substitute "Scottish Water",

(g) in subsection (8)-

(i) for "the water authority" substitute "Scottish Water",

(ii) for "the authority" substitute "Scottish Water",

(h) in subsection (9)-

(i) for "A water authority" substitute "Scottish Water",

(ii) for "they consider" substitute "it considers",

(iii) for "them" substitute "it",

(i) in subsection (11)-

- (i) for "a water authority" substitute "Scottish Water",
- (ii) for "they have" substitute "it has".

(4) In section 78(1) (interpretation), the definition of "water authority" is repealed.

Local Government (Scotland) Act 1973 (c.65)

6 (1) The Local Government (Scotland) Act 1973 is amended as follows.

(2) In section 170A(5)(c) (production and supply of heat and electricity etc. by local authorities), for "a water authority" substitute "Scottish Water".

(3) In section 170B(2) (provision supplementary to section 170A)-

- (a) for "water authorities" substitute "Scottish Water",
- (b) for "a water authority" substitute "Scottish Water".
- (c) in paragraph (a), for "paragraph (a)" substitute "paragraphs (aa) to (ac)".

Reservoirs Act 1975 (c.23)

7 In section 1(4)(a) (definition of "undertakers") of the Reservoirs Act 1975, for the words "a water authority, that authority" substitute "Scottish Water, that body".

House of Commons Disqualification Act 1975 (c.24)

8 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified for membership of the House of Commons), the entries for the East of Scotland Water Authority, the North of Scotland Water Authority and the West of Scotland Water Authority are repealed.

Race Relations Act 1976 (c.74)

9 In Schedule 1A (bodies and other persons subject to general statutory duty) to the Race Relations Act 1976, paragraph 23 is repealed.

Competition Act 1980 (c.21)

10 Section 11(3)(cc) (reference of public bodies and certain other persons to the Commission) of the Competition Act 1980 is repealed.

Wildlife and Countryside Act 1981 (c.69)

11 (1) The Wildlife and Countryside Act 1981 is amended as follows.

(2) In section 27(1) (interpretation of Part I), the definition of "water authority" is repealed.

(3) In section 36(7) (interpretation of section 36), in the definition of "relevant authority", for "a water authority" substitute "Scottish Water".

Local Government and Planning (Scotland) Act 1982 (c.43)

12 In section 14 (local authority's duties in relation to the provision of recreational, sporting, cultural and social facilities and activities)-

(a) in subsection (2), for the words "a water authority" substitute "Scottish Water", and

(b) subsection (3) is repealed.

Civic Government (Scotland) Act 1982 (c.45)

13 In section 54 (playing of instruments, singing, playing radios etc.) of the Civic Government (Scotland) Act 1982, in subsection (3)-

(a) in paragraph (a), for "a water authority" substitute "Scottish Water", and

(b) the words from "In this subsection" to the end are repealed.

Roads (Scotland) Act 1984 (c.54)

14 (1) The Roads (Scotland) Act 1984 is amended as follows.

(2) In section 7(8)(b) (general provisions as to special roads)-

(a) after "by" in the first place where it occurs insert "(i)",

(b) the words "or water authority" are repealed,

(c) after "Schedule" insert ", or

(ii) Scottish Water,"

(d) after "their" insert "or, as the case may be, its".

(3) In section 76(4) (provision supplementary to section 75)-

(a) after "by" in the first place where it occurs insert "(a)",

(b) the words "or water authority" are repealed,

(c) after "Schedule" in the third place where it occurs insert ", or

(b) Scottish Water,"

(d) after "their" insert "or, as the case may be, its".

(4) In section 135 (restriction of powers of sewerage authorities)-

(a) in subsection (1), for "any sewerage authority" substitute "Scottish Water",

(b) in subsection (2), for "a sewerage authority" substitute "Scottish Water".

(5) In section 151(1) (interpretation), the definitions of "sewerage authority" and "water authority" are repealed.

(6) In Schedule 1 (procedure for making or confirming certain orders and schemes)-

(a) in Part I, in paragraph 3, in the Table, in entry (ii), in the second column-

(i) the words "or water authority" are repealed,

(ii) at the end insert "and Scottish Water",

(b) in Part II, in paragraph 10(b)-

(i) after "on" insert "(i)",

(ii) the words "or water authority" are repealed,

(iii) at the end insert ", and

(ii) Scottish Water."

Water (Fluoridation) Act 1985 (c.63)

15 In section 5(1) (interpretation) of the Water (Fluoridation) Act 1985-

(a) in the definition of "statutory water undertaker", for "a water authority" substitute "Scottish Water", and

(b) the definition of "water authority" is repealed.

Bankruptcy (Scotland) Act 1985 (c.66)

16 In section 70 (supplies by utilities) of the Bankruptcy (Scotland) Act 1985, in subsection (4)(c), for the words from "a water" to the end substitute "Scottish Water".

Debtors (Scotland) Act 1987 (c.18)

17 (1) The Debtors (Scotland) Act 1987 is amended as follows.

(2) In each of sections 1(5)(e) (competence of time to pay direction) and 5(4)(e) (competence of time to pay order), after sub-paragraph (iia) insert-

"(iib) a local authority (within the meaning of section 70 of the Water Industry (Scotland) Act 2002 (asp 3)) in respect of any charges payable to them by virtue of section 37 of that Act;"

(3) In section 106 (interpretation), in the definition of "summary warrant", after paragraph (cc) insert-

"(cca) paragraph 2 of schedule 4 to the Water Industry (Scotland) Act 2002 (asp 3);"

Housing (Scotland) Act 1987 (c.26)

- 18 (1) The Housing (Scotland) Act 1987 is amended as follows.
- (2) In section 61 (secure tenant's right to purchase)-
- (a) in subsection (2)(a), for paragraph (ia) substitute-
"(ia) Scottish Water";
- (b) in subsection (11)(l)-
- (i) for "a water authority or sewerage authority in Scotland" substitute
"Scottish Water",
- (ii) after "of" insert "Scottish Water and".
- (3) In section 212(4) (rent increase notices), for paragraph (e) substitute-
"(e) Scottish Water".
- (4) In section 233(3) (power of local authority to assist in provision of
separate service water pipes for houses)-
- (a) for "a water authority" substitute "Scottish Water", and
- (b) for "the water authority" substitute "Scottish Water".
- (5) In section 300(1)(a) (meaning of "public sector authority"), for "a
water authority" substitute "Scottish Water".
- (6) In section 338(1) (interpretation), the definitions of "sewerage
authority" and "water authority" are repealed.

Food Safety Act 1990 (c.16)

- 19 In section 56(1) (water supply: Scotland) of the Food Safety Act 1990-
- (a) for the words from "a water" to "1980" substitute "Scottish Water",
- (b) for "that Act" substitute "the Water (Scotland) Act 1980".

Environmental Protection Act 1990 (c.43)

- 20 (1) The Environmental Protection Act 1990 is amended as follows.
- (2) In section 45 (collection of controlled waste)-
- (a) in subsection (10), for "a sewerage authority" in each place where it
occurs substitute "Scottish Water",
- (b) after subsection (10), insert-
"(10A) Where a waste collection authority, in the exercise of its powers
under subsection (7)(a) above, proposes to execute works outside its area, it shall, in

addition to any notice served under section 3(2) of the Sewerage (Scotland) Act 1968 as applied by virtue of subsection (10) above, serve notice of its intention on the waste collection authority within whose area it is proposed to execute the works together with a description of the proposed works and if, within two months after the service of the notice, the waste collection authority on whom it was served objects to the proposed works, and that objection is not withdrawn, the first-mentioned authority shall not proceed to execute the works without consent aftermentioned but may refer the matter for the determination of the Scottish Ministers who may grant consent to the proposed works either unconditionally or subject to such terms and conditions as they think just, or who may withhold their consent, and their decision on the matter shall be final."

(3) In section 53 (duty of authorities as respects disposal of controlled waste: Scotland)-

- (a) in subsection (2), for "and (10)" substitute ", (10) and (10A)",
 - (b) in subsections (4) and (5), for "the sewerage authority" wherever it occurs substitute "Scottish Water",
 - (c) in subsection (5), for "a sewerage authority" substitute "Scottish Water",
 - (d) subsection (5A) is repealed.
- New Roads and Street Works Act 1991 (c.22)*

21 (1) The New Roads and Street Works Act 1922 is amended as follows.

(2) In section 108(6)(a) (the road works authority and other relevant authorities), for the words from "a sewer" to the end substitute "a public sewer, Scottish Water;".

(3) In section 109(6)(a) (permission to execute works), for the words from "a sewer" to the end substitute "a public sewer, Scottish Water;".

(4) In section 117(3)(a) (restriction on works following substantial works carried out for roads purposes)-

- (a) for "a sewer vested in a sewerage authority" substitute "a public sewer",
 - (b) for "that authority" substitute "Scottish Water".
- (5) In section 148 (sewers)-

- (a) in subsection (1)-
 - (i) for "a sewer vested in a sewerage authority" substitute "a public sewer",
 - (ii) for "that authority" substitute "Scottish Water",
- (b) in subsection (3)(a)-
 - (i) for "a sewerage authority" substitute "Scottish Water",
 - (ii) for "authority" in the second place where it occurs substitute "body",

(c) in subsection (4), for "a sewer vested in a sewerage authority" substitute "a public sewer".

(6) In section 149(4)(a) (provision as to reinstatement of sewers, drains or tunnels), for the words from "a sewer" to "that authority" substitute "a public sewer, Scottish Water".

(7) In section 164(1) (minor definitions)-

(a) after the definition of "in" insert-

""public sewer" has the same meaning as in the Sewerage (Scotland) Act 1968;"

(b) the definition of "sewerage authority" is repealed.

(8) In Schedule 6 (roads with special engineering difficulties)-

(a) in paragraph 7(3)(b), for "a sewer vested in a sewerage authority" substitute "a public sewer",

(b) in paragraph 9-

(i) for "A sewerage authority in whom a sewer is vested" substitute "Scottish Water",

(ii) for "their sewer" substitute "a public sewer".

Natural Heritage (Scotland) Act 1991 (c.28)

22 (1) The Natural Heritage (Scotland) Act 1991 is amended as follows.

(2) In section 20 (drought orders)-

(a) in subsection (3), for "a water authority" substitute "Scottish Water",

(b) in subsection (5), for "the water authority" in both places where it occurs substitute "Scottish Water",

(c) in subsection (6)-

(i) for "a water authority" substitute "Scottish Water",

(ii) for "the authority" in both places where the expression occurs substitute "Scottish Water",

(d) in subsection (7)-

(i) for "the water authority" substitute "Scottish Water",

(ii) for "water authorities generally" substitute "Scottish Water".

(3) In section 22(1) (interpretation), in the definition of "compensation water"-

(a) for "a water authority" substitute "Scottish Water", and

(b) for "their" substitute "its".

(4) In section 24 (rights of entry and inspection under Parts II and III)-

(a) in subsection (1)-

(i) for "a water authority" substitute "Scottish Water", and

- (ii) in paragraph (a), for "the authority" substitute "Scottish Water",
- (b) in subsection (9)-
- (i) for "a water authority" substitute "Scottish Water", and
- (ii) in paragraph (a), for "the authority" substitute "Scottish Water".
- (5) In Schedule 7 (further provisions regarding drought orders)-

- (a) in paragraph 3, for "a water authority" substitute "Scottish Water",
- (b) in paragraph 3(b)-
- (i) for "the authority" substitute "Scottish Water",
- (ii) for "they think" in both places where the expression occurs substitute "it thinks",
- (iii) in sub-sub-paragraph (i), for "the authority's" substitute "its",
- (c) in paragraph 5-
- (i) in sub-paragraph (1), for "a water authority" and "that authority" substitute "Scottish Water",
- (ii) in sub-paragraph (2), for "a water authority" substitute "Scottish Water",
- (iii) in sub-paragraph (3), for "a water authority" and "the authority" substitute "Scottish Water",
- (d) in paragraph 6, for "a water authority" substitute "Scottish Water",
- (e) in paragraph 7-
- (i) for the words from the beginning to "order" substitute "Where powers have been conferred on Scottish Water by a drought order, the Scottish Ministers may require it",
- (ii) for "them" substitute "it".
- (6) In Schedule 8 (procedure for making drought orders), in paragraph 1(3), in the Table, in the second column of the first entry, paragraph (b) is repealed.

(7) In Schedule 9 (compensation in respect of drought orders), in paragraph 1, for "a water authority" substitute "Scottish Water".

Local Government etc. (Scotland) Act 1994 (c.39)

23 In the Local Government etc. (Scotland) Act 1994, the following provisions are repealed-

- (a) sections 62 to 64 (new water and sewerage authorities and their areas),
- (b) section 65(2) (general duties of Scottish Ministers and of water authorities),
- (c) section 66 (codes of practice for new water and sewerage authorities),
- (d) sections 67A to 100 (Water Industry Commissioner and other provisions about new authorities),
- (e) sections 116 to 126 (miscellaneous provisions about new authorities),
- (f) Schedules 7 (constitution etc. of new authorities), 8 (water and sewerage areas) and 9A to 11 (Water Industry Commissioner, recovery by diligence of water charges and water and sewerage transfer schemes), and

(g) in Schedule 13 (modifications of enactments)-
(i) paragraph 38(8)(b) and (c),
(ii) paragraph 56(5),
(iii) paragraph 66(3),
(iv) paragraph 72(7)(a) and (9)(b),
(v) paragraph 75(2)(a) and (c), (3), (4)(a), (5), (6), (7)(a)(ii), (b)(ii) and
(c)(ii), (8)(b), (9) to (11), (13)(c), (15), (17)(a) and (c), (18)(a), (19)(a), (21), (22), (25)(a),
(27) and (28)(a), (c), (e) and (f),
(vi) paragraph 92(55)(b),
(vii) paragraph 119(6)(d) and (e), (7)(b), (11)(b), (31)(c), (38)(e),
(53)(a)(ii), (iii) and (v),
(viii) paragraph 128(3)(c),
(ix) paragraph 133(3),
(x) paragraph 135(8) and (10)(a)(iv) and (v),
(xi) paragraph 137(2)(b) and (6)(b) and (c),
(xii) paragraph 152(2)(c) and (7)(b) and (c),
(xiii) paragraph 167(8)(c),
(xiv) paragraph 168(2), (3), (4)(a) and (6),
(xv) paragraph 181(b).
Environment Act 1995 (c.25)

24 (1) The Environment Act 1995 is amended as follows.

(2) In section 36(3) (codes of practice with respect to environmental and recreational duties), for paragraphs (e) to (f) substitute-

"(da) Scottish Water;"

(3) In Part II of Schedule 21 (application of certain enactments to the Crown), paragraph 6 is repealed.

Planning (Consequential Provisions) (Scotland) Act 1997 (c.11)

25 Paragraph 58 of Schedule 2 (consequential amendments) to the Planning (Consequential Provisions) (Scotland) Act 1997 is repealed.

Water Industry Act 1999 (c.9)

26 (1) The Water Industry Act 1999 is amended as follows.

(2) The following provisions are repealed-

(a) in section 12 (Water Industry Commissioner for Scotland), subsections (1), (2) and (4),
(b) section 13 (Commissioner's advice on charges),

(c) Schedule 2 (Water Industry Commissioner and consultative committees), and

(d) in Part II of Schedule 3 (minor and consequential amendments), paragraphs 7 to 15.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

27 (1) The Public Finance and Accountability (Scotland) Act 2000 is amended as follows.

(2) In section 23(7) (economy, efficiency and effectiveness examinations), for the words from "a new" to "1994 (c.39)" substitute "Scottish Water".

(3) The following provisions are repealed-

(a) in schedule 1 (capital expenditure of and borrowing by certain statutory bodies), paragraph 6, and

(b) in schedule 4 (modifications of enactments relating to Part 2), paragraph 12(2) and (4).

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

28 In schedule 3 (devolved public bodies) to the Ethical Standards in Public Life etc. (Scotland) Act 2000-

(a) the entries for the East of Scotland Water Authority, the North of Scotland Water Authority and the West of Scotland Water Authority are repealed, and

(b) at the appropriate place, the following entry is inserted-
"Scottish Water".

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The largest element of the Act (Part 3) provides for the establishment of Scottish Water as the successor to the three water and sewerage authorities established by the Part II of Local Government etc. (Scotland) Act 1994 ("the 1994 Act"). Many of the provisions in Part 3 of the Act are based on equivalent provisions in Part II of the 1994 Act. Provisions have also been included for Scottish Water to have a board structure that differs from that of the existing authorities and for Scottish Water to have a greater measure of commercial freedom than that enjoyed by the existing authorities.

4. The Act's other elements provide for changes to the representation of the interests of water customers to take account of the establishment of Scottish Water (Part 1) and the creation of a Drinking Water Quality Regulator with powers in respect of Scottish Water and private water supplies (Part 2). As these provisions deal with the regulatory framework within which Scottish Water will operate, they precede those relating to the creation of Scottish Water.

5. The 1994 Act refers to the water authorities that it created as "the new water and sewerage authorities". For ease of understanding, these notes refer to them as the "existing authorities".

PART 1 - WATER INDUSTRY COMMISSIONER AND CUSTOMER PANELS

Section 1 - Water Industry Commissioner for Scotland

6. This section continues in existence the Water Industry Commissioner for Scotland established by section 67A of the 1994 Act (which was inserted by section 12 of the Water Industry Act 1999 ("the 1999 Act")).

7. Subsection (2) gives the Commissioner the general function of promoting the interests of customers of Scottish Water in relation to the provision of services by it in the exercise of its core functions. This is similar to the Commissioner's general function under the 1994 Act in relation to the existing authorities. Scottish Water's "core functions" are all its statutory functions, but excluding its new general power under section 25(1) and the ancillary power under section 25(2) so far as relating to that power (see section 70(2)).

8. Subsection (3) gives the Scottish Ministers a power of direction over the Commissioner, equivalent to that provided in the 1994 Act (under section 67A(4)).

9. Subsection (4) gives effect to Part 1 of schedule 1 which makes detailed provision as to the appointment of the Commissioner and as to the Commissioner's staff, status and accounts which essentially is a restatement of the current provision as to those matters set out in Schedule 9A to the 1994 Act.

Section 2 - Water Customer Consultation Panels

10. This section provides for the establishment of Water Customer Consultation Panels to replace the Water Industry Consultative Committees established by section 67A(2) of the 1994 Act. Those Committees will cease to exist by virtue of the repeal of section 67A of the 1994 Act by the Act.

11. Subsection (1) provides that the Scottish Ministers shall establish the Panels by an order, which must specify, or make provision for determining, the area of Scotland for which each Panel is responsible and the number of Panel members (subsection (2)).

12. The Panels are to represent the views and interests of the customers of Scottish Water (in respect of Scottish Water's core functions) in the area for which the Panel is responsible and must publish reports on matters they consider relevant to the interests of those customers and make any recommendations they consider appropriate to the Commissioner about the promotion of the interests of those customers (subsections (3) and (4)). The Commissioner must have regard to any representations made by the Panels, and to their reports and recommendations, in exercising the Commissioner's functions in relation to Scottish Water (subsection (5)).

13. Subsection (6) gives effect to Part 2 of schedule 1, which makes detailed provisions as to the membership of the Panels, remuneration of their members, provision of administrative support to them, and their proceedings.

14. An order under subsection (1) is to be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

Section 3 - Functions of the Commissioner

15. This section is based on section 68 of the 1994 Act as amended by the 1999 Act. Subsection (1) requires the Commissioner to investigate complaints about Scottish Water made by its current, potential or former customers (in respect of its core functions). Such complaints can be made direct to the Commissioner or through the Customer Panels, which are required to pass any complaints on to the Commissioner (subsection (2)). The Commissioner need not investigate any complaint which is not pursued with Scottish Water or which he judges is vexatious or frivolous (subsection (3)). The Commissioner can make representations to Scottish Water on behalf of a complainer (subsection (4)).

16. Subsection (5) places a new duty on the Commissioner to report back to a Customer Panel on any complaint referred to the Commissioner by the Panel under subsection (2), either by providing a report on the investigation the Commissioner has carried out or by giving the Panel reasons why the Commissioner decided not to investigate such a complaint.

17. Subsection (6) gives the Commissioner a duty to advise the Scottish Ministers on any matter that appears to relate to Scottish Water's standards of service or the manner in which it conducts its customer relations (in respect of its core functions).

18. Subsection (7) gives the Commissioner a general ancillary power to do anything that may aid the exercise of the functions of the Commissioner.

Section 4 - Power of the Commissioner to require information

19. This section, which is based on section 69 of the 1994 Act as amended by the 1999 Act, places a duty on Scottish Water to provide the Commissioner with information,

where it is reasonable that the Commissioner should require the information to carry out the Commissioner's functions (subsection (1)).

20. Subsection (2) provides for the Commissioner or Scottish Water to refer to the Scottish Ministers for a final decision in any disagreements over whether information sought by the Commissioner is sought reasonably.

Section 5 - Annual reports by, and information from, the Commissioner

21. This section provides for the Commissioner to make annual reports and provide information. Subsection (1), which is based on section 70 of the 1994 Act as amended by the 1999 Act, requires the Commissioner to submit an annual report to the Scottish Ministers at the end of each financial year on the exercise of the Commissioner's functions and to provide Ministers with any further information on these that they require. Subsection (2) requires the Commissioner's annual report to summarise action taken by him in the course of the year in connection with Customer Panel recommendations, representations or reports and, where he has decided to take no action, a summary of the reasons. Subsection (3) provides that Commissioner's annual report must set out any Ministerial directions given to the Commissioner during the year.

Section 6 - Funding of the Commissioner

22. This section sets out how the Commissioner will be funded and is based on section 71 of the 1994 Act as amended by the 1999 Act and SI 1999/1820.

23. Subsection (1) gives the Scottish Ministers power to pay grants to the Commissioner, should they choose to do so. Subsection (2) gives the Scottish Ministers powers to direct Scottish Water to make payments to the Commissioner in respect of the Commissioner's expenses.

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.

PART 3 - SCOTTISH WATER

Section 20 - Scottish Water

45. Subsection (1) establishes Scottish Water as a body corporate. Subsection(2) gives effect to schedule 3, which makes detailed provision as to the constitution etc. of Scottish Water.

Section 21 - Transfer of functions from new water and sewerage authorities

46. This section transfers all of the functions of the existing authorities to Scottish Water. This has the effect of making Scottish Water responsible for the discharge of the statutory, or core, water and sewerage functions conferred on the existing authorities, principally by the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980 ("the 1980 Act").

Section 22 - Transfer of property and liabilities

47. Subsection (1) provides for all of the existing authorities' property and liabilities to transfer to Scottish Water. As a result, the public water and sewerage infrastructure will vest in Scottish Water and Scottish Water will become responsible for discharging all of the existing authorities' contractual obligations, including those relating to the staff of the existing authorities, all of whom will transfer - under section 23 - to Scottish Water.

48. Subsection (2) makes it clear that property and liabilities can transfer despite any provision that would otherwise prevent or restrict the transfer.

Section 23 - Transfer of staff

49. This makes it clear that the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) will apply so as to transfer staff of the existing authorities to Scottish Water, in accordance with the terms of those Regulations, at the same time as the functions and property and liabilities of the existing authorities transfer.

Section 24 - Dissolution of new water and sewerage authorities etc

50. Subsection (1) empowers the Scottish Ministers to dissolve the existing authorities on dates to be set by them by order; and that different dates may be set for the dissolution of each authority (subsection (2)). The existing authorities could continue in existence after the transfer of their functions, property, staff etc. to Scottish Water to enable them, for example, to complete final accounts.

51. Subsection (3) gives the Scottish Ministers power by order to make ancillary provisions in connection with the establishment of Scottish Water, the dissolution of the existing authorities and the transfer to Scottish Water. This power will, in particular, enable the Scottish Ministers to deal with transitional and consequential issues arising

from the move to the single authority. For example, the Scottish Ministers will be able to provide that water and sewerage charges made in the name of the existing authorities can be passed to Scottish Water.

52. Orders under this section must be made by statutory instrument and are subject to negative procedure in the Parliament. An order under subsection (3) can textually amend primary legislation but if it does so it will be subject to affirmative procedure (see section 68).

Section 25 - General powers

53. This section confers on Scottish Water wider general powers than those that the existing authorities have under section 89 of the 1994 Act.

54. Subsection (1) confers on Scottish Water a new general power to engage in any activity (whether in Scotland or elsewhere) that is not inconsistent with the exercise by it of its core water and sewerage functions. Subsection (2) confers on Scottish Water an ancillary power to do anything that will assist it to discharge both its core functions and its general power under subsection (1). Subsections (3) to (5) provide illustrations of the things that Scottish Water can do by virtue of this ancillary power; but the list is not an exhaustive description of what can be done. Subsections (3)(e), (4) and (5) are based on provision made in relation to local authorities by section 1 of the Local Government (Contracts) Act 1997.

55. Subsection (6) makes it clear that the powers conferred on Scottish Water by this section are additional to any other powers they may have; but the powers cannot be used to avoid any express prohibitions or restrictions placed on it elsewhere. It also establishes that the section does not enable Scottish Water to raise funds beyond the restrictions provided for in sections 41 and 42.

56. Scottish Water must exercise its powers under this section in accordance with directions to be given by the Scottish Ministers under section 56.

Section 26 - Customer standards code

57. This section, which is based on section 66 of the 1994 Act, provides for Scottish Water to prepare and observe a code of practice, referred to as "the customer standards code", in relation to its core functions.

58. Subsection (1) places a duty on Scottish Water to prepare and then submit to the Commissioner a customer standard code covering customer service standards, procedures for dealing with complaints and the payment of compensation. The first code is to be submitted to the Commissioner by the time Scottish Water submits its first charges scheme to the Commissioner (subsection (2)). The code can be varied from time to time and replaced with a new one (subsection (3)). The code comes into force when it is approved (subsection (4)). The procedure for approval is specified at section 27.

59. Subsection (5) places a duty on Scottish Water to endeavour to observe the approved code; but contravention will not of itself give rise to civil or criminal liability. Scottish Water must inform its customers of the contents of a code (subsection (6)).

60. Subsection (7) places on the Commissioner the duty to monitor Scottish Water's compliance with an approved code. It also gives the Commissioner the powers to report to the Scottish Ministers on compliance and to require Scottish Water to review a code.

Section 27 - Approval of customer standards code

61. This section, which is based on provisions at sections 66 and 76 of the 1994 Act, specifies the procedure for approval of Scottish Water's customer standards code. The Commissioner must approve the customer standards code as drafted or can agree changes to it with Scottish Water before approving it (subsection (1)), and before approving a code the Commissioner must consult each Customer Panel. Where the Commissioner cannot approve the code without modification, and the Commissioner and Scottish Water cannot reach agreement on modifications to the draft code, it is to be sent to the Scottish Ministers for approval (subsection(2)). Scottish Water can require the Commissioner to send the code to the Scottish Ministers for approval where 3 months after submission it has not been approved by the Commissioner (subsection (3)).

62. Subsection (4) gives the Scottish Ministers power to approve codes sent to them under subsections (2) or (3), after consulting each Customer Panel, either without modification or, after having consulted the Commissioner and Scottish Water, with modification.

63. Subsection (5) requires the Commissioner to send the Scottish Ministers a copy of any code approved by the Commissioner; and subsection (6) requires the Scottish Ministers to send to the Commissioner a copy of any code that they approve.

Section 28 - Consultation code

64. This section requires Scottish Water to have a code of practice on consultation.

65. Subsection (1) provides that the consultation code should set out the consultation Scottish Water will carry out on any significant activities and proposals for such activities, in respect of their core functions. The code must be submitted to Scottish Ministers for approval.

66. Subsection (2) requires the consultation code to include provision for consultation with those who live, work or have business in the area affected by the activity being consulted on, or those who represent the interests of such persons. The code must also contain provision about how consultation is to be carried out by Scottish Water and provision for Scottish Water to have regard to the views of those consulted.

67. Subsection (3) provides that Scottish Water must consult each Customer Panel before submitting the consultation code to Scottish Ministers, and have regard to their views. Subsection (4) provides for Scottish Ministers to approve the consultation code, and

subsection(5) provides that the code only comes into force when Ministers have approved the code.

68. The code can be varied from time to time or replaced with a new one (Subsection (8)). Scottish Water is required to publish the code and provide a copy of it to anyone who asks for it (subsection (6) and must endeavour to comply with it (subsection (7)).

Section 29 - Charges for goods and services

69. This section is equivalent to section 74 of the 1994 Act, but revised to clarify Scottish Water's powers to charge for goods and services.

70. Subsection (1) is drawn more widely than 74(1)(a) of the 1994 Act and gives Scottish Water a broad general power under which to charge for any goods that it might supply and any services that it might provide.

71. Subsection (2)(a) makes exemptions from the general charging power in subsection(1) in respect of water supplied under the circumstances set out in:

- section 9A of the Water (Scotland) Act 1980, which ensures that no charge can be made for supplies of water for certain fire-fighting purposes; and
- section 47 of that Act, which continues any arrangements in force before 16th May 1949 under which no charge was made for supplies of water.

72. Subsection (2)(b) avoids the general power at subsection (1) overlapping with other specific powers to charge by specifying that subsection (1) does not apply where another charging power already exists. Subsection (3) provides that the power under subsection (1) to charge can be exercised:

- in respect of services provided in the exercise Scottish Water's core functions as provider of water and sewerage services on the public networks, as part of a charges scheme agreed with the Commissioner; and
- in respect of such services or in any other case, by individual agreements with customers.

73. Subsection (4) provides that where charges are not based on a charges scheme agreed with the Commissioner, the basis for calculating charges is to be a matter for Scottish Water's discretion.

Section 30 - Maximum charges for services provided with help of Scottish Water

74. This section is based on section 75 of the 1994 Act.

75. Subsection (1) gives the Scottish Ministers the power by order to set maximum charges that a person other than Scottish Water can recover from another person for the supply of water and/or sewerage services that are provided with the help of Scottish Water. Subsection(2) explains the situations where, for the purposes of this provision,

water and sewerage services are treated as supplied with the help of Scottish Water. These are:

- where a person has access to services that have been provided by Scottish Water but are made available to the person by someone other than Scottish Water; or
- where a person is provided with a supply of water or sewerage or a service for sewage disposal by another person who was initially supplied by Scottish Water.

76. Subsection (3) allows the maximum charge imposed to vary according to the person, circumstances or localities involved. It allows the Scottish Ministers to fix a maximum amount either by specifying the maximum amount of the charge or by specifying a method to calculate that amount.

77. Subsection (4) enables a person who pays a charge that is above the maximum amount fixed under subsection (1) to recover the excess amount from the person who had levied the charge.

78. An order under subsection (1) must be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

Section 31 - Charges schemes

79. This section is based on section 76(1) to (4) and (8) of the 1994 Act, as amended by section 13 of, and Part II of Schedule 3 to, the 1999 Act.

80. Subsection (1) requires Scottish Water to make a scheme setting out what it will charge for the provision of services that are part of its core functions. Charges schemes must fix charges paid for services and may also set the times and methods of payment of such charges. This differs from section 76(1) of the 1994 Act in that that subsection empowers rather than requires the existing authorities to make charges schemes. Subsection (2) continues to exempt trade effluent from the scope of charges schemes required at subsection (1). Subsection (3) allows a charges scheme to make different provisions for different classes of customers, including different charges depending on individual circumstances or location. Subsection (4) specifies that a charges scheme comes into force when it has been approved in accordance with section 32.

81. Subsection (5) places a duty on the Commissioner and the Scottish Ministers when approving a charges scheme to consider any advice published under section 33.

82. Subsection (6) allows Scottish Water to enter into individual charge agreements with any person independent of a charges scheme for services provided by Scottish Water.

Section 32 - Approval of charges schemes

83. This section is based on section 76(5) to (7) of the 1994 Act, as amended by the 1999 Act. It sets out the procedure for approval of charges scheme made by Scottish Water under section 31. The procedure is similar to that set out in section 27 for approval of the customer standards code.

Section 33 - Commissioner's advice on charges

84. This section, which follows closely section 75A of the 1994 Act, as inserted by section 13 of the 1999 Act, provides for the Commissioner to advise the Scottish Ministers on the amount of charge income needed by Scottish Water during a particular period.

85. Subsection (1) requires the Commissioner to provide the Scottish Ministers when they ask for it with advice on the matters to be taken into or left out of account in setting charges. The advice should cover whatever period the Scottish Ministers specify (subsection (2)).

86. Subsection (3) sets out the factors that will have a bearing on the amount of charge income required by Scottish Water and to which the Commissioner must have regard in framing the advice.

87. Subsection (4) identifies the aspects of Scottish Water's core functions whose costs to Scottish Water the Commissioner must bear in mind in framing the advice. Paragraphs (a) to (c) of the subsection provide functions that were set out at section 75A(4) of the 1994 Act. Paragraph (d) is a new and additional function, covering the first time provision of water and sewerage services. As a result the cost to Scottish Water of making such provision in accordance with the Scottish Ministers' requirements will be a factor in the Commissioner's advice.

88. Subsection (5) gives the Scottish Ministers 3 months in which to consider the advice submitted to them by the Commissioner. By the end of that period they must have accepted it, with or without any modifications they judge necessary, or have rejected it substituting advice of their own. Subsection (6) requires the Scottish Ministers to give their reasons for modifying or rejecting advice and for substituting their own advice.

89. Subsection (7) requires the Commissioner to publish the advice submitted to the Scottish Ministers along with any modification or substitution made by the Ministers and Ministers' reasons for the modification or substitution. It follows that in practice the Commissioner can only publish this material once the process established in this section has been completed.

Section 34 - Publication of summary of charges scheme

90. This section is based on section 77 of the 1994 Act. It places a duty on Scottish Water to make publicly available any charges scheme made by it and approved under section 32 and to publish a summary of the scheme, along with information as to how copies of the scheme can either be inspected or obtained.

Section 35 - Liability of occupiers etc for charges

91. This section is a substantially amended version of section 78 of the 1994 Act. It makes provision for the basis on which those responsible for premises with water or sewerage services provided by Scottish Water shall be liable for payment of charges.

92. Subsection (1) establishes that where Scottish Water provides premises with water or sewerage services it is deemed to be providing those services to the current occupier of the premises. It makes clear that it also covers the provision and maintenance of communication and supply pipes (as defined in the Water (Scotland) Act 1980). Subsection (2) makes the same deeming provision in relation to provision of sewerage services to premises. If any premises are unoccupied then the owner is treated as the occupier for the purposes of these deeming provisions (subsection (3)). These deeming provisions can be disapplied by agreement with Scottish Water (subsection (4)).

93. Subsections (5) to (8) make provision for enabling Scottish Water to recover charges from a former occupier of premises even after that occupier has left the premises in cases where the occupier had agreed with Scottish Water to charge by reference to metered consumption of services. Such an occupier remains liable for the charges if they fail to give Scottish Water 48 hours notice that they are about to cease occupying the premises (subsection (6)). Subsection (7) determines the period for which the occupier remains liable. Subsection (8) establishes that references to 48 hours in this section - by excluding weekends and public holidays from the reckoning - effectively mean two working days.

Section 36 - Section 35: meaning of "occupier"

94. This section provides in cases where the local authorities bill and recover the charges set by Scottish Water under section 37(1)(a) (i.e. in the case of dwellings that are not charged for water and sewerage services by reference to metered consumption), that the occupiers of premises for the purposes of paying charges are to be those liable to pay council tax in respect of the premises or, where the premises are exempt dwellings for council tax purposes, those who would be so liable. For other cases, subsection (2) gives the Scottish Ministers power by order to make provision for particular persons to be treated as being, or not being, the occupiers of particular premises for the purposes of liability for water charges.

Section 37 - Collection of charges by local authority

95. This section, based on section 79 of the 1994 Act, enables the Scottish Ministers to determine by order that, where Scottish Water provides unmeasured water and sewerage services to dwellings, charges are to be collected by the appropriate local authority for the area concerned and that the authority should make payments to Scottish Water in respect of charges collected (subsection (1)). Such an order need not apply to all the dwellings in an area. Subsection (2) sets the matters that may be included in an order made under subsection (1) and these include provisions as to forms and procedures and appeals.

96. Subsection (3) gives effect to schedule 4, which largely restates Schedule 10 to the 1994 Act (repealed by Schedule 7, paragraph 23 (f)), on recovery of unpaid charges by the local authority.

97. An order under subsection (1) must be made by statutory instrument and is subject to negative procedure in the Parliament (see section 68).

Section 38 - Suspension of collection of charges by local authority

98. This section applies to dwellings that are subject to a determination under section 37(1)(a) (i.e. for which the local authorities bill and collect water charges). The section provides a process whereby Scottish Water can give, and subsequently withdraw, wholly or partly, notice to a local authority that it should no longer bill or collect water charges from any such dwellings as are specified in the notice. Where Scottish Water has served such a notice, it will have to bill and collect the water or sewerage charges itself.

99. Subsection (4) provides that Scottish Ministers may make regulations regarding such a notice, and subsection (5) provides that these regulations may provide for a payment to be made by Scottish Water to the relevant local authority in respect of any reasonable administrative expenses it incurs as a consequence of the notice.

Section 39 - Primacy of duty to maintain domestic water supply etc.

100. This section, based on section 80 of the 1994 Act, establishes that the charging powers at sections 29(1) and 37 do not affect Scottish Water's duties to provide water and sewerage services for domestic purposes to those on the public networks. In effect it means that domestic customers cannot be disconnected for not paying their water and sewerage charges.

Section 40 - Reduced charges

101. This section is based on section 81 of the 1994 Act.

102. Subsection (1) empowers the Scottish Ministers to make regulations reducing the charges under section 37 to be paid by those to be defined in the regulations, including exempting some from charges altogether. Subsection (2) provides for regulations to specify the reduced amount to be paid or to make rules for determining the reduced amount. The Scottish Ministers can define those who qualify for the reduced charge, and set the rules for calculating the reduced charge, by reference to such factors as they see fit (subsection (3)).

103. Regulations under subsection (1) must be made by statutory instrument and are subject to negative procedure in the Parliament (see section 68).

Section 41 - Duties and powers relating to finance

104. This section updates the duties at section 83 of the 1994 Act. In common with the other sections in the Act dealing with Scottish Water's finances, it does so taking account as appropriate of the Public Finance and Accountability (Scotland) Act 2000 and the introduction of resource budgeting and accounting in the public finances.

105. Subsection (1) effectively requires Scottish Water taking one year with another to ensure that it has sufficient income to meet its expenditure. Subsection (2) gives the Scottish Ministers power, by order, to set Scottish Water minimum rates of return as measured against the value of its average net assets that it must achieve. Subsection (3) provides for the Scottish Ministers to place Scottish Water under specified duties of a financial nature. But if such a duty replaces a duty to achieve a rate of return set under subsection (2), the duty must be set out in an order which will be subject to approval of

the Scottish Parliament. Subsection (4) gives the Scottish Ministers flexibility as to the periods to be covered by and the content of a duty imposed by them under subsection (3).

106. Subsection (6) requires Scottish Water to ensure that its charges make a proper contribution to the cost of discharging its duties in light of its present and likely future circumstances and of any duty placed on it by subsections (2) or (3).

107. An order under subsection (2) must be made by statutory instrument and is subject to negative procedure in the Parliament. An order under subsection (5) must be made by statutory instrument and is subject to affirmative procedure in the Parliament (see section 68).

Section 42 - Financing and borrowing

108. This section is based on section 84 of the 1994 Act. It gives the Scottish Ministers power to pay grants, on such conditions as they think fit, to Scottish Water to cover the costs of carrying out its functions, or of reimbursing the costs to the authority of reducing charges for groups of customers if required to do so under section 40 (subsections (1) and (2)).

109. Subsection (3) gives Scottish Water the power to borrow from the Scottish Ministers on conditions set by them and from others within or beyond the United Kingdom, subject to the approval of the Scottish Ministers. Scottish Water's net borrowings under these powers in each financial year must not exceed the limit to be set for each year in a Budget Act (subsections (4) and (5)). Sums borrowed from the Scottish Ministers are to be repaid as directed by them (subsection (6)).

Section 43 - Guarantees

110. This section, based on section 85 of the 1994 Act, gives the Scottish Ministers power to guarantee, on whatever terms and conditions they wish, borrowings by Scottish Water and its subsidiaries (subsection (1)). The Scottish Ministers must inform the Scottish Parliament immediately after they issue a guarantee (subsection (2)). Scottish Water must reimburse the Scottish Ministers on terms to be determined by them whenever they are required to honour a guarantee (subsection (3)).

111. Subsection (4) applies the Companies Act definition of "subsidiary".

Section 44 - Directions as to payment and investment

112. This section, based on section 86 of the 1994 Act, gives the Scottish Ministers power to direct Scottish Water to pay them any surplus funds held by it, or to invest those funds as Ministers direct, unless by virtue of another provision Scottish Water is required to pay the sum over to the Scottish Ministers anyway.

Section 45 - Accounts and audit

113. This section, based on section 87 of the 1994 Act, as amended by the Public Finance and Accountability (Scotland) Act 2000, deals with Scottish Water's accounting and audit duties.

114. Subsection (1) requires Scottish Water to keep proper accounting records and to prepare a statement of accounts for each financial year which is to be sent for auditing by the Auditor General for Scotland in accordance with sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000.

115. Subsection (2) requires Scottish Water to prepare its statement of accounts in accordance with directions given by the Scottish Ministers.

Section 46 - Acquisition of land by agreement

116. This section, based on section 98 of the 1994 Act, gives Scottish Water power to acquire land, wherever situated, by agreement with third parties for the purposes of any of its functions, not just its core water and sewerage functions, or for the provision by others of a public water supply or public sewerage system (subsection (1)).

117. Subsection (2) provides that the provision in subsection (3) only applies for land acquired for the purposes of Scottish Water's core functions. Subsection (3) provides for the incorporation into this section of the Lands Clauses Acts (with specified exceptions), and, as appropriate, sections of the Railway Clauses Consolidation (Scotland) Act 1845 (as originally enacted) and Part IV of Schedule 4 to the Water (Scotland) Act 1980 relating to the payment of compensation on land acquisition.

Section 47 - Compulsory acquisition of land

118. This section, based on section 99 of the 1994 Act, deals with Scottish Water's power to acquire land compulsorily.

119. Subsection (1) permits the Scottish Ministers to authorise the compulsory acquisition of land (other than water rights) in Scotland by Scottish Water for use in the exercise of its core functions or to allow others to provide public water or sewerage systems.

120. Subsection (2) provides that the exercise by Scottish Water of the powers at subsection(1) is without prejudice to section 17 of the Water (Scotland) Act 1980, which deals with the acquisition of water rights, and subject to section 18 of that Act, which deals with the authorisation of the compulsory acquisition of land necessary for the purposes of an order under section 17.

121. Subsection (3) applies the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to compulsory purchases by Scottish Water as it applies to other statutory undertakers.

122. Subsection (4) gives the Scottish Ministers the power to authorise Scottish Water to acquire land compulsorily, or acquire it by agreement, for the purposes of exchanging it for such land as is mentioned in section 1(2)(b) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (i.e. land forming part of a common or open space or held inalienably by the National Trust for Scotland).

Section 48 - Disposal of land

123. This section, based on section 100 of the 1994 Act, permits Scottish Water to dispose of any of its land generally, but requires it to get the Scottish Ministers' consent where the proceeds of a disposal would be less than market value.

Section 49 - Interests of customers

1. This section restates section 65(2)(a)(i) and (ii) of the 1994 Act, but with the additional provision that it refers to disability and remote areas, as well as medical conditions and rural areas. It places duties on the Scottish Ministers and Scottish Water, when discharging their respective functions under the Act, and under the 1968 and the 1980 Acts, to have regard to the needs and interests of customers and potential customers, especially those who have special needs because of a disability or medical condition, or who live in rural or remote areas.

124.

Section 50 - Economy, efficiency and effectiveness

125. This section places a general duty on Scottish Water to ensure that its resources are used economically, efficiently and effectively.

Section 51 - Sustainable development

126. This section places a new general duty on Scottish Water in terms of sustainable development. Subsection (2) qualifies the duty so that the Scottish Ministers and Scottish Water need only act in accordance with it where doing so does not run counter to the performance of any enactment relating to the performance of their functions. Subsection (3) provides that Scottish Water must have regard to any guidance issued by Scottish Ministers in complying with this duty.

Section 52 - Public access to land held by Scottish Water

127. This section places a general duty on Scottish Water to have regard to the desirability of preserving for the public freedom of access to land held by it.

Section 53 - Environmental matters

128. This section is an amended version of 65(2)(b), (c) and (d) of the 1994 Act.

129. Subsections (1) and (2) place duties on the Scottish Ministers and Scottish Water, when discharging their respective functions under the Act, and under the 1968 and the 1980 Acts, to have regard to the desirability of preserving public access and protecting and conserving particular aspects of the environment. Subsection (3) requires the Scottish Ministers and Scottish Water, in exercising those functions, to further environmental conservation and enhancement of natural beauty.

130. Subsection (4) qualifies the duties on the Scottish Ministers and Scottish Water under subsection (3) so that they need only act to meet them where doing so does not run counter to the purposes of any enactment relating to any of their functions.

Section 54 - Protection of natural heritage

131. This section places duties on Scottish Natural Heritage (SNH) and Scottish Water in terms of protecting the natural heritage. It is based on section 73 of the 1994 Act.

132. Subsections (1) to (3) require SNH to notify Scottish Water of areas of land that have been designated under natural heritage protection legislation and of any cancellations or variations of those designations. Subsection (4) requires Scottish Water to consult SNH about works or other activity that it plans to undertake on any sites that have been notified to it by SNH, where the activity planned is likely to impact adversely on the land in question.

133. Subsection (5) requires Scottish Water to consult a National Park Authority where any works or other activity that it plans to undertake could affect land within the National Park.

134. Subsection (6) permits Scottish Water to take action in an emergency on land that would be covered by (4) and (5) without first notifying SNH or a National Park Authority. Where Scottish Water acts in this way it must inform SNH or the relevant National Park Authority of what it has done as soon as is practicable.

Section 55 - Consultation with Health Boards

135. This section places a duty on Scottish Water to consult the relevant Health Board when it appears to Scottish Water that services provided by it in the exercise of its core functions are likely to give rise to a significant risk to public health in the Health Board's area. Scottish Water must exercise its core functions so as to seek to reduce or eliminate the risk, having regard to any views expressed by the Health Board. This duty is without prejudice to the duty under section 11(6) requiring a public water supplier served with an enforcement notice to consult the relevant Health Board and have regard to their views.

Section 56 - Directions

136. This section revises substantially section 116 of the 1994 Act on the power of the Scottish Ministers to give directions.

137. Subsection (1) places a new duty on the Scottish Ministers to give directions to Scottish Water as to the exercise of its general powers under section 25 and its internal management powers under schedule 3 and also as to how Scottish Water is managed generally. These directions could, for example, cover the responsibilities of the members and staff of Scottish Water and could require prior approval of, or consultation with, the Scottish Ministers, to any proposed course of action (subsection (2)). Subsection (2)(c) clarifies that a direction under this section could allow matters in it to be determined by third parties where that is appropriate.

138. Subsection (3) gives the Scottish Ministers a general power to give directions to Scottish Water, whether general or specific. The Scottish Ministers must consult Scottish Water before giving any directions under this section (subsection (4)).

139. Subsection (5) requires Scottish Water to comply with all directions given by the Scottish Ministers under Part 3.

Section 57 - Information and reports

140. This section, which is based on section 118 of the 1994 Act, places duties on Scottish Water in terms of providing information and making reports.

141. Subsection (1) requires Scottish Water to provide the Scottish Ministers with any information about it that the Scottish Ministers require. For that purpose Scottish Water must make available or give access to any information requested of it by anyone authorised to do so by the Scottish Ministers (subsection (2)).

142. Subsection (3) requires Scottish Water to produce a half-year and full annual reports of its activities. The half-year report must include a statement of accounts for the period covered by it (subsection (4)).

143. Subsection (5) provides that Scottish Water's annual report must include reports on its performance against the customer standards code, consultation code and its duties on economy, effectiveness and efficiency and sustainable development.

144. Subsection (6) provides that Scottish Water must submit its half-year and annual reports to the Scottish Ministers, the Commissioner and the Convener of the Water Customer Consultation Panels and must publish them. Subsection (8) provides that the Scottish Ministers must lay the reports before the Scottish Parliament.

Section 58 - Records

145. This section is a restatement of the provisions at section 119 of the 1994 Act, requiring Scottish Water to consult the Keeper of the Records of Scotland about arrangements for preserving and managing its records and to allow the Keeper reasonable access to the records.

Section 59 - Validity of actings

146. This section provides that failure to comply with any duty imposed under Part 3 of the Act does not affect the validity of Scottish Water's actings.

Section 60 - Private legislation

147. This section, which is based on section 121 of the 1994 Act, gives Scottish Water power to promote, in the Scottish Parliament only, and oppose in the Westminster and Scottish Parliaments, private legislation. It may promote private legislation only with the consent of the Scottish Ministers, who must withhold their consent if the powers being sought by Scottish Water could be achieved by means of an order under the 1968 Act or the 1980 Act.

Section 61 - Supply of goods and services to and by local authorities.

148. This replaces section 122 of the 1994 Act. The effect of the provision is that Scottish Water can provide goods and service to local authorities and can arrange for other public bodies to provide goods and services to it.

Section 62 - Information from local authorities and assessors

149. This section restates section 123 of the 1994 Act and enables provision to be made for Scottish Water to obtain from local authorities and assessors information that would help it set and recover its charges under a charges scheme.

150. Subsection (1) gives the Scottish Ministers power to makes regulations requiring local authorities or assessors to supply Scottish Water with relevant information. Relevant information is information held by local authorities in connection with council tax, council water charges, non-domestic water and sewerage rates and non-domestic rates and information held by assessors in connection with their functions, but only such information as would help Scottish Water in setting and collecting its own charges under a charges scheme (subsections (2) and (3)).

151. Regulations under subsection (1) must be made by statutory instrument and are subject to negative procedure in the Parliament (see section 68).

PART 4 - MISCELLANEOUS AND GENERAL

Section 63 - Register of trade effluents: confidential information

152. This inserts a new section 37C into the 1968 Act which enables a person to apply to Scottish Water to have commercially confidential information which might otherwise be registered in the Register of Trade Effluents under section 37A of the 1968 Act withheld from that Register. Information is commercially confidential for the purposes of the new section if its publication in the Register would prejudice to an unreasonable degree the commercial interests of the applicant or any other person (subsection (9)).

153. If Scottish Water determines that information is commercially confidential it will withhold the information from the Register (subsection (1)). If Scottish Water fails to make a determination within 21 days of a request to do so, or such other period as may be specified by order, it is treated as having determined the information is commercially confidential (subsection (2)). Where Scottish Water determines the information is not commercially confidential the information must not be entered in the register for a period of 21 days from the notification of that determination (subsection (3)). The Scottish Ministers may by direction provide that in the public interest specified information or descriptions of information must be included in the Register regardless of whether the information is commercially confidential (subsection (4)). Information excluded from the register ceases to be regarded as commercially confidential after 4 years following the

determination unless Scottish Water determines on the application of the person providing the information that is still commercially confidential (subsection (5)).

154. An order under the new section must be made by statutory instrument and is subject to negative procedure in the Parliament (see subsection (8)).

Section 64 - Works in connection with metering

155. This section inserts a new section 24B in the 1980 Act, which enables Scottish Water to require works associated with metering such as provision of a new service pipe and alterations to internal pipework to be undertaken.

Section 65 - Contravention of water byelaws: penalties and proceedings

156. This section amends section 72 of the 1980 Act to provide an increase in the maximum penalty from level 4 to level 5 for contraventions of water byelaws. It also amends that section to enable a prosecution for a contravention of the water byelaws to be brought within 6 months of it being discovered, rather than within 6 months of it being committed as is the case at present. But a prosecution cannot be brought more than 3 years after the offence was committed.

Section 66 - Offences by bodies corporate and partnerships

157. This makes the usual provision in relation to offences committed under the Act by bodies corporate (including Scottish Water) and partnerships so that, in appropriate cases, directors, partners and other senior officers can be prosecuted as well as the body or partnership itself.

Section 67 - Crown application

158. The provisions of the Act will bind the Crown, but will not affect the Queen in her private capacity (subsection (1)). The Crown will not, though, be criminally liable for any contravention of the Act but an application can be made to the Court of Session for a declarator (subsection (2)). Crown officials can, however, be prosecuted for any breach they commit in their own right (subsection (3)).

159. Subsection (4) requires the consent of the Crown Estate Commissioners to be obtained before the compulsory purchase powers at section 47 of the Act are exercised in relation to the Crown Estate.

Section 68 - Orders and regulations

160. This section makes general provision concerning the powers of the Scottish Ministers under the Act to make orders and regulations. All such orders and regulations must be made by statutory instrument (subsection (1)). Ancillary provision can be included in them (subsection (2)). Otherwise this section makes provision as to the form of Parliamentary control over statutory instruments made under the Act.

Section 69 - Ancillary provision

161. This section confers on the Scottish Ministers a stand-alone general power to make orders ancillary to the provisions of the Act and any other consequential matters in connection with the Act and its purposes.

162. An order under this section must be made by statutory instrument and is subject to negative procedure in the Parliament; but it will be subject to affirmative procedure if it textually amends primary legislation (see section 68).

Section 70 - Interpretation

163. This section makes provision for the interpretation of terms used in the Act.

Section 71 - Modification of enactments

164. This section gives effect to schedules 5, 6 and 7 which make amendments to the 1968 Act, the 1980 Act and other enactments that are consequential on the Act's provisions, particularly the establishment of Scottish Water.

Schedule 1 - Water Industry Commissioner and Customer Panels: further provisions

165. Part 1 of the schedule is based on the provisions at Part 1 of Schedule 9A to the 1994 Act on the Commissioner's appointment, employment of staff, status and financial accounting duties.

166. Part 2 makes detailed provision, based to some extent on Part 2 of Schedule 9A to the 1994 Act, in relation to the establishment of the new Water Customer Consultation Panels.

167. Paragraph 5 provides for a single Convener to be appointed by the Scottish Ministers who will be Convener of all the Panels. This replaces the current arrangement where the Commissioner chairs the Consultative Committees.

168. Paragraph 6 provides that the Convener is to be a member of each Panel and that the Convener is to appoint the other members of the Panels in accordance with procedures and on terms and conditions approved by the Scottish Ministers. Currently, the Commissioner appoints the other members of the Consultative Committees. The number of members in a Panel is fixed by the order under section 2 that establishes it.

169. The schedule also provides for the Convener and Panel members to be paid remuneration on terms set by the Scottish Ministers, and that they may also be paid allowances. It makes it clear that the Commissioner's office will provide administrative support to the Convener and Panels, and requires Panels' proceedings to be conducted on terms determined by the Convener, after consulting the Panel members, and approved by Ministers.

Schedule 2 - Drinking Water Quality Regulator: further provision as to powers of entry etc.

170. This schedule regulates the exercise of the powers of entry etc. conferred by sections 9(1), 12(3)(a) and 13(3)(a).

171. The schedule provides that the Regulator can demand entry to premises as of right only at reasonable times except in an emergency. 24 hours notice must be given, unless the premises are those of a public water supplier. Paragraph 2 provides for the Regulator to obtain a warrant from a sheriff or justice of the peace to enforce the powers of entry etc, and that a warrant will be granted only if certain conditions are met. The Regulator or anyone appointed by him is required to produce written evidence of their authority to exercise their powers. Paragraph 4 allows those authorised to enter premises to take other persons and equipment with them into the premises. Paragraph 5 requires anyone entering the premises under the powers in this schedule to leave them as secure as they found them.

172. The schedule also establishes the circumstances in which the Scottish Ministers will pay compensation in respect of the exercise of the Regulator's powers, and makes it an offence for anyone gaining access to premises under these powers to disclose commercially confidential information gained as a result of that access (paragraphs 6 and 7).

Schedule 3 - Scottish Water: status, constitution, proceedings etc.

173. This schedule makes provision in relation to Scottish Water, which is in several respects significantly different from that in schedule 7 to the 1994 Act relating to the constitution etc. of the existing authorities.

174. Paragraph 1 establishes that Scottish Water is not a Crown body.

175. Paragraph 2 provides for Scottish Water's board to contain non-executive and executive members, with non-executive members being appointed by the Scottish Ministers. It establishes that the Chief Executive of Scottish Water is to be an executive board member and that the other executive members, who will be employees of Scottish Water, are to be appointed (in effect co-opted) by the board, subject to the approval of the Scottish Ministers. Sub-paragraphs (1) and (2) set upper and lower limits on the numbers of executive and non-executive board members and establishes that non-executive members must always be in a majority of at least two. Sub-paragraphs (4) and (5) provide for one non-executive member to be appointed who appears to have special knowledge of the interests of Scottish Water's employees, and for Scottish Ministers to consult employee representatives on the specification for this appointment.

176. Paragraph 3 provides that all board members except the Chief Executive are to have fixed term appointments. Board members can resign by written notice and otherwise the Scottish Ministers (in the case of non-executive members) or Scottish Water determines their terms and conditions, with Scottish Ministers' approval (in the case of executive members). This paragraph also establishes the circumstances in which board members may be removed from the board.

177. Paragraph 4 provides for the Scottish Ministers to appoint a non-executive board member to chair the board and another to act as that member's deputy. It establishes the

circumstances in which these members may resign and can be removed from these positions and their other terms and conditions of appointment.

178. Paragraph 5 provides for the non-executive board members to be paid remuneration and for all members to receive allowances for their expenses. The Scottish Ministers can direct Scottish Water to make pension provision in respect of non-executive members.

179. Paragraph 6 establishes that the Scottish Ministers will appoint the first Chief Executive of Scottish Water and that Scottish Water, with the approval of the Scottish Ministers, will make subsequent appointments. It provides for Scottish Water, with the approval of the Scottish Ministers, to appoint staff and requires it, subject to the Scottish Ministers' approval, to set terms and conditions for staff. It must make pension provision for its staff.

180. Paragraph 7 provides for Scottish Water to establish committees, which can include employees who are not members. Paragraph 8 enables Scottish Water to determine its own quorum and proceedings and those of its committees.

181. Paragraph 9 allows Scottish Water to delegate powers to its committees, members and staff. Paragraph 10 provides that vacancies among members or errors in their appointment will not invalidate any actions by Scottish Water.

182. Paragraph 11 ensures that Scottish Water's board can act validly pending the first appointment of the non-executive member provided for in paragraph 2(4).

183. Paragraph 12 provides for the initial round of executive board member appointments in anticipation of Scottish Water being vested with its functions and in the expectation of those appointed being employed by Scottish Water.

184. The powers conferred on Scottish Water by this schedule must be exercised in accordance with directions under section 56.

Schedule 4 - Recovery by local authority of unpaid charges

185. This schedule largely restates in respect of Scottish Water the provisions at Schedule 10 to the 1994 Act. It provides for a local authority, as a billing and collection agent for Scottish Water's domestic unmetered charges, to recover outstanding charges due by domestic customers through the summary warrant procedure that applies at present in the case of the existing water authorities or by raising court actions. A summary warrant will authorise earnings arrestment and ordinary arrestments but not poinding and sale.

Schedule 5 - Modifications of the Sewerage (Scotland) Act 1968

186. This schedule makes amendments to the Sewerage (Scotland) Act 1968. The amendments are principally consequential upon the transfer to Scottish Water of the core sewerage functions.

Schedule 6 - Modification of the Water (Scotland) Act 1980

Transport and the Environment Committee

32nd Meeting, 2001	19 December 2001, cols 2448-2482
1st Meeting, 2002	9 January 2002, cols 2496-2533
2nd Meeting, 2002	16 January 2002, cols 2558-2601
3rd Meeting, 2002	23 January 2002, cols 2604-2660
4th Meeting, 2002	30 January 2002, cols 2663-2679

Stage 3

(a) Subordinate Legislation Committee

6th Meeting, 2002	12 February 2002, cols 783-784
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(b) Consideration by the Parliament

14 February 2002	cols 6520-6613 and cols 6637-6661
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