
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provisions and modifications in consequence of the Water Services etc. (Scotland) Act 2005 (“the 2005 Act”).

The Order provides for a right of reference for Scottish Water, enabling it to require the Water Industry Commission for Scotland (“the WIC”) to refer its determination of Scottish Water’s charges under the Water Industry (Scotland) Act 2002 to the Competition Commission (“the Commission”). The Order also provides for a right of reference to the Commission for water and sewerage services providers against the conditions of their licences granted under the 2005 Act, or against any modification of those conditions. The Order also modifies enactments as a consequence of the creation of the WIC in the 2005 Act, and to reflect the functions of the Commission in considering a reference under this Order.

Article 3 provides for the WIC to refer licence conditions, or the modification of such conditions, or a determination or a revised determination of Scottish Water’s charges to the Commission, and provides for the terms in which a reference is to be framed. Article 4 sets out the time limits within which the Commission’s report on a reference is to be made. Article 5 provides the Commission with powers of investigation in relation to references, by applying provisions in the Enterprise Act 2002, subject to the modifications specified in the article. Article 6 places a duty on the Commission to consult on the conclusions it proposes to include in its report on a reference.

Article 7 requires the Commission to report to the WIC on a reference and requires the WIC to publish it. The Commission and WIC are obliged to consider any issues of public interest, or commercial or personal sensitivity which may arise.

Article 8 enables the WIC to propose modifications of a water services licence or a sewerage service licence, or a determination or a revised determination of Scottish Water’s charges in consequence of the Commission’s report. Article 9 enables the Commission to veto the modifications proposed by the WIC and to replace these in whole or in part with its own modifications. Article 10 obliges the Commission to consider any issues of public interest, or commercial or personal sensitivity before publishing modifications made under article 9. Article 10 also provides the Commission with powers of investigation for the purposes of article 9.

Article 11 and the Schedule provide for the modification of primary and subordinate legislation. The modifications either insert references to the WIC or the Convener and any member of the Water Customer Consultation Panels or refer to the powers of the Commission to consider references under this Order.