



# Water Services etc. (Scotland) Act 2005

## 2005 asp 3

### PART 3

#### COAL MINE WATER POLLUTION

#### **30 Control of water from coal mines**

(1) After section 4C of the Coal Industry Act 1994 (c. 21) there is inserted—

#### **“4D Power of the Authority with respect to coal mine water discharge: Scotland**

- (1) The Authority may take such action as it considers appropriate (if any) for the purpose of preventing, or mitigating the effect of, the discharge of water from a coal mine into or on to any land or into the water environment.
- (2) In this section and sections 4E and 4F below—
  - (a) “the water environment” has the meaning given by section 3 of the Water Environment and Water Services (Scotland) Act 2003 (asp 3); and
  - (b) references to coal mines are to coal mines vested in the Authority.

#### **4E Coal mine water discharge: powers of entry in Scotland**

- (1) If the Authority is of the opinion that a discharge of water from a coal mine into or on to any land or into the water environment has caused, is causing or is likely to cause—
  - (a) serious pollution of the environment; or
  - (b) danger to life or health,the Authority may, for any purpose specified in subsection (2) below, in writing authorise a person to exercise (in accordance with the terms of the authorisation) any of the powers specified in subsection (3) below.
- (2) The purposes are—
  - (a) to determine the extent of the pollution or of the danger, or the likelihood of serious pollution or such danger;

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- (b) to determine whether (and if so how) the Authority should exercise its power under section 4D above;
  - (c) to take action under that section.
- (3) The powers are—
  - (a) to enter—
    - (i) in an emergency, at any time (and, if need be, using reasonable force); or
    - (ii) in any other case, at any reasonable time, any premises which the authorised person has reason to believe it is necessary for him to enter;
  - (b) to use a vehicle or boat to do so;
  - (c) to make such examination and investigation as may in any circumstances be necessary;
  - (d) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
  - (e) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air or water or land in, on, or in the vicinity of, the premises;
  - (f) to require any person to give him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by virtue of this section.
- (4) The powers which are conferred in relation to any land by this section include power, for the purposes mentioned in subsection (2) above—
  - (a) to carry out experimental borings or other works on those premises; and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (5) Where subsection (6) below applies, any entry to premises by virtue of this section shall (except in an emergency) be effected only—
  - (a) after the expiry of at least seven days' notice of the proposed entry given to a person who appears to the authorised person to be in occupation of the premises in question; and
  - (b) either—
    - (i) with the consent of a person who is in occupation of those premises; or
    - (ii) under the authority of a warrant granted under paragraph 2 of Schedule 1C to this Act.
- (6) This subsection applies where it is proposed to—
  - (a) enter any premises used for residential purposes; or
  - (b) take heavy equipment on to any premises which are to be entered.
- (7) Where an authorised person proposes to enter any premises and—
  - (a) entry has been refused and he reasonably believes that the use of force may be necessary to effect entry; or

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(b) he reasonably believes that entry is likely to be refused and that the use of force may be necessary to effect entry,  
any entry to those premises by virtue of this section shall (except in an emergency) be effected only under the authority of a warrant granted under paragraph 2 of Schedule 1C to this Act.

(8) In this section—

“premises” includes any land, vehicle or vessel, and any plant which is designed to move or be moved (whether or not on roads);

“emergency” means a case in which it appears to the authorised person in question—

(a) that there is an immediate risk of serious pollution of the environment; or

(b) that circumstances exist which are an immediate danger to life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy.

(9) Schedule 1C to this Act makes further provision regarding powers of entry.

#### **4F Coal mine discharge: compulsory acquisition of land in Scotland**

(1) The Authority may, with the authorisation of the Scottish Ministers, acquire any land anywhere in Scotland compulsorily if the Authority is of the opinion that—

(a) the acquisition is for the purpose of preventing, or mitigating the effect of, a discharge of water from a coal mine; and

(b) the discharge has caused, is causing or is likely to cause—

(i) serious pollution of the water environment; or

(ii) danger to life or health.

(2) The power to acquire land under subsection (1) above includes power to acquire a servitude or other right in or over land by the creation of a new right.

(3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1) above as if—

(a) this section were contained in an Act in force immediately before the commencement of that Act; and

(b) references in that Act to a local authority were references to the Authority.”.

(2) In section 66 (Crown application) of that Act, after subsection (5) there is added—

“(6) The references in subsection (5) above to a Government department shall, for the purposes of the application of this section to sections 4D to 4F of, and Schedule 1C to, this Act, be treated as including the holder of an office in the Scottish Administration which is not a ministerial office.”.

(3) In section 68 (extent, etc.) of that Act, after subsection (7) there is inserted—

“(7A) Sections 4D to 4F of, and Schedule 1C to, this Act extend to Scotland only.”.

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(4) Schedule 4 inserts Schedule 1C into that Act.

**Commencement Information**

**I1** S. 30 in force at 20.6.2005 by [S.S.I. 2005/351](#), art. 2, [Sch. 1](#)

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