
Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

SCHEDULES

SCHEDULE 22

Section 168.

WATER QUALITY IN SCOTLAND

1 In the ^{M1}Water (Scotland) Act 1980, after section 76, there shall be inserted the following Part—

“PART VI A

QUALITY OF WATER

76A Duties of water authorities with respect to water quality.

- (1) It shall be the duty of a water authority—
 - (a) when supplying water to any premises for domestic purposes to supply only water which is wholesome at the time of supply; and
 - (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which that authority supplies water to premises for domestic purposes, that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources.
- (2) For the purposes of this section and section 76B below and subject to subsection (3) below, water supplied by a water authority to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the authority’s pipes.
- (3) For the purposes of this section where water supplied by a water authority to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
 - (a) it has ceased to be wholesome after leaving the authority’s pipes but while in a pipe which is subject to water pressure from a main or which would be so subject but for the closing of some valve; and
 - (b) it has so ceased in consequence of the failure of the authority, before supplying the water, to take such steps as may be prescribed for the purpose of securing the elimination or reduction to a minimum of any prescribed risk that the water would cease to be wholesome after leaving the authority’s pipes.
- (4) The provisions of this section shall apply in relation to water which is supplied by a water authority whether or not the water is water which the authority is required to supply by virtue of any provision of this Act.

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

76B Regulations for preserving water quality.

- (1) The Secretary of State may by regulations require a water authority to take all such steps as may be prescribed for the purpose of securing compliance with section 76A above; and, without prejudice to the generality of that power, regulations under this subsection may impose an obligation on a water authority—
 - (a) to take all such steps as may be prescribed for monitoring and recording whether the water which that authority supplies to premises for domestic purposes is wholesome at the time of supply;
 - (b) to take all such steps as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which that authority uses or is proposing to use for supplying water to any premises for domestic purposes;
 - (c) to ensure that a source which that authority is using or proposing to use for supplying water for domestic purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
 - (d) to keep records of the localities within which all the premises supplied with water for domestic purposes by that authority are normally supplied from the same source or combination of sources;
 - (e) to comply with prescribed requirements with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.
- (2) Without prejudice to subsection (1) above, the Secretary of State may by regulations make provision with respect to the use by water authorities, for the purposes of or in connection with the carrying out of their functions, of such processes and substances, and of products that contain or are made with such substances or materials, as he considers might affect the quality of any water; and, without prejudice to the generality of that power, regulations under this subsection may—
 - (a) forbid the use by water authorities of processes, substances and products which have not been approved under the regulations or which contravene the regulations;
 - (b) for the purposes of provision made by virtue of paragraph (a) above, require processes, substances and products used by water authorities to conform to such standards as may be prescribed by or approved under the regulations;
 - (c) impose such other requirements as may be prescribed with respect to the use by water authorities of prescribed processes, substances and products;
 - (d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition;
 - (e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

- (f) provide for a contravention of the regulations to constitute—
 - (i) an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed; or
 - (ii) an offence triable either summarily or on indictment and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine; and
 - (g) require prescribed charges to be paid to persons carrying out functions under the regulations.
- (3) The Secretary of State may by regulations require a water authority—
- (a) to publish information about the quality of water supplied for domestic purposes to any premises by that authority; and
 - (b) to provide information to prescribed persons about the quality of water so supplied.
- (4) Regulations under subsection (3) above—
- (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
 - (b) may require the provision of information by a water authority to any person to be free of charge or may authorise it to be subject to the payment by that person to the authority of a prescribed charge; and
 - (c) may impose such other conditions on the provision of information by a water authority to any person as may be prescribed.

76C Offence of supplying water unfit for human consumption.

- (1) Subject to subsection (4) below, where a water authority supplies water by means of pipes to any premises and that water is unfit for human consumption the authority shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (2) Where an offence under this section is proved to be attributable to any neglect on the part of an employee of the water authority, he as well as the water authority shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) For the purposes of subsection (2) above, the penalty on conviction on indictment shall include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (4) In any proceedings for an offence under this section it shall be a defence to show that—
- (a) there were no reasonable grounds for suspecting that the water would be used for human consumption; or
 - (b) all reasonable steps had been taken and all due diligence exercised for securing that the water was fit for human consumption on leaving the pipes or was not used for human consumption.

*Changes to legislation: There are currently no known outstanding effects
for the Water Act 1989, SCHEDULE 22. (See end of Document for details)*

76D Provision of water where piped supplies insufficient or unwholesome.

- (1) Where—
- (a) it is not practicable at reasonable cost for a water authority, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its limits of supply as (so far as those premises are concerned) is sufficient for domestic purposes;
 - (b) it is practicable at reasonable cost for the authority to provide such a supply to those premises otherwise than in pipes;
 - (c) the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and
 - (d) the local authority in whose area those premises are situated notify the water authority of that danger and require the water authority to provide a supply otherwise than in pipes,
- it shall be the duty of the water authority, for such period as may be required by that local authority, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by that local authority.
- (2) Where under subsection (1) above a local authority require the provision by a water authority of a supply of water to any premises, that local authority—
- (a) shall be liable to the water authority for any charges payable in respect of the provision of that supply; but
 - (b) shall have power to recover the whole or any part of any charges paid by virtue of this subsection from the owner or occupier of the premises to which the supply is provided.
- (3) In this section references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.

76E Enforcement of sections 76A to 76D.

- (1) This section applies to enforcement of the duties of water authorities under sections 76A and 76D(1) and under regulations made under section 76B.
- (2) Without prejudice to its generality, section 11 above (power of Secretary of State to make a default order) shall have effect, subject to the following provisions of this section, for the enforcement by the Secretary of State of the duties referred to in subsection (1) above.
- (3) The Secretary of State may make an order under subsection (2) of section 11 without having caused a local inquiry to be held into the matter.
- (4) If he is satisfied that a water authority has failed in any of the duties referred to in subsection (1) above, the Secretary of State shall make an order under subsection (2) of section 11 unless he is satisfied—
 - (a) that the failures complained of were of a trivial nature; or

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

- (b) that the water authority have given, and are complying with, an undertaking to take all such steps as it appears to the Secretary of State to be appropriate, for the time being, for them to take for the purpose of securing or facilitating compliance with these duties.

76F General functions of local authorities in relation to water quality.

- (1) It shall be the duty of every local authority to take all such steps as they consider appropriate for keeping themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises.
- (2) It shall be the duty of a local authority to notify any water authority of anything appearing to the local authority to suggest—
 - (a) that any supply by that water authority of water for domestic purposes to any premises in the area of that local authority is, has been, or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for those purposes;
 - (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health; or
 - (c) that the duty imposed on that water authority by virtue of section 76A(1)(b) above is being, has been or is likely to be so contravened as to affect any supply of water to premises in that area;and it shall be the duty of a local authority to require the provision of a supply in pursuance of section 76D above whenever, in a case falling within paragraph (a) of subsection (1) of that section, they are satisfied, in relation to any premises in their area, as to the matters specified in paragraphs (b) and (c) of that subsection.
- (3) Where a local authority have notified a water authority of any such matter as is mentioned in subsection (2) above, it shall be the duty of that local authority, if they are not satisfied that all such remedial action as is appropriate will be taken by the water authority, to inform the Secretary of State about the contents of the notification.
- (4) It shall be the duty of a local authority to comply with any direction given by the Secretary of State to that local authority or to local authorities generally as to—
 - (a) the cases and circumstances in which they are or are not to exercise any of the powers conferred on them by this Part in relation to private supplies; and
 - (b) the manner in which those powers are to be exercised.
- (5) The Secretary of State may by regulations make such provision, supplementing the provisions of this section, as he considers appropriate for—
 - (a) imposing duties and conferring powers on local authorities with respect to the acquisition of information about the quality and sufficiency of water supplies provided to premises in their areas; and
 - (b) regulating the performance of any duty imposed by or under this section.

*Changes to legislation: There are currently no known outstanding effects
for the Water Act 1989, SCHEDULE 22. (See end of Document for details)*

- (6) Without prejudice to the generality of subsection (5) above, regulations under that subsection may—
- (a) prescribe the matters to be taken into account by a local authority in determining, for the purposes of subsection (1) above, what is appropriate;
 - (b) provide, for the purposes of the exercise or performance of any power or duty conferred or imposed on a local authority by or under this section, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;
 - (c) authorise local authorities to exercise or perform any such power or duty through prescribed persons;
 - (d) provide for the recovery by a local authority, from prescribed persons, of such amounts as may be prescribed in respect of expenses reasonably incurred by the authority in the exercise of any such power or the performance of any such duty.

76G Remedial powers of local authorities in relation to private supplies.

- (1) Subject to the following provisions of this section, where a local authority are satisfied in relation to any premises in their area which are supplied with water for domestic purposes by means of a private supply—
- (a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or
 - (b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,
- the local authority may serve a notice in relation to that private supply on one or more of the relevant persons.
- (2) A notice under this section in relation to a private supply of water to any premises shall—
- (a) give particulars of the matters mentioned in subsection (1) above in respect of which the notice is served;
 - (b) specify the steps which, in the opinion of the local authority serving the notice, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
 - (c) specify a period ending not less than 28 days after the day on which the notice is served within which any representations or objections with respect to the notice must be received by that local authority; and
 - (d) state the effect in relation to that notice of section 76H(2) and (3) below.
- (3) Subject to section 76H below, where a local authority serve a notice under this section on any relevant person they may do one or more of the following, that is to say—

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

- (a) by that notice designate as steps to be taken by the authority themselves such of the steps specified in the notice as they consider it appropriate to so designate;
 - (b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;
 - (c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to that authority such payments as may be so determined in respect of expenses reasonably incurred by that other person or that authority in taking any step specified in the notice;
 - (d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.
- (4) The power of a local authority to serve a notice under this section specifying the steps which are required to be taken in relation to any source from which a private supply is provided both to premises in the area of that authority and to premises in the area of another local authority shall be exercisable only where—
- (a) the other authority consent to the service of the notice; or
 - (b) the authorities act jointly in exercising their respective powers under this section in relation to that source.
- (5) The powers conferred by this section and section 76H below shall be so exercised in relation to a private supply of water to any premises where there is no house as to secure that no local authority are required to bear any of the expenses incurred (whether by the authority or by any other person) in taking any steps for ensuring that the supply is wholesome which are specified in any notice under this section.
- (6) The steps that a relevant person may be required by a notice under this section to take in relation to any premises shall include—
- (a) requiring a supply of water to be provided to those premises by a water authority or by any other person; and
 - (b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.
- (7) For the purposes of this section and section 76H below the relevant persons, in relation to a private supply of water to any premises in the area of a local authority, are the owners and occupiers of those premises and (whether or not the source of the private supply is in that authority's area) the owners and occupiers of the premises where that source is situated and any other person who exercises powers of management or control in relation to that source.

76H Effect, confirmation and variation of notice under section 76G.

- (1) Subject to subsection (2) below, a notice served by a local authority under section 76G above shall not take effect until the end of the period specified

*Changes to legislation: There are currently no known outstanding effects
for the Water Act 1989, SCHEDULE 22. (See end of Document for details)*

in the notice as the period within which representations or objections with respect to the notice must be received by that authority.

- (2) Where any written representation or objection with respect to a notice by a local authority under section 76G above is received by the authority, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—
 - (a) the notice is submitted by the authority to the Secretary of State and is confirmed by him either with or without modifications; or
 - (b) the representation or objection is withdrawn.
- (3) If a local authority submit a notice under section 76G above to the Secretary of State for confirmation, the Secretary of State—
 - (a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;
 - (b) may, with respect to the matters specified in the notice or any proposed modification of it, direct the local authority to serve a notice under section 76G above, in such terms as may be specified in the direction, on any relevant person who has not previously been so served;
 - (c) may, for the purposes of paragraph (a) or (b) above—
 - (i) cause a local inquiry to be held; or
 - (ii) afford to the local authority and to every person who has made representations or objections with respect to the notice or a proposed direction under paragraph (b) above an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and
 - (d) may, if he is satisfied that the person on whom any notice to be served in pursuance of a direction under paragraph (b) above has had a proper opportunity of having his representations or objections with respect to the proposal for the direction considered, dispense in relation to the notice so served with the provisions of subsections (1) and (2) above and of section 76G(2)(c) and (d) above.
- (4) Where the Secretary of State confirms a notice under section 76G above (whether with or without modifications)—
 - (a) he, or if he so directs, the local authority concerned shall serve notice of that confirmation on every person originally served with the notice under that section; and
 - (b) that notice shall take effect, with any modifications made by the Secretary of State, at such time as may be specified in the notice served under this subsection.
- (5) Where any relevant person who is required by virtue of a notice under section 76G above to take any step in relation to any premises fails to take that step within the period specified in the notice, the authority which served the notice may, in accordance with any applicable provision having effect by virtue of section 76I below, take that step themselves.
- (6) Where any step is taken by a local authority in relation to any premises by virtue of subsection (5) above—

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

- (a) the authority may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by the authority in taking that step; and
 - (b) for the purposes of any requirement under which payments are required to be made to that person by any person other than the authority, sums paid by virtue of paragraph (a) above in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.
- (7) Nothing in this Act shall confer any right of action on any person in respect of any loss or damage sustained by that person in consequence of the failure by any other person to take any step specified in a notice under section 76G above; but any sum required to be paid to any person by virtue of any requirement or undertaking contained in such a notice shall be recoverable by that person from the person who is required to pay it.
- (8) Any requirement which is imposed by virtue of a notice under section 76G above on the owner or occupier of any premises and is expressed to bind those premises in relation to the owners or occupiers from time to time shall bind successive owners or, as the case may be, occupiers of those premises; and section 65 above (power of local authority to make a charging order in respect of costs) shall apply to a requirement under section 76G above as if that requirement were a requirement under section 64 above.
- (9) Subject to subsection (10) below, a local authority may by notice served on any person modify or revoke the effect in relation to that person of any notice under section 76G above or this subsection (including a notice which has been confirmed, with or without modifications, by the Secretary of State).
- (10) Section 76G(2)(c) and (d) and subsections (1) to (4) above shall apply, as they apply in relation to a notice under section 76G above, in relation to any notice served by a local authority on any person under subsection (9) above except where the notice—
 - (a) extends the period within which any step is required to be taken by that person; or
 - (b) discharges, postpones or abates any obligation of that person to make a payment to the local authority.

76I Incidental powers of local authorities.

- (1) Subject to subsection (5) below, a local authority may serve on any person a notice requiring him to furnish that authority, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by that authority for the purpose of exercising or performing any power or duty conferred or imposed on that authority by or under any of sections 76F to 76H above.
- (2) Any person designated in writing for the purpose by any local authority may—
 - (a) enter any premises for the purpose, in relation to any private supply, of—
 - (i) determining whether, and if so in what manner, any power or duty conferred or imposed on that authority by or under

*Changes to legislation: There are currently no known outstanding effects
for the Water Act 1989, SCHEDULE 22. (See end of Document for details)*

- any of sections 76F to 76H above should be exercised or performed; or
- (ii) exercising any such power or performing any such duty;
- (b) enter any premises to which a supply of water is provided by a water authority for the purpose, in relation to a supply so provided, of determining whether, and if so in what manner, such a power should be exercised or such a duty performed or of exercising such a power or performing such a duty; or
- (c) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as the local authority—
- (i) consider appropriate for the purposes of any such power or duty; and
- (ii) have authorised that person to carry out or take away,
- and the provisions of subsections (3) to (7) of section 38 shall apply to the right of entry given by this subsection to any person designated by a local authority as they apply to the right of entry of an authorised officer of a water authority.
- (3) Entry into any premises shall not be demanded as of right by virtue of this section except—
- (a) in an emergency, or
- (b) at a reasonable time and after 24 hours' notice of the intended entry has been given to the occupier of the premises.
- (4) The Secretary of State may by regulations make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.
- (5) A person who fails to comply with the requirements of a notice served on him under subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and it shall be a defence for a person charged with an offence under this subsection to show that he had a reasonable excuse.

76J Standards of wholesomeness.

- (1) The Secretary of State may by regulations make provision that water that is supplied to any premises is or is not to be regarded as wholesome for the purposes of this Part if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for the purpose of determining the wholesomeness of any water—
- (a) prescribe general requirements as to the purposes for which the water is to be suitable;
- (b) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

- (c) prescribe specific requirements as to other characteristics of the water;
- (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;
- (e) enable the Secretary of State to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition; and
- (f) enable the Secretary of State to authorise a local authority (either instead of the Secretary of State or concurrently with him) to exercise in relation to a private supply any power conferred on the Secretary of State by regulations made by virtue of paragraph (e) above.

76K Power to give effect to international obligations.

The Secretary of State may by regulations provide that the provisions of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to—

- (a) any [^{F1}EU] obligations; or
- (b) any international agreement to which the United Kingdom is for the time being a party.

76L Interpretation etc. of Part VI A.

(1) In this Part—

“analyse”, in relation to any sample of land or water, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

“local authority” means an islands or district council;

“micro-organism” includes any microscopic biological entity which is capable of replication;

“private supply” means, subject to subsection (2) below, a supply of water provided otherwise than by a water authority (including a supply provided for the purposes of the bottling of water) and cognate expressions shall be construed accordingly;

“substance” includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

“wholesome” and cognate expressions shall be construed subject to the provisions of any regulations made under section 76J.

(2) For the purposes of any reference in this Part to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this subsection water shall be treated

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22. (See end of Document for details)

as used on any premises where it is bottled on those premises for use or consumption elsewhere.

- (3) The rights conferred by virtue of this Part as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises in question.”

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Textual Amendments

F1 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3)4(2)6(4)(5))

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Marginal Citations

M1 1980 c. 45.

Changes to legislation:

There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 22.