



Sewerage (Scotland) Act 1968

1968 CHAPTER 47

PART I

GENERAL PROVISIONS AS TO SEWERAGE

Duties and powers of local authorities

1 Duty of local authority to provide for sewerage of their area

- (1) Subject to the provisions of this Act, it shall be the duty of every local authority to provide such public sewers as may be necessary for effectually draining their area of domestic sewage, surface water and trade effluent, and to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of their sewers.
- (2) Without prejudice to the generality of the foregoing subsection, every local authority shall take their public sewers to such point or points as will enable the owners of premises which are to be served by the sewers to connect their drains or private sewers therewith at a reasonable cost.
- (3) The duties imposed by the foregoing subsections shall not require a local authority to do anything which is not practicable at a reasonable cost.
- (4) If any question arises under this section as to whether anything is or is not practicable at a reasonable cost or as to the point or points to which public sewers must be taken to enable drains or private sewers to be connected therewith at a reasonable cost, the Secretary of State, if requested to do so by any person aggrieved, shall, after consultation with that person and with the local authority concerned, determine that question, and the local authority shall give effect to his determination.

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2 Maintenance of public sewers and other works

Subject to section 4 below, it shall be the duty of every local authority to inspect, maintain, repair, cleanse, empty, ventilate and where appropriate renew all sewers, sewage treatment works and other works vested in them by virtue of this Act.

3 Construction etc. of public sewers and public sewage treatment works

- (1) Subject to the provisions of this Act, a local authority may, within or outwith their area—
 - (a) construct a public sewer—
 - (i) in, under or over any street, or under any cellar or vault below any street;
 - (ii) in, on or over any land not forming part of a street;
 - (b) construct public sewage treatment works in or on any land held by them or appropriated for the purpose.
- (2) Before commencing construction of a sewer in, on or over any land not forming part of a street, a local authority shall serve notice of their intention on the owner and the occupier of the land concerned together with a description of the proposed works and of the right to object thereto, and if within 2 months after the service of the notice the owner or the occupier objects to the proposed works, and that objection is not withdrawn, the local authority shall not proceed to execute the works without consent after mentioned but may refer the matter by summary application to the sheriff who may grant consent to the proposed works either unconditionally or subject to such terms and conditions as he thinks just, or who may withhold his consent, and the decision of the sheriff on the matter shall be final.
- (3) Section 349 of the Local Government (Scotland) Act 1947 (service of notices) shall apply to notices under subsection (2) above relating to land as it applies to notices relating to premises.
- (4) Where a local authority, in the exercise of their powers under subsection (1) above, propose to execute works outwith their area otherwise than in pursuance of an agreement under section 5 below, they shall in addition to any notice served under subsection (2) above serve notice of their intention on the local authority within whose area it is proposed to execute the works together with a description of the proposed works and if within two months after the service of the notice the local authority on whom it was served object to the proposed works, and that objection is not withdrawn, the first-mentioned authority shall not proceed to execute the works without consent aftermentioned but may refer the matter for the determination of the Secretary of State who may grant consent to the proposed works either unconditionally or subject to such terms and conditions as he thinks just, or who may withhold his consent, and his decision on the matter shall be final.

4 Power of local authority to close or alter public sewers etc.

A local authority may, if they think fit, close, alter, replace or remove any sewer, sewage treatment works or other works vested in them by virtue of this Act, but, before any person who is lawfully using the sewer or works for any purpose is deprived by the authority of that use, they shall provide a sewer or works equally effective for that use and shall at their expense carry out any work necessary to connect his drain or private sewer with the sewer or works so provided.

5 Agreements between local authorities

- (1) A local authority may enter into an agreement as respects any of the following matters with another local authority, and on such terms and conditions as may be specified in the agreement—
 - (a) whereby they shall exercise, in relation to any part of the area of the other authority, or in relation to any premises situated therein, any of the functions of the other authority under this Act;
 - (b) whereby their sewers or sewage treatment works may be connected with and discharged into the sewers or sewage treatment works of the other authority.
- (2) In the event of authorities failing to agree as to the terms or conditions on which they should make an agreement under the foregoing subsection, the Secretary of State may, on the application of those authorities, determine those terms or conditions, and his decision on the matter shall be final.

6 Functions outwith the area of a local authority

Where by virtue of an agreement under section 5 above or in pursuance of section 13 below a local authority exercise any functions in relation to any part of the area of another local authority or in relation to any premises situated therein, they may do so as if that part or those premises were situated within their area.

7 Agreements between highway and local authorities

- (1) Subject to the provisions of this section, a highway authority and a local authority may agree, on such terms and conditions as may be specified in the agreement, as to the provision, management, maintenance or use of their sewers or drains for the conveyance of water from the surface of streets or surface water from premises.
- (2) Where a sewer or drain with respect to which a highway authority and a local authority propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage treatment works of another local authority, the agreement shall not be made without the consent of that other authority, who may give their consent upon such terms and conditions as they think fit.
- (3) A highway authority or local authority shall not unreasonably refuse to enter into an agreement for the purposes of this section or insist unreasonably upon terms or conditions unacceptable to the other party, and a local authority shall not, under subsection (2) above, unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms or conditions unacceptable to either party thereto, and any dispute arising under this section to which the Secretary of State is not a party as to whether or not any authority are acting unreasonably, shall be referred to the Secretary of State, who, after consultation with the authorities concerned, shall determine the dispute, and his decision shall be final.
- (4) In this section " highway authority " has the meaning assigned to it in relation to Scotland by section 257(1) of the Road Traffic Act 1960.

8 Agreements as to provision of sewers etc. for new premises

- (1) Subject to subsection (2) below, where a local authority are satisfied that premises are to be constructed within their area by any person, they may enter into an agreement with that person as respects the provision by that person or by them of sewers and

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sewage treatment works to serve those premises, and any such agreement may specify the terms and conditions on which the work is to be carried out, including provision as to the taking over by the authority of sewage treatment works so provided, and, in relation to any premises served or to be served by the sewers or works, shall be enforceable against the authority by the owner or occupier of the premises for the time being.

- (2) An agreement under the foregoing subsection may only be entered into by an authority where the authority have no duty under section 1 above to provide public sewers to serve the premises.

9 Loan of temporary sanitary conveniences

Where work is to be carried out in connection with a sewer, drain or sewage treatment works which necessitates the disconnection of water closets or other sanitary conveniences provided for or in connection with premises, the local authority concerned may agree with the occupier of the premises, and on such terms and conditions as may be specified in the agreement, to supply on loan to him temporary sanitary conveniences in substitution for any water closets or other sanitary conveniences so disconnected :

Provided that the local authority shall make no charge for the supply, cleansing or removal of the temporary sanitary conveniences for the first 7 days of the period of loan or where the work is made necessary by a defect in a public sewer.

10 Emptying of septic tanks

- (1) A local authority may pass a resolution whereby they elect to empty all septic tanks serving premises situated in their area or in any part thereof specified in the resolution, and where such a resolution has been passed and approved by the Secretary of State it shall be the duty of the authority, subject to subsection (2) below, to empty all septic tanks serving such premises, where it is reasonably practicable to do so, at reasonable intervals and at such convenient hours and times as they consider proper.
- (2) The duty imposed by the foregoing subsection does not extend to septic tanks which receive trade effluent or to septic tanks which are, or are part of, public sewage treatment works.
- (3) If any question arises under this section as to whether anything is or is not reasonably practicable or as to whether intervals are or are not reasonable, or if any question arises under subsection (2) above, it shall be determined summarily by the sheriff, whose decision on the matter shall be final.
- (4) Where in relation to any premises situated in their area a local authority have no duty to empty septic tanks serving those premises, they may, at the request of the owner or occupier of the premises, agree to empty any such tank on such conditions as to payment or otherwise as the authority may think fit.

11 Duty of local authority to keep map showing public sewers etc.

- (1) Every local authority shall keep deposited at their offices, for inspection and copying by any person at all reasonable hours free of charge, a map showing and distinguishing so far as is reasonably practicable all sewers, drains and sewage treatment works which are vested in them by virtue of this Act.

- (2) . Where some of the sewers so vested in a local authority are reserved for foul water only or for surface water only, the said map shall show also the purposes which each such sewer is intended to serve.

Rights and duties of owners and occupiers

12 Rights of owners and occupiers to connect with and drain into public sewers etc.

- (1) Subject to the provisions of this section and of section 14 below, the owner of any premises within the area of a local authority shall be entitled to connect his drains or private sewers with the sewers or sewage treatment works of that authority, and the occupier of any such premises shall be entitled by means of those drains or private sewers to drain into those sewers or works the domestic sewage and surface water from those premises.
- (2) An owner shall not, under the foregoing subsection, be entitled to connect his drains or sewers with the sewers or works of an authority unless the intervening land is land through which the owner is entitled to construct a drain or sewer.
- (3) The owner of any premises who proposes to connect his drains or sewers with the sewers or works of a local authority, or to alter a drain or sewer connected with such sewer or works in such a manner as may interfere with them, shall give to the authority notice of his proposals, and within 28 days of the receipt by them of the notice the authority may refuse permission for the connection or alteration, or grant permission for the connection or alteration, subject to such conditions as they think fit, and any such permission may in particular specify the mode and point of connection and, where there are separate public sewers for foul water and surface water, prohibit the discharge of foul water into the sewer reserved for surface water, and prohibit the discharge of surface water into the sewer reserved for foul water.
- (4) A local authority shall forthwith intimate to the owner their decision on any proposals made by him under subsection (3) above, and, where permission is refused, or granted subject to conditions, shall inform him of the reasons for their decision and of his right of appeal under subsection (5) below.
- (5) If a person to whom a decision has been given under subsection (4) above is aggrieved by the decision or any conditions attached thereto, he may appeal to the Secretary of State who may confirm the decision and any such conditions either with or without modification or refuse to confirm it.
- (6) Where permission has been granted as mentioned in subsection (3) above or by virtue of subsection (5) above, the person to whom it was granted shall, before commencing any work in pursuance of that permission, give not less than 3 days' notice to the local authority who granted it so as to enable them to supervise the execution of the work, and shall afford them all reasonable facilities for so doing.
- (7) Where any work to be done in pursuance of a permission granted under subsection (3) above or by virtue of subsection (5) above involves the breaking open of a street, the local authority who granted the permission may undertake the work in the street and may recover the expenses reasonably incurred by them in so doing from the person for whom the work was done.
- (8) Any person who connects a drain or sewer to the sewers or works of a local authority or alters a drain or sewer without permission granted under this section, or contrary to

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any conditions attached thereto, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £25, and the local authority may, whether or not proceedings have been taken under this subsection, close, remove or remake any such unlawful connection, and recover from the offender any expenses reasonably incurred by them in so doing.

13 Rights of owners and occupiers to connect with and drain into sewers etc. of another local authority

- (1) Subject to the following subsection, the owner or occupier of any premises outwith the area of a local authority shall have the like rights with respect to connection with or drainage into the sewers or works of that authority as he would have under section 12 above if his premises were situated within their area, and the provisions of that section shall apply accordingly:

Provided that—

- (a) the owner of the premises concerned shall, at the same time as he gives notice of his proposals under subsection (3) of that section, give notice to the same effect to the authority within whose area the premises are situated; and
 - (b) the Secretary of State in determining an appeal under subsection (5) of that section may, as a condition of granting permission to a connection, require the local authority in whose area the premises are situated to make to the other local authority concerned such reasonable payment or reasonable periodical payments as he thinks fit.
- (2) The foregoing subsection shall not apply where the owner of premises is required by or under any other enactment to connect his drains or sewers with the sewers or sewage treatment works of the local authority within whose area his premises are situated.

14 Direction by local authority as to manner of construction of works

- (1) Where the owner of any premises proposes to construct a drain or sewer in respect of which notice has been given to the local authority by virtue of section 12(3) above or that subsection as applied by section 13 above, or sewage treatment works in respect of which notice has been given under subsection (2) below, the authority may, if they consider that the proposed drain, sewer or works is, or is likely to be, needed to form part of a general sewerage system which they have provided or propose to provide, within 28 days of the receipt by them of the notice direct him to construct the drain, sewer or works in a manner differing from that in which he proposes to construct the drain, sewer or works.
- (2) Where the owner of any premises proposes to construct sewage treatment works to serve those premises he shall give notice of his proposals to the local authority within whose area the works are to be situated.
- (3) If a person to whom a direction has been issued under subsection (1) above is aggrieved by the direction, he may appeal to the Secretary of State, who may disallow the direction or allow it with or without modification.
- (4) A person to whom a direction is issued under this section shall, before commencing any work in pursuance of that direction, give not less than 3 days' notice to the local authority who issued it so as to enable them to supervise the execution of the work and shall afford them all reasonable facilities for so doing.

- (5) An authority who issue a direction under subsection (1) above shall pay to the person constructing the drain, sewer or" sewage treatment works the extra expenses reasonably incurred by him in complying with the direction and, until the drain, sewer or works become vested in the authority, they shall also from time to time pay to him so much of any expenses reasonably incurred by him in repairing, operating or maintaining the drain, sewer or works as may be attributable to their direction having been made and complied with, and, if any question arises as to the amount of any payment to be made to him under this subsection, he may refer it by summary application to the sheriff whose decision on the matter shall be final.
- (6) If any person who under this section has been directed by a local authority to construct a drain, sewer or sewage treatment works in a particular manner constructs them otherwise than in accordance with the terms of the direction, or, if the direction has been modified under subsection (3) above, of the modified direction, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £25.

15 Owner or occupier to remedy defects in drains and other works

- (1) If it appears to a local authority that as respects any premises in their area the drains or sewage treatment works serving such premises (other than drains or works vested in the authority) are defective, they may by notice require the owner or occupier of the premises, within a reasonable time therein specified, to remedy the defect.
- (2) If an owner or occupier is aggrieved by a notice under the foregoing subsection he may, within the time specified in the notice, refer the matter by summary application to the sheriff, who may issue such directions as he thinks fit, and whose decision on the matter shall be final.
- (3) Where an owner or occupier fails to comply with the terms of a notice under subsection (1) above, or as modified under subsection (2) above, the local authority may, after giving not less than 7 days' notice to the owner or occupier concerned, carry out the work necessary to remedy the defect, and may recover the expenses reasonably incurred by them in so doing from the person on whom the notice was served, but without prejudice to the rights and obligations, as between themselves, of the owner and occupier:

Provided that the local authority may, if they think fit, remit such part of the expenses as seems to them to be equitable.

- (4) If it appears to the medical officer of health or sanitary inspector that immediate action is required to remedy a defect, and he so certifies in writing to the local authority, the foregoing provisions of this section shall apply with the following modifications—
 - (a) the period specified in a notice under subsection (1) shall be 48 hours;
 - (b) subsection (2) shall not apply ; and
 - (c) the period specified in subsection (3) shall not apply and the authority may proceed to carry out the work forthwith.
- (5) In this section " defect" includes any obstruction in a drain or sewage treatment works, and " defective" shall be construed accordingly.

Vesting of sewers, drains and works

16 Vesting of sewers and other works in local authority

- (1) All sewers, junctions therewith, drains and sewage treatment works which were immediately before the commencement of this section vested in a local authority shall continue to be vested in them, and there shall also vest in them—
 - (a) all sewers and sewage treatment works constructed by them at their expense in pursuance of section 1 above ;
 - (b) all junctions with their sewers, whether constructed before or after the commencement of this section, and whether constructed at the expense of the authority or otherwise;
 - (c) all private sewers connecting with their sewers or sewage treatment works, whether constructed before or after the commencement of this section ;
 - (d) all sewage treatment works taken over by them by virtue of an agreement under section 8 above ; and
 - (e) all sewage treatment works taken over by them under section 17 below.
- (2) Private sewers and junctions with sewers referred to in the foregoing subsection which are completed after the commencement of this section shall vest in the local authority on the date of their completion, and the works referred to in paragraph (e) of the foregoing subsection shall vest in the authority in accordance with the provisions of section 17 below.
- (3) All sewers, junctions therewith, drains and sewage treatment works vested in a local authority shall be the property of the authority who shall be solely responsible for their management, maintenance and renewal.
- (4) In this section " junction " means the junction between a public sewer and any other sewer or drain.

17 Local authority may take over private sewage treatment works

- (1) Subject to the provisions of this section, a local authority within whose area premises served by private sewage treatment works are situated may, by agreement with the owner of the works, or failing such agreement, in pursuance of proposals made by them under subsection (2) below, take over the works.
- (2) A local authority may, by notice served on the owner of works as mentioned in the foregoing subsection, intimate their proposals to take over the works within such period, not being less than 2 months, as may be specified in the notice, and on such conditions, including if they think fit conditions as to payment of compensation by them, as may be so specified, and shall serve copies of the notice on any other local authority within whose area any of the works, or any sewers or drains connected therewith, are situated; any notice served under this subsection shall inform the owner of his right of appeal under subsection (3) below.
- (3) If an owner on whom a notice has been served under subsection (2) above is aggrieved by the notice, he may, within the period specified in the notice, appeal to the Secretary of State who may confirm the proposals of the local authority and any conditions so specified either with or without modification or refuse to confirm them.
- (4) All works taken over by a local authority under this section shall vest in them in accordance with the terms of any agreement made under subsection (1) above, or

failing such agreement, at the end of the period specified under subsection (2) above or on such date as may be specified by the Secretary of State in his decision on an appeal under subsection (3) above.

- (5) Subject to the provisions of this Act, a person who immediately before the taking over of works under this section was lawfully entitled to use them shall continue to be so entitled after they have been so taken over.
- (6) An agreement under subsection (1) above or proposals under subsection (2) above may relate to a part only of works.

Miscellaneous

18 Expenses of local authorities and dissolution of drainage districts

- (1) On the appointed day all special drainage districts and drainage districts shall be dissolved, and as from the commencement of this section the power to form such districts under Part VII of the Local Government (Scotland) Act 1947 or section 218 of the Burgh Police (Scotland) Act 1892 shall cease to have effect.
- (2) The Secretary of State shall, by regulations made by statutory instrument, provide for the payment by the local authority within whose area any such district was situated, subject to such exceptions or conditions as may be specified in the regulations, of compensation to or in respect of persons who were officers or servants employed for the purposes of the district who suffer loss of employment or loss or diminution of emoluments which is attributable to the dissolution of the district; and the regulations shall include provision as to the manner in which and the persons to whom any claim for compensation under this subsection is to be made and for the determination of all questions arising under the regulations.
- (3) As from the appointed day, the expenses of a town council under this Act shall be met from the burgh rate and the expenses of a county council under this Act shall be met from the county rate, and, if the county council think fit, and in accordance with the subsequent provisions of this section, from the special district sewer rate.
- (4) Notwithstanding the dissolution under this section of special drainage districts, a county council may continue to levy a special district sewer rate in any part of their area which formed a special drainage district where such a rate was levied for the year immediately preceding the appointed day:

Provided that for the seven years commencing on the appointed day the product of any such rate shall not exceed—

- (a) for the first year, the relevant sum;
- (b) for the second year, the relevant sum;
- (c) for the third year, 85 per cent. of the relevant sum;
- (d) for the fourth year, 70 per cent. of the relevant sum;
- (e) for the fifth year, 55 per cent. of the relevant sum;
- (f) for the sixth year, 40 per cent. of the relevant sum;
- (g) for the seventh year, 25 per cent. of the relevant sum;

and no special district sewer rate shall thereafter be levied by the county council.

In this subsection "relevant sum" means the product of the special district sewer rate levied in a special drainage district for the year preceding the appointed day.

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- (5) Notwithstanding the dissolution under this section of special drainage districts, section 45 of the Local Government (Scotland) Act 1894 (which provides for distinguishing in the valuation roll lands and heritages in special drainage districts and for the separate valuation of portions of undertakings within such districts) shall, during such period as may be necessary for the purposes of subsection (4) above, continue to have effect in relation to areas which formed the special districts so dissolved.
- (6) As from the appointed day, the provisions of Part VII of the Local Government (Scotland) Act 1947, so far as relating to the operation and dissolution of special drainage districts, shall cease to have effect.

19 Compulsory acquisition of land

- (1) A local authority may, if so authorised by the Secretary of State, purchase land compulsorily for the purposes of this Part of this Act, whether or not the land is immediately required for those purposes, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to any such compulsory purchase as if this Act had been in force immediately before the commencement of that Act.
- (2) Where a dispute arises as to the compensation payable in respect of any such compulsory purchase, it shall be determined by the Lands Tribunal for Scotland in accordance with the Land Compensation (Scotland) Act 1963, but until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland any such dispute shall be determined by an official arbiter appointed under Part I of the said Act of 1963.

20 Compensation for loss etc. resulting from exercise of powers under this Part of this Act

- (1) Subject to the provisions of this section, a local authority shall make full compensation for any loss, injury or damage sustained by any person by reason of the exercise by the authority of any of their powers under this Part of this Act in relation to a matter as to which he has not himself been in default.
- (2) Any question arising under this section as to the fact of loss, injury or damage or as to the amount of compensation shall, in the case of dispute, be referred to a single arbiter to be appointed by agreement between the parties or, in default of agreement, by the Secretary of State, and the arbiter may, and, if so directed by the Court of Session, shall, state a case for the opinion of that Court on any question of law arising in the proceedings.
- (3) A claim for compensation against an authority under this section shall not be maintainable unless it is made to the authority within 12 months after the date on which it is alleged to have arisen.
- (4) Where an owner of land claims compensation in respect of loss, injury or damage sustained by him by reason of a local authority having, in the exercise of their powers under this Part of this Act, constructed a sewer in, on or over his land, the arbiter in determining the amount of compensation shall determine also by what amount, if any, the value to the claimant of any land belonging to him has been enhanced by the construction of the sewer, and the local authority shall be entitled to set off that amount against the amount of any compensation awarded.

21 Buildings not to interfere with sewers

- (1) Unless with the consent of the local authority, which shall not be unreasonably withheld, no building shall be erected over, or in such a way as to interfere with or to obstruct access to, any sewer vested in the authority.
- (2) If any question arises as to whether consent under the foregoing subsection has been unreasonably withheld or as to what conditions should be attached to the consent, a person aggrieved may refer the question by summary application to the sheriff, whose decision in the matter shall be final.
- (3) In this section " building " has the same meaning as in section 29(1) of the Building (Scotland) Act 1959.

22 Protection for statutory undertakers

- (1) Subject to the provisions of this section, nothing in this Part of this Act shall authorise a local authority to carry out works which will interfere with the carrying on of a statutory undertaking without the consent of the statutory undertakers concerned.
- (2) Consent under the foregoing subsection shall not be unreasonably withheld, and if any question arises as to whether or not consent is unreasonably withheld or as to what conditions, including payment of compensation, should be attached to the consent, either party may require that it shall be referred to a single arbiter to be appointed, in default of agreement, by the President of the Institution of Civil Engineers, and the arbiter may, and, if so directed by the Court of Session, shall, state a case for the opinion of that Court on any question of law arising in the proceedings.
- (3) Nothing in this section shall be construed as limiting the powers of a local authority under section 41 below.
- (4) In this section " statutory undertakers " and " statutory undertaking " have the meanings assigned to them by section 113(1) of the Town and Country Planning (Scotland) Act 1947.

23 Restriction on working of minerals

Sections 71 to 78 of the Railways Clauses Consolidation (Scotland) Act 1845 (which restrict the working of minerals, subject to the payment of compensation), as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923, shall apply in relation to any public sewers, public sewage treatment works and public drains to which they do not already apply with the substitution—

- (a) for references to the railway of references to the sewers, works and drains;
- (b) for references to the company of references to the local authority in whom the sewers, works or drains are vested.