



Water Services etc. (Scotland) Act 2005

2005 asp 3

PART 2

PROVISION OF WATER AND SEWERAGE SERVICES

Scottish Water: water and sewerage services undertaking

13 Water and sewerage services undertaking

- (1) Scottish Water must, in accordance with any requirements made under subsection (2), secure the establishment of a business undertaking for the purposes of this section.
- (2) The Scottish Ministers may require Scottish Water to—
 - (a) take such steps for the purposes of or in connection with—
 - (i) the establishment and development of the undertaking; and
 - (ii) Scottish Water's interest in the undertaking,as the Scottish Ministers may specify; and
 - (b) take the steps, or any particular steps, by such date as they may specify.
- (3) It is, subject to the approval of the Scottish Ministers, for Scottish Water to determine whether the undertaking is—
 - (a) to be—
 - (i) a subsidiary (to be construed in accordance with section 736 of the Companies Act 1985 (c. 6)) of Scottish Water;
 - (ii) a company (within the meaning of that Act) formed by Scottish Water (on its own or with others); or
 - (iii) a partnership; or
 - (b) to be established through such other arrangements as Scottish Water considers it appropriate to make.
- (4) The functions of the undertaking are—
 - (a) to become a water services provider and a sewerage services provider; and
 - (b) thereafter, to perform the activities authorised by the water services and sewerage services licences held by it.

Status: This is the original version (as it was originally enacted).

- (5) Accordingly, the undertaking must (as soon as reasonably practicable after it is established) apply for a water services licence and a sewerage services licence.
- (6) The Scottish Ministers may by order provide that paragraphs 1 and 2 of schedule 2 have effect—
 - (a) as regards an initial application by the undertaking for a licence; and
 - (b) following such an application, as regards the granting of the licence and the incorporation in it of conditions,with or subject to such modifications as the order may specify.
- (7) The undertaking may engage in any activity which it considers is not inconsistent with the performance of the activities authorised by the water services and sewerage services licences held by it.
- (8) After the undertaking is established, Scottish Water must not treat it any more or less favourably than it treats—
 - (a) in relation to services as respects the supply of water, other water services providers; and
 - (b) in relation to services as respects the provision of sewerage and the disposal of sewage, other sewerage services providers.
- (9) Any reference in any enactment to Scottish Water is to be construed as not including the undertaking.

14 Financing, borrowing and guarantees

- (1) In such circumstances as the Scottish Ministers may by order specify, the Scottish Ministers may, with the consent of Scottish Water, make grants to the business undertaking established under section 13(1) of such amounts as the Scottish Ministers may determine.
- (2) In such circumstances as the Scottish Ministers may by order specify, the undertaking—
 - (a) may, with the consent of Scottish Water, borrow from the Scottish Ministers (and they may lend to it) sums of such amounts as the Scottish Ministers may determine;
 - (b) may not, except as described in subsection (4)(b), borrow money from any other person apart from Scottish Water.
- (3) In any financial year, the net amount of sums borrowed under subsection (2)(a) must not exceed the amount specified for that year for the purposes of this subsection in a Budget Act.
- (4) In subsection (3), “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 Scottish Water, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

- (5) Any loans made under subsection (2)(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 specify.
- (6) In such circumstances as the Scottish Ministers may by order specify, the Scottish Ministers may guarantee, in such manner as they consider appropriate, the discharge of any financial obligation in connection with any sums borrowed as described in subsection (4)(b).
- (7) Immediately after a guarantee is given under subsection (6), the Scottish Ministers must lay a statement of the guarantee before the Parliament.
- (8) Where any sums are paid out in fulfilment of a guarantee under subsection (6), the undertaking must make to the Scottish Ministers, at such times and in such manner as they may from time to time specify—
 - (a) payments of such amounts as they may so specify in or towards repayment of those sums; and
 - (b) payments of interest, at such rate as they may so specify, on the amount outstanding for the time being in respect of those sums.
- (9) In such circumstances as the Scottish Ministers may by order specify, the Scottish Ministers may, with the consent of Scottish Water, subscribe for share or loan capital of the undertaking.
- (10) Any—
 - (a) grants under subsection (1) may be made;
 - (b) loans under subsection (2)(a) may be made;
 - (c) guarantees under subsection (6) may be given; and
 - (d) subscriptions for share or loan capital under subsection (9) may be made, subject to such conditions as the Scottish Ministers consider it appropriate to impose.

15 Transfer of staff etc. to the undertaking

- (1) Scottish Water must, following a requirement made by the Scottish Ministers to do so, transfer such of its staff to the employment of the business undertaking established under section 13(1) as are necessary for the purposes of or in connection with the matters mentioned in subsection (8).
- (2) The contract of employment of a person transferred by virtue of subsection (1)—
 - (a) is not terminated by the transfer; and
 - (b) has effect from the date of transfer as if originally made between the person and the undertaking.
- (3) Without prejudice to subsection (2), where a person is transferred to the employment of the undertaking by virtue of subsection (1)—
 - (a) all the rights, powers, duties and liabilities of Scottish Water under or in connection with the person's contract of employment are transferred to the undertaking on the date of transfer; and
 - (b) anything done before that date by or in relation to Scottish Water in respect of the person or that contract is to be treated from that date as having been done by or in relation to the undertaking.

Status: This is the original version (as it was originally enacted).

- (4) Subsections (1) to (3) do not affect any right of any person to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those subsections.
- (5) Scottish Water must, following a requirement made by the Scottish Ministers to do so, transfer such of its property (including rights) and liabilities to the undertaking as are necessary for the purposes of or in connection with the matters mentioned in subsection (8).
- (6) A transfer by virtue of subsection (5) may be—
- (a) to such extent; and
 - (b) subject to such conditions,
- as Scottish Water may, with the consent of the Scottish Ministers, determine.
- (7) A transfer by virtue of subsection (5)—
- (a) has effect in relation to any property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or prohibit the transfer of the property or liabilities; and
 - (b) has the effect of vesting in the undertaking any property or liabilities to which it applies.
- (8) For the purpose of subsections (1) and (5), those matters are—
- (a) applications by the undertaking for water services and sewerage services licences; and
 - (b) the performance by the undertaking of its activities.