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# Water Environment and Water Services (Scotland) Act 2003

2003 asp 3

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 29th January 2003 and received Royal Assent on 5th March 2003**

**PART 1**

PROTECTION OF THE WATER ENVIRONMENT

**CHAPTER 1**

PURPOSE, GENERAL DUTIES AND DEFINITIONS

**1 General purpose of Part 1**

(1) The purpose of this Part is to make provision for or in connection with protection of the water environment, including making provision, and enabling provision to be made, for or in connection with implementing Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy (referred to in this Part as "the Directive").

(2) In this Part "protection of the water environment" includes, in particular-

(a) preventing further deterioration of, and protecting and enhancing, the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on those aquatic ecosystems,

(b) promoting sustainable water use based on the long-term protection of available water resources,

(c) aiming at enhancing protection and improvement of the aquatic environment through, amongst other things, specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing out of discharges, emissions and losses of the priority hazardous substances,

(d) ensuring the progressive reduction of pollution of groundwater and preventing further pollution of it, and

(e) contributing to mitigating the effects of floods and droughts,  
with a view to contributing to the achievement of the aims specified in subsection (3).

(3) Those aims are-

(a) the provision of a sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

(b) a significant reduction in pollution of groundwater,

(c) the protection of territorial and other marine waters, and

(d) achieving the objectives of international agreements, including those which aim to prevent and eliminate pollution of the marine environment, in relation to which measures are adopted under paragraph 1 of Article 16 of the Directive in pursuance of a proposal under paragraph 3 of that Article.

## 2 The general duties

(1) The Scottish Ministers and SEPA must exercise their functions under the relevant enactments so as to secure compliance with the requirements of the Directive.

(2) The responsible authorities must exercise their designated functions so as to secure compliance with the requirements of the Directive.

(3) Subsection (4) applies to-

(a) the Scottish Ministers in exercising their functions, and SEPA in exercising its functions, under the relevant enactments in pursuance of subsection (1),

(b) the responsible authorities in exercising their designated functions in pursuance of subsection (2).

(4) The Scottish Ministers, SEPA and the responsible authorities must-

(a) have regard to the social and economic impact of such exercise of those functions,

(b) so far as is consistent with the purposes of the relevant enactment or designated function in question-

(i) promote sustainable flood management, and

(ii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions.

(5) Without prejudice to subsections (1) to (4), the Scottish Ministers and every public body and office-holder must, in exercising any functions, have regard to the desirability of protecting the water environment.

(6) The Scottish Ministers may give directions (whether general or specific) and guidance to-

(a) SEPA, in relation to the exercise of its functions under the relevant enactments,

(b) the responsible authorities, in relation to the exercise of their designated functions; and SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

(7) Directions under subsection (6) may include provision 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.

(8) In this section-

"the relevant enactments" means this Part and such other enactments as the Scottish Ministers may by order specify,

"responsible authorities" means such public bodies and office-holders, or public bodies and office-holders of such descriptions, as the Scottish Ministers may by order designate for the purposes of this Part; and "designated functions", in relation to a responsible authority, means such of the authority's functions relating to the water environment as are specified in

relation to the authority in an order made by the Scottish Ministers (whether or not the order designating the authority as a responsible authority).

### **3 The water environment: definitions**

(1) The following provisions have effect for the interpretation of this Part.

(2) "The water environment" means all surface water, groundwater and wetlands.

(3) "Surface water" means inland water (other than groundwater), transitional water and coastal water.

(4) "Groundwater" means water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

(5) "Wetland" means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water and which is directly dependent, with regard to its water needs, on a body of groundwater or a body of surface water.

(6) "Inland water" means-

(a) all standing or flowing water on the surface of the land (other than transitional water), and

(b) all groundwater,  
within the landward limits of coastal water.

(7) "Transitional water" means water (other than groundwater) in the vicinity of river mouths which is partly saline in character as a result of its proximity to coastal water but which is substantially influenced by freshwater flows.

(8) "Coastal water" means water (other than groundwater) within the area extending landward from the 3 mile limit up to the limit of the highest tide or, where appropriate, the seaward limits of any bodies of transitional water, but does not include any water beyond the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland.

(9) "The 3 mile limit" means the limit consisting of a line every point of which is at a distance of 3 miles on the seaward side from the nearest point of the baseline from which the breadth of the territorial sea of the United Kingdom adjacent to Scotland is measured; and "miles" means international nautical miles of 1,852 metres.

(10) Nothing in this Part applies to any water contained in-

(a) artificial swimming pools,

(b) mains or other pipes belonging to Scottish Water or which are used by Scottish Water or any other person for the purpose only of providing a supply of water to any premises,

(c) water treatment works,

(d) sewers and drains which drain into sewers,

(e) sewage treatment works,

(f) artificially created systems for the treatment of pollutants.

(11) The Scottish Ministers-

(a) must deposit with SEPA maps showing what appear to them to be the landward and seaward limits of every body of transitional water,

(b) may, if they consider it appropriate to do so, deposit with SEPA maps showing the landward and seaward limits of coastal water,

(c) may, if they consider it appropriate to do so by reason of any change of what appears to them to be any of the limits referred to in paragraphs (a) and (b), deposit a map showing the revised limits.

(12) SEPA must make the maps deposited with it under subsection (11) available, at all reasonable times, for public inspection free of charge.

(13) In subsection (8), "the seaward limits of any bodies of transitional water" means the places for the time being shown as such in the latest map deposited under subsection (11).

## **CHAPTER 2**

### **RIVER BASIN MANAGEMENT PLANNING**

#### *River basin districts*

#### **4 Establishment of river basin districts**

(1) The Scottish Ministers must by order designate one or more river basin districts for the purposes of this Part.

(2) A river basin district is an area, identified in the order, comprising one or more river basins together with any relevant bodies of groundwater and bodies of coastal water which are to form part of that river basin district in accordance with subsection (3).

(3) A relevant body of groundwater or body of coastal water is to form part of the nearest river basin district or, if it appears to the Scottish Ministers that another river basin district is more appropriate, that district.

(4) An order under subsection (1) (a "designation order") must identify each river basin district by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

(5) The Scottish Ministers must send to SEPA a copy of-

(a) a designation order, and

(b) the map prepared in pursuance of subsection (4).

(6) SEPA must make the copies of the designation order and map available, at all reasonable times, for public inspection free of charge.

(7) In this section "relevant body of groundwater" means a body of groundwater which does not fully follow any particular river basin.

## **5 Characterisation of river basin districts**

(1) SEPA must, by 22nd December 2004, carry out a characterisation of each river basin district.

(2) In this section "characterisation", in relation to a river basin district, means-

- (a) an analysis of the characteristics of the water environment,
- (b) a review of the impact of human activity on the status of the water environment, and
- (c) an economic analysis of water use.

(3) SEPA must review and, where necessary, update each characterisation carried out under subsection (1) by 22nd December 2013 and by the end of each period of 6 years thereafter.

(4) A characterisation under subsection (1) and a review under subsection (3) must be carried out in accordance with the technical specifications set out in Annexes II and III to the Directive.

(5) The Scottish Ministers may by regulations make further provision as to the characterisations and reviews to be carried out under this section, including provision as to-

- (a) the criteria by reference to which characterisations and reviews are to be carried out, including criteria for designating bodies of surface water as artificial or heavily modified,
- (b) the methods and procedures to be followed in carrying out characterisations and reviews.

## **6 Bodies of water used for the abstraction of drinking water**

(1) The Scottish Ministers must by order identify any bodies of water within each river basin district which-

- (a) are used for the abstraction of water intended for human consumption and either-
  - (i) provide more than 10 cubic metres of such water per day, or
  - (ii) serve more than 50 persons, or
- (b) are intended to be used as mentioned in paragraph (a).

(2) An order under subsection (1) may identify the bodies of water by reference to a map prepared for the purposes of the order and laid before the Parliament.

(3) The Scottish Ministers must send to SEPA a copy of-

- (a) an order made under subsection (1), and
- (b) any map prepared in pursuance of subsection (2).

## **7 Register of protected areas**

(1) SEPA must, for each river basin district-

- (a) by 22nd December 2004 prepare, and
- (b) thereafter maintain,

a register of the protected areas lying (whether wholly or partly) within the district in accordance with regulations made by the Scottish Ministers.



(2) Such regulations may, in particular, make provision as to-

- (a) the form and manner in which the register is to be prepared and maintained,
- (b) the information which the register is to contain.

(3) In this section, "protected areas" means-

- (a) any bodies of water identified under section 6, and
- (b) the areas and bodies of water falling within subsection (4).

(4) The areas and bodies of water falling within this subsection are those for the time being designated or otherwise identified as requiring special protection under any Community instrument providing for the protection of surface water and groundwater or for the conservation of habitats or species directly depending on water, or any enactment implementing such a Community instrument, including, in particular-

- (a) areas designated for the protection of economically significant aquatic species,
- (b) bodies of water designated as recreational waters,
- (c) nutrient-sensitive areas, and

(d) areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in the protection of the habitats or species.

(5) The Scottish Ministers may by regulations make such further provision for identifying, or enabling the identification of, the areas and bodies of water falling within subsection (4) as they consider necessary or expedient, including provision for identifying any of those areas or bodies of water by reference to-

- (a) such Community instruments, or enactments implementing such instruments, as are specified in the regulations,
- (b) such other criteria as may be specified in the regulations.

(6) SEPA must make the register available, at all reasonable times, for public inspection free of charge.

## **8 Monitoring**

(1) SEPA must, in relation to each river basin district-

- (a) carry out, or secure the carrying out of, monitoring of the status of the water environment and relevant territorial water adjacent to the district, and
- (b) analyse, or secure the analysis of, the information obtained under paragraph (a).

(2) SEPA must prepare a programme for monitoring (whether by SEPA or other persons) the status of the water environment and relevant territorial water (a "monitoring programme").

(3) Monitoring in accordance with the monitoring programme must be commenced by 22nd December 2006.

(4) Subsection (3) is subject to any provision made in regulations by virtue of subsection (5)(d).

(5) The Scottish Ministers may by regulations make provision-

(a) as to the nature and method of monitoring and analysis to be carried out (whether by SEPA or by other persons) for the purpose of subsection (1)(a),

(b) requiring persons other than SEPA to carry out such monitoring and analysis,

(c) as to the times at or by which, and the circumstances in which, such monitoring and analysis is to be carried out,

(d) for monitoring in accordance with the monitoring programme to be commenced in relation to such protected areas (within the meaning of section 7(3)) or descriptions of protected area as are specified in the regulations by such date (other than that specified in subsection (3)) as is specified in or determined under the regulations,

(e) as to the provision to SEPA of information resulting from such monitoring and analysis carried out by persons other than SEPA,

(f) as to the form and content of a monitoring programme,

(g) as to consultation and other procedure in connection with the preparation of a monitoring programme.

(6) The Scottish Ministers may issue guidance to SEPA or any other person on any matter in relation to which they have power to make regulations under subsection (5); and SEPA or, as the case may be, that person must have regard to the guidance.

(7) Subsection (6) is without prejudice to section 2(6).

(8) In this section "relevant territorial water" means so much of the territorial sea of the United Kingdom adjacent to Scotland as is not coastal water or transitional water.

## **9 Environmental objectives and programmes of measures**

(1) For the purposes of the river basin management plan for a river basin district SEPA must-

(a) set environmental objectives for each body of water in the district, and

(b) prepare a programme of measures to be applied to achieve those objectives.

(2) In setting environmental objectives and preparing a programme of measures under this section, SEPA must take account of the characterisation of the river basin district concerned (and any review of it) carried out under section 5.

(3) Environmental objectives may be set so as to apply with modifications in relation to particular descriptions of bodies of water or in particular circumstances.

(4) The Scottish Ministers may by regulations make further provision as to the setting of environmental objectives and the preparation of programmes of measures under this section.

(5) Regulations under subsection (4) making provision as to the setting of environmental objectives under this section may, in particular, include provision as to-

(a) the types of environmental objective which may be set for particular descriptions of body of water,

(b) the date by which and the criteria by reference to which such objectives are to be set,

(c) the methods and procedures to be followed in setting such objectives,

(d) the dates by which such objectives are to be achieved,

(e) particular descriptions of bodies of water in relation to which, or particular circumstances in which, such objectives are to apply with modifications.

(6) Regulations under subsection (4) making provision as to the preparation of programmes of measures under this section may, in particular, include provision as to-

- (a) the types of measures which must or may be included in such a programme,
- (b) the date by which such a programme is to be prepared,
- (c) the methods and procedures to be followed in preparing such a programme.

(7) In this section, "environmental objectives" means the objectives required to comply with Article 4 of the Directive together with any objectives required to comply with paragraphs 2 and 3 of Article 7 of the Directive.

### *River basin management plans*

## **10 River basin management plans**

(1) SEPA must, by such date as the Scottish Ministers may direct, prepare and submit to them a river basin management plan for each river basin district in respect of such period as they may direct.

(2) A river basin management plan must include-

- (a) the matters specified in Part 1 of schedule 1, and
- (b) such other matters as the Scottish Ministers may by regulations specify.

(3) A river basin management plan-

(a) must (without prejudice to subsection (2)(b)) contain or be accompanied by such maps, diagrams, illustrations and descriptive matter as the Scottish Ministers may direct, and

(b) may contain or be accompanied by such other maps, diagrams, illustrations and descriptive matter as SEPA thinks appropriate for the purpose of explaining or illustrating any matter in the plan.

(4) Any such maps, diagrams, illustrations and descriptive matter are to be treated as forming part of the plan; and references to such a plan are to be construed accordingly.

## **11 River basin management plans: publicity and consultation**

(1) Not less than 3 years before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a statement setting out-

(a) the steps under this section, and any other consultation measures, which it is to take in connection with the preparation of the plan, and

(b) the dates on or by which those steps and measures are to be taken.

(2) Not less than 2 years before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a summary of the significant water management issues which it considers arise in relation to the river basin district in question.

(3) Not less than one year before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a draft of the plan.

(4) Publication of a statement under subsection (1), a summary under subsection (2) and a draft plan under subsection (3) is to be in such manner as SEPA thinks fit.

(5) On publishing a statement, a summary or a draft plan SEPA must-

- (a) publicise-
  - (i) that fact,
  - (ii) the arrangements for making copies of the statement, summary or draft plan available for public inspection in pursuance of paragraph (b), and
  - (iii) the opportunity to make representations about the statement, summary or draft plan under subsection (7),
- (b) make copies of the statement, summary or draft plan available for public inspection free of charge for such period, which must be at least 6 months beginning with the date of its publication, as SEPA may determine,
- (c) consult the persons specified in subsection (6),
- (d) take such steps as it thinks fit for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.

(6) The persons referred to in subsection (5)(c) are-

- (a) Scottish Natural Heritage,
- (b) Scottish Water,
- (c) every responsible authority which has functions exercisable in or in relation to the river basin district in question,
- (d) every local authority any part of whose area is within the river basin district,
- (e) every district salmon fishery board any part of whose salmon fishery district is within the river basin district,
- (f) where any part of the river basin district has been designated as a National Park, the National Park authority for that National Park,
- (g) such persons as appear to SEPA to be representative of the interests of those carrying on any business which relies upon the water environment within the river basin district,
- (h) such persons as appear to SEPA to have an interest in the protection of the water environment within the river basin district,
- (i) such persons as appear to SEPA to have an interest in the promotion of sustainable flood management,
- (j) such other persons as SEPA thinks fit.

(7) Any person who wishes to make representations to SEPA about a statement, summary or draft plan may do so within the period determined under subsection (5)(b).

(8) In preparing the draft river basin management plan SEPA must take into account-

- (a) any views on the statement or summary relating to the plan expressed by those consulted under subsection (5)(c), and
- (b) any representations about the statement or summary, which are received by SEPA within the period determined under subsection (5)(b).

(9) In preparing the river basin management plan for submission to the Scottish Ministers SEPA must take into account-

(a) any views on the draft plan expressed by those consulted under subsection (5)(c),  
and

(b) any representations about the draft plan,  
which are received by SEPA within the period determined under subsection (5)(b).

(10) Where SEPA is required under this section or section 12 or 13 to publicise any matter in connection with a river basin management plan, it-

(a) must do so by means of a notice published in-

(i) at least one newspaper circulating throughout Scotland, and

(ii) such local newspapers circulating in the river basin district in question, or any part of it, as it thinks fit, and

(b) may further publicise the matter by such electronic or other means as it thinks fit.

## **12 River basin management plans: submission for approval**

(1) As soon as a river basin management plan is submitted to the Scottish Ministers, SEPA must-

(a) publicise-

(i) that fact, and

(ii) the arrangements for making copies of the plan available for public inspection in pursuance of paragraph (b), and

(b) make copies of the plan available for public inspection free of charge.

(2) A river basin management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement-

(a) of the action taken by SEPA to comply with subsections (3) and (so far as relating to the draft plan) (4) to (6) of section 11,

(b) containing a summary of the views and representations referred to in subsection (9) of that section and of any adjustments made to the plan in light of those views and representations.

(3) If the Scottish Ministers, having considered the statement, are of the opinion that further action should be taken by SEPA in relation to the plan under subsections (3) to (6) of section 11, they may return the plan to SEPA and direct it-

(a) to take such further action under those subsections as they may specify, and

(b) to resubmit the plan with such modifications, if any, as SEPA considers appropriate by such time (if any) as the direction may specify.

(4) Where the Scottish Ministers return the plan to SEPA under subsection (3), they must state their reasons for doing so.

(5) This section applies, with the necessary modifications, in relation to a river basin management plan resubmitted to the Scottish Ministers in pursuance of subsection (3)(b) as it applies to the plan as originally submitted.

## **13 River basin management plans: approval**

(1) After considering a river basin management plan submitted to them under section 10(1) or in pursuance of section 12(3)(b) or subsection (4) of this section, the Scottish

Ministers may-

- (a) approve it (in whole or in part and with or without modifications), or
- (b) reject it.

(2) Before determining whether or not to approve a plan, the Scottish Ministers may request such further information and carry out such other investigations and consultation as they think fit.

(3) The Scottish Ministers must state their reasons for their determination under subsection (1) in relation to a plan.

(4) Where the Scottish Ministers reject a plan, they must return the plan to SEPA and direct it to resubmit the plan with-

- (a) such modifications (if any) as the direction may specify, and
- (b) any further modifications which SEPA considers appropriate, by such time (if any) as the direction may specify.

(5) Where the Scottish Ministers approve a plan, SEPA must-

- (a) publish the approved plan in such manner as it thinks fit,
- (b) make copies of it available for public inspection,
- (c) make copies of it available for sale at a reasonable price, and
- (d) publicise-
  - (i) the publication of the approved plan, and
  - (ii) the arrangements for making copies of it available for public inspection in pursuance of paragraph (b).

#### **14 River basin management plans: review**

(1) SEPA must, no later than 6 years (or such lesser period as the Scottish Ministers may direct) from the date on which a river basin management plan was approved under section 13, review and update the plan.

(2) Following such a review SEPA must, by such date as the Scottish Ministers may direct, prepare and submit to the Scottish Ministers a revised river basin management plan for the river basin district in question in respect of such period as the Scottish Ministers may direct.

(3) The revised plan must include (in addition to the matters required to be included by section 10) the matters specified in Part 2 of schedule 1.

(4) Sections 10(2) to (4), 11 to 13 and 17(3) apply in relation to the preparation, submission and approval of a revised river basin management plan.

#### **15 Sub-basin plans**

(1) For the purpose of supplementing the river basin management plan for a river basin district-

- (a) SEPA must-

(i) divide the district into such geographical areas as it thinks fit, and  
(ii) prepare, for each of those areas, a plan in relation to water management within the area,

(b) SEPA or a responsible authority may, if it thinks fit, prepare a plan in relation to a particular aspect of water management within the district.

(2) A plan prepared under subsection (1)(b) may, for example, relate to-

- (a) a particular description of body of water,
- (b) a particular catchment or geographical area (whether or not an area determined in pursuance of subsection (1)(a)),
- (c) a particular matter relating to the water environment,
- (d) a particular description of user of water resources.

(3) A plan prepared under subsection (1)(a) or (b) is referred to in this Part as a "sub-basin plan".

(4) A sub-basin plan must not be inconsistent with anything in the river basin management plan which it supplements.

(5) A sub-basin plan prepared under subsection (1)(b), so far as applying to an area determined in pursuance of subsection (1)(a), must not be inconsistent with the sub-basin plan prepared for that area under subsection (1)(a).

(6) SEPA or, as the case may be, the responsible authority must consult such of the persons specified or referred to in section 11(6)(a) to (j) as it thinks fit about a proposed sub-basin plan and must take into account any views expressed by those consulted.

(7) For the purposes of subsection (6) as it applies to a responsible authority, the references in section 11(6)(g) to (j) to SEPA are to be read as if they were references to that responsible authority.

## **16 Duty to have regard to river basin management plans and sub-basin plans**

The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a river basin district, have regard to-

- (a) the river basin management plan for that district as approved under section 13,
- (b) so far as the exercise of the functions affects an area of the district determined in pursuance of section 15(1)(a), the sub-basin plan prepared for that area, and
- (c) so far as relevant, any sub-basin plan prepared under section 15(1)(b) for the purpose of supplementing the river basin management plan for the district.

## **17 River Basin District Advisory Groups**

(1) Each river basin district is to have one or more River Basin District Advisory Groups.

(2) The function of each Advisory Group is to advise SEPA on any matter which-

- (a) relates to the preparation of river basin management plans for the district, and
- (b) is within the remit of the Group.

(3) SEPA must, in preparing a river basin management plan, have regard to any advice given by an Advisory Group.

(4) The number of Advisory Groups, and their remits, membership and procedure, are to be such as SEPA may determine.

(5) SEPA may determine the remit of an Advisory Group for any river basin district by reference to one or more of the following, namely-

- (a) a particular sub-basin plan,
- (b) a particular geographical area,
- (c) any other particular aspect of water management within the district.

(6) In determining the number of Advisory Groups for any river basin district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of the persons specified or referred to in section 11(6)(a) to (h).

(7) SEPA may pay to members of an Advisory Group such expenses and allowances as it may determine.

#### *General*

### **18 Power to obtain information and documents etc.**

(1) The Scottish Ministers and any responsible authority must, on being requested to do so by SEPA, provide SEPA with-

- (a) such information in their or, as the case may be, its possession or under their or its control, and
- (b) such assistance,  
as SEPA may reasonably seek in connection with the exercise of any of SEPA's functions under this Chapter.

(2) SEPA may serve a notice on any other person requiring the person-

- (a) to provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or
- (b) to produce to SEPA, or to a person authorised by it, such documents,  
as it may reasonably require in connection with the exercise of any of its functions under this Chapter.

(3) The information or documents required to be provided or produced in pursuance of a notice under subsection (2) must be specified or described in the notice.

(4) A notice under subsection (2) may require information to be provided or documents to be produced-

- (a) at or by a time and at a place specified in the notice,
- (b) in circumstances specified in the notice, or
- (c) from time to time, in accordance with criteria specified in the notice.



(5) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (2) cannot agree with SEPA on whether information is, or documents are, being sought or required reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

(6) Nothing in this section authorises SEPA 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.

(7) References in this section to documents 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.

(8) Where by virtue of subsection (2) documents are produced to any person, that person may take copies of or make extracts from them.

(9) A person who-

(a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under subsection (2), 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.

(10) A person guilty of an offence under subsection (9) is liable-

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

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

## **19 General regulation-making power**

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

(a) the form and content of river basin management plans and sub-basin plans,

(b) the matters to be taken into account in preparing such plans,

(c) the procedures to be followed in connection with their preparation, submission, approval, review and modification.

(2) Such regulations may, in particular-

(a) provide for the notice to be given of, or the publicity to be given to-

(i) matters to be included or proposed to be included in any such plan,

(ii) the approval of any such plan,

(iii) any other procedural step,

and for publicity to be given to the procedures referred to in subsection (1)(c),

(b) make provision for documents and information relating to matters included in the plan to be made available to the public,

(c) make provision as to the making and consideration of representations with respect to any such plan,

(d) require or authorise-

(i) in relation to a river basin management plan, SEPA,

(ii) in relation to a sub-basin plan, SEPA or the responsible authority,

to consult, or consider the views of, other persons before taking any particular procedural step.

(3) This section is without prejudice to sections 10 to 15 and 17.

## CHAPTER 3

### MEASURES FOR PROTECTION OF THE WATER ENVIRONMENT

#### 20 Regulation of controlled activities

(1) The Scottish Ministers may by regulations make such provision for or in connection with regulating any activity (a "controlled activity") as they consider necessary or expedient for the purposes of protection of the water environment.

(2) Such regulations may, in particular-

(a) make provision for or in connection with regulating the activities specified in subsection (3),

(b) otherwise make such provision for or in connection with the basic measures and supplementary measures mentioned in paragraph 2 of Article 11 of the Directive as the Scottish Ministers consider necessary or expedient for the purpose of facilitating the achievement of the environmental objectives set out in river basin management plans.

(3) The activities referred to in subsection (2)(a) are-

(a) activities liable to cause pollution of the water environment,

(b) abstraction of water from bodies of surface water or groundwater,

(c) the construction, alteration or operation of impounding works in bodies of surface water,

(d) building, engineering or other works in, or in the vicinity of, any body of inland surface water,

(e) activities connected with any of the activities specified in paragraphs (a) to (d).

(4) The provision which may be made in regulations under this section includes provision for any of the purposes specified in Part 1 of schedule 2.

(5) Part 2 of that schedule has effect for supplementing Part 1.

(6) In subsection (3)-

"abstraction", in relation to a body of surface water or groundwater, means the doing of anything whereby any water is removed by mechanical means from that body of water, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another body of water within the water environment,

"impounding works", in relation to a body of surface water, means-

(a) any dam, weir or other works in the body of water by which water may be impounded,

(b) any works diverting the flow of water in the body of water in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a),

"pollution", in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances or heat into the water environment, or any part of it, which may give rise to any harm; and "harm" means-

- (a) harm to the health of human beings or other living organisms,
  - (b) harm to the quality of the water environment, including-
    - (i) harm to the quality of the water environment taken as a whole,
    - (ii) other impairment of, or interference with, the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,
  - (c) offence to the senses of human beings,
  - (d) damage to property, or
  - (e) impairment of, or interference with, amenities or other legitimate uses of the water environment.
- (7) This section is without prejudice to section 22.

## **21 Controlled activities regulations: procedure**

(1) Before making any regulations under section 20, the Scottish Ministers must consult-

- (a) SEPA,
- (b) every responsible authority,
- (c) such persons appearing to them to be representative of the interests of local government, industry, agriculture, fisheries and small businesses respectively as they think fit, and
- (d) such other persons as they think fit.

(2) Before making any regulations under that section specifying rules as mentioned in paragraph 3(2) of schedule 2 (general binding rules), the Scottish Ministers must, in addition to consulting as required by subsection (1)-

- (a) publish a draft of the proposed rules, and publicise the opportunity to make representations about them under subsection (3), in such manner as they think fit, and
- (b) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as they may determine.

(3) Any person who wishes to make representations about the proposed rules to the Scottish Ministers may do so within the period determined under subsection (2)(b).

(4) The Scottish Ministers must, in making the regulations specifying the rules, have regard to any representations on the proposed rules received by them within that period.

## **22 Remedial and restoration measures**

(1) The Scottish Ministers may by regulations make such provision for or in connection with remedial or restoration measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans.

(2) In this section "remedial or restoration measures" means the carrying out of any operations or works, or the taking of any other action, in relation to any land or body of water with a view to-

- (a) remedying or mitigating the effects of any pollution (as defined in section 20(6)) of the water environment,
- (b) improving or restoring the characteristics of any body of water.

(3) Regulations under this section may, in particular, make provision-

(a) conferring on SEPA or any responsible authority power to undertake, or arrange for the undertaking of, remedial or restoration measures,

(b) for determining which other persons (if any) are the appropriate persons to bear responsibility for remedial or restoration measures and conferring on SEPA or any responsible authority power-

(i) to serve notices requiring such persons to undertake remedial or restoration measures, or

(ii) to undertake, or arrange for the undertaking of, such measures at the expense of such persons.

## **23 Fixing of charges for water services**

(1) The Scottish Ministers may by regulations make such provision for or in connection with the fixing of charges for the provision of water services as they consider necessary or expedient for the purposes of protection of the water environment.

(2) Regulations under subsection (1) may, in particular, make provision for securing that, in the fixing of such charges, account is taken of such principles, objectives or other matters as are specified in the regulations.

(3) Before making any regulations under subsection (1), the Scottish Ministers must consult such persons as they think fit.

(4) In this section, "water services" means services which provide, for households, public institutions or any economic activity-

(a) abstraction (as defined in section 20(6)), impoundment, storage, treatment and distribution of surface water or groundwater,

(b) waste-water collection and treatment facilities which subsequently discharge into surface water.

## **24 Planning permission: fish farming**

(1) The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows.

(2) In section 26 (meaning of "development")-

(a) in subsection (6)-

(i) for "tank" in the first and second places where it occurs substitute "equipment",

(ii) after "waters" in the first place where it occurs insert ", transitional water or coastal water",

(iii) before the definition of "fish farming" insert-

""coastal water" has the meaning given by section 3(8) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);

"equipment" includes any tank, cage or other structure, or long-line, for use in fish farming;"

(iv) the definition of "tank" is repealed,

(v) at the end insert-

"transitional water" has the meaning given by section 3(7) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);",

(b) after subsection (6) insert-

"(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of "equipment" and "fish farming" in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), "modifications" includes amendments and repeals."

(3) In section 40 (assessment of environmental effects), after subsection (3) insert-

"(4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.

(5) In subsection (4), "water environment" has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3)."

(4) In section 275 (regulations and orders)-

(a) in subsection (4), after "26(2)(f)" insert "and (6A)",

(b) after subsection (5) insert-

"(5A) No order made under section 26(6A) is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament."

(5) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of or in connection with the application of the Town and Country Planning (Scotland) Act 1997 (c.8), by virtue of this section, to operations in transitional water or coastal water.

(6) An order under subsection (5) may, in particular, make provision for any planning authority specified in the order to be the planning authority for the purposes of the application of that Act, by virtue of this section, to operations in such areas of transitional water or coastal water as the order may specify in relation to the authority, despite those operations relating to land outwith the district of the authority.

(7) Before making an order under subsection (5) the Scottish Ministers must consult-

(a) every planning authority,

(b) SEPA,

(c) such other persons as they think fit.

## CHAPTER 4

### SUPPLEMENTARY

#### **25 Power to give effect to Community obligations etc.**

(1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

(2) In this section "related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

#### **26 Annual report on implementation of Directive**

The Scottish Ministers must, as soon as practicable after the end of each calendar year, lay before the Parliament a report summarising-

(a) action taken during the year by the Scottish Ministers, SEPA and the responsible authorities for securing compliance with the requirements of the Directive in accordance with this Part, and

(b) progress made during the year towards achieving the environmental objectives set from time to time under section 9.

#### **27 Availability of documents for public inspection**

Where, under this Part, any order, map, plan, register or other document is to be made available for public inspection, it-

(a) must be made available-

(i) in print, and

(ii) electronically, and

(b) may be made available by such other means, or in such other formats, as the person required to make it available thinks fit for the purpose of encouraging the inspection of it by members of the public.

#### **28 Interpretation of Part 1**

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

"body of groundwater" means a distinct volume of groundwater within one or more aquifers; and "aquifer" means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater,

"body of inland surface water" means a body of surface water which is also inland water,

"body of surface water" means a discrete and significant element of surface water such as a loch, a stream, river, canal or other watercourse, part of a loch, stream, river, canal or other watercourse, a body of transitional water or a stretch of coastal water,

"body of water" means a body of groundwater or a body of surface water,

"coastal water" has the meaning given in section 3,  
"controlled activity" is to be construed in accordance with section 20,  
"the Directive" has the meaning given in section 1,  
"groundwater" has the meaning given in section 3,  
"inland water" has the meaning given in section 3,  
"loch" means a body of standing inland surface water,  
"protection of the water environment" has the meaning given in section 1,  
"responsible authority" is to be construed in accordance with section 2,  
"river basin" means an area of land from which all surface run-off water flows through a connected sequence of streams, rivers or other watercourses or lochs into the sea at a single river mouth, estuary or delta and includes any body of transitional water in the vicinity of that river mouth, estuary or delta,  
"river basin district" means an area designated as such by an order under section 4(1),  
"river basin management plan" means such a plan approved by the Scottish Ministers under section 13 (including that section as applied by section 14(4)),  
"SEPA" means the Scottish Environment Protection Agency,  
"sub-basin plan" has the meaning given in section 15,  
"surface water" has the meaning given in section 3,  
"the territorial sea of the United Kingdom adjacent to Scotland" has the same meaning as it has for the purposes of the Scotland Act 1998 (c.46),  
"transitional water" has the meaning given in section 3,  
"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices and passages through which water flows and includes artificial watercourses and underground watercourses,  
"the water environment" has the meaning given in section 3.

(2) In this Part, any reference to any loch or any river or other watercourse includes a reference to the bottom, channel or bed of any loch, river or, as the case may be, other watercourse which is for the time being dry.

(3) Any word or expression used in both this Part and the Directive and not otherwise defined in this Part has the same meaning for the purposes of this Part as it has for the purposes of the Directive.

## **PART 2**

### **WATER AND SEWERAGE SERVICES**

#### *Duty to provide water and sewerage services*

#### **29 Duty to provide water and sewerage services**

(1) Section 1 (duty of Scottish Water to provide for sewerage) of the Sewerage (Scotland) Act 1968 (c.47) ("the 1968 Act") is amended as follows.

(2) After subsection (3) insert-

"(3A) Subsection (3) shall not apply to such cases or descriptions of case as the Scottish Ministers may direct.

(3B) In determining what is a reasonable cost for the purpose of subsection (3) so far as relating to subsection (2)(a), the costs to be taken into account include the costs of-

- (a) constructing such other public sewers, public SUD systems and such public sewage treatment works, and
  - (b) carrying out such other work,
- as Scottish Water considers necessary in consequence of the connection referred to in subsection (2)(a).

(3C) Subject to subsection (3B), any question as to what is a reasonable cost for the purposes of this section shall be determined in accordance with regulations made by the Scottish Ministers.

(3D) Such regulations may, in particular, make provision as to-

- (a) the matters to be taken into, or left out of, account,
  - (b) the criteria to be applied,
  - (c) the method of calculation to be adopted,
- in determining what is a reasonable cost for those purposes, and may make different provision for different cases and descriptions of case."

(3) In subsection (4), after "whether" insert "a reasonable cost has been properly determined in accordance with regulations made under subsection (3C) or".

(4) In subsection (6), for "subsection" substitute "subsections (3C) and".

(5) Section 6 (duty of Scottish Water to provide water supply) of the Water (Scotland) Act 1980 (c.45) ("the 1980 Act") is amended as follows.

(6) In subsection (2), after "shall" in the second place where it occurs insert ", subject to subsection (2A),".

(7) After subsection (2) insert-

"(2A) Subsection (2), so far as requiring Scottish Water to take pipes to the point or points referred to in that subsection, shall not apply for so long as there is in force an agreement between Scottish Water and some other person for that person to take the pipes referred to in that subsection to that point or those points.

(2B) Subsections (1) and (2), so far as excepting from the duties under those subsections things which cannot be done at a reasonable cost, shall not apply to such cases or descriptions of case as the Scottish Ministers may direct.

(2C) In determining what is a reasonable cost for the purpose of subsection (2) so far as excepting from the duty under that subsection things which cannot be done at a reasonable cost, the costs to be taken into account include the costs of-

- (a) constructing such other water mains, communication pipes and other waterworks,
- and



(b) carrying out such other work,  
as Scottish Water considers necessary in consequence of the connection referred to in that subsection.

(2D) Subject to subsection (2C), any question as to what is a reasonable cost for the purposes of this section shall be determined in accordance with regulations made by the Scottish Ministers.

(2E) Such regulations may, in particular, make provision as to-

(a) the matters to be taken into, or left out of, account,  
(b) the criteria to be applied,  
(c) the method of calculation to be adopted,  
in determining what is a reasonable cost for those purposes, and may make different provision for different cases and descriptions of case."

(8) In subsection (3), after the words "as to" insert-

"(za) whether a reasonable cost has been properly determined in accordance with regulations made under subsection (2D), or".

### **30 Private sewers, SUD systems and sewage treatment works etc.: vesting, takeover and connection conditions**

(1) In section 3A (authorisation of construction of certain private sewers etc.) of the 1968 Act, after subsection (2) insert-

"(3) An agreement under subsection (2)-

(a) is subject to-

(i) the condition that the sewer or SUD system or part shall vest in Scottish Water only if the sewer, system or part complies with the construction standards specified by virtue of section 14A and, in the case of a SUD system or part, with the SUD systems requirements specified by virtue of section 14B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(1), and

(b) shall not take effect until the person who constructed the sewer or SUD system provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii)."

(2) In section 8 (agreements as to provision of sewers etc. for new premises) of the 1968 Act-

(a) after subsection (1) insert-

"(1A) An agreement under subsection (1) so far as it makes provision for the taking over by Scottish Water of a SUD system or sewage treatment works-

(a) is subject to-

(i) the condition that the system complies, or the works comply, with the construction standards specified by virtue of section 14A and, in the case of a SUD system, with the SUD systems requirements specified by virtue of section 14B, so far as applicable, and

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(2), and

(b) shall not take effect until the person providing the system or works provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii).",

(b) subsection (2) is repealed.

(3) In section 12 of the 1968 Act (rights of owners and occupiers to connect with and drain into public sewers etc.), after subsection (2) insert-

"(2A) An owner shall not, under subsection (1), be entitled to connect the owner's drains, sewers or SUD systems with the sewers, SUD systems or works of Scottish Water unless-

(a) the drains, sewers or systems comply with the construction standards specified by virtue of section 14A and, in the case of a SUD system, with the SUD systems requirements specified by virtue of section 14B, so far as applicable, and

(b) the owner has, if required to do so under section 14C(3), entered into a connection agreement (within the meaning of that section) and has provided such security as Scottish Water may reasonably require for the performance of the owner's obligations under the connection agreement."

(4) After section 14 of the 1968 Act insert-

**"14A Private sewers, SUD systems and sewage treatment works etc.: construction standards**

(1) In relation to drains, private sewers, private SUD systems and private sewage treatment works, the construction standards referred to in sections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) are such standards in relation to the construction of drains, sewers, SUD systems or, as the case may be, sewage treatment works as the Scottish Ministers may, by regulations made by statutory instrument, specify.

(2) The standards which may be specified in regulations under subsection (1) include standards specified in or under other enactments.

(3) Regulations under subsection (1) may make different provision in relation to different descriptions of person and different cases or descriptions of case.

(4) Before making regulations under subsection (1) the Scottish Ministers must consult-

(a) Scottish Water, and

(b) such other persons as they consider appropriate.

(5) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

## **14B Sustainable urban drainage systems: requirements**

(1) In relation to SUD systems, the SUD systems requirements referred to in sections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) are such requirements in relation to the nature, design and layout of SUD systems as the Scottish Ministers may, by regulations made by statutory instrument, specify.

(2) Subsections (3) to (5) of section 14A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.

## **14C Private sewers, SUD systems and sewage treatment works etc.: vesting conditions, takeover agreements and connection agreements**

(1) For the purposes of section 3A(3)(a)(ii) or 16A(3)(a)(ii), Scottish Water may require the inclusion in an agreement under subsection (2) of the section in question of conditions ("vesting conditions") as to-

(a) any sum to be paid by Scottish Water to the person who constructed the sewer or SUD system in respect of its construction,

(b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the sewer or system, including in particular the costs of-

(i) complying with section 2, both in relation to the sewer or system and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (iii),

(ii) connecting the sewer or system to public sewers, public SUD systems or public sewage treatment works,

(iii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such other work, as Scottish Water considers necessary in consequence of the connection of the sewer or system,

and where the agreement under section 3A(2) or, as the case may be, 16A(2) relates only to a part of a sewer or SUD system, the references in paragraphs (a) and (b) of this subsection to the sewer or system shall be read as if they were references to the part.

(2) For the purposes of section 8, Scottish Water may require the inclusion in an agreement under subsection (1) of that section, so far as it makes provision for the taking over by Scottish Water of a SUD system or sewage treatment works, of conditions ("takeover conditions") as to-

(a) any sum to be paid by Scottish Water to the person providing the system or works in respect of its or their construction,

(b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the system or works, including in particular the costs of-

(i) complying with section 2, both in relation to the system or works and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (ii),

(ii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such other work, as Scottish Water considers necessary in consequence of the taking over of the system or works in pursuance of the agreement.

(3) For the purposes of section 12, Scottish Water may require the owner of a drain, sewer or SUD system referred to in subsection (2A) of that section to enter into an agreement

(a "connection agreement") with it as to-

(a) any sum to be paid by Scottish Water to the owner in respect of the construction of the drain, sewer or system,

(b) the liability of the owner to pay Scottish Water sums in respect of Scottish Water's costs in relation to the drain, sewer or system, including in particular the costs of-

(i) complying with section 2, both in relation to the drain, sewer or system and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (iii),

(ii) connecting the drain, sewer or system to public sewers, public SUD systems or public sewage treatment works,

(iii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such work in relation to public sewers, public SUD systems and public sewage treatment works, as Scottish Water considers necessary in consequence of the connection of the drain, sewer or system.

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

(a) the provisions to be included-

(i) by virtue of subsection (1), as vesting conditions in an agreement under section 3A(2) or 16A(2),

(ii) by virtue of subsection (2), as takeover conditions in an agreement under section 8(1),

(iii) by virtue of subsection (3), in a connection agreement,

(b) cases in relation to which subsection (1), (2) or (3) does not apply, or applies with modifications.

(5) Regulations under subsection (4) may, in particular, make provision-

(a) for determining the sum (if any) to be paid by Scottish Water by virtue of subsection (1)(a), (2)(a) or (3)(a),

(b) for determining the liability-

(i) by virtue of subsection (1)(b), of the person who constructed the sewer or SUD system,

(ii) by virtue of subsection (2)(b), of the person providing the SUD system or works,

(iii) by virtue of subsection (3)(b), of the owner,

by reference to such matters, criteria and methods of calculation as the regulations may specify,

(c) as to when sums due under the vesting conditions, the connection agreement or the takeover conditions are payable,

(d) as to the security which Scottish Water is entitled to require under section 3A(3)(b), 8(1A)(b), 12(2A)(b) or 16A(3)(b).

(6) Regulations under subsection (4) may make different provision in relation to different descriptions of person and different cases or descriptions of case.

(7) A statutory instrument containing regulations under subsection (4) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament."

(5) In section 16A (vesting of certain private sewers) of the 1968 Act, after subsection (2) insert-

"(3) An agreement under subsection (2)-

(a) is subject to-

(i) the condition that the sewer or SUD system or part shall vest in Scottish Water only if the sewer, system or part complies with the construction standards specified by virtue of section 14A and, in the case of a SUD system or part, with the SUD systems requirements specified by virtue of section 14B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(1), and

(b) shall not take effect until the person who constructed the sewer or SUD system provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii)."

*Mains and pipes provided by persons other than Scottish Water*

### **31 Laying of water mains and communication pipes by persons other than Scottish Water**

After section 23 of the 1980 Act insert-

#### **"23A Laying of mains and communication pipes by persons other than Scottish Water**

(1) Without prejudice to sections 23 and 24 (including any power under those sections to authorise the laying of mains or communication pipes on its behalf), Scottish Water may authorise a person to lay a main or communication pipe which is to connect with a main vested in it-

(a) in, under or over any road or under any cellar or vault below any road, or

(b) in, on or over any land which does not form part of a road and is not land as respects which that person is owner, lessee or occupier.

(2) Where Scottish Water gives an authorisation to any person under subsection (1) in relation to a main, subsections (1) to (2) of section 23, so far as relating to the laying of a main shall apply in respect of that person as they apply in respect of Scottish Water.

(3) Where-

(a) a main or communication pipe (not being a main pipe or laid by or on behalf of Scottish Water) is laid by any person, and

(b) the main or pipe connects with a main vested in Scottish Water, the main or, as the case may be, the communication pipe shall vest in Scottish Water.

(4) Notwithstanding subsection (3), Scottish Water may, before the completion of a main or communication pipe to which that subsection applies, determine that the main or pipe, or any part of it, shall vest in the person who laid it and that that person shall have sole responsibility for its management, maintenance and renewal.

(5) Scottish Water shall give notice of a determination under subsection (4) to the person who laid the main or communication pipe.

(6) Where-

(a) a main or communication pipe (not being a main or pipe laid by or on behalf of Scottish Water) is laid by any person, and

(b) the main or pipe does not connect with a main vested in Scottish Water, the main or, as the case may be, the communication pipe shall vest in the person who laid it, who shall have sole responsibility for its management, maintenance and renewal.

(7) Notwithstanding subsections (4) and (6), Scottish Water may at any time enter into an agreement under which the main or communication pipe in question, or any part of it, shall vest in it.

(8) An agreement under subsection (7) relating to a main or communication pipe to which subsection (3) applies-

(a) is subject to-

(i) the condition that the main or pipe shall vest in Scottish Water only if it complies with the construction standards specified by virtue of section 23B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 23C, and

(b) shall not take effect until the person who laid the main or pipe provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii).

### **23B Construction standards for mains and communication pipes to vest in Scottish Water**

(1) In relation to a main or communication pipe to which subsection (3) of section 23A applies, the construction standards referred to in subsection (8)(a)(i) of that section are such standards as the Scottish Ministers may, by regulations, specify.

(2) The standards which may be specified in regulations under subsection (1) include standards specified in or under other enactments.

(3) Regulations under subsection (1) may make different provision in relation to different cases or descriptions of case.

(4) Before making regulations under subsection (1) the Scottish Ministers must consult-

(a) Scottish Water, and

(b) such other persons as they consider appropriate.

### **23C Vesting conditions for mains and communication pipes**

(1) For the purposes of subsection (8)(a)(ii) of section 23A, Scottish Water may require the inclusion in an agreement under subsection (7) of that section of conditions

("vesting conditions") as to-

- (a) any sum to be paid by Scottish Water to the person who laid the main or communication pipe in respect of its laying,
- (b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the main or pipe, including in particular the costs of-
  - (i) maintaining, repairing and renewing the main or pipe and such water mains, communication pipes and other waterworks constructed, and work carried out, as are mentioned in sub-paragraph (iii),
  - (ii) connecting the main or pipe to a main vested in Scottish Water,
  - (iii) constructing such water mains, communication pipes and other waterworks, and carrying out such other work, as Scottish Water considers necessary in consequence of the connection.

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

- (a) the provisions to be included, by virtue of subsection (1) of this section, as vesting conditions in an agreement under section 23A(7),
- (b) cases in relation to which subsection (1) of this section does not apply, or applies with modifications.

(3) Regulations under subsection (2) may, in particular, make provision-

- (a) for determining the sum (if any) to be paid by Scottish Water by virtue of subsection (1)(a),
- (b) for determining the liability, by virtue of subsection (1)(b), of the person who laid the main or communication pipe by reference to such matters, criteria and methods of calculation as the regulations may specify,
- (c) as to when sums due under the vesting conditions are payable,
- (d) as to the security which Scottish Water is entitled to require under section 23A(8)(b).

(4) Regulations under subsection (2) may make different provision in relation to different descriptions of person and different cases or descriptions of case."

### *Vesting of waterworks and mains*

## **32 Vesting in Scottish Water of waterworks and mains**

(1) In section 21 (power to carry out works) of the 1980 Act-

- (a) the existing provision becomes subsection (1),
- (b) after that subsection insert-

"(2) For the avoidance of doubt, all waterworks constructed in pursuance of subsection (1) above (whether before or after the commencement of this subsection) vest in Scottish Water."

(2) In section 23 (power to lay mains etc.) of that Act, at the end insert-

"(5) For the avoidance of doubt, all mains laid in pursuance of subsection (1) above (whether laid before or after the commencement of this subsection) vest in Scottish

Water."

*Sustainable urban drainage systems*

**33 Sustainable urban drainage systems**

(1) In section 59(1) (interpretation) of the 1968 Act, insert the following definitions in the appropriate places alphabetically-

"private SUD system" means any SUD system which is not a public SUD system;

"public SUD system" means any SUD system which is vested in Scottish Water;

"road water" means the run-off of rainwater from any road for the time being entered in a list of public roads kept by a local roads authority under section 1(1) of the Roads (Scotland) Act 1984;

"SUD system" means a sustainable urban drainage system;

"sustainable urban drainage system" means a drainage system which-

(a) facilitates attenuation, settlement or treatment of surface water from 2 or more premises (whether or not together with road water), and

(b) includes one or more of the following: inlet structures, outlet structures, swales, constructed wetlands, ponds, filter trenches, attenuation tanks and detention basins (together with any associated pipes and equipment);".

(2) Schedule 3 makes modifications of the 1968 Act and the Water Industry (Scotland) Act 2002 (asp 3) in relation to sustainable urban drainage systems.

*Supplementary*

**34 Modifications of Part III of the 1980 Act**

Schedule 4 makes modifications of Part III of the 1980 Act which are minor or consequential on this Part.

**PART 3**

GENERAL

**35 Crown application**

(1) Part 1 and this Part bind the Crown.

(2) The amendments and repeals made by Part 2 bind the Crown to the extent that the enactments amended or repealed bind the Crown.

(3) Subsection (1) does not require subordinate legislation made under this Act to bind the Crown.

(4) 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 body or office-holder having responsibility for enforcing that provision, declare



unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (4), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

### **36 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 to make-

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

(b) provision for the delegation of functions,

(c) different provision for different purposes and different areas.

(3) An order under section 24 or 37, and regulations under section 8, 20, 22 or 23, may modify any enactment, instrument or document.

(4) A statutory instrument containing an order or regulations under-

(a) any of sections 2, 5 to 7, 9, 10 and (except where subsection (6) applies) 37, or

(b) paragraph 20(4) of schedule 2,

is subject to annulment in pursuance of a resolution of the Parliament.

(5) A statutory instrument containing regulations under section 8, 19, 20, 22 or 23, if made without a draft having been laid before, and approved by a resolution of, the Parliament is subject to annulment in pursuance of a resolution of the Parliament.

(6) No-

(a) order under section 4 or 24,

(b) regulations under section 25,

(c) order under section 37 or regulations under section 8, 20, 22 or 23 containing provisions which add to, replace or omit any part of the text of an Act,

is or are to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.

### **37 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.

### **38 Commencement and short title**

(1) The provisions of this Act, other than this Part, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Water Environment and Water Services (Scotland) Act 2003.

## SCHEDULE 1

*(introduced by sections 10 and 14)*

MATTERS TO BE INCLUDED IN RIVER BASIN MANAGEMENT PLANS

### **PART 1**

MATTERS TO BE INCLUDED IN EVERY PLAN

- 1 A summary of the characterisation of the river basin district carried out under section 5.
- 2 A summary of significant pressures, and the impact of human activity, on the status of the water environment within the district.
- 3 A summary of the register of protected areas maintained under section 7, including information sufficient to identify each protected area within the district.
- 4 Information as to the arrangements for monitoring water status under section 8 and as to the results of such monitoring.
- 5 A list of the environmental objectives set under section 9 for every body of water in the district.
- 6 A summary of the programme of measures prepared under section 9 to be applied to achieve those objectives.
- 7 Information as to any sub-basin plan.
- 8 A non-technical summary of the information provided under paragraphs 1 to 7.
- 9 A summary of-
  - (a) the steps taken under subsections (3) to (6) of section 11 in relation to the plan, and
  - (b) changes made to the plan in light of-
    - (i) the views and representations received on it, and
    - (ii) any advice given by a River Basin District Advisory Group under section 17(2).
- 10 Information as to-
  - (a) SEPA, and
  - (b) every responsible authority and regulator (within the meaning of schedule 2) having functions in relation to the river basin district.
- 11 The arrangements for making available to the public documents and information relevant to the preparation and implementation of the plan.

### **PART 2**

#### ADDITIONAL MATTERS TO BE INCLUDED IN REVISED PLANS

- 12 A summary of the changes which have been made as compared with the previous plan.
- 13 An assessment of the progress made towards the achievement of the environmental objectives set under section 9, including the results of monitoring under section 8 and reasons for any failure to achieve any such objective.
- 14 A summary of any measures included in the programme of measures prepared under section 9 in relation to the previous plan which were not applied, with reasons for the non-application.
- 15 A summary of any measures additional to those referred to in paragraph 14 which were applied to achieve the environmental objectives set under section 9.

#### SCHEDULE 2

*(introduced by section 20)*

CONTROLLED ACTIVITIES REGULATIONS: PARTICULAR PURPOSES

##### **PART 1**

LIST OF PURPOSES

*Controlled activities*

- 1 (1) Further defining the activities specified in subsection (3) of section 20.
- (2) Modifying the definitions of those activities.
- (3) Specifying other activities as controlled activities.

*Regulators*

- 2 (1) Determining the authorities (whether SEPA or any other public or local authority or the Scottish Ministers) by whom functions conferred by the regulations for or in connection with regulating controlled activities are to be exercisable (such authorities being referred to in this schedule as "regulators").
- (2) Securing that such functions are exercised with a view to achieving the environmental objectives set out in river basin management plans.
- (3) Specifying any other purposes for which any such functions are to be exercisable.
- (4) Enabling the Scottish Ministers to give directions (whether general or specific) with which regulators are to comply, or guidance to which regulators are to have regard, in exercising functions under the regulations, including-
- (a) directions providing for any functions exercisable by one regulator to be exercisable instead by another,

(b) directions given for the purpose of the implementation of any obligations of the United Kingdom under the Community Treaties or under any international agreement to which the United Kingdom is a party,

(c) directions relating to the exercise of any function in a particular case or description of case,

(d) directions providing 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.

*Regulation of controlled activities*

3 (1) Prohibiting persons from carrying on, or from causing or permitting others to carry on, any controlled activity, or from carrying on any such activity except so far as it is-

(a) authorised by or under, and

(b) carried on in accordance with, the regulations.

(2) Specifying rules of general application ("general binding rules") subject to which controlled activities may be carried on.

(3) Treating as authorised the carrying on of controlled activities which are subject to general binding rules.

(4) Enabling regulators to authorise the carrying on of controlled activities (whether or not the carrying on of any such activities is subject to general binding rules)-

(a) by way of a licence granted under the regulations (a "water use licence"),

(b) subject to a requirement to register the carrying on of the activity ("registration").

*Notification of proposals to carry on controlled activities*

4 (1) Requiring persons proposing to carry on controlled activities to notify regulators of the proposals.

(2) Prescribing the form and content of notifications and otherwise regulating the procedure for notifying proposed controlled activities.

(3) Requiring regulators to advise persons notifying them of proposals to carry on controlled activities as to whether the carrying on of the activities requires to be authorised by regulators under the regulations in pursuance of paragraph 3(4) and, if so, the type of authorisation required.

*Water use licences*

5 (1) Prescribing the form and content of applications for water use licences.

(2) Specifying restrictions or other requirements in connection with applications for, or the grant of, licences.

(3) Otherwise regulating the procedure to be followed in connection with applications for licences and the determination of applications.

(4) Enabling licence applications to be treated as notifications in specified circumstances.

(5) Prescribing the contents of licences.

(6) Authorising licences to be granted subject to conditions imposed by regulators.

(7) Enabling the granting of licences authorising the carrying on of more than one controlled activity.

(8) Securing that licences have effect subject to specified conditions.

(9) Requiring licences or the conditions to which they are subject to be reviewed by regulators (whether periodically or in specified circumstances).

(10) Authorising or requiring the variation of licences or such conditions by regulators (whether on applications made by holders of licences or otherwise).

(11) Regulating the transfer and surrender of licences.

(12) Authorising the suspension of licences by regulators.

(13) Authorising the revocation of licences by regulators.

(14) Authorising the imposition by regulators of requirements with respect to the taking of preventive or remedial action (by holders of licences or other persons) in connection with the surrender and revocation of licences.

#### *Registration*

6 (1) Regulating the procedure for registration required by provision made in pursuance of paragraph 3(4)(b), including variation and revocation of registrations.

(2) Specifying restrictions or other requirements in connection with registration.

#### *Charging schemes*

7 (1) Authorising, or authorising regulators to make, vary and revoke schemes for, the charging by regulators of fees or other charges-

(a) in respect of notifications,

(b) in respect of, or in respect of applications for-

(i) the grant of a licence,

(ii) the variation of a licence or the conditions to which it is subject,

(iii) the transfer, surrender or revocation of a licence,

- (iv) registration,
- (c) in respect of the subsistence of a licence or registration,
- (d) in respect of other specified matters.

(2) Regulating the procedure for making, varying and revoking such schemes.

#### *Publicity and consultation*

8 Securing that-

- (a) publicity is given to specified matters,
- (b) regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) which are open to public inspection,
- (c) copies of entries in such registers, or of specified documents, may be obtained by members of the public.

9 Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions (including consultation on any guidance they propose to issue in connection with the exercise of those functions), and providing for them to take into account representations made to them on consultation.

#### *Enforcement and offences*

10 (1) Conferring on regulators functions with respect to the monitoring and inspection of the carrying on of controlled activities, including-

- (a) power to take samples or to make copies of information,
- (b) power to arrange for preventive or remedial action to be taken at the expense of those carrying on the controlled activities.

(2) Authorising regulators to appoint suitable persons to exercise any such functions and conferring powers (such as those specified in section 108(4) of the Environment Act 1995 (c.25)) on persons so appointed.

11 (1) Authorising regulators to serve on any persons carrying on controlled activities (whether or not the carrying on of those activities is authorised by or under the regulations) notices, including notices requiring them-

- (a) to notify the controlled activities being carried on by them,
- (b) to take preventive or remedial action at their own expense in respect of contraventions, actual or potential, of-
  - (i) in relation to activities being carried on under water use licences, any conditions to which the licences are subject,
  - (ii) in relation to activities being carried on subject to general binding rules, those rules,
- (c) in relation to activities being carried on subject to registration, to take preventive or remedial action at their own expense where the activities are being carried on otherwise than as described in the registration,
- (d) to provide such financial security as the regulators serving the notices consider appropriate pending the taking of preventive or remedial action required by virtue of paragraph (b) or (c),

(e) to take steps to remove imminent risks of serious adverse impacts on the status of the water environment (whether or not arising from any such contraventions),  
(f) to stop the carrying on of controlled activities and to take such preventive or remedial action as may be specified in the notice.

(2) Providing for the enforcement of such notices by civil proceedings.

12 Creating offences and dealing with matters relating to such offences, including-

- (a) the provision of defences, and
- (b) evidentiary matters.

13 Enabling, where a person has been convicted of an offence under the regulations-

- (a) a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment),
- (b) a regulator to arrange for such action at that person's expense.

*Appeals*

14 (1) Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations.

(2) Making provision for (or for the determination of) matters relating to the making, considering and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

*General*

15 (1) Making provision which, subject to any modifications that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by any of sections 157, 158 and 160 of the Environmental Protection Act 1990 (c.43).

(2) Making provision about the application of the regulations to the Crown.

**PART 2**

SUPPLEMENTARY PROVISIONS

*Particular types of controlled activity*

16 The regulations may provide for specified provisions of the regulations to have effect in relation only to-

- (a) specified controlled activities,
- (b) the carrying on of controlled activities in specified circumstances, or
- (c) the carrying on of controlled activities by specified persons or descriptions of persons.

*General binding rules*

17 General binding rules may-

- (a) impose conditions or requirements,

- (b) prescribe standards or objectives to be complied with or achieved,
- (c) require standards or objectives specified in or under other enactments to be complied with or achieved.

*Imposition of conditions*

18 In connection with the imposition of conditions as mentioned in paragraph 5(6) the regulations may in particular provide-

- (a) for such conditions to be imposed in the light of any specified general principles and any directions or guidance given under the regulations,
- (b) for such guidance to include guidance sanctioning reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing a condition,
- (c) for such conditions to be imposed by reference to agreements between or among holders of licences as to the carrying on by them of the controlled activities authorised by the licences.

*Charging schemes*

19 The regulations may-

- (a) require any such scheme as is mentioned in paragraph 7 to be so framed that the fees and charges payable under the scheme-
  - (i) are determined in the light of any specified general principles and any directions or guidance given under the regulations,
  - (ii) are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator to whom they are so payable) as is specified,
- (b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

*Offences*

20 (1) The regulations may provide for any such offence as is mentioned in paragraph 12 to be triable-

- (a) only summarily,
- (b) either summarily or on indictment.

(2) The regulations may provide for such an offence to be punishable-

- (a) on summary conviction by-
  - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 6 months), or
  - (ii) a fine not exceeding such amount as is specified (which must not exceed £20,000), or both,
- (b) on conviction on indictment by-
  - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 5 years), or
  - (ii) a fine, or both.

(3) The regulations may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified (in addition to



any punishment provided for in pursuance of sub-paragraph (2)).

(4) The Scottish Ministers may by order substitute for the sum for the time being specified in sub-paragraph (2)(a)(ii) such other sum as appears to them to be justified by a change in the value of money appearing to them to have taken place since the last occasion on which the sum was fixed.

### *Interpretation*

21 In this schedule-

"general binding rules" means rules specified in the regulations in pursuance of paragraph 3(2),

"notification" means notification of a proposal to carry on a controlled activity in accordance with any provision made in the regulations in pursuance of paragraph 4(1),

"registration" means registration under any provision made in the regulations in pursuance of paragraph 3(4)(b),

"the regulations" means regulations under section 20,

"regulators" has the meaning given in paragraph 2(1),

"specified" means specified in the regulations,

"water use licence" means a licence granted under any provision made in the regulations in pursuance of paragraph 3(4)(a).

## SCHEDULE 3

*(introduced by section 33)*

SUSTAINABLE URBAN DRAINAGE SYSTEMS: FURTHER AMENDMENTS

*The 1968 Act*

1 The 1968 Act is amended as follows.

2 In section 1(1) (duty of Scottish Water to provide for sewerage)-

(a) after "sewers" in the first place where it occurs insert "and public SUD systems",

(b) after "sewers" in the second place where it occurs insert "and SUD systems".

3 In section 2 (maintenance of public sewers etc.), after "sewers," insert "SUD systems,".

4 In section 3 (power to construct public sewers)-

(a) in subsection (1)(a), after "sewer" insert "or SUD system",

(b) in subsection (2), after "sewer" insert "or SUD system".

5 In section 3A(2) (vesting of privately constructed sewers)-

(a) after "sewer" in the first place where it occurs insert "or SUD system",

(b) after "sewer" in each other place where it occurs insert "or system",

(c) after "sewers" insert ", SUD systems".

- 6 In section 4 (Scottish Water may close or alter public sewers etc.)-
- (a) after "sewer" in the first and third places where it occurs insert ", SUD system",
  - (b) after "sewer" in the second and fourth places where it occurs insert ", system".
- 7 In section 7(1) (agreements between roads authorities and Scottish Water), after "sewers" insert ", SUD systems".
- 8 In section 8(1) (agreements as to provision of sewers etc. for new premises)-
- (a) after "sewers" in both places where it occurs insert ", SUD systems",
  - (b) after "of" in the second place where it occurs insert "SUD systems and".
- 9 In section 11(1) (Scottish Water to keep maps of sewers, drains etc.), after "drains" insert ", SUD systems".
- 10 (1) Section 12 (rights of owners and occupiers to connect with and drain into public sewers etc.) is amended as follows.
- (2) In subsection (1)-
    - (a) for "or private sewers" in the first place where those words occur substitute ", private sewers or private SUD systems",
    - (b) after "sewers" in the second place where it occurs insert ", SUD systems",
    - (c) after "entitled" in the second place where it occurs insert "(a)",
    - (d) for "and surface water from those premises" substitute", and
    - (b) by means of those drains, private sewers or private SUD systems, to drain into those sewers, systems or works the surface water, from those premises".
  - (3) In subsection (2)-
    - (a) for "or sewers" substitute ", sewers or SUD systems",
    - (b) after "sewers" in the second place where it occurs insert ", SUD systems",
    - (c) for "or sewer" substitute ", sewer or SUD system".
  - (4) In subsection (3)-
    - (a) for "or sewers" substitute ", sewers or SUD systems",
    - (b) after "sewers" in the second place where it occurs insert ", SUD systems",
    - (c) for "or sewer" substitute ", sewer or SUD system",
    - (d) after "sewer" in the second place where it occurs insert ", system".
  - (5) In subsection (8)-
    - (a) for "or sewer" in both places where those words occur substitute ", sewer or SUD system",
    - (b) after "sewers" insert ", SUD systems".
- 11 In section 14 (direction by Scottish Water as to manner of construction of works)-

- (a) in subsection (1)-  
 (i) for "or sewer" substitute ", sewer or SUD system",  
 (ii) after "sewer" in the second, third and fourth places where it occurs insert ", SUD system",
- 12 (b) in subsection (5), after "sewer" in each place where it occurs insert ", SUD system",  
 (c) in subsection (6), after "sewer" insert ", SUD system".  
 In section 15 (owner or occupier to remedy defects in drains etc.)-
- 13 (a) in subsection (1), after "drains" in both places where it occurs insert ", SUD systems",  
 (b) in subsection (5), after "drain" insert ", SUD system".  
 In section 16 (vesting of sewers and other works in Scottish Water)-
- (a) in subsection (1)-  
 (i) in paragraph (a), after "sewers" insert ", SUD systems",  
 (ii) in paragraph (c), after "sewers" in the first place where it occurs insert "and private SUD systems",  
 (iii) in paragraph (cc), after "sewers" in the first place where it occurs insert "and private SUD systems", and after "sewers" in the second place where it occurs insert "and systems",  
 (iv) in paragraph (d), after "works" insert "and SUD systems",  
 (v) in paragraph (e), after "works" insert "and SUD systems",  
 (b) in subsection (2)-  
 (i) after "sewers" in the first place where it occurs insert ", private SUD systems",  
 (ii) after "works" insert "and SUD systems",  
 (c) in subsection (3), after "drains" insert ", SUD systems".
- 14 In section 16A (vesting of certain private sewers)-
- (a) in subsection (1), for "or" in the second place where it occurs substitute "and any sewer or SUD system vested in a person",  
 (b) in subsection (2), after "sewer" insert "or SUD system".
- 15 In section 17 (Scottish Water may take over private sewage treatment works)-
- (a) in subsection (1)-  
 (i) after "works" in the first place where it occurs insert "or private SUD system",  
 (ii) after "works" in the second place where it occurs insert "or system",  
 (b) in subsection (2)-  
 (i) after "works" in the first place where it occurs insert "or a SUD system",  
 (ii) after "works" in the second place where it occurs insert "or system",  
 (c) in subsection (4), after "works" insert "and any SUD system",  
 (d) in subsection (5)-  
 (i) after "works" insert "or a SUD system",  
 (ii) after "them" insert "or it",  
 (iii) after "have" insert "or it has",  
 (e) in subsection (6), after "works" insert "or a SUD system".

16 In section 21(1) (buildings not to interfere with sewers), after "sewer" insert "or SUD system".

17 In section 23 (restriction on working minerals)-

(a) after "works" in the first place where it occurs insert ", public SUD systems",

(b) after "works" in every other place where it occurs insert ", SUD systems".

18 In section 39 (Scottish Water to have right to sewage), after "sewers" insert ", SUD systems".

19 In section 41 (breaking open of streets etc.), after "sewers" insert ", SUD systems".

20 In section 45 (production of plans and information)-

(a) after "sewer" in the first and second places where it occurs insert ", SUD system",

(b) after "sewer" in the third and fourth places where it occurs insert ", system".

21 In section 46 (certain matter not to be passed into drains)-

(a) after "sewer" in the first place where it occurs insert ", public SUD system",

(b) after "sewer" in the second and third places where it occurs insert ", SUD system".

22 In section 48(1) (powers of entry)-

(a) in paragraph (a), after "of" in the third place where it occurs insert "a SUD system or",

(b) in paragraph (dd)-

(i) after "sewer" in the first place where it occurs insert "or SUD system",

(ii) after "sewer" in the second place where it occurs insert "or public SUD system",

(c) in paragraph (f)-

(i) after "sewers" in the first place where it occurs insert ", public SUD systems",

(ii) after "sewers" in the second place where it occurs insert ", SUD systems".

23 In section 59 (interpretation)-

(a) in subsection (1), in the definition of "sewage treatment works", at the end insert "but does not include a SUD system",

(b) in subsection (3), after "sewer" in both places where it occurs insert ", SUD system".

*Water Industry (Scotland) Act 2002 (asp 3)*

24 In section 46(1)(b)(ii) of the Water Industry (Scotland) Act 2002 (acquisition of land by agreement for provision of sewerage system), after "sewers" insert ", sustainable urban drainage systems".

## SCHEDULE 4

*(introduced by section 34)*

### MODIFICATIONS OF PART III OF THE 1980 ACT

1 In section 22 (power to break open streets) of the 1980 Act-

(a) the existing provision becomes subsection (1),

(b) after that subsection insert-

"(2) Paragraph 1 of Schedule 3 has effect in relation to works carried out by any person-

(a) in pursuance of an authorisation under section 23A(1), or

(b) in connection with the management, maintenance or renewal of a main or communication pipe laid by that person in pursuance of such an authorisation and vested in that person,

as it has in relation to works carried out by Scottish Water."

2 In section 23 (power to lay mains etc.), after subsection (2) insert-

"(2A) In relation to a main not vested in Scottish Water, Scottish Water may recover from the person in whom the main is vested any expenses reasonably incurred by Scottish Water under subsection (1) or (2) in connection with the inspection, repair, maintenance, alteration, renewal or removal of the main.

(2B) In relation to a main laid by any person in pursuance of an authorisation under section 23A(1), subsections (1) and (2) of this section, so far as relating to the inspection, repair, maintenance, alteration, renewal or removal of a main, apply to that person as they apply to Scottish Water."

3 (1) Section 24 (communication and supply pipes) of the 1980 Act is amended as follows.

(2) In subsection (1), for "the water authority providing the supply" substitute "Scottish Water".

(3) After subsection (1) insert-

"(1A) Subsection (1) does not apply in relation to the laying of any part of a service pipe in respect of which an authorisation under section 23A(1) is in force."

(4) In subsection (2), for "all water authorities" substitute "Scottish Water".

(5) In subsection (3)-

(a) at the beginning insert "Subject to section 23A,",

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

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

(6) In subsection (4)-

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

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

4 (1) Part II of Schedule 3 (provisions as to laying communication and supply pipes etc.) is amended as follows.

(2) In paragraph 4, after sub-paragraph (2) insert-

"(3) In relation to a service pipe not vested in Scottish Water, Scottish Water may recover from the person in whom the service pipe is vested any expenses reasonably incurred by Scottish Water under sub-paragraph (1) or (2) of this paragraph in connection with the inspection, repair, alteration, renewal, removal or replacement of the service pipe.

(4) In relation to a communication pipe laid by any person in pursuance of an authorisation under section 23A(1) and vested in that person, sub-paragraphs (1) and (2) of this paragraph (except so far as conferring power to lay service pipes) apply to that person as they apply to Scottish Water."

(3) In paragraph 6, after sub-paragraph (1) insert-

"(1A) Sub-paragraph (1) does not apply in relation to the laying of any part of a communication pipe in respect of which an authorisation under section 23A(1) is in force."

5 In Schedule 4 (provisions to be incorporated in orders relating to water undertakings), in paragraph 34, after sub-paragraph (2) insert-

"(3) Scottish Water may, whether or not proceedings have been taken under this paragraph-

(a) remove any pipe or apparatus attached without its consent to a pipe belonging to it or to a supply pipe,

(b) carry out such works as it considers necessary in relation to any alteration made in, or apparatus attached to, a supply pipe without its consent,

and may recover from the person who attached the pipe or apparatus or, as the case may be, made the alteration any expenses reasonably incurred by it in doing so."

## **Explanatory Notes to Water Environment and Water Services (Scotland) Act 2003**

### **2003 Chapter 3**

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## 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.

### BACKGROUND

3. The Act sets out new arrangements for the protection of the water environment and changes how new connections to the public water and sewerage infrastructure are to be funded.
4. The water environment provisions of the Act (Part 1) make provision and enable provision to be made for or in connection with implementing Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ("the Directive").

5. EC Directives are legislative acts of the European Community. Member States are required to take all appropriate measures to fulfil the obligations arising out of the EC Treaties or resulting from action taken by the Community's institutions (including Directives) by virtue of Article 10 of the Treaties. Article 249 of the Treaties specifically provides that Member States are required to achieve the outcomes and objectives specified in Directives although they have discretion about the methods and procedures to be employed in meeting them. The Scottish Ministers have responsibility for implementing the United Kingdom's obligations under Directives so far as within devolved competence.

6. Article 1 of the Directive sets out the main outcomes that it is intended to deliver. These are to be realised through the achievement of the environmental objectives set out in Article 4. The Directive applies to all water in the natural environment - that is all rivers, lochs, estuaries and coastal waters as well as water under the ground. The basic objectives to be achieved as set out in Article 4(1) can be summarised as follows:

- prevent deterioration in the status of surface water bodies;
- protect, enhance and restore all bodies of surface water with the aim of achieving good surface water status by 2015;
- prevent deterioration of the status of groundwater bodies;
- protect, enhance and restore all bodies of groundwater with the aim of achieving good groundwater status by 2015;
- prevent or limit the input of pollutants to groundwater and reverse any significant and sustained upward trend in the concentration of pollutants in groundwater;
- comply with European wide measures against priority and priority hazardous substances; and
- achieve compliance with any relevant standards and objectives for protected areas.

In addition, there is flexibility for Member States to take account of social, economic or wider environmental considerations by applying other objectives where it would be infeasible or disproportionately expensive to achieve the basic objectives. The circumstances in which these alternative objectives may apply are set out in the rest of Article 4.

7. The Directive requires Member States to put in place systems for managing their water environments, based on natural river basin districts and underpinned by extensive environmental monitoring and scientific investigation, called "river basin management". It further requires Member States to take account of the need to recover the costs of water services as a way of encouraging the sustainable use of water resources.

8. The Directive repeals and replaces a number of older EC water Directives and incorporates the remaining existing water Directives (the Bathing Water, Nitrates and Urban Waste Water Treatment Directives) into its framework through its protected areas provisions. The "Natura" Directives on the protection of Habitats and Birds are also linked to this Directive by virtue of the protected area provisions.



## **THE ACT - AN OVERVIEW**

9. The Act is in three parts.

### **Part 1 - Protection of the water environment**

10. This Part:

- sets out the general purpose of protection of the water environment;
- defines the water environment and sets out the duties of public authorities, including the Scottish Ministers and the Scottish Environment Protection Agency (SEPA), in respect of its protection;
- provides for the establishment of river basin districts and the characterisation thereof;
- provides for the establishment of a register of protected areas and for the identification of waters used for the abstraction of drinking water;
- requires an environmental objective to be set for each body of water in a river basin district and that monitoring of the status of the water environment in each river basin district is carried out;
- requires the preparation of river basin management plans for each river basin district;
- describes the procedures for preparation, approval and review of these plans including the requirements for publicity and consultation;
- requires the creation of river basin district advisory groups and allows for the creation of sub-basin plans;
- places a duty on public authorities, including the Scottish Ministers, to have regard to river basin management plans, where relevant;
- enables provision to be made, by regulations, for or in connection with regulating any activity, and in connection with the fixing of charges for water services, for the purposes of protecting the water environment;
- enables provision to be made, by regulations, for or in connection with remedial and restoration measures necessary for the purposes of achieving the environmental objectives; and
- provides for amendment to the Town and County Planning (Scotland) Act 1997 to the effect that local authorities will be given planning control over marine fish farms.

### **Part 2 - Water and sewerage services**

11. Part 2 of the Act makes changes to the system for funding new connections to the water and sewerage infrastructure by amending the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980. These include clarifying when and how infrastructure vests in Scottish

Water and conferring regulation making powers for various detailed provisions including determining reasonable cost and setting construction standards and detailed conditions for connection agreements. It also adds sustainable urban drainage systems to Scottish Water's core functions as provider of sewerage services.

### **Part 3 - General**

12. This Part makes general provision for the making of orders and regulations under the Act. It also makes provision about the application of the Act to the Crown and commencement of the Act.

## **THE ACT - SECTION BY SECTION**

### **Part 1 - Protection of the water environment**

#### *Section 1 - General purpose of Part 1*

13. Subsection (1) sets out the general purpose of the provisions included in Part 1 of the Act. It provides that the purpose of Part 1 is to make provision for or in connection with protection of the water environment including making provision, or enabling provision to be made, for or in connection with implementing the Directive.

14. Subsection (2) explains what is meant by the term "protection of the water environment". The list is non-exhaustive but it gives an indication of the scope of the provisions included in Part 1 and the scope of more detailed provisions that may in due course be included in subordinate legislation made under those provisions. The actions listed in subsection (2) are for the purpose of contributing to the achievement of the aims set out in subsection (3).

15. Subsections (2) and (3) largely mirror the terms of Article 1 of the Directive.

#### *Section 2 - The general duties*

16. Section 2 sets out the extent to which specified bodies are required to have regard to the requirements of the Directive when exercising their functions.

17. Subsections (1) and (2) should be read with subsection (8) which defines the terms "relevant enactments", "responsible authorities" and "designated functions".

18. The effect of subsection (4) is to require the Scottish Ministers, SEPA and the responsible authorities to take into account social and economic considerations when exercising the functions referred to subsection (3). This is consistent with the principle of proportionality in European law which requires that the means of achieving a particular objective should correspond to the importance of, and be necessary for the achievement of, that objective. Subsections (3) and (4) also require Scottish Ministers, SEPA and the responsible authorities to promote sustainable flood management, to act in the way best calculated to contribute to sustainable development so far as is consistent with the purposes of the relevant enactment or designated function in question, and to adopt an integrated approach.

19. Subsection (5) places a general duty on the Scottish Ministers and all public bodies and office holders, in exercising any functions, to have regard to the desirability of protecting the water environment.

20. Subsection (6) enables the Scottish Ministers to direct or guide SEPA and the responsible authorities on how they must exercise those of their functions that are covered by this section.

21. Subsection (7) would enable Ministers, for example, to direct that specified functions must be exercised so as to satisfy technical standards set by SEPA.

### *Section 3 - The water environment: definitions*

22. This section defines various terms that are used in this Part of the Act. Subsection (2) defines the water environment as all surface water, groundwater and wetlands. Subsection (10) specifies a number of artificial systems that are not affected by this Part. Some of the geographical limits of the definitions may (or must in the case of transitional water) be identified by reference to maps which the Scottish Ministers must deposit with SEPA (subsection (11)).

23. The cumulative effect of this section is that the water environment generally covers all water and wetlands (other than the excluded water mentioned in subsection (10)) out to 3 miles from the territorial sea base-line. Certain specific provisions of the Act (e.g. section 8 on monitoring) confer functions in relation to the territorial sea beyond that 3-mile limit.

### *Section 4 - Establishment of river basin districts*

24. Subsection (1) places a duty on the Scottish Ministers to designate one or more river basin districts by order.

25. Subsection (2) makes it clear that river basin districts are to be made up of one or more river basins together with associated coastal and groundwater bodies. The smallest unit could be a single river basin although a district can, and is more likely to, comprise more than one river basin together with associated bodies of groundwater and coastal water. River basins and coastal and groundwater bodies are defined in section 28. "River basin" includes the transitional water at the mouth of the river.

26. Subsection (3) provides for the allocation to appropriate river basin districts of bodies of coastal water and bodies of groundwater that are not fully contained within the area of one river basin. The Scottish Ministers are to assign them to the nearest river basin district or, if another district appears more appropriate, to that one.

27. The order-making power in this section will enable the Scottish Ministers to implement Article 3(1) of the Directive.

### *Section 5 - Characterisation of river basin districts*

28. Subsection (1), as read with subsection (2), requires SEPA to carry out, by 22 December 2004, an environmental and economic characterisation of all the river basin

districts identified under section 4. Subsection (3) requires SEPA to review this characterisation by 22 December 2013 and every 6 years thereafter.

29. Subsection (4) requires SEPA to carry out any such characterisations and reviews in accordance with technical specifications in the Directive. These are specifications on the classification of bodies of water in river basin districts and how their status is to be determined and monitored.

30. Subsection (5) enables the Scottish Ministers to make more detailed provision, by regulations, as to the methods and procedures and criteria by reference to which the characterisations and reviews are to be carried out.

31. This section will enable the Scottish Ministers to implement Article 5 of the Directive.

#### *Section 6 - Bodies of water used for the abstraction of drinking water*

32. Subsection (1) enables the Scottish Ministers to implement, in part, Article 7(1) of the Directive.

33. Subsection (2) enables the Scottish Ministers to identify the boundaries of the areas on a map prepared for the purposes of the order and to be laid before the Parliament. The Scottish Ministers must send a copy of the order and map to SEPA (subsection (3)).

#### *Section 7 - Register of protected areas*

34. Subsection (1) requires SEPA, by 22 December 2004, to prepare and maintain a register of protected areas for each river basin district in accordance with regulations made by the Scottish Ministers. The duty to "maintain" the register covers keeping it under review and up to date.

35. Subsection (2) gives an indication of the matters in respect of which the regulations may make provision. It enables Ministers to specify the date by which a register is to be prepared, its form and the information which it must contain.

36. This section will enable the Scottish Ministers to implement Article 6 of the Directive. The wording in subsection (4) mirrors to some extent the terminology used in Article 6(1) and Annex IV to the Directive.

#### *Section 8 - Monitoring*

37. This section will enable the Scottish Ministers to implement the requirements of Article 8 of the Directive, and Article 7(1) in so far as that Article requires monitoring of waters used for the abstraction of drinking water to be carried out.

#### *Section 9 - Environmental objectives and programmes of measures*

38. This section concerns the setting of environmental objectives for all the bodies of water within river basin districts. "Body of water" is defined in section 28. Subsection (1) places a duty on SEPA to set these objectives and to prepare a programme of measures to be applied to achieve these objectives. Subsection (2) requires SEPA to take account of the characterisation

of the river basin district concerned carried out under section 5 when setting environmental objectives and preparing a programme of measures under section 9. Subsection (3) provides for derogations to the objectives to apply in certain circumstances.

39. Subsection (4) confers power on the Scottish Ministers to make, by regulations, further provision as to the setting of environmental objectives and the preparation of programmes of measures under section 9.

40. Subsection (5) specifies that any regulations under subsection (4) making provision about setting environmental objectives may in particular include provision as to:

- the types of environmental objective which may be set for particular descriptions of body of water,
- the date and criteria by reference to which such objectives are to be set,
- the methods and procedures to be followed in setting such objectives,
- the dates by which such objectives are to be achieved; and
- descriptions of bodies of water or circumstances in which such objectives are to apply with modifications.

41. Subsection (6) specifies that any regulations under subsection (4) making provision about programmes of measures may in particular include provision as to the types of measure which may be included in the programme of measures, the date by which the programme is to be prepared and the methods and procedures to be followed in preparing such a programme.

42. This section will enable the Scottish Ministers to implement the requirements of Article 4 of the Directive.

#### *Section 10 - River basin management plans*

43. Subsection (1) requires SEPA to prepare and submit to the Scottish Ministers a river basin management plan for each river basin district in Scotland. The Scottish Ministers may direct SEPA as to when such a plan must be submitted.

44. Subsection (2) provides that a river basin management plan must include the matters listed in Part 1 of schedule 1 and any other matters that may be set out in regulations by the Scottish Ministers.

45. Subsections (3) and (4) provide for the incorporation of maps, diagrams and other illustrative information in river basin management plans. The plans must include such elements as directed by the Scottish Ministers and may contain others that SEPA thinks are appropriate. Where they do appear they are to be treated as forming part of the plan.

#### *Section 11 - River basin management plans: publicity and consultation*

46. Subsection (1) provides that SEPA must publish a statement about its preparation of the plan, including what consultation measures it proposes to take in that respect, a minimum of 3 years before the plan is to become effective.

47. Subsection (2) provides that SEPA must publish a summary of the significant water management issues for the relevant river basin district a minimum of 2 years before the plan is to become effective.

48. Subsection (3) provides that SEPA must publish a draft of the plan a minimum of 1 year before the plan is to become effective.

49. SEPA must consult on the statement, summary and draft plan and publicise the publication of these documents, the arrangements for making them publicly available, and the opportunity to make representations about them. Anyone may make representations to SEPA about them (subsection (7)). Subsections (8) and (9) require SEPA to take into account any views or representations received about the statement, summary or draft plan.

50. Subsection (10) provides that where SEPA is required by section 11, 12 or 13 to publicise any matter in connection with a river basin management plan, it must do so by means of a notice published in at least one national newspaper circulating in Scotland, such local newspapers in the river basin district (or part thereof) as it thinks fit, and may further publicise the matter by such electronic means as it thinks fit.

#### *Section 12 - River basin management plans: submission for approval*

51. This section makes provision in connection with the submission of a river basin management plan to the Scottish Ministers.

52. Subsection (1) requires SEPA, when it has submitted a river basin management plan to the Scottish Ministers, to publicise that fact, to make copies of the plan available for public inspection free of charge, and to publicise arrangements for making such copies available.

53. Subsection (2) provides that a river basin management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement of the action taken by SEPA in publishing the draft plan, making it available for public inspection and consulting the bodies and persons described in section 11(6). The statement must also include a summary of the representations received about the draft plan and of any consequential adjustments made to the plan.

54. Subsection (3) provides that the Scottish Ministers may - having considered the statement and if they believe further work by SEPA on the issues covered by the statement is required - return the plan to SEPA. In doing so they may direct SEPA to take such further action in that regard as they may specify and to resubmit the plan with such modifications as SEPA considers appropriate. The Scottish Ministers may specify the timescale in which the plan should be resubmitted. Subsection (4) requires the Scottish Ministers to state their reasons for returning the plan to SEPA.

55. Subsection (5) provides that the requirements in this section - about publicising submission of a plan, making copies available, attaching a statement about consultation and about return of the plan to SEPA - also apply to resubmitted plans.

### *Section 13 - River basin management plans: approval*

56. This section makes provision for the Scottish Ministers' approval of river basin management plans.

57. Subsection (1) provides that once a river basin management plan has been submitted to them, the Scottish Ministers may approve the plan or reject it. They may approve the whole of the plan or part of it and may do so with or without modifications. Subsection (3) requires the Scottish Ministers to state their reasons for such a decision.

58. Subsection (2) allows the Scottish Ministers to seek further information or undertake such other investigations and consultation as they consider appropriate before determining whether to approve or reject a plan.

59. Subsection (4) provides for the circumstances in which the Scottish Ministers reject a plan. In that case, they must return the plan to SEPA and direct it to resubmit the plan with any modifications they may specify together with any further changes that SEPA considers appropriate. The Scottish Ministers may direct the timescale in which a plan must be resubmitted.

60. Subsection (5) requires SEPA, when a river basin management plan has been approved, to publicise the approved plan as it thinks fit. It must also make copies of it available for public inspection and for sale at a reasonable price. SEPA must also publicise the publication of the approved plan and the arrangements for making copies of it available for public inspection.

### *Section 14 - River basin management plans: review*

61. Subsection (1) requires SEPA to review and update each approved river basin management plan, no later than 6 years, or such lesser period as Scottish Ministers may direct, from the date on which the plan was approved under section 13.

62. Subsection (2) gives the Scottish Ministers a power to direct SEPA, following a review, to prepare and submit a revised river basin management plan to the Scottish Ministers by a given date.

63. Subsection (3) provides that a revised plan must contain the matters set out in Part 2 of schedule 1, over and above the requirements in relation to content of the plan set out in section 10. The terms of Part 2 of schedule 1 largely mirror the terms of Part B of Annex VII to the Directive.

64. Subsection (4) provides that the specified provisions of the Act apply to a revised plan in the same way they do to an original plan. This will give Ministers the same control of the process as they have for the original plan.

65. This section will enable the Scottish Ministers to implement Article 13(7) of the Directive.

### *Section 15 - Sub-basin plans*

66. This section provides for the preparation of sub-basin plans and will enable implementation of Article 13(5) of the Directive. Subsection (1)(a) requires SEPA to divide the river basin district into such geographical areas as it thinks fit and prepare a plan in respect of each of those areas in relation to water management within the area. Subsection (1)(b) allows SEPA as a responsible authority, if it thinks fit, to prepare a plan in relation to a particular aspect of water management within the district. Subsection (2) gives some examples of the sort of thing that a sub-basin plan under subsection (1)(b) might relate to, e.g. a particular type of body of water, a particular catchment area, a particular matter in relation to the water environment or a particular type of water use. This list of matters which sub-basin plans might deal with is sufficiently wide to accommodate both the geographic and the thematic sub-basin plans which SEPA is permitted to establish under subsection (1). The cumulative effect of these provisions is to require SEPA, as a minimum, to prepare sub-basin plans across the geographical extent of the river basin district. SEPA is also given the power to establish sub-basin plans to look at particular water management issues where it deems that these are necessary.

67. Subsection (4) provides that sub-basin plans must not be inconsistent with anything in the river basin management plan, which they supplement. Subsection (5) requires that sub-basin plans relating to water management issues in the district prepared under subsection (1)(b) should not be inconsistent with anything in the mandatory geographical sub-basin plans prepared under subsection (1)(a). Subsection (6) requires SEPA or the responsible authority to consult such of the persons referred to in section 11(6)(a) to (j) as it thinks fit about a proposed sub-basin plan, and must take into account any views expressed by those consulted.

#### *Section 16 - Duty to have regard to river basin management plans*

68. This section places a specific requirement on the Scottish Ministers and every public body and office holder to have regard to any relevant river basin management plan in the exercise of their functions, and to those sub-basin plans relevant to, or affected by the exercise of the functions of these bodies

#### *Section 17 - River Basin District Advisory Groups*

69. This section provides for the establishment of River Basin District Advisory Groups. Subsection (1) provides that at least one such Group must be established for each river basin district. Subsection (2) provides that the function of each of the advisory groups is to advise SEPA on any matter which relates to the preparation of river basin management plans for the district and is within the remit of the group. Subsection (5) provides that SEPA may determine the remit of an Advisory Group by reference to a particular sub-basin plan, a particular geographical area, or any other particular aspect of water management within the district.

70. Subsection (3) requires SEPA, in preparing a river basin management plan, to have regard to any advice given by an Advisory Group. Subsection (4) provides that the number of Advisory Groups, their remits, membership and procedure, are to be such as SEPA may determine. In determining the number of Advisory Groups for any river basin district and their remits and memberships, subsection (6) provides that SEPA must seek to ensure appropriate representation of the interests of the persons specified or referred to in section 11(6)(a) to (h). SEPA may pay such expenses and allowances to members of an Advisory Group as it considers appropriate.



### *Section 18 - Power to obtain information and documents*

71. This section provides for SEPA to obtain information and assistance from the Scottish Ministers and the responsible authorities and to obtain information from other persons to enable it to carry out its functions under Chapter 2 of Part 1 of the Act.

72. Subsection (1) places a duty on the Scottish Ministers and the responsible authorities designated pursuant to section 2, to provide SEPA with such information and assistance as SEPA may reasonably seek in connection with the exercise of any of its functions under Chapter 2.

73. Subsection (2) enables SEPA to serve a notice on any person (other than the Scottish Ministers or the responsible authorities) in order to obtain information from them that it needs to carry out its functions under Chapter 2. Subsections (3) and (4) provide more detail about the form and content of such notices.

74. Subsection (5) allows the Scottish Ministers to arbitrate where there are differences of opinion between SEPA and a responsible authority or any other person about the reasonableness of SEPA's requests for information or assistance, as appropriate.

75. Subsection (6) provides that SEPA may not require the disclosure of any information that is legally privileged.

76. Subsection (7) makes it clear that persons on whom such notices are to be served must produce documents in legible form (e.g. a print out of a document held electronically).

77. Subsection (9) makes it an offence not to comply with a request for information or documents or to intentionally alter, suppress or destroy any documents requested by SEPA. Subsection (10) describes the penalties that are attached to this offence. The statutory maximum referred to in subsection (10)(a) is currently £5,000. There is no limit on the level of fines in the event of conviction on indictment.

### *Section 19 - General regulation-making power*

78. Subsection (1) confers power on the Scottish Ministers to make regulations specifying the form and content of river basin management plans and sub-basin plans, matters to be taken account of by SEPA in preparing the plans and the detailed procedures to be followed in connection with their preparation, submission, approval and modification.

79. Subsection (2) provides that the regulation making power may, in particular, be used to specify more detailed procedures for publicity and consultation on the plans. Subsection (3) makes it clear that regulation making power is without prejudice to sections 10 to 15 and 17.

### *Section 20 - Regulation of controlled activities*

80. Subsection (1) confers power on the Scottish Ministers to make regulations for or in connection with the control of any activity (referred to as a "controlled activity") that they consider is necessary or expedient for the purposes of protecting the water environment.

81. Subsection (2) specifies that Ministers may use this power, in particular, to make provision for the regulation of a number of specified activities (described in subsection (3)) and to make such other provision for or in connection with the basic measures and supplementary measures mentioned in paragraph 2 of Article 11 of the Directive as they consider necessary for the achievement of the environmental objectives set out in river basin management plans.

82. Subsection (3) describes certain activities which the regulations may, in particular, deal with and subsection (6) further defines them.

83. Subsections (4) and (5) enable the regulations made under this section to make provision for any of the purposes set out in schedule 2.

84. This section will enable the Scottish Ministers to implement the requirements of Article 11 of the Directive. Subsection (3)(a) relates to Article 11(3)(g) and (h) of the Directive. Subsections (3)(b) and (3)(c) relate to Article 11(3)(e) of the Directive. Subsection (3)(d) relates to Article 11(3)(i) of the Directive.

#### *Section 21 - Controlled activities regulations: procedure*

85. Subsection (1) requires the Scottish Ministers to consult various bodies (including SEPA, the responsible authorities and representatives of local government, industry, agriculture, fisheries and small business interests) before making any regulations under section 20. Subsection (1)(d) will enable the Scottish Ministers to include other interests in their consultation as they see fit.

86. Subsection (2) provides additional consultation requirements that apply in relation to the making of general binding rules pursuant to section 20 and paragraph 3(2) of schedule 2. General binding rules will be generally applicable conditions applying to particular water uses, sectors or areas and will be made by the Scottish Ministers by regulations. In addition to the consultation requirements specified in paragraph 85 above, the Scottish Ministers must consult on the rules for at least 28 days. They must give notice of the opportunities for interested parties to make representations about the proposed rules. Further, they must have regard to views expressed during the consultation period in finalising the rules (subsection (4)).

#### *Section 22 - Remedial and restoration measures*

87. Subsection (1) confers power on the Scottish Ministers to make regulations for or in connection with any remedial or restoration measures that they consider are necessary for the purposes of achieving the environmental objectives in river basin management plans. Remedial or restoration measures might include, for example, the removal of a redundant weir or lade or the clean up of historical pollution where these threaten the achievement of the environmental objectives for the body of water concerned.

88. Subsection (3) gives particular examples of the provision that could be made by the Scottish Ministers in regulations under subsection (1). They could give SEPA or any responsible authority the function of undertaking remedial or restoration measures. Or they could make provision for determining what other persons should bear responsibility for such measures and allow SEPA or a responsible body to either serve notices on the persons so

identified requiring them to carry out the works themselves or to undertake the works themselves or arrange to have the works undertaken and recover the costs from the persons so identified.

#### *Section 23 - Fixing of charges for water services*

89. Subsection (1) confers power on the Scottish Ministers to make by regulations such provision in relation to charging for water services as they consider necessary or expedient for the purpose of protection of the water environment.

90. Subsection (2) provides that the regulations may, in particular, specify principles, objectives or other matters to be taken account of in the fixing of charges. Regulations under this section can amend enactments (section 36(3)) e.g. enactments conferring power to charge, for or relating to the fixing of charges, for the provision of water services. Subsection (3) requires Scottish Ministers to consult such persons as they see fit before making regulations under subsection 1. "Water services" is defined in subsection (4).

91. This section will enable the Scottish Ministers to implement the requirements of Article 9 of the Directive.

#### *Section 24 - Planning permission :fish farming*

92. This section introduces planning controls over marine fish farming in transitional water and coastal water as defined in the Act. This is achieved largely through amendments of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act")

93. Subsection (2)(a) amends the definition of "development" in section 26(6) of the 1997 Act to include fish farming in coastal water and transitional water as defined in the Act. Fish farms within the 3-mile limit of UK territorial waters adjacent to Scotland will require planning permission. Fish farming in inland waters is already subject to planning control under the 1997 Act.

94. The definition of "tank" in the 1997 Act is repealed and replaced by a new definition of "equipment". The new definition of "equipment" includes tanks, cages and other structures as well as long lines, which are used in the farming of shellfish.

95. Subsection (2)(b) introduces two new subsections, (6A) and (6B), into section 26 of the 1997 Act. These provisions confer powers on the Scottish Ministers to make orders making modifications (including amendments and repeals) as they consider necessary or expedient to the definitions of "fish farming" and "equipment" in subsection (6) of section 26. Such orders are subject to affirmative resolution procedure.

96. Subsection (3) amends section 40 of the 1997 Act dealing with the assessment of the environmental effects of fish farming development. The amendment requires a planning authority, before granting planning permission in respect of a fish farming development, to consider the effect of the proposed development on the water environment as defined in the Act. This includes fish farms in inland water as well as transitional water and coastal water.

97. Subsection (4) amends section 275 of the 1997 Act relating to the Scottish Ministers' powers to make regulations and orders.

98. Subsection (5) confers power on the Scottish Ministers to make orders for the purpose of or in connection with the application of the 1997 Act to fish farming in transitional water or coastal water. This power does not provide for a general extension of planning powers to all offshore activities or extend planning authority boundaries seaward.

99. Subsection (6) makes particular provision for the Scottish Ministers to allocate, by order under subsection (5), responsibility for planning control for specified areas of transitional water or coastal water to particular planning authorities. The amendment does not change the districts of planning authorities.

100. Subsection (7) requires that the Scottish Ministers consult SEPA, every planning authority and such other persons as they see fit before making any order under subsection (5).

*Section 25 - Power to give effect to Community obligations etc.*

101. Subsection (1) provides that the Scottish Ministers may by regulations provide that the provisions of Part 1 of the Act are to have effect with such modifications as the regulations may specify but only for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

102. A related right includes the right of the UK to derogate from a Community obligation or to make a more onerous provision in respect of an obligation (subsection (2)).

*Section 26 - Annual report on implementation of Directive*

103. This section requires the Scottish Ministers to provide an annual report to the Scottish Parliament, as soon as practicable after the end of each calendar year, on progress made during the year towards achieving the environmental objectives set under section 9, and on the action taken during the year by Scottish Ministers, SEPA and the responsible authorities for securing compliance with the requirements of the Directive.

*Section 27 - Availability of documents for public inspection*

104. This Section requires, as a minimum, that documents made available for public inspection under Part 1 of the Act should be made available in print and electronically. It also allows the information to be made available by such other means, or in such other formats, as the person required to make it available thinks fit for the purposes of encouraging inspection of it by the members of the public.

*Section 28 - Interpretation of Part 1*

105. This section defines the various terms used in Part 1 of the Act. It also provides that any term used in Part 1 of the Act and in the Directive, but not defined in Part 1, has the same meaning as it has for the purposes of the Directive.

**Part 2 - Water and sewerage services**

*Section 29 - Duty to provide water and sewerage services*

106. This section amends section 1 of the Sewerage (Scotland) Act 1968 ("the 1968 Act") and section 6 of the Water (Scotland) Act 1980 ("the 1980 Act") to make further provision regarding Scottish Water's duty to provide water and sewerage services at reasonable cost.

107. The 1968 and 1980 Acts, as amended by other enactments including the Water Industry (Scotland) Act 2002, set out Scottish Water's core duties to provide, respectively, public sewerage services and water supplies. The 1968 Act makes general provision for sewerage and trade effluent. The Act sets out the duties and powers of Scottish Water, and the rights and obligations of owners and occupiers, in relation to sewerage provision and also includes arrangements for the vesting of sewers, drains and works. The provision on trade effluent includes the right to discharge into public sewers, control of discharges and agreements in lieu of applications for consent. There are other miscellaneous and general provisions in the 1968 Act covering such matters as the powers of Scottish Water to execute works, require information and enter premises.

108. The 1980 Act consolidates previous enactments relating to water supply in Scotland. It confers functions on Scottish Water, and on the Scottish Ministers, in relation to the conservation, protection and effective use of water resources and in relation to the provision of water supplies throughout Scotland for domestic and non-domestic purposes. The 1980 Act confers order making powers on the Scottish Ministers, for example, regarding acquisition of water by Scottish Water. It also confers powers on Scottish Water relating to restriction of water supply and usage, survey and acquisition of land, acquisition of water rights, carrying out of works, breaking open of streets, laying pipes and the making of byelaws. The Act also sets out the rights and duties of owners and occupiers, including the option to take a supply of water by meter in certain circumstances. It also makes provision for offences, including the offence of polluting water, and penalties.

109. Section 1 of the 1968 Act imposes a duty on Scottish Water to provide sewerage, provided it is practicable to do so at reasonable cost (subsection (3)). Section 29(2) of the Act inserts four new subsections after subsection (3) of section 1 of the 1968 Act. New subsection (3A) allows the Scottish Ministers to specify cases or types of cases to which subsection (3) does not apply, with the effect that Scottish Water must comply with the duties set out in subsections (1) and (2) despite this requiring actions which are not practicable at reasonable cost. New subsection (3B) specifies that in determining reasonable cost for the purpose of subsection (3) the costs to be taken into account include such costs as Scottish Water considers necessary in consequence of the connection. New subsection (3C) allows the Scottish Ministers to determine reasonable cost for the purposes of section 1 of the 1968 Act in regulations. New subsection (3D) specifies that the regulations may, in particular, make provision as regards the matters and criteria to be considered and the method of calculation to be adopted in determining reasonable cost, and that different provisions may be made for different cases or types of case.

110. Subsections (3) and (4) of section 29 insert references to regulations under the new subsection (3C) in subsections (4) and (6) of section 1 of the 1968 Act. The effect of the amendment to section 1(4) is that an aggrieved person can appeal to the Scottish Ministers on the grounds that a determination of reasonable cost has not been made properly in accordance with the regulations, whereupon the Scottish Ministers will determine the issue, following consultation with Scottish Water, and Scottish Water must give effect to that determination. The effect of the amendment to section 1(6) is that the power to make regulations under new subsection (3C) is exercisable by statutory instrument, subject to negative procedure.

111. Subsection (6) of section 29 amends section 6(2) of the 1980 Act to make Scottish Water's duty to supply water under that subsection subject to the new subsection (2A) added by subsection (7), so that Scottish Water is not required to take pipes to a connection point for buildings where an agreement is in force between Scottish Water and another person for them to carry out this action. Subsection (7) also adds new subsections (2A) to (2E) to section 6. Subsection (2B) provides that the Scottish Ministers can specify cases or types of cases where the duties in Section 6(1) and (2) of the 1980 Act apply despite requiring actions which are not practicable at reasonable cost. Subsection (2C) specifies that in determining reasonable cost for the purpose of subsection (2), the costs to be taken into account include such costs as Scottish Water considers necessary in consequence of the connection. Subsection (2D) enables the Scottish Ministers to define reasonable cost for the purposes of section 6 of the 1980 Act in regulations. Subsection (2E) specifies that those regulations, may in particular, make provision as to matters to be taken into account, the criteria to be applied and the method of calculation to be adopted in for deciding what is reasonable cost. The regulations will be made by statutory instrument and subject to negative procedure in the Scottish Parliament, in accordance with section 101(2) of the 1980 Act (as amended by the Scotland Act).

112. Subsection (8) of section 29 amends subsection (3) of section 6 of the 1980 Act so that the issues which the Scottish Ministers can be requested to determine include whether a reasonable cost has been properly determined in accordance with regulations under subsection (2D).

*Section 30 - Private sewers, SUD systems and sewage treatment works etc.: vesting, takeover and connection conditions*

113. This section makes detailed provision on vesting, construction standards, connection agreements and takeover conditions, by amending sections 3, 8, 12 and 16 of the 1968 Act and adding three new sections, 14A, 14B and 14C, to that Act.

114. Subsection (1) adds subsection (3) to section 3A of the 1968 Act. The new subsection specifies that a sewer or SUD system shall vest in Scottish Water only if it complies with the construction standards set out in new sections 14A or 14B so far as applicable and also to any conditions that Scottish Water has made under new section 14C. Subsection (3) also provides that vesting of a sewer or SUD system should not take effect until any security required as part of an agreement under section 14C, for example a bond, has been provided.

115. Subsection (2) adds subsection (1A) to section 8 of the 1968 Act, and repeals section 8(2). The new subsection specifies that an agreement by Scottish Water to take over a sewage treatment works, or SUD system, is subject to the works complying with the construction standards set out in new sections 14A or 14B so far as applicable and also to any conditions that Scottish Water has made under new section 14C. Subsection (1A) also provides that the take-over of a sewage treatment works or SUD system should not take effect until any security required as part of an agreement under section 14C, for example a bond, has been provided.

116. Subsection (3) makes similar provision to the provisions in subsections (1) and (2), in respect of connecting drains or sewers or SUD systems to those of Scottish Water, by adding a new subsection (2A) to section 12 of the 1968 Act. Subsection (2A) provides that an owner can only connect their drains or sewers or SUD systems to those of Scottish Water if they

meet the required construction standards and, if required by Scottish Water, the owner has entered into a connection agreement with Scottish Water and has provided adequate security.

117. Subsection (4) provides for new sections 14A, 14B and 14C to be added to the 1968 Act.

118. Section 14A relates to private sewers, SUD systems and sewage treatment works. It makes provision as to the construction standards which drains, private sewers, private SUD systems and private sewage treatment works must meet for the purposes of the new subsections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i). Subsection (1) of the new section specifies that these standards are to be prescribed by the Scottish Ministers in regulations. Subsection (2) provides that the standards required by the regulations can include those specified in other enactments, e.g. those that are legally binding on Scottish Water. Subsection (3) provides that any regulations made pursuant to this section can apply different standards to different persons or cases or types of case. The Scottish Ministers must consult Scottish Water and any other persons they consider appropriate before making any such regulations (section 14A(4)), and the regulations are to be made by statutory instrument, subject to negative procedure in the Scottish Parliament (section 14A(5)).

119. Section 14B relates to sustainable urban drainage systems. Subsection (1) specifies that for the purposes of the new subsections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) the SUD system requirements are to be prescribed by the Scottish Ministers in regulations. Subsection (2) provides that subsections (3) to (5) of new section 14A also apply to regulations made under section 14B.

120. Section 14C provides for vesting conditions and vesting of sewers or SUD systems (section 14C(1)), takeover conditions and taking over of sewage treatment works or a SUD system (section 14C(2)), and for connection agreements and connecting drains or sewers or a SUD system (section 14C(3)). It also confers a regulation making power on the Scottish Ministers to prescribe conditions which must be included in these agreements, and exceptions in which the agreements are not required, or are required with modifications (Section 14C(4)). Section 14C(5) enables detailed provision to be made for financial conditions which can be made in the regulations. Any such regulations must be made by statutory instrument, subject to negative procedure in the Scottish Parliament (section 14C(7)).

121. Subsection (5) adds subsection (3) to section 16A of the 1968 Act relating to vesting of private sewers. The new subsection specifies that a sewer or SUD system shall vest in Scottish Water only if it complies with the construction standards set out in new sections 14A or 14B so far as applicable and also to any conditions that Scottish Water has made under new section 14C. Subsection (3) also provides that vesting of a sewer or SUD system should not take effect until any security required as part of an agreement under section 14C, for example a bond, has been provided.

### *Section 31 - Laying of water mains and communication pipes by persons other than Scottish Water*

122. This section inserts three new sections, 23A, 23B and 23C, in the 1980 Act.

123. Section 23A relates to laying of mains and communication pipes by persons other than Scottish Water. It provides for Scottish Water to authorise another person to lay a main or

communication pipe and clarifies the arrangements for subsequently vesting the main or pipe. It provides a power for Scottish Water to authorise another person to lay a main or communication pipe where this involves road works or crossing a third party's land (section 23A(1)), and transfers to the authorised person the requirements to give reasonable notice to interested parties and the procedure for responding to objections provided in section 23 of the 1980 Act (section 23A(2)). Section 23A(3) provides for a main or communication pipe which connects to a main which is vested in Scottish Water to vest in Scottish Water. An exception to this is provided for where Scottish Water has made a determination during the construction of the main or communication pipe, vesting the main or pipe and its management, maintenance and renewal instead in the person who has laid it (section 23A(4)), and giving notice of this determination (section 23A(5)). Where a main or communication pipe is laid by a person other than for or on behalf of Scottish Water and the consequent main does not connect to another main which is vested in Scottish Water, section 23A(6) provides that it vests in the person who laid the main.

124. However, section 23A(7) provides that, despite a main or communication pipe not connecting with a main vested in Scottish Water or a determination having been made by Scottish Water that the main or pipe should vest in the person who laid it, Scottish Water may enter into an agreement for the main or pipe to vest in it instead. Section 23A(8) provides that where the main or communication pipe which is intended to vest in Scottish Water connects to a public main, such an agreement is only valid if the main meets the construction standards provided by section 23B, and is subject to any conditions and security Scottish Water require under section 23C.

125. Section 23B relates to construction standards for mains and communication pipes to vest in Scottish Water. It provides a regulation-making power for the Scottish Ministers to prescribe the standards referred to in section 23A which a main or communication pipe not laid by or on behalf of Scottish Water must meet for it to vest in Scottish Water. These standards can include those specified in other enactments, e.g. those that are legally binding on Scottish Water (section 23B(2)). The regulations under this section may make provision for different standards for different cases or types of case, and before making the regulations, the Scottish Ministers must consult Scottish Water and any other persons they consider appropriate (sections 23B(3) and (4)). Regulations under this section will be made by statutory instrument and subject to negative procedure in the Scottish Parliament (section 101(2) of the 1980 Act).

126. Section 23C relates to vesting conditions for mains and communication pipes. It sets out arrangements for an agreement between Scottish Water and the person who laid the main to include payments to either party, and a regulation-making power for the Scottish Ministers to make detailed provision relating to how costs and liabilities in vesting conditions should be determined.

127. Section 23C(1) provides that Scottish Water may require conditions ("vesting conditions") to be included in an agreement under section 23A(7) between Scottish Water and another person to allow a main or communication pipe to vest in Scottish Water. These conditions may include a payment from Scottish Water to the person who laid the main or pipe to cover the costs of laying it, and a liability on that person to pay Scottish Water in respect of expenses they incur, either through maintaining, repairing or renewing the mains or pipe, connecting it to a public main, or other work that Scottish Water considers necessary as a consequence of connecting the main or communication pipe. Section 23C(2) provides a



regulation making power for the Scottish Ministers in relation to these vesting conditions. The regulations can specify provision which should be included in an agreement, and cases where section 23C(1) does not apply, or applies only with modifications. Section 23C(3) provides further detail as to provision which may be made in these regulations: they may provide for how a sum which Scottish Water should contribute in respect of the costs of laying the main or communication pipe should be determined; they may set out the matters, criteria and methods of calculation for determining the liability of the person who laid the mains or pipe; when sums due under vesting conditions should be paid; and the security Scottish Water is entitled to require under section 23A(8)(b). Section 23C(4) clarifies that these regulations can make different provision for different cases or types of case. Regulations under this section will be made by statutory instrument and subject to negative procedure in the Scottish Parliament in terms of section 101(2) of the 1980 Act.

#### *Section 32 - Vesting in Scottish Water of waterworks and mains*

128. This section amends sections 21 and 23 of the 1980 Act to clarify that all waterworks constructed in accordance with section 21(1), and all water mains laid in accordance with section 23(1), whether before or after the provisions commence, are vested in Scottish Water. "Waterworks" is defined in the 1980 Act as including "streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines and all machinery, lands buildings and things for supplying, or used for supplying, water or used for protecting sources of water supply". Where any of these waterworks is used for providing a public water supply under the Act, section 32 will ensure that it is vested in Scottish Water.

#### *Section 33 - Sustainable urban drainage systems*

129. This section amends section 59(1) (interpretation) of the 1968 Act to insert a definition of sustainable urban drainage systems and related definitions.

130. Subsection (2) introduces schedule 3, which makes modifications to the 1968 Act and the Water Industry (Scotland) Act 2002 in relation to sustainable urban drainage systems.

#### *Section 34 - Modifications of Part III of the 1980 Act*

131. This section introduces schedule 4, which makes modifications of Part III of the 1980 Act which are minor or consequential on this Part.

### **Part 3 - General**

#### *Section 35 - Crown application*

132. This section makes provision for the application of the Act to Crown bodies. Part 1 will, in line with the Directive and subject to subsection (3), apply equally to bodies of water on Crown held land and activities carried on by Crown bodies as it applies to other bodies of water and activities by other persons. Subsection (2) ensures that the textual amendments made to the 1968 and 1980 Acts by Part 2 apply to the Crown to the same extent as those Acts. Subsection (3) makes it clear that subordinate legislation under the Act is not required to bind the Crown.

133. Subsection (4) provides that the Crown will not be criminally liable for any contravention of the Act's provisions but allows the Court of Session to declare any act of the Crown in contravention of the Act's provisions unlawful, upon application by the public body or office holder responsible for enforcing the provision in question.

134. Subsection (5) provides that any provision made by or under this Act applies to persons in the service of the Crown as it applies to other persons.

#### *Section 36 - Orders and regulations*

135. This section prescribes the procedure for the making of orders and regulations under the Act.

136. Subsection (2) as read with subsection (3) allows the Scottish Ministers, amongst other things, to make any changes to existing enactments or other documents (such as administrative guidance) that are necessary to bring them into line with the provisions of the Act or regulations made under the Act. Subsection (4) lists those orders and regulations made under specified provisions of the Act which are subject to negative procedure.

137. Regulations made under section 8, 19, 20, 22 or 23 can be subject to affirmative or negative procedure, at the choice of the Scottish Ministers (subsection (5)), although they must be made by affirmative procedure if they textually amend primary legislation (subsection (6)). Regulations made under section 19 are not subject to this proviso as there are no circumstances in which those regulations will textually amend other Acts. Subsection (6) also makes clear that orders under section 4 or 24, regulations under section 25 or orders under section 37 which make textual amendments will be subject to affirmative procedure. Regulations made under paragraph 20(4) of schedule 2 which concerns the up-rating of fines for offences committed, will be subject to negative procedure.

#### *Section 37 - Ancillary provision*

138. This section enables the Scottish Ministers by order to make incidental, supplemental, consequential, transitional, transitory or saving provision, if appropriate.

#### *Section 38 - Commencement and short title*

139. This section provides that all of the provisions of the Act, except Part 3, shall come into force when Scottish Ministers by order appoint. Part 3 comes into force on Royal Assent. The section also provides for the short title of the Act.

### **Schedules**

#### *Schedule 1 - Matters to be included in river basin management plans*

140. This schedule describes matters that must be included in river basin management plans. Part 1 of the schedule describes matters that must be included in every river basin management plan. Part 2 describes the additional matters that must be included in revised river basin management plans.

#### *Schedule 2 - Controlled activities regulations: particular purposes*

141. Schedule 2 is in two parts. Part 1 sets out the purposes for which regulations made pursuant to section 20 of the Act may be made. Part 2 supplements Part 1.

142. Paragraph 1 enables the regulations made pursuant to section 20 to expand on the definitions of controlled activities given in section 20(3) and to amend those definitions if desirable. The regulations may also specify controlled activities in addition to those specified in section 20(3).

143. Paragraph 2 enables the Scottish Ministers to specify in the regulations which authority will exercise any regulatory functions conferred by them. The Scottish Ministers, SEPA or any other public or local authority may be appointed as regulators. The regulations may specify that the regulators functions are to be exercised with a view to achieving the environmental objectives set out in river basin management plans and any other purposes (for example, mitigating flood or drought). The regulations may also enable the Scottish Ministers to issue directions and guidance to any regulator in connection with the exercise of their regulatory functions. Directions must be complied with. Guidance need only be had regard to.

144. Paragraph 3 enables the regulations to make provision for prohibiting persons from carrying on, or from causing or permitting others to carry on, any controlled activity unless it is authorised by or under and carried on in accordance with the regulations. The paragraph contemplates three types of authorisation: general binding rules (paragraph 3(2) and (3)), water use licences (paragraph 3(4(a))) and registration (paragraph 3(4(b))), as further described below.

145. Paragraph 3(2) is the main provision dealing with general binding rules but paragraph 17 is also relevant because it gives some indication of the type of provision that could be made in general binding rules. It makes it clear that general binding rules may impose conditions or requirements on the carrying out of a controlled activity. They may also set standards or objectives to be complied with or achieved and require standards or objectives set out in other enactments to be complied with or achieved. Paragraph 3(3) enables provision to be made for treating controlled activities as authorised if they are subject to general binding rules.

146. Paragraph 4 enables provision to be made for requiring anyone who proposes to carry on a controlled activity to notify the relevant regulator first. This will enable the regulator to determine what form of authorisation (if any) is required to be obtained in respect of that activity. The regulations will specify the procedure for notifying proposed controlled activities and for the assessment of how an activity requires to be authorised.

147. Paragraph 5 enables the regulations to make provision for or in connection with water use licences. They may prescribe the form and content of applications for water use licences and the procedure for making applications and for issuing such licences. It allows for such licences to be reviewed and varied periodically by the relevant regulator. It also allows for such licences to be suspended or revoked by the relevant regulator. It further allows for the regulations to specify requirements to be met if licences are transferred from one operator to another or surrendered. It will be possible for regulators to grant single water use licences covering a number of controlled activities.

148. Paragraph 5(6) should be read together with paragraph 18, which makes more detailed provision in relation to the imposition of conditions in respect of a water use licence. It

provides that regulations may, in particular, provide for conditions to be imposed in the light of any specified general principles, directions or guidance given under the regulations. Paragraph 18(c) will enable provision to be made to allow a regulator to impose conditions with reference to management agreements entered into between a number of licence holders. The regulations can specify the circumstances in which any such agreements may be incorporated in a water use licence.

149. Paragraph 6 enables the regulations to make provision for or in connection with the registration of controlled activities. For example, in some cases the regulations might permit the carrying on of a controlled activity subject only to a requirement to register the proposed carrying on of that activity with the relevant regulator. The regulations may require all notified activities to be registered irrespective of whether they are controlled by means of a water use licence or general binding rules or neither.

150. Paragraph 7 enables the regulations to make provision allowing regulators to establish charging schemes to recover costs incurred in connection with processing and assessing notifications, registering activities and water use licensing. Paragraph 7(2) will enable the regulations to provide that any such charging schemes must be approved by the Scottish Ministers before they take effect.

151. Paragraph 7 should be read together with paragraph 19, which makes further provision in relation to charging schemes. It provides that the regulations may require fees and charges payable under a charging scheme to be determined in the light of any specified general principles, directions or guidance given under the regulations or for them to be sufficient taking one year with another to cover expenditure specified in the regulations. The regulations may authorise any charging scheme to make different provision for different cases and that the regulations may specify different kinds of cases.

152. Paragraph 8 allows for requirements to be placed on the regulators to publicise various matters and to maintain certain public registers in connection with their regulatory functions. For example, the regulations may specify that regulators are to maintain public registers of both applications received for authorisations and authorisations granted. The regulations may also require persons to publicise the fact that they applying for an authorisation in certain circumstances, for example, when the controlled activity they propose to carry out is likely to have a significant effect on the water environment.

153. Paragraph 9 enables the regulations to specify the circumstances in which regulators must consult on various aspects of their regulatory functions. The regulations may, in particular, specify requirements for regulators to consult on any general guidance that they may make in connection with their regulatory functions (such as, for example, guidance on the risk assessment methodologies used to assess notifications of controlled activities).

154. Paragraph 10 enables the regulations to confer on regulators' functions with respect monitoring and inspecting the carrying on of controlled activities. This will enable them to ensure that authorisations are complied with. The regulations may, for example, allow regulators to enter premises, take samples or copy information and to arrange for remedial work to be carried out at the expense of those carrying out the controlled activities.

155. Paragraph 11 enables the regulations to provide regulators with powers to issue various notices on persons. It provides a non-exhaustive list of such notices (paragraph

11(1)(a) to (f)). Paragraph 11(1)(a) provides for notices to notify. This is to cater for the situation where a person is found to be carrying on a controlled activity without an authorisation and would require that person to notify the activity to the regulator. It provides for an administrative means of bringing persons into the control regime - the alternative is likely to be a prosecution under the proposed prohibition of the carrying on of controlled activities without an authorisation.

156. Paragraph 12 enables the regulations to specify offences and make related provision. The regulations could, for example, create an offence of non-compliance with a notice. Paragraph 12 must be read subject to paragraph 20 in Part 2 of the schedule which specifies maximum penalties and makes provision for continuing offences. Where a person has been convicted of an offence the regulations may enable the courts to deal with that person by requiring that person to take remedial action in addition to or instead of imposing any punishment. They may also enable regulators to arrange for remedial action to be taken at the expense of that person.

157. Paragraph 14 enables the regulations to specify rights of appeals in respect of decisions made or notices served or other things done (or omitted to be done) by regulators in connection with the various regulatory regimes. Any such regulations would make detailed provision in respect of, for example, procedural matters and the making, consideration and determination of appeals.

158. Paragraph 15 provides that the regulations may make provision along similar lines to the provisions of sections 157, 158 and 160 of the Environmental Protection Act 1990. Sections 157 and 158 of that Act deal with offences. Section 157 provides that directors, managers, secretaries of corporate bodies or other similar officers of such bodies or persons purporting to act in such a capacity or a member of a corporate body where it is managed by members are guilty of offences committed by the corporate body in question when liability for the offence can be attributed to them. Section 158 provides that where offences are committed because of acts or the default of some other person then the other person may be convicted of the offence in question. Section 160 sets out procedures and requirements for the serving of notices. It provides for notices to be left in person or sent by post. It further specifies the type of addresses notices should be sent to and, in relation to corporate bodies on whom, precisely notices can be served.

159. Paragraph 21 defines various terms used in schedule 2.

#### *Schedule 3 - Sustainable urban drainage systems: further amendments*

160. This schedule makes modifications to the 1968 Act and the Water Industry (Scotland) Act 2002 in relation to sustainable urban drainage systems. It integrates SUD systems into existing law, in particular adding SUD systems to Scottish Water's core functions as provider of sewerage services.

#### *Schedule 4 - Modifications of Part III of the 1980 Act*

161. This schedule makes modifications of Part III of the 1980 Act which are minor or consequential on Part 2 of the Act.

162. The schedule amends provisions in the 1980 Act to take account of the situation where someone other than Scottish Water lays mains or pipes in pursuance of an authorisation under section 23A. Section 23A establishes that Scottish Water can grant authorisation to other persons to lay a main under, or over a road.

163. Section 22 and paragraph 1 of Schedule 3 of the 1980 Act deal with the power of Scottish Water to break open roads for the purpose of carrying on works. The amendments to these sections apply these provisions to persons other than Scottish Water, carrying out works in pursuance of an authorisation under section 23A(1).

164. The amendments to section 23 and paragraph 4 of Schedule 3 allow Scottish Water to recover expenses from the person in whom a main is vested so far as relating to inspection and maintenance.

165. The amendments to Schedule 3, paragraph 4 ensure that an authorised person has the necessary powers to enable him to fulfil his maintenance obligations in relation to communication pipes vested in him.

166. Amendments to Schedule 4, paragraph 34 ensure that Scottish Water has the power to disconnect pipes which are connected without its consent and recover the expense from the person who made the connection.

## **PARLIAMENTARY HISTORY OF WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003**

The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those reports.

<b>Proceedings and Reports</b>	<b>Reference</b>
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### **Introduction**

18 June 2002	SP Bill 57 (Session 1)
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### **Stage 1**

#### **(a) Transport and the Environment Committee**

22 <sup>nd</sup> Meeting 2002	26 June 2002, cols 3337-3338
23 <sup>rd</sup> Meeting 2002	4 September 2002, cols 3354-3386
24 <sup>th</sup> Meeting 2002	11 September 2002, cols 3390-3420
25 <sup>th</sup> Meeting 2002	18 September 2002, cols 3442-3486

26<sup>th</sup> Meeting 2002                      25 September 2002, cols 3487-3538

27<sup>th</sup> Meeting 2002                      2 October 2002, cols 3541-3542

28<sup>th</sup> Meeting 2002                      9 October 2002 (in private)

16<sup>th</sup> Report 2002: Report on the Water    SP Paper 677

Environment and Water Services

(Scotland) Bill

(b) Subordinate Legislation Committee

26<sup>th</sup> Meeting 2002                      24 September 2002, cols 1028-1034

27<sup>th</sup> Meeting 2002                      1 October 2002, cols 1042-1045

**(c) Consideration by the Parliament**

30 October 2002                      Cols 14718-14762

**Stage 2**

**(a) Transport and the Environment Committee**

31<sup>st</sup> Meeting 2002                      13 November 2002, cols 3668-3686

32<sup>nd</sup> Meeting 2002                      20 November 2002, cols 3712-3759

33<sup>rd</sup> Meeting 2002                      27 November 2002, cols 3785-3824

34<sup>th</sup> Meeting 2002                      4 December 2002, cols 3826-3865

35<sup>th</sup> Meeting 2002                      11 December 2002, cols 3888-3919

**Stage 3**

**(b) Subordinate Legislation Committee**

3<sup>rd</sup> Meeting, 2003                      21 January 2003, cols 1172-1173

6<sup>th</sup> Report 2003: Water Environment        SP Paper 754

and Water Services (Scotland) Bill as

amended at Stage 2: Delegated Powers

Scrutiny

**(c) Consideration by the Parliament**

29 January 2003

Cols 17499-17557 and 17573-17592