



Water Resources (Scotland) Act 2013

2013 asp 5

PART 6

SEWERAGE NETWORK

Private sewage works

37 Common maintenance

After Part II of the 1968 Act there is inserted—

“PART IIA

PRIVATE SEWAGE TREATMENT WORKS

38A Application of Part

- (1) This Part applies to any private sewage treatment works if the discharge of their contents is subject to an authorisation under the Controlled Activities Regulations.
- (2) In this Part, “private works” means private sewage treatment works to which this Part applies.

38B Other rules

- (1) This Part prevails over any rule of law or real burden—
 - (a) requiring the agreement, of any owner of common property, to the carrying out of maintenance of the property, or
 - (b) concerning the recovery, by any owner of common property from another owner of the property, of the cost of such maintenance,so far as the rule or burden is applicable in connection with measures of the kind to which section 38C(2) relates.

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- (2) In subsection (1), “real burden” is to be construed in accordance with the Title Conditions (Scotland) Act 2003.

38C **Common maintenance**

- (1) Subsection (2) applies where two or more persons own any private works in common.
- (2) Any of the persons may take (or cause to be taken) any measures that the person considers necessary for ensuring that the works are properly maintained so that they comply with any applicable conditions under the Controlled Activities Regulations.
- (3) Subsection (2) is subject to section 38D.
- (4) In subsection (2), the reference to being properly maintained includes being emptied as required from time to time.

38D **Notice and effect**

- (1) Before taking (or causing to be taken) any measures under section 38C(2), a person must serve on each of the other owners a notice—
- (a) giving the person's name and address,
 - (b) specifying the private works in question,
 - (c) in addition to describing the measures to be taken, stating—
 - (i) why the measures are to be taken,
 - (ii) when the measures are to be taken,
 - (d) containing—
 - (i) an estimate of the cost of the measures,
 - (ii) a note showing the proportion of that cost for which each owner would be liable (along with their names and addresses),
 - (e) directing the reader to this Part.
- (2) The measures described in the notice may be taken under section 38C(2) at any time after the end of the period of 28 days beginning with the day on which it is duly served (or, if it is so served on different days, the last of those days).
- (3) Unless the notice has expired, the measures may be so taken—
- (a) with or without the agreement of any or all of the other owners,
 - (b) subject to any review or appeal under section 38E.
- (4) The notice expires—
- (a) at the end of the period of 12 months beginning with the day on which it is duly served, or
 - (b) if it is extended in any review or appeal under section 38E, at the end of the period of extension.
- (5) A notice under subsection (1) may be served by two or more persons acting together.

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38E **Review of notice**

- (1) A person on whom a notice is served under section 38D(1) may apply to the sheriff for a review of the notice, if aggrieved by the serving of the notice or its terms.
- (2) An application under subsection (1) must be made—
 - (a) by way of summary application,
 - (b) within the period of 28 days beginning with the day on which the notice is duly served.
- (3) In the application, the sheriff may—
 - (a) uphold, vary or quash the notice,
 - (b) make any further order necessary.
- (4) The sheriff's decision in the application may be appealed to the sheriff principal, but only on a point of law.
- (5) The sheriff principal's determination of the review is final.
- (6) An application under subsection (1) may be—
 - (a) made by two or more persons acting together,
 - (b) heard by the sheriff along with another such application relating to the same notice.

38F **Recovery of cost**

- (1) Where measures have been taken under section 38C(2)—
 - (a) each of the owners of the private works is liable for a proportion of the actual cost of taking them, and
 - (b) any of those owners is entitled to recover from any of the other owners the proportion of that cost for which the other owner is liable.
- (2) Subsection (1) is subject to subsections (3) to (8).
- (3) The proportion of the cost mentioned in subsection (1)(a) for which each owner is liable is the equivalent to the owner's pro indiviso share of the ownership of the private works.
- (4) Liability accrues to an owner under subsection (1)(a) only when there has been duly served—
 - (a) a notice under section 38D(1) relating to the measures, and
 - (b) a notice under subsection (5) relating to the measures.
- (5) Before exercising the entitlement to make recovery under subsection (1)(b), an owner must serve on each of the other owners a notice containing—
 - (a) a statement of the cost mentioned in subsection (1)(a),
 - (b) a note confirming the proportion of that cost for which each owner is liable in accordance with subsection (3) (along with their names and addresses).
- (6) The entitlement of an owner to make recovery under subsection (1)(b) is not—
 - (a) established unless the owner has—

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- (i) incurred the cost mentioned in subsection (1)(a), and
 - (ii) duly served a notice under subsection (5),
 - (b) exercisable until after the end of the period of 30 days beginning with the day on which the notice under subsection (5) is duly served (or, if it is so served on different days, the last of those days).
- (7) A notice under subsection (5) is valid only if it is accompanied by an invoice or other clear evidence of the cost mentioned in subsection (1)(a).
- (8) Section 38E applies in relation to a notice under subsection (5) as it does in relation to one under section 38D(1), except that in relation to a notice under subsection (5) a review under section 38E is competent only if the actual cost of the measures grossly exceeds the estimate of the cost of them contained in the notice under section 38D(1).

38G Liability of owner

- (1) Subsection (2) applies to a person who is liable under section 38F(1)(a).
- (2) The person does not stop being so liable merely because the person ceases to be an owner of the private works.
- (3) Subsection (4) applies to a person who is entitled to make recovery under section 38F(1)(b).
- (4) The person does not stop being so entitled merely because the person ceases to be an owner of the private works.

38H Controlled Activities Regulations

- (1) In this Part—
 - (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
 - (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,
 - (c) a reference to any conditions under the Controlled Activities Regulations is to any conditions of an authorisation under those Regulations.
- (2) The Scottish Ministers may by regulations modify—
 - (a) subsection (1),
 - (b) sections 38A(1) and 38C(2).
- (3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—
 - (a) the Controlled Activities Regulations, or
 - (b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003.
- (4) Regulations under subsection (2) are subject to the negative procedure.”

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Commencement Information

- I1** S. 37 in force at 10.6.2013 for specified purposes by S.S.I. 2013/163, art. 3, Sch.
- I2** S. 37 in force at 21.12.2013 in so far as not already in force by S.S.I. 2013/342, art. 2(c)

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