



Water Services etc. (Scotland) Act 2005

2005 asp 3

PART 2

PROVISION OF WATER AND SEWERAGE SERVICES

Sewerage nuisance: code of practice

26 Monitoring and enforcement

- (1) Each local authority must—
 - (a) monitor compliance in its area with any sewerage code; and
 - (b) where a complaint of sewerage nuisance is made to it by a person living in its area, investigate the complaint.
- (2) Where a local authority is satisfied that Scottish Water or another person to whom a sewerage code applies is—
 - (a) not complying with; or
 - (b) likely not to comply with,the code in a material regard, the authority must serve a notice (an “enforcement notice”) on Scottish Water or (as the case may be) that other person.
- (3) An enforcement notice—
 - (a) may require—
 - (i) the execution of such works; and
 - (ii) the taking of such other steps,as are necessary for securing compliance with a sewerage code in any particular respects; and
 - (b) must specify the date by which the requirements of the notice, or any particular requirements of it, are to be fulfilled.
- (4) A person on whom an enforcement notice has been served may, by summary application made within 21 days of the date of service of the notice, appeal to the sheriff against the notice; and the notice is of no effect until the appeal is withdrawn or finally determined.

*Changes to legislation: There are currently no known outstanding effects for the
 Water Services etc. (Scotland) Act 2005, Section 26. (See end of Document for details)*

- (5) In an appeal under subsection (4), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (6) If a person, without reasonable excuse, contravenes an enforcement notice, the person is guilty of an offence and liable on summary conviction to a fine not exceeding £40,000.
- (7) Where an enforcement notice is contravened, the local authority may (whether or not proceedings have been taken for an offence under subsection (6)) take proceedings in the sheriff court for the purposes of securing that the requirements of the notice are fulfilled.
- (8) Where an enforcement notice is contravened, the local authority may (whether or not proceedings have been taken for an offence under subsection (6)) take any action it considers necessary in fulfilment of the requirements of the notice.
- (9) Any expenses reasonably incurred by a local authority in taking action under subsection (8) may be recovered by the authority from the person on whom the enforcement notice was served.
- (10) The functions of a local authority under sections 79 to 81 of the Environmental Protection Act 1990 (c. 43) in respect of statutory nuisance (within the meaning of Part III of that Act) do not apply in relation to any [^{F1}nuisance—
- (a) which constitutes a sewerage nuisance; and
 - (b) in respect of which a sewerage code applies.]
- [^{F2}(10A) Paragraphs 2, 3 and 5 of Schedule 3 to the Environmental Protection Act 1990 (c. 43) apply to the exercise of functions by a local authority under this section as they apply to the exercise of functions under Part III of that Act, with the following modifications—
- (a) in paragraph 2(1)(a), for “statutory nuisance” substitute “sewerage nuisance”
 - (b) in paragraph 2(1)(b) and (4)(b), for “Part III” substitute “section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3)” ;
 - (c) in paragraph 3(1), for the words from “, on summary conviction” to the end substitute—
 - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.”;
 - (d) in paragraph 3(2), for the words from “, on summary conviction” to the end substitute—
 - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.”;
 - (e) in paragraph 5—
 - (i) for the words “executing Part III” substitute “exercising functions under section 26 of the Water Services etc. (Scotland) Act 2005” ;
 - (ii) the words from “(other” to the end are to be disregarded.]

(11) This section and section 25 are without prejudice to section 82 (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990.

(12) In this section and section 25, “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Changes to legislation: There are currently no known outstanding effects for the
Water Services etc. (Scotland) Act 2005, Section 26. (See end of Document for details)

Textual Amendments

- F1** Words in s. 26(10) substituted (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#), **ss. 115(2), 128(2)** (with s. 127); [S.S.I. 2009/9](#), art. 2(a), Sch. 1
- F2** S. 26(10A) inserted (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#), **ss. 115(3), 128(2)** (with s. 127); [S.S.I. 2009/9](#), art. 2(a), Sch. 1

Commencement Information

- I1** S. 26(1)-(9) (11) in force at 22.4.2006 by [S.S.I. 2006/167](#), art. 2, **Sch. 2**
- I2** S. 26(10) in force at 22.4.2006 for specified purposes by [S.S.I. 2006/167](#), art. 2, **Sch. 2**
- I3** S. 26(12) in force at 10.2.2006 for specified purposes by [S.S.I. 2006/40](#), **art. 2(b)**
- I4** S. 26(12) in force at 22.4.2006 in so far as not already in force by [S.S.I. 2006/167](#), art. 2, **Sch. 2**

Changes to legislation:

There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Section 26.