

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 9

Statutory Nuisances

Section 115 Sewerage nuisance: local authority powers

220. This section amends section 26 of the Water Services etc. (Scotland) Act 2005 (“the 2005 Act”) to further specify the extent of a local authority’s powers in relation to the monitoring and enforcement of sewerage nuisances under section 26 of the 2005 Act. Subsection (2) provides that a local authority’s functions under Part III of the 1990 Act do not apply to nuisances which constitute a sewerage nuisance and in respect of which a sewerage code (contained in an order made under section 25 of the 2005 Act) applies.
221. Subsection (3) inserts a new subsection (10A) into section 26 of the 2005 Act, to apply the provisions of paragraphs 2, 3 and 5 of schedule 3 to the 1990 Act where a local authority is enforcing a sewerage code under section 26 of the 2005 Act, subject to the modifications specified in paragraphs (a) to (e). A local authority enforcing a sewerage code will acquire the powers of entry to premises set out in paragraph 2 of schedule 3 for the purpose of establishing whether a statutory nuisance exists or carrying out remedial action under Part III of the 1990 Act. Wilful obstruction of the exercise of these powers of entry will constitute a criminal offence, as will disclosure of any trade secret obtained by any person in the exercise of the powers. The local authority and those acting on its behalf will be protected from personal liability in respect of anything done in good faith in furtherance of Part III.