

WATER RESOURCES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 6 – Sewerage Network

Section 34 – Priority substances etc.

58. This section inserts a new paragraph (p) into subsection (3) of section 29 (decision on application for trade effluent consent) of the 1968 Act. The new paragraph allows Scottish Water to impose conditions as to the elimination or diminution of any priority substance or pollutant contained in trade effluent in a trade effluent consent granted under section 26 of the 1968 Act. Any occupier of trade premises who discharges trade effluent into the sewers of Scottish Water contrary to conditions imposed under Part 2 of the 1968 Act commits a criminal offence under section 24(2) of that Act.
59. The section also inserts a new section 29A into 1968 Act which defines the terms “priority substance” and “pollutant” for the purposes of new section 29(3)(p) of the 1968 Act. “Priority substance” is defined by reference to Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, and “pollutant” is defined by reference to the Controlled Activities Regulations. The Scottish Ministers may make consequential modifications of those definitions by regulations where the Directive or Regulations are modified.

Section 35 – Substances generally

60. This section inserts a new section 46A into the 1968 Act which creates a new offence of passing, or permitting to be passed, fat, oil or grease into a public sewer or connected drain where it is liable to interfere with the free flow of the sewer’s contents or adversely affect the treatment or disposal of its contents. The offence only applies to the passing of such matter from trade premises (defined by section 59(1) of the 1968 Act as any premises used or intended to be used for carrying on any trade or industry). It does not apply in circumstances where Scottish Water has given its consent for the substance to be passed into the sewerage network under Part II of the 1968 Act.
61. The section also inserts a new section 46B into the 1968 Act, which allows Scottish Water to recover the cost of investigating or remedying any resulting damage to or blockage of the sewer or drain, or interference with the free flow of the sewer’s contents, from the owner or occupier responsible, unless Scottish Water has given its consent to the discharge under Part II of the 1968 Act.
62. The section also amends section 46 (certain matter not to be passed into drains) of the 1968 Act to bring the maximum penalties applicable to that offence on summary conviction into line with the maximum penalties provided for in the new section 46A(5).

Section 36 – Powers of entry

63. This section amends section 48 (powers of entry) of the 1968 Act to provide that Scottish Water’s powers of entry under that section extend to taking entry for the purposes of:
- monitoring, inspecting, and testing sewage (in addition to taking samples away for analysis, which is already provided for by section 48 of the 1968 Act);
 - installing or maintaining monitoring, testing or sampling equipment for use on the premises; and
 - investigating the source of any matter or substance (other than sewage) which is passing from the premises into the public sewerage network.

Section 37 – Common maintenance

64. This section inserts a new Part IIA into the 1968 Act. The new Part applies to private sewage treatment works which are owned in common by two or more persons and the discharge of the contents of which are authorised under the Controlled Activities Regulations. Private sewage treatment works such as septic tanks will usually involve some discharge to the water environment and that discharge will usually require authorisation under the Controlled Activities Regulations.
65. The term “private sewage treatment works” is defined in section 59 of the 1968 Act as meaning any works, apparatus or plant used for the treatment or disposal of sewage that is not vested in Scottish Water. It includes a septic tank, but not a SUD (Sustainable Urban Drainage) system.
66. At common law, where property is owned in common, the consent of all *pro indiviso* owners is generally required before any alterations, non-essential repairs or other works can be carried out upon it, although the grant of ownership (as recorded in the title to the property) may make different arrangements. The new Part sets out new rules regarding the maintenance of private sewage treatment works owned in common that override any conflicting provision of the common law or any contrary provision that may exist in the title deeds of the properties concerned.
67. The new Part provides that, where works need to be carried out to private sewage treatment works that are owned in common in order to comply with conditions of the works’ authorisation under the Controlled Activities Regulations, any one proprietor may carry out (or instruct) those measures without having to secure the consent of all (or a certain proportion of) the other co-proprietors. Before doing so, the owner(s) wishing to carry out the measures must serve a notice under new section 38D of the 1968 Act upon each of the other owners, who may apply to the sheriff under new section 38E for review of the notice if they are unhappy with the measures proposed.
68. The new Part also makes provision for each of the owners of the works to be liable for a share of the cost of measures taken under new section 38C(2) of the 1968 Act, based on the same proportion that each owner’s *pro indiviso* share of the property bears to the whole. New section 38F makes provision for an owner to recover the cost of measures taken, subject to the cost having been incurred and to the service of a notice.
69. Provision is made in new section 38G of the 1968 Act for liability for the cost of measures to continue notwithstanding a change in ownership of any property connected to the private sewage treatment works.
70. New section 38H of the 1968 Act provides for a definition for the Controlled Activities Regulations and related matters. The Scottish Ministers may make consequential modifications of that definition by regulations.