

SFT Guidance on powers of Scottish public bodies to generate/procure heat and electricity supplies, and to supply heat and electricity to third parties, and the constraints on those powers.

Appendix 7

Legislation referred to in the Scottish Water section.

WATER INDUSTRY (SCOTLAND) ACT 2002

70 Interpretation

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

“the 1968 Act” means the Sewerage (Scotland) Act 1968,

“the 1980 Act” means the Water (Scotland) Act 1980,

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994,

“charges scheme” has the meaning given by section 29A(1),

“the Commission” means the Water Industry Commission for Scotland established under section 1(1) of this Act,

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

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

“new water and sewerage authorities” means the bodies established by section 62(1) of the 1994 Act and—

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

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

“the Parliament” means the Scottish Parliament,

“sewerage services provider” has the meaning given in section 6(4) of Water Services etc. (Scotland) Act 2005,

“water services provider” has the meaning given in section 6(2) of the Water Services etc. (Scotland) Act 2005.

(2) In this Act, the references to core functions in relation to Scottish Water are to its functions under or by virtue of—

(a) the 1968 Act and the 1980 Act,

(b) any other enactment (including this Act) so far as relating to the provision of water or sewerage services in Scotland.

25 General powers

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

(1A) Subsection (1) extends to allowing Scottish Water to engage in any activity that it considers will assist in the development of the value of Scotland's water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2013).

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

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

(a) form or promote (whether alone or with others) companies (under the Companies Act 2006),

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

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

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

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

(4) Where—

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

(b) in connection with the provision contract, a person (the “financier”) makes a loan to, or provides any other form of finance for, a party to the provision contract other than Scottish Water, the power in subsection (2) also includes power to enter into a contract with the financier, or any insurer of or trustee for the financier, in connection with the provision contract.

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

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

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

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

WATER RESOURCES (SCOTLAND) ACT 2013

1.— Duty of the Scottish Ministers

(1) The Scottish Ministers must—

(a) take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland's water resources,

(b) do so in ways designed to promote the sustainable use of the resources.

(2) In fulfilling the duty under subsection (1), the Scottish Ministers are to act so far as is consistent with the proper exercise of their—

(a) functions under the 2003 Act and the 2009 Act,

(b) other functions (whether or not relating to water resources or environmental matters).

(3) In subsection (1), the reference to the value of water resources—

(a) means the value of the resources on any basis (including their monetary or non-monetary worth),

(b) extends to the economic, social, environmental or other benefit deriving from the use of the resources (or any activities in relation to them).

(4) In this section—

“the 2009 Act” means the Climate Change (Scotland) Act 2009,

“water resources” means wetland, inland water and transitional water as defined by section 3 of the 2003 Act.

WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

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).

WATER INDUSTRY (SCOTLAND) ACT 2002

50 Economy, efficiency and effectiveness

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

50A.— Development of assets

(1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its functions, Scottish Water must take reasonable steps to develop the commercial value of its assets and expertise.

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

(3) In this section, “assets” means property, rights and other assets (whether tangible or intangible).

51 Sustainable development

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

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

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

51A.— Supporting renewable energy

(1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its functions, Scottish Water must take reasonable steps to promote the use of its assets for the generation of renewable energy.

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

(3) In this section, “*assets*” means property, rights and other assets (whether tangible or intangible).

56 Directions

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

(a) as to the exercise of its powers under section 25 and schedule 3 ,

(aa) requiring it to promote water conservation and water-use efficiency, and

(b) otherwise as to how its affairs are to be managed and conducted.

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

(a) as to the nature and allocation of the responsibilities of the members and employees of

Scottish Water,

(b) requiring Scottish Water to obtain the approval of, or to consult, the Scottish Ministers before exercising such of its powers, or exercising them in such ways, as the directions may specify,

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

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

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

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