



# Water Industry (Scotland) Act 2002

## 2002 asp 3

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **63 Register of trade effluents: confidential information**

After section 37B of the 1968 Act insert—

##### **“37C Exclusion from register of commercially confidential information**

- (1) Despite subsection (2) of section 37A of this Act, Scottish Water shall not enter in the register maintained under that section information relating to the affairs of any individual or business if—
  - (a) it determines, on the application of the person providing the information, that it is commercially confidential (as regards that or any other person), and
  - (b) the information is not information which is required to be entered in the register in pursuance of a direction under subsection (4) below.
- (2) If, on an application under subsection (1) above, Scottish Water fails to make a determination within the period of 21 days beginning with the date of the application, it shall be treated as having determined that the information is commercially confidential.
- (3) Where, on an application under subsection (1) above, Scottish Water determines that information is not commercially confidential, the information shall not be entered on the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned.
- (4) The Scottish Ministers may give Scottish Water directions as to specified information, or descriptions of information, which the public interest requires to be included in the register regardless of whether the information is commercially confidential.

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- (5) Information excluded from the register by virtue of subsection (1) above shall be treated as ceasing to be commercially confidential for the purposes of this section on the expiry of the period of 4 years beginning with the date of the determination by virtue of which it was excluded unless Scottish Water determines, on the application of the person who provided the information, that it is still commercially confidential.
- (6) Subsection (2) above applies in relation to an application under subsection (5) above as it applies in relation to an application under subsection (1) above.
- (7) The Scottish Ministers may, by order made by statutory instrument, substitute (whether in all cases or in such descriptions of case as the order may specify) for the period for the time being specified in subsection (2) above such other period as they consider appropriate.
- (8) A statutory instrument containing an order under subsection (7) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (9) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any person, if its inclusion in the register would prejudice to an unreasonable degree the commercial interests of that person.”

## 64 Works in connection with metering

After section 24A of the 1980 Act insert—

### “24B Works in connection with metering

- (1) This section applies where, in relation to any premises (“the premises concerned”), the conditions specified in subsection (2) are satisfied.
- (2) The conditions referred to in subsection (1) are that—
  - (a) Scottish Water is supplying or proposes to supply water to the premises,
  - (b) such supply is or is to be by meter, and
  - (c) there is a service pipe which is connected with a water main vested in Scottish Water and by which a supply of water is or could be provided to those premises.
- (3) Where this section applies, Scottish Water may serve a notice on the owner of the premises concerned requiring the execution, within such period of not less than 3 months as the notice shall specify, of such of the works mentioned in subsection (4) as the notice may specify.
- (4) The works referred to in subsection (3) are, in relation to the premises concerned—
  - (a) works consisting of the installation and connection of any meter for use in determining the quantity of water supplied to the premises,
  - (b) where a supply of water is or could be provided by the service pipe referred to in subsection (2)(c) to other premises as well as the premises concerned, works consisting of the installation, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for the premises concerned, but only to the

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- extent that such a pipe will constitute a supply pipe and is not required to be laid in a road,
- (c) works for the purpose of maintaining, repairing, disconnecting or removing—
- (i) any meter which has been installed for use in determining the quantity of water supplied to the premises, or
  - (ii) any pipes or apparatus installed in the course of any works specified in this section, and
- (d) any other works appearing to Scottish Water to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c), including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.
- (5) In the case of any of the works mentioned in paragraph (a) of subsection (4) and paragraph (c)(i) of that subsection so far as relating to maintenance and repair of a meter, Scottish Water may execute the works itself instead of requiring the owner, under subsection (3), to execute the works.
- (6) If an owner upon whom a notice has been served under subsection (3) fails to comply with it, Scottish Water may itself execute the works which the owner was required by the notice to execute.
- (7) Where Scottish Water has served a notice under that subsection requiring the execution of the works mentioned in paragraph (b) of subsection (4), it shall, within 14 days after those works have been executed, lay so much of the separate service pipe referred to in that paragraph as will constitute a communication pipe or a supply pipe to be laid in a road and shall make all necessary connections.
- (8) Scottish Water may recover from the owner of the premises concerned any expenses reasonably incurred by it in executing any works under subsection (5), (6) or (7).
- (9) Subsection (8) is without prejudice to the rights and obligations, as between themselves, of the owner and occupier of the premises.”

## **65      Contravention of water byelaws: penalties and proceedings**

- (1) Section 72 (general provisions as to byelaws) of the 1980 Act is amended as follows.
- (2) In subsection (3) (maximum level of penalty), for “level 4” substitute “ level 5 ”.
- (3) After that subsection, insert—
- “(3A) Subject to subsection (3B), proceedings for any offence against such byelaws may be commenced at any time—
- (a) within 6 months after the date on which evidence sufficient in the opinion of the procurator fiscal to justify the proceedings came to the procurator fiscal’s knowledge, or
  - (b) where such evidence was reported to the procurator fiscal by Scottish Water, within 6 months after the date on which it came to Scottish Water’s knowledge.
- (3B) No such proceedings shall be commenced more than 3 years after—

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- (a) the date of the commission of the offence, or
  - (b) in the case of a continuing offence, the last date on which the offence was committed.
- (3C) Subsection (3) of section 136 (time limit for certain offences) of the Criminal Procedure (Scotland) Act 1995 (c.46) applies for the purposes of this section as it applies for the purposes of that section.
- (3D) For the purposes of subsection (3A), a certificate signed by or on behalf of the procurator fiscal or, as the case may be, Scottish Water, and stating the date on which evidence such as is mentioned in that subsection came to the procurator fiscal's or, as the case may be, Scottish Water's knowledge shall be conclusive evidence of that fact.
- (3E) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.”

### *General*

## **66 Offences by bodies corporate and partnerships**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, secretary, member or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Act which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

## **67 Crown application**

- (1) This Act binds the Crown, but nothing in this section is to be taken as in any way affecting Her Majesty in her private capacity.
- (2) 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 authority or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (2), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- (4) The powers conferred by section 47 are exercisable in relation to land forming part of the Crown Estate only with the consent of the Crown Estate Commissioners.

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## 68 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—
  - (a) to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) to make different provision for different purposes and different areas.
- (3) An order under section 24(3) or 69 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act (except sections 41(5)<sup>[F1]</sup>, 56B] and 72(1) and, where subsection (5) of this section applies, sections 24(3) and 69) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under section 24(3) or 69 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft has been laid before, and approved by resolution of, the Parliament.
- (6) No order is to be made under section 41(5) <sup>[F2]</sup>or 56B] unless a draft has been laid before, and approved by resolution of, the Parliament.

### Textual Amendments

- F1** Words in s. 68(4) inserted (1.7.2005) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\), s. 37\(2\), sch. 5 para. 7\(8\)\(a\)](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 2
- F2** Words in s. 68(6) inserted (1.7.2005) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\), s. 37\(2\), sch. 5 para. 7\(8\)\(b\)](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 2

## 69 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.

## 70 Interpretation

- (1) In this Act, unless the context otherwise requires—
  - “the 1968 Act” means the Sewerage (Scotland) Act 1968 (c.47),
  - “the 1980 Act” means the Water (Scotland) Act 1980 (c.45),
  - “the 1994 Act” means the Local Government etc. (Scotland) Act 1994 (c.39),
  - “charges scheme” has the meaning given by section <sup>[F3]</sup>29A(1) ,
  - <sup>[F4]</sup>“Citizens Advice Scotland” means the Scottish Association of Citizens Advice Bureaux,]
  - <sup>[F5]</sup>“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,

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“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.

[<sup>F6</sup>“sewerage services provider” has the meaning given in section 6(4) of Water Services etc. (Scotland) Act 2005 (asp 3),

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

[<sup>F7</sup>(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.]

#### Textual Amendments

- F3** Words in s. 70(1) substituted (1.7.2005) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#), s. 37(2), [sch. 5 para. 7\(9\)\(a\)](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 2
- F4** Words in s. 70(1) inserted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 15\(12\)](#) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F5** Words in s. 70(1) substituted (1.7.2005) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#), s. 37(2), [sch. 5 para. 7\(9\)\(b\)](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 2
- F6** Words in s. 70 inserted (15.8.2011) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 130\(8\), 134\(7\)\(8\)](#); S.S.I. 2011/278, art. 2(b)
- F7** S. 70(2) substituted (21.12.2013) by [Water Resources \(Scotland\) Act 2013 \(asp 5\)](#), [ss. 26, 56\(1\)\(2\)](#); S.S.I. 2013/342, art. 2(a)

## 71 Modification of enactments

- (1) Schedules 5 and 6 make modifications of, respectively, the 1968 Act and the 1980 Act.
- (2) Schedule 7 makes modifications of other enactments.

## 72 Commencement and short title

- (1) The provisions of this Act, other than this section and sections 66 to 70, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Water Industry (Scotland) Act 2002.

#### Subordinate Legislation Made

- P1** [S. 72\(1\)](#) power fully exercised: different dates appointed for specified provisions and purposes by [S.S.I. 2002/118](#), art. 2, [Sch.](#) (with savings in [art. 3](#))

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