

FIRE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Fire and Rescue Services

Chapter 4 – Water supply

Section 17 – Duty to secure water supply

29. This section re-enacts section 13 of the 1947 Act, requiring relevant authorities to take all reasonable measures to ensure an adequate supply of water and the setting out of the purposes for which they should secure that supply.

Section 18 – Use of water

30. This section allows a relevant authority to use any suitable supply of water for specified purposes. Whilst it provides for payment of reasonable compensation for water this is limited by reference to section 9A of the Water (Scotland) Act 1980, which expressly forbids charging by a water undertaker in respect of: water taken for the purpose of extinguishing fires or for any other emergency purposes; water taken for testing apparatus used for extinguishing fires; or for fire fighting training. This section re-enacts section 15(2) of the 1947 Act.

Section 19 – Agreements in relation to water supply

31. This section re-enacts section 14(1) and 15(1) of the 1947 Act and allows a relevant authority to enter into agreements with Scottish Water or with persons other than Scottish Water in order to secure the use of water; to improve access to water; or to lay and maintain pipes and to carry out other works in connection with the use of water. Subsection (2) allows for any agreement to include terms for payment, other than for the purposes covered by section 9A of the Water (Scotland) Act 1980.
32. Subsection (3) places a requirement on Scottish Water not to unreasonably refuse to enter into an agreement in relation to water supply and subsection (4) provides that Scottish Ministers may determine whether any refusal by Scottish Water to enter into an agreement under this section is unreasonable.

Section 20 – Emergency supply by Scottish Water

33. This section re-enacts sections 30(4) and (4A) of the 1947 Act. Subsection (1) places an obligation on Scottish Water to take all necessary steps to increase supply or pressure of water if requested to do so by a relevant authority for the purposes in section 17(2). Subsection (2) allows Scottish Water to shut off water from the mains and pipes in any area to enable it to comply with a request to increase supply or water pressure. Subsection (3) safeguards the relevant authority, Scottish Water or any other person from any liability for anything done by Scottish Water in complying with its obligations. Subsection (4) makes it an offence for Scottish Water, without reasonable excuse, to

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fail to take any steps which it is obliged to take and provides for a level 5 fine (currently £5,000) on summary conviction.

Section 21 – Fire hydrants: provision etc.

34. Subsection (1) applies sections 19 to 22 of Schedule 4 to the Water (Scotland) Act 1980 to Scottish Water. Scottish Water are therefore required, at the request of a relevant authority (see paragraph 9 of schedule 3 to this Act) to fix fire hydrants on their mains, keep them in good order and renew them. As soon as such a hydrant is complete, Scottish Water must - if required by the relevant authority – deposit a key in appropriate places. The costs incurred shall be defrayed by the relevant authority. Scottish Water must also, at the request and expense of the owner or occupier of any factory or place of business near a road, where certain requirements are fulfilled, fix a hydrant, keep it in good order and from time to time renew it.
35. Subsection (2) requires Scottish Water to mark the location of every fire hydrant with a notice or distinguishing mark and under subsection (4) the costs of doing this can be charged to the relevant authority in whose area the hydrant is situated.
36. Subsection (5) grants the Scottish Ministers power to make regulations providing for uniformity in fire hydrants and the distinguishing marks and notices indicating their location. This re-enacts section 14(6) of the 1947 Act.
37. Subsection (6) provides that, in circumstances where a hydrant is damaged as a result of authorised use which was not for the purposes of fire fighting or other relevant authority purposes, the liability for the cost of repair or replacement will not fall on the relevant authority. This re-enacts section 14(3)(b) of the 1947 Act.

Section 22 – Fire hydrants: recovery of costs

38. Section 21 of Schedule 4 to the Water (Scotland) Act 1980 provides that the cost of fire hydrants and of fixing, maintaining and renewing them is borne by the relevant authority. Section 22 amends the Water (Scotland) Act 1980 by inserting a new section 21A into Schedule 4, which provides Scottish Ministers with a power to make regulations setting out the persons (with the exception of Scottish Water) from whom, and the circumstances in which, a relevant authority may recover costs in respect of fire hydrants.

Section 23 – Fire hydrants: offences

39. This section makes it an offence for any person to use a fire hydrant provided by Scottish Water other than for fire fighting or any other purpose of a relevant authority, or other than for any purpose authorised by Scottish Water. It also makes it an offence to damage or obstruct a fire hydrant provided by Scottish Water other than as a consequence of its use for those purposes.
40. Under subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a maximum of a level 5 fine (currently £5000).
41. This section re-enacts section 14(5) of the 1947 Act.

Section 24 – Notice of works affecting water supply and fire hydrants

42. This section re-enacts sections 16(1) to (3) of the 1947 Act and requires any person who proposes to carry out any works for the purpose of supplying water to any part of the area of a relevant authority to give written notice to the authority under subsection (1). The notice period for doing so is either 14 days in a case where proposed works are to be carried out under a requirement under any enactment other than the Water (Scotland) Act 1980, or 6 weeks in any other case. A person proposing to carry out any works affecting a fire hydrant is required to give at least seven days' notice in writing.

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43. Under subsection (4), if it is not practicable for written notice to be given in accordance with the timescales set out in subsections (1) and (3), the person is regarded as having given such notice if it is given as soon as practicable. It is an offence under subsection (5), if, without reasonable excuse, a person fails to give notice as required. Under subsection (6) a person is liable on summary conviction to a maximum of a level 5 fine.