
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

The Public Water Supplies (Scotland) Regulations 2014

PART 12

SCOTTISH WATER: INCIDENTAL POWERS

Power to enter

40.—(1) Scottish Water may where necessary to comply with any duty or requirement imposed on it by virtue of Parts 4 to 9 (and without prejudice to any power otherwise exercisable by it)—

- (a) enter any premises to which it supplies water for the purposes of—
 - (i) assessing or monitoring the quality of the water; or
 - (ii) investigating or isolating anything that appears to be affecting, or may affect, the quality of the water; and
- (b) take any steps at the premises which are reasonably required for those purposes.

(2) Paragraph (1) has effect whether the water or thing is located at the premises or elsewhere.

(3) Except in an emergency, paragraph (1) authorises entry only if the occupier (if any) of the premises—

- (a) has consented to the intended entry for those purposes; or
- (b) has been given at least 24 hours' notice of the intended entry for those purposes.

(4) Where Scottish Water exercises the powers conferred by paragraph (1) (“the powers”) in an emergency, the powers allow the use of reasonable force (if required).

(5) In paragraph (1), the reference to affecting the quality of the water is to affecting its quality adversely (directly or indirectly).

(6) In paragraphs (3) and (4), “an emergency” means a case in which it appears to Scottish Water that—

- (a) water supplied by it to premises for human consumption purposes constitutes an imminent danger to human health; and
- (b) it must exercise immediately the powers conferred by paragraph (1) in order to protect human health from that danger.

Entry warrants

41.—(1) Scottish Water may apply to the sheriff for a warrant authorising it to—

- (a) enter particular premises for the purposes mentioned in regulation 40(1); and
- (b) take any steps at the premises which are reasonably required for those purposes.

(2) The sheriff may grant the warrant sought if satisfied—

- (a) that there are reasonable grounds for entering the premises for those purposes; and
- (b) that—

- (i) the first and second conditions are met; or
 - (ii) the third condition is met.
- (3) The first condition is that—
- (a) admission to the premises has been refused;
 - (b) the taking of steps at the premises has been obstructed; or
 - (c) such refusal or obstruction may reasonably be expected.
- (4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.
- (5) The third condition is that the premises are unoccupied.
- (6) A warrant under paragraph (1)—
- (a) remains valid until the purposes mentioned in regulation 40(1) are fulfilled; and
 - (b) allows the use of reasonable force (if required).
- (7) Paragraph (1) has effect whether the water or thing is located at the premises or elsewhere.

Approved persons

- 42.**—(1) Paragraph (2) applies to the authority conferred on Scottish Water by—
- (a) regulation 40(1); or
 - (b) a warrant under regulation 41(1).
- (2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in regulation 40(1).

Taking steps

- 43.**—(1) Paragraphs (2) to (6) apply in relation to the exercise of the authority mentioned in regulation 42(1)(a) or (b).
- (2) An approved person must, if required by the occupier of the premises—
- (a) produce evidence of the approved person's identity (and approval); and
 - (b) explain the nature of the authority by (as the case may be)—
 - (i) reference to regulation 40(1); or
 - (ii) showing a copy of the warrant.
- (3) An approved person may take onto the premises—
- (a) other persons acting under the approved person's direction;
 - (b) such equipment as is necessary in connection with the steps that may be taken there.
- (4) The steps that may be taken by an approved person (or other persons acting under that person's direction) at the premises include—
- (a) inspecting or measuring any water found there;
 - (b) carrying out tests on or taking samples from any soil, water or other substance found there; and
 - (c) installing or maintaining any measuring, testing or sampling equipment for use there.
- (5) Except in an emergency, an approved person may enter the premises only at a reasonable time.
- (6) If the premises are unoccupied (or the occupier is temporarily absent), an approved person must leave them as effectively secured against entry as they were when that person entered them.

(7) In paragraphs (2) to (6), “approved person” means person approved as mentioned in paragraph 42(2).

(8) In paragraph (5), “an emergency” has the same meaning as it has in regulation 40(6).

Obstruction offence

44.—(1) A person commits an offence if the person intentionally obstructs an approved person in the exercise—

- (a) in an emergency, of the authority mentioned in regulation 42(1)(a); or
- (b) of the authority mentioned in regulation 42(1)(b).

(2) In paragraph (1)—

“an emergency” has the same meaning as it has in regulation 40(6); and

“approved person” means person approved as mentioned in regulation 42(2).

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Compensation

45. Section 10 (compensation for damage resulting from the exercise of powers) of the 1980 Act has effect in relation to the exercise by Scottish Water of the authority mentioned in regulation 42(1) (a) or (b) (read with regulation 43) as it applies to the exercise of its powers under that Act.