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Water Environment and Water Services (Scotland) Act 2003

2003 asp 3

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 29th January 2003 and received Royal Assent on 5th March 2003

An Act of the Scottish Parliament to make provision for protection of the water environment, including provision for implementing European Parliament and Council Directive 2000/60/EC; to amend the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980 in relation to the provision of water and sewerage services; and for connected purposes.

PART 1

PROTECTION OF THE WATER ENVIRONMENT

Modifications etc. (not altering text)

C1 Pt. 1 applied (with modifications) (2.1.2004) by Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245), regs. 1(1), **6** (as amended (10.4.2017) by S.I. 2017/407, reg. 1(a), **Sch. 4 para. 1(4)** (with reg. 1(c))

C2 Pt. 1 applied (with modifications) (10.2.2004) by Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99), regs. 1(1), 5(1), **Sch. 4** (with reg. 5(2))

CHAPTER 1

PURPOSE, GENERAL DUTIES AND DEFINITIONS

1 General purpose of Part 1

(1) The purpose of this Part is to make provision for or in connection with protection of the water environment, including making provision, and enabling provision to be made, for or in connection with implementing Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for

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Community action in the field of water policy (referred to in this Part as "the Directive").

(2) In this Part "protection of the water environment" includes, in particular—

(a) preventing further deterioration of, and protecting and enhancing, the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on those aquatic ecosystems,

(b) promoting sustainable water use based on the long-term protection of available water resources,

(c) aiming at enhancing protection and improvement of the aquatic environment through, amongst other things, specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing out of discharges, emissions and losses of the priority hazardous substances,

(d) ensuring the progressive reduction of pollution of groundwater and preventing further pollution of it, and

(e) contributing to mitigating the effects of floods and droughts,

with a view to contributing to the achievement of the aims specified in subsection (3).

(3) Those aims are—

(a) the provision of a sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

(b) a significant reduction in pollution of groundwater,

(c) the protection of territorial and other marine waters, and

(d) achieving the objectives of international agreements, including those which aim to prevent and eliminate pollution of the marine environment, in relation to which measures are adopted under paragraph 1 of Article 16 of the Directive in pursuance of a proposal under paragraph 3 of that Article.

Commencement Information

I1 S. 1 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

2 The general duties

(1) The Scottish Ministers and SEPA must exercise their functions under the relevant enactments so as to secure compliance with the requirements of the Directive.

(2) The responsible authorities must exercise their designated functions so as to secure compliance with the requirements of the Directive.

(3) Subsection (4) applies to—

(a) the Scottish Ministers in exercising their functions, and SEPA in exercising its functions, under the relevant enactments in pursuance of subsection (1),

(b) the responsible authorities in exercising their designated functions in pursuance of subsection (2).

(4) The Scottish Ministers, SEPA and the responsible authorities must—

(a) have regard to the social and economic impact of such exercise of those functions,

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(b) so far as is consistent with the purposes of the relevant enactment or designated function in question—

(i) promote sustainable flood management, and

(ii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions.

(5) Without prejudice to subsections (1) to (4), the Scottish Ministers and every public body and office-holder must, in exercising any functions, have regard to the desirability of protecting the water environment.

(6) The Scottish Ministers may give directions (whether general or specific) and guidance to—

(a) SEPA, in relation to the exercise of its functions under the relevant enactments,

(b) the responsible authorities, in relation to the exercise of their designated functions;

and SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

(7) Directions under subsection (6) may include provision 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.

(8) In this section—

"the relevant enactments" means this Part and such other enactments as the Scottish Ministers may by order specify,

"responsible authorities" means such public bodies and office-holders, or public bodies and office-holders of such descriptions, as the Scottish Ministers may by order designate for the purposes of this Part; and "designated functions", in relation to a responsible authority, means such of the authority's functions relating to the water environment as are specified in relation to the authority in an order made by the Scottish Ministers (whether or not the order designating the authority as a responsible authority).

Commencement Information

I2 S. 2 in force at 15.12.2003 by S.S.I. 2003/562 , **art. 2(a)**

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

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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).

Commencement Information

I3 S. 3 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

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CHAPTER 2

RIVER BASIN MANAGEMENT PLANNING

River basin districts

4 Establishment of river basin districts

(1) The Scottish Ministers must by order designate one or more river basin districts for the purposes of this Part.

(2) A river basin district is an area, identified in the order, comprising one or more river basins together with any relevant bodies of groundwater and bodies of coastal water which are to form part of that river basin district in accordance with subsection (3).

(3) A relevant body of groundwater or body of coastal water is to form part of the nearest river basin district or, if it appears to the Scottish Ministers that another river basin district is more appropriate, that district.

(4) An order under subsection (1) (a "designation order") must identify each river basin district by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

(5) The Scottish Ministers must send to SEPA a copy of—
  (a) a designation order, and
  (b) the map prepared in pursuance of subsection (4).

(6) SEPA must make the copies of the designation order and map available, at all reasonable times, for public inspection free of charge.

(7) In this section "relevant body of groundwater" means a body of groundwater which does not fully follow any particular river basin.

Commencement Information
I4 S. 4 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

5 Characterisation of river basin districts

(1) SEPA must, by 22nd December 2004, carry out a characterisation of each river basin district.

(2) In this section "characterisation", in relation to a river basin district, means—
  (a) an analysis of the characteristics of the water environment,
  (b) a review of the impact of human activity on the status of the water environment, and
  (c) an economic analysis of water use.

(3) SEPA must review and, where necessary, update each characterisation carried out under subsection (1) by 22nd December 2013 and by the end of each period of 6 years thereafter.

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(4) A characterisation under subsection (1) and a review under subsection (3) must be carried out in accordance with the technical specifications set out in Annexes II and III to the Directive.

(5) The Scottish Ministers may by regulations make further provision as to the characterisations and reviews to be carried out under this section, including provision as to—

(a) the criteria by reference to which characterisations and reviews are to be carried out, including criteria for designating bodies of surface water as artificial or heavily modified,

(b) the methods and procedures to be followed in carrying out characterisations and reviews.

Commencement Information

I5 S. 5 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

6 Bodies of water used for the abstraction of drinking water

(1) The Scottish Ministers must by order identify any bodies of water within each river basin district which—

(a) are used for the abstraction of water intended for human consumption and either—

(i) provide more than 10 cubic metres of such water per day, or

(ii) serve more than 50 persons, or

(b) are intended to be used as mentioned in paragraph (a).

(2) An order under subsection (1) may identify the bodies of water by reference to a map prepared for the purposes of the order and laid before the Parliament.

(3) The Scottish Ministers must send to SEPA a copy of—

(a) an order made under subsection (1), and

(b) any map prepared in pursuance of subsection (2).

Commencement Information

I6 S. 6 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

7 Register of protected areas

(1) SEPA must, for each river basin district—

(a) by 22nd December 2004 prepare, and

(b) thereafter maintain,

a register of the protected areas lying (whether wholly or partly) within the district in accordance with regulations made by the Scottish Ministers.

(2) Such regulations may, in particular, make provision as to—

(a) the form and manner in which the register is to be prepared and maintained,

(b) the information which the register is to contain.

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(3) In this section, "protected areas" means—
  (a) any bodies of water identified under section 6, and
  (b) the areas and bodies of water falling within subsection (4).

(4) The areas and bodies of water falling within this subsection are those for the time being designated or otherwise identified as requiring special protection under any Community instrument providing for the protection of surface water and groundwater or for the conservation of habitats or species directly depending on water, or any enactment implementing such a Community instrument, including, in particular—
  (a) areas designated for the protection of economically significant aquatic species,
  (b) bodies of water designated as recreational waters,
  (c) nutrient-sensitive areas, and
  (d) areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in the protection of the habitats or species.

(5) The Scottish Ministers may by regulations make such further provision for identifying, or enabling the identification of, the areas and bodies of water falling within subsection (4) as they consider necessary or expedient, including provision for identifying any of those areas or bodies of water by reference to—
  (a) such Community instruments, or enactments implementing such instruments, as are specified in the regulations,
  (b) such other criteria as may be specified in the regulations.

(6) SEPA must make the register available, at all reasonable times, for public inspection free of charge.

Commencement Information
I7 S. 7 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

8 Monitoring

(1) SEPA must, in relation to each river basin district—
  (a) carry out, or secure the carrying out of, monitoring of the status of the water environment and relevant territorial water adjacent to the district, and
  (b) analyse, or secure the analysis of, the information obtained under paragraph (a).

(2) SEPA must prepare a programme for monitoring (whether by SEPA or other persons) the status of the water environment and relevant territorial water (a "monitoring programme").

(3) Monitoring in accordance with the monitoring programme must be commenced by 22nd December 2006.

(4) Subsection (3) is subject to any provision made in regulations by virtue of subsection (5)(d).

(5) The Scottish Ministers may by regulations make provision—

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(a) as to the nature and method of monitoring and analysis to be carried out (whether by SEPA or by other persons) for the purpose of subsection (1)(a),
(b) requiring persons other than SEPA to carry out such monitoring and analysis,
(c) as to the times at or by which, and the circumstances in which, such monitoring and analysis is to be carried out,
(d) for monitoring in accordance with the monitoring programme to be commenced in relation to such protected areas (within the meaning of section 7(3)) or descriptions of protected area as are specified in the regulations by such date (other than that specified in subsection (3)) as is specified in or determined under the regulations,
(e) as to the provision to SEPA of information resulting from such monitoring and analysis carried out by persons other than SEPA,
(f) as to the form and content of a monitoring programme,
(g) as to consultation and other procedure in connection with the preparation of a monitoring programme.

(6) The Scottish Ministers may issue guidance to SEPA or any other person on any matter in relation to which they have power to make regulations under subsection (5); and SEPA or, as the case may be, that person must have regard to the guidance.

(7) Subsection (6) is without prejudice to section 2(6).

(8) In this section "relevant territorial water" means so much of the territorial sea of the United Kingdom adjacent to Scotland as is not coastal water or transitional water.

Commencement Information
I8 S. 8 in force at 1.6.2005 by S.S.I. 2005/235, **art. 2(a)**

9 Environmental objectives and programmes of measures

(1) For the purposes of the river basin management plan for a river basin district SEPA must—
(a) set environmental objectives for each body of water in the district, and
(b) prepare a programme of measures to be applied to achieve those objectives.

(2) In setting environmental objectives and preparing a programme of measures under this section, SEPA must take account of the characterisation of the river basin district concerned (and any review of it) carried out under section 5.

(3) Environmental objectives may be set so as to apply with modifications in relation to particular descriptions of bodies of water or in particular circumstances.

(4) The Scottish Ministers may by regulations make further provision as to the setting of environmental objectives and the preparation of programmes of measures under this section.

(5) Regulations under subsection (4) making provision as to the setting of environmental objectives under this section may, in particular, include provision as to—
(a) the types of environmental objective which may be set for particular descriptions of body of water,

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(b) the date by which and the criteria by reference to which such objectives are to be set,

(c) the methods and procedures to be followed in setting such objectives,

(d) the dates by which such objectives are to be achieved,

(e) particular descriptions of bodies of water in relation to which, or particular circumstances in which, such objectives are to apply with modifications.

(6) Regulations under subsection (4) making provision as to the preparation of programmes of measures under this section may, in particular, include provision as to—

(a) the types of measures which must or may be included in such a programme,

(b) the date by which such a programme is to be prepared,

(c) the methods and procedures to be followed in preparing such a programme.

(7) In this section, "environmental objectives" means the objectives required to comply with Article 4 of the Directive together with any objectives required to comply with paragraphs 2 and 3 of Article 7 of the Directive.

Commencement Information

I9 S. 9 in force at 1.6.2005 by S.S.I. 2005/235, **art. 2(a)**

River basin management plans

10 River basin management plans

(1) SEPA must, by such date as the Scottish Ministers may direct, prepare and submit to them a river basin management plan for each river basin district in respect of such period as they may direct.

(2) A river basin management plan must include—

(a) the matters specified in Part 1 of schedule 1, and

(b) such other matters as the Scottish Ministers may by regulations specify.

(3) A river basin management plan—

(a) must (without prejudice to subsection (2)(b)) contain or be accompanied by such maps, diagrams, illustrations and descriptive matter as the Scottish Ministers may direct, and

(b) may contain or be accompanied by such other maps, diagrams, illustrations and descriptive matter as SEPA thinks appropriate for the purpose of explaining or illustrating any matter in the plan.

(4) Any such maps, diagrams, illustrations and descriptive matter are to be treated as forming part of the plan; and references to such a plan are to be construed accordingly.

Commencement Information

I10 S. 10 in force at 1.6.2005 by S.S.I. 2005/235, **art. 2(a)**

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11 River basin management plans: publicity and consultation

(1) Not less than 3 years before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a statement setting out—
- (a) the steps under this section, and any other consultation measures, which it is to take in connection with the preparation of the plan, and
- (b) the dates on or by which those steps and measures are to be taken.

(2) Not less than 2 years before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a summary of the significant water management issues which it considers arise in relation to the river basin district in question.

(3) Not less than one year before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a draft of the plan.

(4) Publication of a statement under subsection (1), a summary under subsection (2) and a draft plan under subsection (3) is to be in such manner as SEPA thinks fit.

(5) On publishing a statement, a summary or a draft plan SEPA must—
- (a) publicise—
  - (i) that fact,
  - (ii) the arrangements for making copies of the statement, summary or draft plan available for public inspection in pursuance of paragraph (b), and
  - (iii) the opportunity to make representations about the statement, summary or draft plan under subsection (7),
- (b) make copies of the statement, summary or draft plan available for public inspection free of charge for such period, which must be at least 6 months beginning with the date of its publication, as SEPA may determine,
- (c) consult the persons specified in subsection (6),
- (d) take such steps as it thinks fit for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.

(6) The persons referred to in subsection (5)(c) are—
- (a) Scottish Natural Heritage,
- (b) Scottish Water,
- (c) every responsible authority which has functions exercisable in or in relation to the river basin district in question,
- (d) every local authority any part of whose area is within the river basin district,
- (e) every district salmon fishery board any part of whose salmon fishery district is within the river basin district,
- (f) where any part of the river basin district has been designated as a National Park, the National Park authority for that National Park,
- (g) such persons as appear to SEPA to be representative of the interests of those carrying on any business which relies upon the water environment within the river basin district,
- (h) such persons as appear to SEPA to have an interest in the protection of the water environment within the river basin district,
- (i) such persons as appear to SEPA to have an interest in the promotion of sustainable flood management,
- (j) such other persons as SEPA thinks fit.

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(7) Any person who wishes to make representations to SEPA about a statement, summary or draft plan may do so within the period determined under subsection (5)(b).

(8) In preparing the draft river basin management plan SEPA must take into account—
  (a) any views on the statement or summary relating to the plan expressed by those consulted under subsection (5)(c), and
  (b) any representations about the statement or summary,
which are received by SEPA within the period determined under subsection (5)(b).

(9) In preparing the river basin management plan for submission to the Scottish Ministers SEPA must take into account—
  (a) any views on the draft plan expressed by those consulted under subsection (5)(c), and
  (b) any representations about the draft plan,
which are received by SEPA within the period determined under subsection (5)(b).

(10) Where SEPA is required under this section or section 12 or 13 to publicise any matter in connection with a river basin management plan, it—
  (a) must do so by means of a notice published in—
    (i) at least one newspaper circulating throughout Scotland, and
    (ii) such local newspapers circulating in the river basin district in question, or any part of it, as it thinks fit, and
  (b) may further publicise the matter by such electronic or other means as it thinks fit.

Commencement Information
I11 S. 11 in force at 1.6.2005 by S.S.I. 2005/235, **art. 2(a)**

VALID FROM 14/12/2007

12 River basin management plans: submission for approval

(1) As soon as a river basin management plan is submitted to the Scottish Ministers, SEPA must—
  (a) publicise—
    (i) that fact, and
    (ii) the arrangements for making copies of the plan available for public inspection in pursuance of paragraph (b), and
  (b) make copies of the plan available for public inspection free of charge.

(2) A river basin management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement—
  (a) of the action taken by SEPA to comply with subsections (3) and (so far as relating to the draft plan) (4) to (6) of section 11,
  (b) containing a summary of the views and representations referred to in subsection (9) of that section and of any adjustments made to the plan in light of those views and representations.

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(3) If the Scottish Ministers, having considered the statement, are of the opinion that further action should be taken by SEPA in relation to the plan under subsections (3) to (6) of section 11, they may return the plan to SEPA and direct it—
  (a) to take such further action under those subsections as they may specify, and
  (b) to resubmit the plan with such modifications, if any, as SEPA considers appropriate by such time (if any) as the direction may specify.

(4) Where the Scottish Ministers return the plan to SEPA under subsection (3), they must state their reasons for doing so.

(5) This section applies, with the necessary modifications, in relation to a river basin management plan resubmitted to the Scottish Ministers in pursuance of subsection (3)(b) as it applies to the plan as originally submitted.

VALID FROM 14/12/2007

13 River basin management plans: approval

(1) After considering a river basin management plan submitted to them under section 10(1) or in pursuance of section 12(3)(b) or subsection (4) of this section, the Scottish Ministers may—
  (a) approve it (in whole or in part and with or without modifications), or
  (b) reject it.

(2) Before determining whether or not to approve a plan, the Scottish Ministers may request such further information and carry out such other investigations and consultation as they think fit.

(3) The Scottish Ministers must state their reasons for their determination under subsection (1) in relation to a plan.

(4) Where the Scottish Ministers reject a plan, they must return the plan to SEPA and direct it to resubmit the plan with—
  (a) such modifications (if any) as the direction may specify, and
  (b) any further modifications which SEPA considers appropriate,

  by such time (if any) as the direction may specify.

(5) Where the Scottish Ministers approve a plan, SEPA must—
  (a) publish the approved plan in such manner as it thinks fit,
  (b) make copies of it available for public inspection,
  (c) make copies of it available for sale at a reasonable price, and
  (d) publicise—
    (i) the publication of the approved plan, and
    (ii) the arrangements for making copies of it available for public inspection in pursuance of paragraph (b).

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VALID FROM 14/12/2007

14 River basin management plans: review

(1) SEPA must, no later than 6 years (or such lesser period as the Scottish Ministers may direct) from the date on which a river basin management plan was approved under section 13, review and update the plan.

(2) Following such a review SEPA must, by such date as the Scottish Ministers may direct, prepare and submit to the Scottish Ministers a revised river basin management plan for the river basin district in question in respect of such period as the Scottish Ministers may direct.

(3) The revised plan must include (in addition to the matters required to be included by section 10) the matters specified in Part 2 of schedule 1.

(4) Sections 10(2) to (4), 11 to 13 and 17(3) apply in relation to the preparation, submission and approval of a revised river basin management plan.

15 Sub-basin plans

(1) For the purpose of supplementing the river basin management plan for a river basin district—
  (a) SEPA must—
    (i) divide the district into such geographical areas as it thinks fit, and
    (ii) prepare, for each of those areas, a plan in relation to water management within the area,
  (b) SEPA or a responsible authority may, if it thinks fit, prepare a plan in relation to a particular aspect of water management within the district.

(2) A plan prepared under subsection (1)(b) may, for example, relate to—
  (a) a particular description of body of water,
  (b) a particular catchment or geographical area (whether or not an area determined in pursuance of subsection (1)(a)),
  (c) a particular matter relating to the water environment,
  (d) a particular description of user of water resources.

(3) A plan prepared under subsection (1)(a) or (b) is referred to in this Part as a "sub-basin plan".

(4) A sub-basin plan must not be inconsistent with anything in the river basin management plan which it supplements.

(5) A sub-basin plan prepared under subsection (1)(b), so far as applying to an area determined in pursuance of subsection (1)(a), must not be inconsistent with the sub-basin plan prepared for that area under subsection (1)(a).

(6) SEPA or, as the case may be, the responsible authority must consult such of the persons specified or referred to in section 11(6)(a) to (j) as it thinks fit about a proposed sub-basin plan and must take into account any views expressed by those consulted.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) For the purposes of subsection (6) as it applies to a responsible authority, the references in section 11(6)(g) to (j) to SEPA are to be read as if they were references to that responsible authority.

Commencement Information

I12 S. 15 in force at 1.6.2005 by S.S.I. 2005/235, **art. 2(b)**

VALID FROM 14/12/2007

16 Duty to have regard to river basin management plans and sub-basin plans

The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a river basin district, have regard to—

(a) the river basin management plan for that district as approved under section 13,

(b) so far as the exercise of the functions affects an area of the district determined in pursuance of section 15(1)(a), the sub-basin plan prepared for that area, and

(c) so far as relevant, any sub-basin plan prepared under section 15(1)(b) for the purpose of supplementing the river basin management plan for the district.

17 River Basin District Advisory Groups

(1) Each river basin district is to have one or more River Basin District Advisory Groups.

(2) The function of each Advisory Group is to advise SEPA on any matter which—

(a) relates to the preparation of river basin management plans for the district, and

(b) is within the remit of the Group.

(3) SEPA must, in preparing a river basin management plan, have regard to any advice given by an Advisory Group.

(4) The number of Advisory Groups, and their remits, membership and procedure, are to be such as SEPA may determine.

(5) SEPA may determine the remit of an Advisory Group for any river basin district by reference to one or more of the following, namely—

(a) a particular sub-basin plan,

(b) a particular geographical area,

(c) any other particular aspect of water management within the district.

(6) In determining the number of Advisory Groups for any river basin district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of the persons specified or referred to in section 11(6)(a) to (h).

(7) SEPA may pay to members of an Advisory Group such expenses and allowances as it may determine.

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Commencement Information
I13 S. 17 in force at 1.6.2005 by S.S.I. 2005/235, **art. 2(c)**

General

18 Power to obtain information and documents etc.

(1) The Scottish Ministers and any responsible authority must, on being requested to do so by SEPA, provide SEPA with—
(a) such information in their or, as the case may be, its possession or under their or its control, and
(b) such assistance,
as SEPA may reasonably seek in connection with the exercise of any of SEPA's functions under this Chapter.

(2) SEPA may serve a notice on any other person requiring the person—
(a) to provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or
(b) to produce to SEPA, or to a person authorised by it, such documents,
as it may reasonably require in connection with the exercise of any of its functions under this Chapter.

(3) The information or documents required to be provided or produced in pursuance of a notice under subsection (2) must be specified or described in the notice.

(4) A notice under subsection (2) may require information to be provided or documents to be produced—
(a) at or by a time and at a place specified in the notice,
(b) in circumstances specified in the notice, or
(c) from time to time, in accordance with criteria specified in the notice.

(5) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (2) cannot agree with SEPA on whether information is, or documents are, being sought or required reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

(6) Nothing in this section authorises SEPA to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(7) References in this section to documents are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

(8) Where by virtue of subsection (2) documents are produced to any person, that person may take copies of or make extracts from them.

(9) A person who—
(a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under subsection (2), or

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(b) intentionally alters, suppresses or destroys a document which that person has been required by such a notice to produce,

is guilty of an offence.

(10) A person guilty of an offence under subsection (9) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

Commencement Information

I14 S. 18 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(b)**

VALID FROM 14/12/2007

19 General regulation-making power

(1) The Scottish Ministers may by regulations make provision as to—

(a) the form and content of river basin management plans and sub-basin plans,

(b) the matters to be taken into account in preparing such plans,

(c) the procedures to be followed in connection with their preparation, submission, approval, review and modification.

(2) Such regulations may, in particular—

(a) provide for the notice to be given of, or the publicity to be given to—

(i) matters to be included or proposed to be included in any such plan,

(ii) the approval of any such plan,

(iii) any other procedural step,

and for publicity to be given to the procedures referred to in subsection (1)(c),

(b) make provision for documents and information relating to matters included in the plan to be made available to the public,

(c) make provision as to the making and consideration of representations with respect to any such plan,

(d) require or authorise—

(i) in relation to a river basin management plan, SEPA,

(ii) in relation to a sub-basin plan, SEPA or the responsible authority,

to consult, or consider the views of, other persons before taking any particular procedural step.

(3) This section is without prejudice to sections 10 to 15 and 17.

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CHAPTER 3

MEASURES FOR PROTECTION OF THE WATER ENVIRONMENT

20 Regulation of controlled activities

(1) The Scottish Ministers may by regulations make such provision for or in connection with regulating any activity (a "controlled activity") as they consider necessary or expedient for the purposes of protection of the water environment.

(2) Such regulations may, in particular—

(a) make provision for or in connection with regulating the activities specified in subsection (3),

(b) otherwise make such provision for or in connection with the basic measures and supplementary measures mentioned in paragraph 2 of Article 11 of the Directive as the Scottish Ministers consider necessary or expedient for the purpose of facilitating the achievement of the environmental objectives set out in river basin management plans.

(3) The activities referred to in subsection (2)(a) are—

(a) activities liable to cause pollution of the water environment,

[[F1](b) abstraction of water from the water environment,

(c) construction, alteration or operation of impounding works in surface water or wetlands,

(d) carrying out building or engineering works, or works other than those referred to in paragraph (c)–

(i) in inland water (other than groundwater) or wetlands, or

(ii) in the vicinity of inland water or wetlands and having or likely to have a significant adverse effect on the water environment,

(da) artificial recharge or augmentation of groundwater,**]**

(4) The provision which may be made in regulations under this section includes provision for any of the purposes specified in Part 1 of schedule 2.

(5) Part 2 of that schedule has effect for supplementing Part 1.

(6) In subsection (3)—

[[F2]"abstraction" means the doing of anything whereby any water is removed or diverted by mechanical means, pipe or any engineering structure or works from any part of the water environment, whether temporarily or permanently, including anything whereby the water is so removed or diverted for the purpose of being transferred to another part of the water environment, and includes–

(a) the construction or extension of any well, borehole, water intake or other work by which water may be abstracted, and

(b) the installation or modification of any machinery or apparatus by which additional quantities of water may be abstracted by means of a well, borehole, water intake or other work,**]**

[[F3]"impounding works" means in relation to surface water–

(a) any dam, weir or other works by which water may be impounded,

(b) any works diverting the flow of water in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a),**]**

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"pollution", in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances or heat into the water environment, or any part of it, which may give rise to any harm; and "harm" means—

(a) harm to the health of human beings or other living organisms,

(b) harm to the quality of the water environment, including—

(i) harm to the quality of the water environment taken as a whole,

(ii) other impairment of, or interference with, the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,

(c) offence to the senses of human beings,

(d) damage to property, or

(e) impairment of, or interference with, amenities or other legitimate uses of the water environment.

(7) This section is without prejudice to section 22.

Textual Amendments

F1 S. 20(3)(b)-(da) substituted for s. 20(3)(b)-(d) (1.4.2006) by Water Environment (Controlled Activities) 9Scotland) Regulations 2005 (S.S.I. 2005/348), regs. 1(2), **3(2)** (with regs. 4, 50)

F2 Words in s. 20(6) substituted (1.4.2006) by Water Environment (Controlled Activities) 9Scotland) Regulations 2005 (S.S.I. 2005/348), regs. 1(2), **3(3)(a)** (with regs. 4, 50)

F3 Words in s. 20(6) substituted (1.4.2006) by Water Environment (Controlled Activities) 9Scotland) Regulations 2005 (S.S.I. 2005/348), regs. 1(2), **3(3)(b)** (with regs. 4, 50)

Commencement Information

I15 S. 20 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(c)**

21 Controlled activities regulations: procedure

(1) Before making any regulations under section 20, the Scottish Ministers must consult—

(a) SEPA,

(b) every responsible authority,

(c) such persons appearing them to be representative of the interests of local government, industry, agriculture, fisheries and small businesses respectively as they think fit, and

(d) such other persons as they think fit.

(2) Before making any regulations under that section specifying rules as mentioned in paragraph 3(2) of schedule 2 (general binding rules), the Scottish Ministers must, in addition to consulting as required by subsection (1)—

(a) publish a draft of the proposed rules, and publicise the opportunity to make representations about them under subsection (3), in such manner as they think fit, and

(b) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as they may determine.

(3) Any person who wishes to make representations about the proposed rules to the Scottish Ministers may do so within the period determined under subsection (2)(b).

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(4) The Scottish Ministers must, in making the regulations specifying the rules, have regard to any representations on the proposed rules received by them within that period.

Commencement Information

I16 S. 21 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(c)**

VALID FROM 10/07/2008

22 Remedial and restoration measures

(1) The Scottish Ministers may by regulations make such provision for or in connection with remedial or restoration measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans.

(2) In this section "remedial or restoration measures" means the carrying out of any operations or works, or the taking of any other action, in relation to any land or body of water with a view to—

(a) remedying or mitigating the effects of any pollution (as defined in section 20(6)) of the water environment,

(b) improving or restoring the characteristics of any body of water.

(3) Regulations under this section may, in particular, make provision—

(a) conferring on SEPA or any responsible authority power to undertake, or arrange for the undertaking of, remedial or restoration measures,

(b) for determining which other persons (if any) are the appropriate persons to bear responsibility for remedial or restoration measures and conferring on SEPA or any responsible authority power—

(i) to serve notices requiring such persons to undertake remedial or restoration measures, or

(ii) to undertake, or arrange for the undertaking of, such measures at the expense of such persons.

VALID FROM 21/09/2013

23 Fixing of charges for water services

(1) The Scottish Ministers may by regulations make such provision for or in connection with the fixing of charges for the provision of water services as they consider necessary or expedient for the purposes of protection of the water environment.

(2) Regulations under subsection (1) may, in particular, make provision for securing that, in the fixing of such charges, account is taken of such principles, objectives or other matters as are specified in the regulations.

(3) Before making any regulations under subsection (1), the Scottish Ministers must consult such persons as they think fit.

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(4) In this section, "water services" means services which provide, for households, public institutions or any economic activity—

(a) abstraction (as defined in section 20(6)), impoundment, storage, treatment and distribution of surface water or groundwater,

(b) waste-water collection and treatment facilities which subsequently discharge into surface water.

VALID FROM 06/02/2007

24 Planning permission: fish farming

(1) The Town and Country Planning (Scotland) Act 1997 (c. 8) is amended as follows.

(2) In section 26 (meaning of "development")—

(a) in subsection (6)—

(i) for "tank" in the first and second places where it occurs substitute " equipment ",

(ii) after "waters" in the first place where it occurs insert " , transitional water or coastal water ",

(iii) before the definition of "fish farming" insert—

""coastal water" has the meaning given by section 3(8) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);

"equipment" includes any tank, cage or other structure, or long-line, for use in fish farming;",

(iv) the definition of "tank" is repealed,

(v) at the end insert—

""transitional water" has the meaning given by section 3(7) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);",

(b) after subsection (6) insert—

"(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of "equipment" and "fish farming" in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), "modifications" includes amendments and repeals."

(3) In section 40 (assessment of environmental effects), after subsection (3) insert—

"(4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.

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(5) In subsection (4), "water environment" has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3)."

(4) In section 275 (regulations and orders)—

(a) in subsection (4), after "26(2)(f)" insert " and (6A) ",

(b) after subsection (5) insert—

"(5A) No order made under section 26(6A) is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament."

(5) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of or in connection with the application of the Town and Country Planning (Scotland) Act 1997 (c. 8), by virtue of this section, to operations in transitional water or coastal water.

(6) An order under subsection (5) may, in particular, make provision for any planning authority specified in the order to be the planning authority for the purposes of the application of that Act, by virtue of this section, to operations in such areas of transitional water or coastal water as the order may specify in relation to the authority, despite those operations relating to land outwith the district of the authority.

(7) Before making an order under subsection (5) the Scottish Ministers must consult—

(a) every planning authority,

(b) SEPA,

(c) such other persons as they think fit.

CHAPTER 4

SUPPLEMENTARY

25 Power to give effect to Community obligations etc.

(1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

(2) In this section "related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

Commencement Information

I17 S. 25 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(a)**

26 Annual report on implementation of Directive

The Scottish Ministers must, as soon as practicable after the end of each calendar year, lay before the Parliament a report summarising—

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(a) action taken during the year by the Scottish Ministers, SEPA and the responsible authorities for securing compliance with the requirements of the Directive in accordance with this Part, and

(b) progress made during the year towards achieving the environmental objectives set from time to time under section 9.

Commencement Information

I18 S. 26 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(d)**

27 Availability of documents for public inspection

Where, under this Part, any order, map, plan, register or other document is to be made available for public inspection, it—

(a) must be made available—

(i) in print, and

(ii) electronically, and

(b) may be made available by such other means, or in such other formats, as the person required to make it available thinks fit for the purpose of encouraging the inspection of it by members of the public.

Commencement Information

I19 S. 27 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(d)**

28 Interpretation of Part 1

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

"body of groundwater" means a distinct volume of groundwater within one or more aquifers; and "aquifer" means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater,

"body of inland surface water" means a body of surface water which is also inland water,

"body of surface water" means a discrete and significant element of surface water such as a loch, a stream, river, canal or other watercourse, part of a loch, stream, river, canal or other watercourse, a body of transitional water or a stretch of coastal water,

"body of water" means a body of groundwater or a body of surface water,

"coastal water" has the meaning given in section 3,

"controlled activity" is to be construed in accordance with section 20,

"the Directive" has the meaning given in section 1,

"groundwater" has the meaning given in section 3,

"inland water" has the meaning given in section 3,

"loch" means a body of standing inland surface water,

"protection of the water environment" has the meaning given in section 1,

"responsible authority" is to be construed in accordance with section 2,

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"river basin" means an area of land from which all surface run-off water flows through a connected sequence of streams, rivers or other watercourses or lochs into the sea at a single river mouth, estuary or delta and includes any body of transitional water in the vicinity of that river mouth, estuary or delta,

"river basin district" means an area designated as such by an order under section 4(1),

"river basin management plan" means such a plan approved by the Scottish Ministers under section 13 (including that section as applied by section 14(4)),

"SEPA" means the Scottish Environment Protection Agency,

"sub-basin plan" has the meaning given in section 15,

"surface water" has the meaning given in section 3,

"the territorial sea of the United Kingdom adjacent to Scotland" has the same meaning as it has for the purposes of the Scotland Act 1998 (c. 46),

"transitional water" has the meaning given in section 3,

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices and passages through which water flows and includes artificial watercourses and underground watercourses,

"the water environment" has the meaning given in section 3.

(2) In this Part, any reference to any loch or any river or other watercourse includes a reference to the bottom, channel or bed of any loch, river or, as the case may be, other watercourse which is for the time being dry.

(3) Any word or expression used in both this Part and the Directive and not otherwise defined in this Part has the same meaning for the purposes of this Part as it has for the purposes of the Directive.

Commencement Information

I20 S. 28 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(d)**

PART 2

WATER AND SEWERAGE SERVICES

Duty to provide water and sewerage services

29 Duty to provide water and sewerage services

(1) Section 1 (duty of Scottish Water to provide for sewerage) of the Sewerage (Scotland) Act 1968 (c. 47) ("the 1968 Act") is amended as follows.

(2) After subsection (3) insert—

"(3A) Subsection (3) shall not apply to such cases or descriptions of case as the Scottish Ministers may direct.

(3B) In determining what is a reasonable cost for the purpose of subsection (3) so far as relating to subsection (2)(a), the costs to be taken into account include the costs of—

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(a) constructing such other public sewers, public SUD systems and such public sewage treatment works, and

(b) carrying out such other work,

as Scottish Water considers necessary in consequence of the connection referred to in subsection (2)(a).

(3C) Subject to subsection (3B), any question as to what is a reasonable cost for the purposes of this section shall be determined in accordance with regulations made by the Scottish Ministers.

(3D) Such regulations may, in particular, make provision as to—

(a) the matters to be taken into, or left out of, account,

(b) the criteria to be applied,

(c) the method of calculation to be adopted,

in determining what is a reasonable cost for those purposes, and may make different provision for different cases and descriptions of case."

(3) In subsection (4), after "whether" insert " a reasonable cost has been properly determined in accordance with regulations made under subsection (3C) or ".

(4) In subsection (6), for "subsection" substitute " subsections (3C) and ".

(5) Section 6 (duty of Scottish Water to provide water supply) of the Water (Scotland) Act 1980 (c. 45) ("the 1980 Act") is amended as follows.

(6) In subsection (2), after "shall" in the second place where it occurs insert " , subject to subsection (2A), ".

(7) After subsection (2) insert—

"(2A) Subsection (2), so far as requiring Scottish Water to take pipes to the point or points referred to in that subsection, shall not apply for so long as there is in force an agreement between Scottish Water and some other person for that person to take the pipes referred to in that subsection to that point or those points.

(2B) Subsections (1) and (2), so far as excepting from the duties under those subsections things which cannot be done at a reasonable cost, shall not apply to such cases or descriptions of case as the Scottish Ministers may direct.

(2C) In determining what is a reasonable cost for the purpose of subsection (2) so far as excepting from the duty under that subsection things which cannot be done at a reasonable cost, the costs to be taken into account include the costs of—

(a) constructing such other water mains, communication pipes and other waterworks, and

(b) carrying out such other work,

as Scottish Water considers necessary in consequence of the connection referred to in that subsection.

(2D) Subject to subsection (2C), any question as to what is a reasonable cost for the purposes of this section shall be determined in accordance with regulations made by the Scottish Ministers.

(2E) Such regulations may, in particular, make provision as to—

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(a) the matters to be taken into, or left out of, account,

(b) the criteria to be applied,

(c) the method of calculation to be adopted,

in determining what is a reasonable cost for those purposes, and may make different provision for different cases and descriptions of case."

(8) In subsection (3), after the words "as to" insert—

"(za) whether a reasonable cost has been properly determined in accordance with regulations made under subsection (2D), or".

Commencement Information

I21 S. 29 in force at 6.3.2006 by S.S.I. 2006/55, **art. 2(a)**

PROSPECTIVE

30 Private sewers, SUD systems and sewage treatment works etc.: vesting, takeover and connection conditions

(1) In section 3A (authorisation of construction of certain private sewers etc.) of the 1968 Act, after subsection (2) insert—

"(3) An agreement under subsection (2)—

(a) is subject to—

(i) the condition that the sewer or SUD system or part shall vest in Scottish Water only if the sewer, system or part complies with the construction standards specified by virtue of section 14A and, in the case of a SUD system or part, with the SUD systems requirements specified by virtue of section 14B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(1), and

(b) shall not take effect until the person who constructed the sewer or SUD system provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii)."

(2) In section 8 (agreements as to provision of sewers etc. for new premises) of the 1968 Act—

(a) after subsection (1) insert—

"(1A) An agreement under subsection (1) so far as it makes provision for the taking over by Scottish Water of a SUD system or sewage treatment works—

(a) is subject to—

(i) the condition that the system complies, or the works comply, with the construction standards specified by virtue of section 14A and, in the case of a SUD system, with the SUD systems requirements

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Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

specified by virtue of section 14B, so far as applicable, and

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(2), and

(b) shall not take effect until the person providing the system or works provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii).",

(b) subsection (2) is repealed.

(3) In section 12 of the 1968 Act (rights of owners and occupiers to connect with and drain into public sewers etc.), after subsection (2) insert—

"(2A) An owner shall not, under subsection (1), be entitled to connect the owner's drains, sewers or SUD systems with the sewers, SUD systems or works of Scottish Water unless—

(a) the drains, sewers or systems comply with the construction standards specified by virtue of section 14A and, in the case of a SUD system, with the SUD systems requirements specified by virtue of section 14B, so far as applicable, and

(b) the owner has, if required to do so under section 14C(3), entered into a connection agreement (within the meaning of that section) and has provided such security as Scottish Water may reasonably require for the performance of the owner's obligations under the connection agreement."

(4) After section 14 of the 1968 Act insert—

"**14A Private sewers, SUD systems and sewage treatment works etc.: construction standards**

(1) In relation to drains, private sewers, private SUD systems and private sewage treatment works, the construction standards referred to in sections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) are such standards in relation to the construction of drains, sewers, SUD systems or, as the case may be, sewage treatment works as the Scottish Ministers may, by regulations made by statutory instrument, specify.

(2) The standards which may be specified in regulations under subsection (1) include standards specified in or under other enactments.

(3) Regulations under subsection (1) may make different provision in relation to different descriptions of person and different cases or descriptions of case.

(4) Before making regulations under subsection (1) the Scottish Ministers must consult—

(a) Scottish Water, and

(b) such other persons as they consider appropriate.

(5) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

14B Sustainable urban drainage systems: requirements

(1) In relation to SUD systems, the SUD systems requirements referred to in sections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) are such requirements in relation to the nature, design and layout of SUD systems as the Scottish Ministers may, by regulations made by statutory instrument, specify.

(2) Subsections (3) to (5) of section 14A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.

14C Private sewers, SUD systems and sewage treatment works etc.: vesting conditions, takeover agreements and connection agreements

(1) For the purposes of section 3A(3)(a)(ii) or 16A(3)(a)(ii), Scottish Water may require the inclusion in an agreement under subsection (2) of the section in question of conditions ("vesting conditions") as to—

(a) any sum to be paid by Scottish Water to the person who constructed the sewer or SUD system in respect of its construction,

(b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the sewer or system, including in particular the costs of—

(i) complying with section 2, both in relation to the sewer or system and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (iii),

(ii) connecting the sewer or system to public sewers, public SUD systems or public sewage treatment works,

(iii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such other work, as Scottish Water considers necessary in consequence of the connection of the sewer or system,

and where the agreement under section 3A(2) or, as the case may be, 16A(2) relates only to a part of a sewer or SUD system, the references in paragraphs (a) and (b) of this subsection to the sewer or system shall be read as if they were references to the part.

(2) For the purposes of section 8, Scottish Water may require the inclusion in an agreement under subsection (1) of that section, so far as it makes provision for the taking over by Scottish Water of a SUD system or sewage treatment works, of conditions ("takeover conditions") as to—

(a) any sum to be paid by Scottish Water to the person providing the system or works in respect of its or their construction,

(b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the system or works, including in particular the costs of—

(i) complying with section 2, both in relation to the system or works and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (ii),

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(ii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such other work, as Scottish Water considers necessary in consequence of the taking over of the system or works in pursuance of the agreement.

(3) For the purposes of section 12, Scottish Water may require the owner of a drain, sewer or SUD system referred to in subsection (2A) of that section to enter into an agreement (a "connection agreement") with it as to—

(a) any sum to be paid by Scottish Water to the owner in respect of the construction of the drain, sewer or system,

(b) the liability of the owner to pay Scottish Water sums in respect of Scottish Water's costs in relation to the drain, sewer or system, including in particular the costs of—

(i) complying with section 2, both in relation to the drain, sewer or system and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (iii),

(ii) connecting the drain, sewer or system to public sewers, public SUD systems or public sewage treatment works,

(iii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such work in relation to public sewers, public SUD systems and public sewage treatment works, as Scottish Water considers necessary in consequence of the connection of the drain, sewer or system.

(4) The Scottish Ministers may by regulations made by statutory instrument make provision as to—

(a) the provisions to be included—

(i) by virtue of subsection (1), as vesting conditions in an agreement under section 3A(2) or 16A(2),

(ii) by virtue of subsection (2), as takeover conditions in an agreement under section 8(1),

(iii) by virtue of subsection (3), in a connection agreement,

(b) cases in relation to which subsection (1), (2) or (3) does not apply, or applies with modifications.

(5) Regulations under subsection (4) may, in particular, make provision—

(a) for determining the sum (if any) to be paid by Scottish Water by virtue of subsection (1)(a), (2)(a) or (3)(a),

(b) for determining the liability—

(i) by virtue of subsection (1)(b), of the person who constructed the sewer or SUD system,

(ii) by virtue of subsection (2)(b), of the person providing the SUD system or works,

(iii) by virtue of subsection (3)(b), of the owner,

by reference to such matters, criteria and methods of calculation as the regulations may specify,

(c) as to when sums due under the vesting conditions, the connection agreement or the takeover conditions are payable,

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(d) as to the security which Scottish Water is entitled to require under section 3A(3)(b), 8(1A)(b), 12(2A)(b) or 16A(3)(b).

(6) Regulations under subsection (4) may make different provision in relation to different descriptions of person and different cases or descriptions of case.

(7) A statutory instrument containing regulations under subsection (4) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament."

(5) In section 16A (vesting of certain private sewers) of the 1968 Act, after subsection (2) insert—

"(3) An agreement under subsection (2)—

(a) is subject to—

(i) the condition that the sewer or SUD system or part shall vest in Scottish Water only if the sewer, system or part complies with the construction standards specified by virtue of section 14A and, in the case of a SUD system or part, with the SUD systems requirements specified by virtue of section 14B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(1), and

(b) shall not take effect until the person who constructed the sewer or SUD system provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii)."

VALID FROM 10/07/2008

Mains and pipes provided by persons other than Scottish Water

31 Laying of water mains and communication pipes by persons other than Scottish Water

After section 23 of the 1980 Act insert—

"**23A Laying of mains and communication pipes by persons other than Scottish Water**

(1) Without prejudice to sections 23 and 24 (including any power under those sections to authorise the laying of mains or communication pipes on its behalf), Scottish Water may authorise a person to lay a main or communication pipe which is to connect with a main vested in it—

(a) in, under or over any road or under any cellar or vault below any road, or

(b) in, on or over any land which does not form part of a road and is not land as respects which that person is owner, lessee or occupier.

(2) Where Scottish Water gives an authorisation to any person under subsection (1) in relation to a main, subsections (1) to (2) of section 23, so

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far as relating to the laying of a main shall apply in respect of that person as they apply in respect of Scottish Water.

(3) Where—

(a) a main or communication pipe (not being a main pipe or laid by or on behalf of Scottish Water) is laid by any person, and

(b) the main or pipe connects with a main vested in Scottish Water,

the main or, as the case may be, the communication pipe shall vest in Scottish Water.

(4) Notwithstanding subsection (3), Scottish Water may, before the completion of a main or communication pipe to which that subsection applies, determine that the main or pipe, or any part of it, shall vest in the person who laid it and that that person shall have sole responsibility for its management, maintenance and renewal.

(5) Scottish Water shall give notice of a determination under subsection (4) to the person who laid the main or communication pipe.

(6) Where—

(a) a main or communication pipe (not being a main or pipe laid by or on behalf of Scottish Water) is laid by any person, and

(b) the main or pipe does not connect with a main vested in Scottish Water,

the main or, as the case may be, the communication pipe shall vest in the person who laid it, who shall have sole responsibility for its management, maintenance and renewal.

(7) Notwithstanding subsections (4) and (6), Scottish Water may at any time enter into an agreement under which the main or communication pipe in question, or any part of it, shall vest in it.

(8) An agreement under subsection (7) relating to a main or communication pipe to which subsection (3) applies—

(a) is subject to—

(i) the condition that the main or pipe shall vest in Scottish Water only if it complies with the construction standards specified by virtue of section 23B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 23C, and

(b) shall not take effect until the person who laid the main or pipe provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii).

23B Construction standards for mains and communication pipes to vest in Scottish Water

(1) In relation to a main or communication pipe to which subsection (3) of section 23A applies, the construction standards referred to in subsection (8)(a)(i) of that section are such standards as the Scottish Ministers may, by regulations, specify.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The standards which may be specified in regulations under subsection (1) include standards specified in or under other enactments.

(3) Regulations under subsection (1) may make different provision in relation to different cases or descriptions of case.

(4) Before making regulations under subsection (1) the Scottish Ministers must consult—
  (a) Scottish Water, and
  (b) such other persons as they consider appropriate.

23C Vesting conditions for mains and communication pipes

(1) For the purposes of subsection (8)(a)(ii) of section 23A, Scottish Water may require the inclusion in an agreement under subsection (7) of that section of conditions ("vesting conditions") as to—
  (a) any sum to be paid by Scottish Water to the person who laid the main or communication pipe in respect of its laying,
  (b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the main or pipe, including in particular the costs of—
    (i) maintaining, repairing and renewing the main or pipe and such water mains, communication pipes and other waterworks constructed, and work carried out, as are mentioned in sub-paragraph (iii),
    (ii) connecting the main or pipe to a main vested in Scottish Water,
    (iii) constructing such water mains, communication pipes and other waterworks, and carrying out such other work, as Scottish Water considers necessary in consequence of the connection.

(2) The Scottish Ministers may by regulations make provision as to—
  (a) the provisions to be included, by virtue of subsection (1) of this section, as vesting conditions in an agreement under section 23A(7),
  (b) cases in relation to which subsection (1) of this section does not apply, or applies with modifications.

(3) Regulations under subsection (2) may, in particular, make provision—
  (a) for determining the sum (if any) to be paid by Scottish Water by virtue of subsection (1)(a),
  (b) for determining the liability, by virtue of subsection (1)(b), of the person who laid the main or communication pipe by reference to such matters, criteria and methods of calculation as the regulations may specify,
  (c) as to when sums due under the vesting conditions are payable,
  (d) as to the security which Scottish Water is entitled to require under section 23A(8)(b).

(4) Regulations under subsection (2) may make different provision in relation to different descriptions of person and different cases or descriptions of case."

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Vesting of waterworks and mains

32 Vesting in Scottish Water of waterworks and mains

(1) In section 21 (power to carry out works) of the 1980 Act—

(a) the existing provision becomes subsection (1),

(b) after that subsection insert—

"(2) For the avoidance of doubt, all waterworks constructed in pursuance of subsection (1) above (whether before or after the commencement of this subsection) vest in Scottish Water."

(2) In section 23 (power to lay mains etc.) of that Act, at the end insert—

"(5) For the avoidance of doubt, all mains laid in pursuance of subsection (1) above (whether laid before or after the commencement of this subsection) vest in Scottish Water."

Commencement Information

I22 S. 32 in force at 6.3.2006 by S.S.I. 2006/55, **art. 2(b)**

Sustainable urban drainage systems

33 Sustainable urban drainage systems

(1) In section 59(1) (interpretation) of the 1968 Act, insert the following definitions in the appropriate places alphabetically—

""private SUD system" means any SUD system which is not a public SUD system;

"public SUD system" means any SUD system which is vested in Scottish Water;

"road water" means the run-off of rainwater from any road for the time being entered in a list of public roads kept by a local roads authority under section 1(1) of the Roads (Scotland) Act 1984;

"SUD system" means a sustainable urban drainage system;

"sustainable urban drainage system" means a drainage system which—

(a) facilitates attenuation, settlement or treatment of surface water from 2 or more premises (whether or not together with road water), and

(b) includes one or more of the following: inlet structures, outlet structures, swales, constructed wetlands, ponds, filter trenches, attenuation tanks and detention basins (together with any associated pipes and equipment);".

(2) Schedule 3 makes modifications of the 1968 Act and the Water Industry (Scotland) Act 2002 (asp 3) in relation to sustainable urban drainage systems.

Commencement Information

I23 S. 33(1) in force at 6.3.2006 for specified purposes by S.S.I. 2006/55, **art. 2(c)**

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 10/07/2008

Supplementary

34 Modifications of Part III of the 1980 Act

Schedule 4 makes modifications of Part III of the 1980 Act which are minor or consequential on this Part.

PART 3

GENERAL

35 Crown application

(1) Part 1 and this Part bind the Crown.

(2) The amendments and repeals made by Part 2 bind the Crown to the extent that the enactments amended or repealed bind the Crown.

(3) Subsection (1) does not require subordinate legislation made under this Act to bind the Crown.

(4) 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 body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (4), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

36 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 to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
- (b) provision for the delegation of functions,
- (c) different provision for different purposes and different areas.

(3) An order under section 24 or 37, and regulations under section 8, 20, 22 or 23, may modify any enactment, instrument or document.

(4) A statutory instrument containing an order or regulations under—
- (a) any of sections 2, 5 to 7, 9, 10 and (except where subsection (6) applies) 37, or
- (b) paragraph 20(4) of schedule 2,

is subject to annulment in pursuance of a resolution of the Parliament.

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(5) A statutory instrument containing regulations under section 8, 19, 20, 22 or 23, if made without a draft having been laid before, and approved by a resolution of, the Parliament is subject to annulment in pursuance of a resolution of the Parliament.

(6) No—

(a) order under section 4 or 24,

(b) regulations under section 25,

(c) order under section 37 or regulations under section 8, 20, 22 or 23 containing provisions which add to, replace or omit any part of the text of an Act,

is or are to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.

37 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.

38 Commencement and short title

(1) The provisions of this Act, other than this Part, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Water Environment and Water Services (Scotland) Act 2003.

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SCHEDULE 1

(introduced by sections 10 and 14)

MATTERS TO BE INCLUDED IN RIVER BASIN MANAGEMENT PLANS

PART 1

MATTERS TO BE INCLUDED IN EVERY PLAN

1 A summary of the characterisation of the river basin district carried out under section 5.

Commencement Information
I24 Sch. 1 para. 1 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

2 A summary of significant pressures, and the impact of human activity, on the status of the water environment within the district.

Commencement Information
I25 Sch. 1 para. 2 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

3 A summary of the register of protected areas maintained under section 7, including information sufficient to identify each protected area within the district.

Commencement Information
I26 Sch. 1 para. 3 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

4 Information as to the arrangements for monitoring water status under section 8 and as to the results of such monitoring.

Commencement Information
I27 Sch. 1 para. 4 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

5 A list of the environmental objectives set under section 9 for every body of water in the district.

Commencement Information
I28 Sch. 1 para. 5 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

6 A summary of the programme of measures prepared under section 9 to be applied to achieve those objectives.

Commencement Information
I29 Sch. 1 para. 6 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

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7 Information as to any sub-basin plan.

Commencement Information
I30 Sch. 1 para. 7 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

8 A non-technical summary of the information provided under paragraphs 1 to 7.

Commencement Information
I31 Sch. 1 para. 8 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

9 A summary of—
(a) the steps taken under subsections (3) to (6) of section 11 in relation to the plan, and
(b) changes made to the plan in light of—
(i) the views and representations received on it, and
(ii) any advice given by a River Basin District Advisory Group under section 17(2).

Commencement Information
I32 Sch. 1 para. 9 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

10 Information as to—
(a) SEPA, and
(b) every responsible authority and regulator (within the meaning of schedule 2) having functions in relation to the river basin district.

Commencement Information
I33 Sch. 1 para. 10 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

11 The arrangements for making available to the public documents and information relevant to the preparation and implementation of the plan.

Commencement Information
I34 Sch. 1 para. 11 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

PART 2

ADDITIONAL MATTERS TO BE INCLUDED IN REVISED PLANS

12 A summary of the changes which have been made as compared with the previous plan.

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Commencement Information
I35 Sch. 1 para. 12 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

13 An assessment of the progress made towards the achievement of the environmental objectives set under section 9, including the results of monitoring under section 8 and reasons for any failure to achieve any such objective.

Commencement Information
I36 Sch. 1 para. 13 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

14 A summary of any measures included in the programme of measures prepared under section 9 in relation to the previous plan which were not applied, with reasons for the non-application.

Commencement Information
I37 Sch. 1 para. 14 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

15 A summary of any measures additional to those referred to in paragraph 14 which were applied to achieve the environmental objectives set under section 9.

Commencement Information
I38 Sch. 1 para. 15 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(b)**

SCHEDULE 2

(introduced by section 20)

CONTROLLED ACTIVITIES REGULATIONS: PARTICULAR PURPOSES

PART 1

LIST OF PURPOSES

1 (1) Further defining the activities specified in subsection (3) of section 20.

(2) Modifying the definitions of those activities.

(3) Specifying other activities as controlled activities.

Commencement Information
I39 Sch. 2 para. 1 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

2 (1) Determining the authorities (whether SEPA or any other public or local authority or the Scottish Ministers) by whom functions conferred by the regulations for or in

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connection with regulating controlled activities are to be exercisable (such authorities being referred to in this schedule as "regulators").

(2) Securing that such functions are exercised with a view to achieving the environmental objectives set out in river basin management plans.

(3) Specifying any other purposes for which any such functions are to be exercisable.

(4) Enabling the Scottish Ministers to give directions (whether general or specific) with which regulators are to comply, or guidance to which regulators are to have regard, in exercising functions under the regulations, including—

(a) directions providing for any functions exercisable by one regulator to be exercisable instead by another,

(b) directions given for the purpose of the implementation of any obligations of the United Kingdom under the Community Treaties or under any international agreement to which the United Kingdom is a party,

(c) directions relating to the exercise of any function in a particular case or description of case,

(d) directions providing 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.

Commencement Information

I40 Sch. 2 para. 2 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

3 (1) Prohibiting persons from carrying on, or from causing or permitting others to carry on, any controlled activity, or from carrying on any such activity except so far as it is—

(a) authorised by or under, and

(b) carried on in accordance with,

the regulations.

(2) Specifying rules of general application ("general binding rules") subject to which controlled activities may be carried on.

(3) Treating as authorised the carrying on of controlled activities which are subject to general binding rules.

(4) Enabling regulators to authorise the carrying on of controlled activities (whether or not the carrying on of any such activities is subject to general binding rules)—

(a) by way of a licence granted under the regulations (a "water use licence"),

(b) subject to a requirement to register the carrying on of the activity ("registration").

Commencement Information

I41 Sch. 2 para. 3 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

4 (1) Requiring persons proposing to carry on controlled activities to notify regulators of the proposals.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Prescribing the form and content of notifications and otherwise regulating the procedure for notifying proposed controlled activities.

(3) Requiring regulators to advise persons notifying them of proposals to carry on controlled activities as to whether the carrying on of the activities requires to be authorised by regulators under the regulations in pursuance of paragraph 3(4) and, if so, the type of authorisation required.

Commencement Information
I42 Sch. 2 para. 4 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

5 (1) Prescribing the form and content of applications for water use licences.

(2) Specifying restrictions or other requirements in connection with applications for, or the grant of, licences.

(3) Otherwise regulating the procedure to be followed in connection with applications for licences and the determination of applications.

(4) Enabling licence applications to be treated as notifications in specified circumstances.

(5) Prescribing the contents of licences.

(6) Authorising licences to be granted subject to conditions imposed by regulators.

(7) Enabling the granting of licences authorising the carrying on of more than one controlled activity.

(8) Securing that licences have effect subject to specified conditions.

(9) Requiring licences or the conditions to which they are subject to be reviewed by regulators (whether periodically or in specified circumstances).

(10) Authorising or requiring the variation of licences or such conditions by regulators (whether on applications made by holders of licences or otherwise).

(11) Regulating the transfer and surrender of licences.

(12) Authorising the suspension of licences by regulators.

(13) Authorising the revocation of licences by regulators.

(14) Authorising the imposition by regulators of requirements with respect to the taking of preventive or remedial action (by holders of licences or other persons) in connection with the surrender and revocation of licences.

Commencement Information
I43 Sch. 2 para. 5 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

6 (1) Regulating the procedure for registration required by provision made in pursuance of paragraph 3(4)(b), including variation and revocation of registrations.

(2) Specifying restrictions or other requirements in connection with registration.

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Commencement Information
I44 Sch. 2 para. 6 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

7 (1) Authorising, or authorising regulators to make, vary and revoke schemes for, the charging by regulators of fees or other charges—
- (a) in respect of notifications,
- (b) in respect of, or in respect of applications for—
  - (i) the grant of a licence,
  - (ii) the variation of a licence or the conditions to which it is subject,
  - (iii) the transfer, surrender or revocation of a licence,
  - (iv) registration,
- (c) in respect of the subsistence of a licence or registration,
- (d) in respect of other specified matters.

(2) Regulating the procedure for making, varying and revoking such schemes.

Commencement Information
I45 Sch. 2 para. 7 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

Publicity and consultation

8 Securing that—
- (a) publicity is given to specified matters,
- (b) regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) which are open to public inspection,
- (c) copies of entries in such registers, or of specified documents, may be obtained by members of the public.

Commencement Information
I46 Sch. 2 para. 8 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

9 Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions (including consultation on any guidance they propose to issue in connection with the exercise of those functions), and providing for them to take into account representations made to them on consultation.

Commencement Information
I47 Sch. 2 para. 9 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

Enforcement and offences

10 (1) Conferring on regulators functions with respect to the monitoring and inspection of the carrying on of controlled activities, including—

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(a) power to take samples or to make copies of information,

(b) power to arrange for preventive or remedial action to be taken at the expense of those carrying on the controlled activities.

(2) Authorising regulators to appoint suitable persons to exercise any such functions and conferring powers (such as those specified in section 108(4) of the Environment Act 1995 (c. 25)) on persons so appointed.

Commencement Information
I48 Sch. 2 para. 10 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

11 (1) Authorising regulators to serve on any persons carrying on controlled activities (whether or not the carrying on of those activities is authorised by or under the regulations) notices, including notices requiring them—

(a) to notify the controlled activities being carried on by them,

(b) to take preventive or remedial action at their own expense in respect of contraventions, actual or potential, of—

(i) in relation to activities being carried on under water use licences, any conditions to which the licences are subject,

(ii) in relation to activities being carried on subject to general binding rules, those rules,

(c) in relation to activities being carried on subject to registration, to take preventive or remedial action at their own expense where the activities are being carried on otherwise than as described in the registration,

(d) to provide such financial security as the regulators serving the notices consider appropriate pending the taking of preventive or remedial action required by virtue of paragraph (b) or (c),

(e) to take steps to remove imminent risks of serious adverse impacts on the status of the water environment (whether or not arising from any such contraventions),

(f) to stop the carrying on of controlled activities and to take such preventive or remedial action as may be specified in the notice.

(2) Providing for the enforcement of such notices by civil proceedings.

Commencement Information
I49 Sch. 2 para. 11 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

12 Creating offences and dealing with matters relating to such offences, including—

(a) the provision of defences, and

(b) evidentiary matters.

Commencement Information
I50 Sch. 2 para. 12 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

13 Enabling, where a person has been convicted of an offence under the regulations—

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(a) a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment),
(b) a regulator to arrange for such action at that person's expense.

Commencement Information
I51 Sch. 2 para. 13 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

14 (1) Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations.

(2) Making provision for (or for the determination of) matters relating to the making, considering and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

Commencement Information
I52 Sch. 2 para. 14 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

15 (1) Making provision which, subject to any modifications that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by any of sections 157, 158 and 160 of the Environmental Protection Act 1990 (c. 43).

(2) Making provision about the application of the regulations to the Crown.

Commencement Information
I53 Sch. 2 para. 15 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

PART 2

SUPPLEMENTARY PROVISIONS

16 The regulations may provide for specified provisions of the regulations to have effect in relation only to—
(a) specified controlled activities,
(b) the carrying on of controlled activities in specified circumstances, or
(c) the carrying on of controlled activities by specified persons or descriptions of persons.

Commencement Information
I54 Sch. 2 para. 16 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

17 General binding rules may—
(a) impose conditions or requirements,
(b) prescribe standards or objectives to be complied with or achieved,
(c) require standards or objectives specified in or under other enactments to be complied with or achieved.

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Commencement Information
I55 Sch. 2 para. 17 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

18 In connection with the imposition of conditions as mentioned in paragraph 5(6) the regulations may in particular provide—

(a) for such conditions to be imposed in the light of any specified general principles and any directions or guidance given under the regulations,

(b) for such guidance to include guidance sanctioning reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing a condition,

(c) for such conditions to be imposed by reference to agreements between or among holders of licences as to the carrying on by them of the controlled activities authorised by the licences.

Commencement Information
I56 Sch. 2 para. 18 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

19 The regulations may—

(a) require any such scheme as is mentioned in paragraph 7 to be so framed that the fees and charges payable under the scheme—

(i) are determined in the light of any specified general principles and any directions or guidance given under the regulations,

(ii) are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator to whom they are so payable) as is specified,

(b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

Commencement Information
I57 Sch. 2 para. 19 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

20 (1) The regulations may provide for any such offence as is mentioned in paragraph 12 to be triable—

(a) only summarily,

(b) either summarily or on indictment.

(2) The regulations may provide for such an offence to be punishable—

(a) on summary conviction by—

(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 6 months), or

(ii) a fine not exceeding such amount as is specified (which must not exceed **[**[F4]£40,000**]**),

or both,

(b) on conviction on indictment by—

(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 5 years), or

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(ii) a fine,

or both.

(3) The regulations may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified (in addition to any punishment provided for in pursuance of sub-paragraph (2)).

(4) The Scottish Ministers may by order substitute for the sum for the time being specified in sub-paragraph (2)(a)(ii) such other sum as appears to them to be justified by a change in the value of money appearing to them to have taken place since the last occasion on which the sum was fixed.

Textual Amendments

F4 Word in Sch. 2 para. 20(2)(a)(ii) substituted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), s. 145(2), **Sch. 2 para. 6**; S.S.I. 2004/420, art. 3, Sch. 1

Commencement Information

I58 Sch. 2 para. 20 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

21 In this schedule—

"general binding rules" means rules specified in the regulations in pursuance of paragraph 3(2),

"notification" means notification of a proposal to carry on a controlled activity in accordance with any provision made in the regulations in pursuance of paragraph 4(1),

"registration" means registration under any provision made in the regulations in pursuance of paragraph 3(4)(b),

"the regulations" means regulations under section 20,

"regulators" has the meaning given in paragraph 2(1),

"specified" means specified in the regulations,

"water use licence" means a licence granted under any provision made in the regulations in pursuance of paragraph 3(4)(a).

Commencement Information

I59 Sch. 2 para. 21 in force at 20.5.2005 by S.S.I. 2005/256, **art. 2(c)**

VALID FROM 30/11/2007

SCHEDULE 3

(introduced by section 33)

SUSTAINABLE URBAN DRAINAGE SYSTEMS: FURTHER AMENDMENTS

The 1968 Act

1 The 1968 Act is amended as follows.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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2 In section 1(1) (duty of Scottish Water to provide for sewerage)—

(a) after "sewers" in the first place where it occurs insert " and public SUD systems ",

(b) after "sewers" in the second place where it occurs insert " and SUD systems ".

3 In section 2 (maintenance of public sewers etc.), after "sewers," insert " SUD systems, ".

4 In section 3 (power to construct public sewers)—

(a) in subsection (1)(a), after "sewer" insert " or SUD system ",

(b) in subsection (2), after "sewer" insert " or SUD system ".

5 In section 3A(2) (vesting of privately constructed sewers)—

(a) after "sewer" in the first place where it occurs insert " or SUD system ",

(b) after "sewer" in each other place where it occurs insert " or system ",

(c) after "sewers" insert " , SUD systems ".

6 In section 4 (Scottish Water may close or alter public sewers etc.)—

(a) after "sewer" in the first and third places where it occurs insert " , SUD system ",

(b) after "sewer" in the second and fourth places where it occurs insert " , system ".

7 In section 7(1) (agreements between roads authorities and Scottish Water), after "sewers" insert " , SUD systems ".

8 In section 8(1) (agreements as to provision of sewers etc. for new premises)—

(a) after "sewers" in both places where it occurs insert " , SUD systems ",

(b) after "of" in the second place where it occurs insert " SUD systems and ".

9 In section 11(1) (Scottish Water to keep maps of sewers, drains etc.), after "drains" insert " , SUD systems ".

10 (1) Section 12 (rights of owners and occupiers to connect with and drain into public sewers etc.) is amended as follows.

(2) In subsection (1)—

(a) for "or private sewers" in the first place where those words occur substitute " , private sewers or private SUD systems ",

(b) after "sewers" in the second place where it occurs insert " , SUD systems ",

(c) after "entitled" in the second place where it occurs insert " (a) ",

(d) for "and surface water from those premises" substitute ", and

(b) by means of those drains, private sewers or private SUD systems, to drain into those sewers, systems or works the surface water,

from those premises ".

(3) In subsection (2)—

(a) for "or sewers" substitute " , sewers or SUD systems ",

(b) after "sewers" in the second place where it occurs insert " , SUD systems ",

(c) for "or sewer" substitute " , sewer or SUD system ".

(4) In subsection (3)—

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(a) for "or sewers" substitute " , sewers or SUD systems ",
(b) after "sewers" in the second place where it occurs insert " , SUD systems ",
(c) for "or sewer" substitute " , sewer or SUD system ",
(d) after "sewer" in the second place where it occurs insert " , system ".

(5) In subsection (8)—
(a) for "or sewer" in both places where those words occur substitute " , sewer or SUD system ",
(b) after "sewers" insert " , SUD systems ".

11 In section 14 (direction by Scottish Water as to manner of construction of works)—
(a) in subsection (1)—
(i) for "or sewer" substitute " , sewer or SUD system ",
(ii) after "sewer" in the second, third and fourth places where it occurs insert " , SUD system ",
(b) in subsection (5), after "sewer" in each place where it occurs insert " , SUD system ",
(c) in subsection (6), after "sewer" insert " , SUD system ".

12 In section 15 (owner or occupier to remedy defects in drains etc.)—
(a) in subsection (1), after "drains" in both places where it occurs insert " , SUD systems ",
(b) in subsection (5), after "drain" insert " , SUD system ".

13 In section 16 (vesting of sewers and other works in Scottish Water)—
(a) in subsection (1)—
(i) in paragraph (a), after "sewers" insert " , SUD systems ",
(ii) in paragraph (c), after "sewers" in the first place where it occurs insert " and private SUD systems ",
(iii) in paragraph (cc), after "sewers" in the first place where it occurs insert " and private SUD systems ", and after "sewers" in the second place where it occurs insert " and systems ",
(iv) in paragraph (d), after "works" insert " and SUD systems ",
(v) in paragraph (e), after "works" insert " and SUD systems ",
(b) in subsection (2)—
(i) after "sewers" in the first place where is occurs insert " , private SUD systems ",
(ii) after "works" insert " and SUD systems ",
(c) in subsection (3), after "drains" insert " , SUD systems ".

14 In section 16A (vesting of certain private sewers)—
(a) in subsection (1), for "or" in the second place where it occurs substitute " and any sewer or SUD system vested in a person ",
(b) in subsection (2), after "sewer" insert " or SUD system ".

15 In section 17 (Scottish Water may take over private sewage treatment works)—
(a) in subsection (1)—
(i) after "works" in the first place where it occurs insert " or private SUD system ",

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(ii) after "works" in the second place where it occurs insert " or system ",

(b) in subsection (2)—

(i) after "works" in the first place where it occurs insert " or a SUD system ",

(ii) after "works" in the second place where it occurs insert " or system ",

(c) in subsection (4), after "works" insert " and any SUD system ",

(d) in subsection (5)—

(i) after "works" insert " or a SUD system ",

(ii) after "them" insert " or it ",

(iii) after "have" insert " or it has ",

(e) in subsection (6), after "works" insert " or a SUD system ".

16 In section 21(1) (buildings not to interfere with sewers), after "sewer" insert " or SUD system ".

17 In section 23 (restriction on working minerals)—

(a) after "works" in the first place where it occurs insert " , public SUD systems ",

(b) after "works" in every other place where it occurs insert " , SUD systems ".

18 In section 39 (Scottish Water to have right to sewage), after "sewers" insert " , SUD systems ".

19 In section 41 (breaking open of streets etc.), after "sewers" insert " , SUD systems ".

20 In section 45 (production of plans and information)—

(a) after "sewer" in the first and second places where it occurs insert " , SUD system ",

(b) after "sewer" in the third and fourth places where it occurs insert " , system ".

21 In section 46 (certain matter not to be passed into drains)—

(a) after "sewer" in the first place where it occurs insert " , public SUD system ",

(b) after "sewer" in the second and third places where it occurs insert " , SUD system ".

22 In section 48(1) (powers of entry)—

(a) in paragraph (a), after "of" in the third place where it occurs insert " a SUD system or ",

(b) in paragraph (dd)—

(i) after "sewer" in the first place where it occurs insert " or SUD system ",

(ii) after "sewer" in the second place where it occurs insert " or public SUD system ",

(c) in paragraph (f)—

(i) after "sewers" in the first place where it occurs insert " , public SUD systems ",

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(ii) after "sewers" in the second place where it occurs insert " , SUD systems ".

23 In section 59 (interpretation)—

(a) in subsection (1), in the definition of "sewage treatment works", at the end insert " but does not include a SUD system ",

(b) in subsection (3), after "sewer" in both places where it occurs insert " , SUD system ".

24 In section 46(1)(b)(ii) of the Water Industry (Scotland) Act 2002 (acquisition of land by agreement for provision of sewerage system), after "sewers" insert " , sustainable urban drainage systems ".

VALID FROM 10/07/2008

SCHEDULE 4

(introduced by section 34)

MODIFICATIONS OF PART III OF THE 1980 ACT

1 In section 22 (power to break open streets) of the 1980 Act—

(a) the existing provision becomes subsection (1),

(b) after that subsection insert—

"(2) Paragraph 1 of Schedule 3 has effect in relation to works carried out by any person—

(a) in pursuance of an authorisation under section 23A(1), or

(b) in connection with the management, maintenance or renewal of a main or communication pipe laid by that person in pursuance of such an authorisation and vested in that person,

as it has in relation to works carried out by Scottish Water."

2 In section 23 (power to lay mains etc.), after subsection (2) insert—

"(2A) In relation to a main not vested in Scottish Water, Scottish Water may recover from the person in whom the main is vested any expenses reasonably incurred by Scottish Water under subsection (1) or (2) in connection with the inspection, repair, maintenance, alteration, renewal or removal of the main.

(2B) In relation to a main laid by any person in pursuance of an authorisation under section 23A(1), subsections (1) and (2) of this section, so far as relating to the inspection, repair, maintenance, alteration, renewal or removal of a main, apply to that person as they apply to Scottish Water."

PROSPECTIVE

3 (1) Section 24 (communication and supply pipes) of the 1980 Act is amended as follows.

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(2) In subsection (1), for "the water authority providing the supply" substitute " Scottish Water ".

(3) After subsection (1) insert—

"(1A) Subsection (1) does not apply in relation to the laying of any part of a service pipe in respect of which an authorisation under section 23A(1) is in force."

(4) In subsection (2), for "all water authorities" substitute " Scottish Water ".

(5) In subsection (3)—

(a) at the beginning insert " Subject to section 23A, ",

(b) for "the water authority and the authority" substitute " Scottish Water and Scottish Water ",

(c) for "their" in both places where it occurs substitute " its ".

(6) In subsection (4)—

(a) for "the water authority" substitute " Scottish Water ",

(b) for "them" in both places where it occurs substitute " it ".

PROSPECTIVE

4 (1) Part II of Schedule 3 (provisions as to laying communication and supply pipes etc.) is amended as follows.

(2) In paragraph 4, after sub-paragraph (2) insert—

"(3) In relation to a service pipe not vested in Scottish Water, Scottish Water may recover from the person in whom the service pipe is vested any expenses reasonably incurred by Scottish Water under sub-paragraph (1) or (2) of this paragraph in connection with the inspection, repair, alteration, renewal, removal or replacement of the service pipe.

(4) In relation to a communication pipe laid by any person in pursuance of an authorisation under section 23A(1) and vested in that person, sub-paragraphs (1) and (2) of this paragraph (except so far as conferring power to lay service pipes) apply to that person as they apply to Scottish Water."

(3) In paragraph 6, after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) does not apply in relation to the laying of any part of a communication pipe in respect of which an authorisation under section 23A(1) is in force."

PROSPECTIVE

5 In Schedule 4 (provisions to be incorporated in orders relating to water undertakings), in paragraph 34, after sub-paragraph (2) insert—

"(3) Scottish Water may, whether or not proceedings have been taken under this paragraph—

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(a) remove any pipe or apparatus attached without its consent to a pipe belonging to it or to a supply pipe,

(b) carry out such works as it considers necessary in relation to any alteration made in, or apparatus attached to, a supply pipe without its consent,

and may recover from the person who attached the pipe or apparatus or, as the case may be, made the alteration any expenses reasonably incurred by it in doing so."

Status:
Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
Water Environment and Water Services (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.