



# Water (Scotland) Act 1980

## 1980 CHAPTER 45

An Act to consolidate the enactments relating to water in Scotland. [1st August 1980]

### Modifications etc. (not altering text)

- C1 The base date version of this Act is as revised to 1.12.1991 and takes into account the effects (if any) on it of consolidating legislation which came into force at that date.
- C2 Act explained by [National Heritage \(Scotland\) Act 1985 \(c. 16, SIF 78\)](#), s. 20
- C3 Act modified by [Dockyard Services Act 1986 \(c. 52, SIF 58\)](#), s. 3(1)(c)

### Commencement Information

- I1 Act wholly in force at Royal Assent

## PART I

### CENTRAL AUTHORITY

#### 1 Duty of Secretary of State.

It shall be the duty of the Secretary of State—

- (a) to promote the conservation of the water resources of Scotland and the provision by water authorities and water development boards of adequate water supplies throughout Scotland; and
- (b) to secure the collection, preparation, publication and dissemination of information and statistics relating to such water resources and water supplies; and
- (c) .....

F1

### Textual Amendments

- F1 S. 1(c) repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c.23, SIF 81:2\)](#), ss. 32, 41, [Sch. 4](#)

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#### Modifications etc. (not altering text)

**C4** S. 1 extended (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), **s. 15(3)**

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F2

#### Textual Amendments

**F2** S. 2 repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), ss. 25, 41, Sch. 2 para. 38, **Sch. 4**

## PART II

### DUTIES OF WATER AUTHORITIES

#### 3 Water authorities.

- (1) Subject to subsection (2), the water authority for any area shall be the regional or islands council for that area.
- (2) For any area specified in column 1 of the following table the water authority shall be the regional council specified in relation to that area in column 2 of that table.

TABLE

Area	Regional council to whose limits of supply the area in column 1 is added
1	2
The whole of the former county of Kinross.	Fife
That part of the former counties of Stirling and Dunbarton which on 16th May 1975 lay within both the Strathclyde Region and the region of the former Mid-Scotland Water Board.	Central
That part of the Stirling District and the Central Region situated at Craigmaddie Loch which on 1st April 1977 was transferred to the Strathkelvin District and the Strathclyde Region.	Central

- (3) The area within which a water authority are to exercise their functions shall comprise the limits of supply of that authority.
- (4) Notwithstanding section 57 (appointment of committees) of the <sup>M1</sup>Local Government (Scotland) Act 1973, where—

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- (a) a water authority have arranged under section 56 (discharge of functions) of the said Act of 1973 for the discharge of their functions relating to water by a committee, and
  - (b) the limits of supply of that authority include an added area,then the members of that committee shall be appointed both by that authority and by the other water authority; and the number of such members to be appointed by each of those authorities shall be such number as may be agreed between them or in default of agreement as the Secretary of State may by order specify.
- (5) A member of such a committee who represents the other water authority shall not be entitled to exercise a deliberative vote or to submit a motion or, except with the leave of the committee, to take part in a discussion except in respect of a matter relating solely or, in the opinion of the person presiding at the meeting of the committee, mainly to the exercise of any of the functions of the water authority of whose committee he is a member.
- (6) Where the limits of supply of a water authority include an added area but the authority propose to make an arrangement for the discharge of their functions relating to water other than such an arrangement as is referred to in subsection (4)(a), then the proposed arrangement shall require the consent of the Secretary of State, who shall not give such consent unless he is satisfied that the interests of the other water authority will be adequately safeguarded by the proposed arrangement.
- (7) In this section—
  - “added area” means an area specified in column 1 of the table set out at the end of subsection (2) or in that column as amended or extended by an order under section 4;
  - “the other water authority” means the authority in whose region the added area is situated.

#### Marginal Citations

M1 1973 c. 65.

#### 4 Alteration of limits of supply.

- (1) Subject to the provisions of this section, the Secretary of State may at any time by order alter the limits of supply of a water authority.
- (2) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient for the purposes of the order.
- (3) The provisions of Schedule 7 shall have effect in relation to the making of an order under this section.

#### 5 Maps of limits of supply.

- (1) The Secretary of State shall, as soon as practicable after the coming into force of the <sup>M2</sup>Local Government (Scotland) Act 1973, send to any water authority whose limits of supply include an area specified in column 1 of the table set out in section 3(2) and to any water authority whose limits of supply would include such an area but for the said

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section 3(2), a map of that area, and shall, as soon as practicable after an order under section 4 relating to the limits of supply of a water authority comes into operation, send to that authority a map of the limits of supply of that authority as altered or, as the case may be, designated by the order.

- (2) Any map sent to a water authority under section 6 of the <sup>M3</sup>Water (Scotland) Act 1967 or under this section, except a map which has been superseded by a subsequent map so sent, shall be kept at the principal office of the authority; and the authority shall provide reasonable facilities for the inspection of the map by any person wishing to inspect it, and for the taking of copies of, and extracts from, the map.
- (3) Any map to which subsection (2) applies shall be taken to be a document within the meaning of the <sup>M4</sup>Documentary Evidence Act 1868, as applied to the Secretary of State for Scotland.

#### Marginal Citations

- M2** 1973 c. 65.  
**M3** 1967 c. 78.  
**M4** 1868 c. 37

## 6 Duty of authority to provide supply.

- (1) It shall be the duty of every water authority to provide a supply of wholesome water to every part of their limits of supply where a supply of water is required for domestic purposes and can be provided at a reasonable cost.
- (2) Without prejudice to the generality of subsection (1), every water authority shall provide a supply of wholesome water in pipes to every part of their limits of supply where a supply of water is required for domestic purposes and shall take the pipes affording that supply to such point or points as will enable the buildings for which a supply is required for domestic purposes to be connected thereto at a reasonable cost; but this subsection shall not require a water authority to do anything which is not practicable at a reasonable cost or to provide such a supply to any part of their limits of supply where such a supply is already available at such point or points.
- (3) If any question arises under this section as to—
  - (a) whether a supply of water can be provided at a reasonable cost, or
  - (b) whether anything is or is not practicable at a reasonable cost, or
  - (c) the point or points to which pipes must be taken in order to enable buildings to be connected therewith at a reasonable cost,
 the Secretary of State, if requested to do so by 10 or more local government electors in the limits of supply of the water authority, shall, after consulting the authority, determine that question and the authority shall give effect to his determination.
- (4) Every water authority shall also provide a supply of water for the purpose of complying with any other obligation imposed on them by this Act and may, if they think fit, provide a supply to enable them to exercise any of the powers conferred on them by this Act or for any other purpose which they consider is in the interests of the area comprising their limits of supply.

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## **7 Supply of water for domestic purposes.**

- (1) In this Act a supply of water for domestic purposes means a sufficient supply for drinking, washing, cooking, central heating and sanitary purposes but not for any bath having a capacity in excess of 100 gallons, and includes—
  - (a) a supply for the purposes of any profession carried on in any premises the greater part of which is used as a house; and
  - (b) where the water is drawn from a tap inside a house and no hosepipe or similar apparatus is used, a supply for watering a garden, for horses kept for private use and for washing vehicles kept for private use.
- (2) A supply of water under subsection (1) does not include a supply of water for the business of a laundry, or any business of preparing food or beverages for consumption otherwise than on the premises.
- (3) “Domestic purposes” in any local enactment relating to the supply of water shall be construed in accordance with sub-sections (1) and (2).

## **8 Water supplied for domestic purposes to be wholesome.**

Every water authority shall provide in their mains and communication pipes a supply of wholesome water sufficient for the domestic purposes of all owners and occupiers of premises within their limits of supply who are entitled to a supply for those purposes.

## **9 Supply of water for non-domestic purposes.**

- (1) Subject to the following provisions of this Act, a water authority shall give a supply of water on reasonable terms and conditions for purposes other than domestic purposes to the owner or occupier of any premises within their limits of supply who requests them to give such a supply to those premises.
- (2) A water authority shall not be required to give a supply of water in accordance with subsection (1) if their ability to meet existing obligations to supply water for any purposes or probable future requirements to supply water for domestic purposes, without having to incur unreasonable expenditure in constructing new waterworks for the purpose, would thereby be endangered.
- (3) The water authority may require, as a condition of giving a supply of water under this section, that the person requesting the supply shall enter into an agreement undertaking to pay to them in respect of each year a sum not exceeding one-eighth of the cost of providing and laying the necessary mains (less any amounts received by the authority in respect of water supplied whether for domestic or non-domestic purposes in that year from those mains) until the expiration of a period of 12 years or such lesser period as may appear to the authority to be appropriate.
- (4) Any question arising as to the terms and conditions on which water is to be supplied under this section and any question whether the authority are justified in refusing to give a supply shall in default of agreement, be referred to the Secretary of State and the Secretary of State may determine it himself or, if he thinks fit, refer it for determination by arbitration.
- (5) Where a water authority are required to give a supply of water under this section, the powers of the authority and of persons supplied or proposed to be supplied by them to lay mains and pipes for providing a supply of water for domestic purposes and to

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break open [<sup>F3</sup>roads] for that purpose shall apply for the purpose of the provision of a supply under this section.

- (6) Charges for water supplied under this section, whether by meter or otherwise, shall be recoverable in the manner in which [<sup>F4</sup>non-domestic rates] levied by the regional or islands council <sup>F5</sup> are recoverable.

#### Textual Amendments

- F3** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(2)**
- F4** Words substituted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c.47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 27**
- F5** Words repealed by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 34, **Sch. 6**

[<sup>F6</sup>9A

Without prejudice to any provision relating to [<sup>F7</sup>the non-domestic water rate or the community water charges], but notwithstanding anything in section 9 or 49 of this Act, no charge may be made by a water authority in respect of—

- (a) water taken for the purposes of extinguishing fires or of testing apparatus installed, or equipment used, for extinguishing fires; or
- (b) the availability of water for the said purposes:

Provided that nothing in this section shall prevent the making of charges in respect of work carried out at the request of or for the benefit of any person receiving a supply of water for the said purposes.]

#### Textual Amendments

- F6** S. 9A added by Local Government and Planning (Scotland) Act 1982 (c.43, SIF 81:2), s. 59
- F7** Words substituted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 28**

## 10 Compensation for damage resulting from exercise of powers.

- (1) Subject to the provisions of this section, a district council or water authority or water development board shall make full compensation to any person who has sustained damage by reason of the exercise by them of any of their powers under this Act in relation to a matter as to which he has not himself been in default.

[<sup>F8</sup>(1A) The escape of water, however caused, onto agricultural land or forestry land from one of a water authority's or as the case may be water development board's communication pipes or mains shall for the purposes of subsection (1) above be taken to have been brought about by the exercise by them of powers under this Act.]

- (2) Any question arising under this section as to the fact of damage or as to the amount of compensation shall, in case of dispute, be determined by arbitration.
- (3) A claim for compensation under this section shall not be maintainable unless it is made within 12 months after the date on which it is alleged to have arisen.

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- (4) The provisions of this section shall be without prejudice to any other provisions in this Act relating to compensation.
- [<sup>F9</sup>(5) Without prejudice to any right to compensation other than under subsection (1) above, in that subsection “person” does not, as regards compensation payable under that subsection by virtue of subsection (1A) above, include—
- (a) statutory undertakers as defined in section 275(1) of the <sup>M5</sup> Town and Country Planning (Scotland) Act 1972;
  - [<sup>F10</sup>(b) roads authorities as defined in section 151(1) of the <sup>M6</sup> Roads (Scotland) Act 1984;]
  - (c) bridge authorities [<sup>F11</sup>or managers as defined in section 39(1) of the <sup>M7</sup> Public Utilities Street Works Act 1950;], [<sup>F11</sup>as defined in section 147 of the New Roads and Street Works Act 1991;]
  - [<sup>F12</sup>(d) road managers as defined in section 2(5) of the said Act of 1950;]
  - [<sup>F12</sup>(d) road works authority as defined in section 108 of the New Roads and Street Works Act 1991;]
  - (e) persons on whom a right to compensation under section 26 of the said Act of 1950 is conferred.
- (6) In subsection (1A) above, the expressions “agricultural land” and “forestry land” mean land (but not any building) used, respectively, for agriculture or for forestry which is so used for the purposes of a trade or business; and in the foregoing provisions of this subsection “agriculture” has the meaning assigned to it by section 86(3) of the Agriculture (Scotland) Act 1948 and “forestry” means the growing of woods and forests for the production of timber and other forest products and the growing of trees for planting in such woods and forests.]

#### Textual Amendments

- F8** S. 10(1A) inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 57(a)
- F9** S. 10(5)(6) inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 57(b)
- F10** S. 10(5)(b) substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(3\)\(a\)](#)
- F11** Words from “as defined” to “1991;” substituted (*prosp.*) for words from “or managers” to the end of para. (c) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(2\)\(a\)](#)
- F12** S. 10(5)(d) commencing “road works” substituted (*prosp.*) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(2\)\(b\)](#) for para (d) commencing “road managers” which latter para. (d) was itself substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(3\)\(b\)](#)

#### Marginal Citations

- M5** 1972 c. 52 (123:3).
- M6** 1984 c. 54 (59, 108).
- M7** 1950 c. 39 (59, 108).

## 11 Power of Secretary of State on default of authority or board.

- (1) If—
- (a) a complaint is made to the Secretary of State that a water authority or a water development board have failed—

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- (i) to do anything which they are required to do by or under this Act,
    - (ii) to give an adequate supply of water either as respects quantity or quality within their limits of supply, or have failed to give any supply which they have been lawfully required to give, or
    - (iii) to take such steps as are in the circumstances reasonable to obtain new powers or to extend their existing powers for the purpose of remedying any such failure as is mentioned in paragraph (ii), or
  - (b) the Secretary of State is of opinion that an investigation should be made as to whether any authority or board have failed in any of those matters, he may cause a local inquiry to be held into the matter.
- (2) If after a local inquiry has been held in pursuance of subsection (1), the Secretary of State is satisfied that there has been such a failure on the part of the authority or board in question, he may make an order declaring them to be in default and directing them for the purpose of remedying the default to discharge such of their functions in such a manner and within such time or times as may be specified in the order or, as the case may be, to take such steps within such time or times as may be specified in the order to obtain new powers or to extend their existing powers.
- (3) If the authority or board declared to be in default by an order made under subsection (2) fail to comply with any requirements of that order within the time specified therein for compliance with that requirement—
- (a) the Secretary of State may make an order transferring to another authority or board such of the functions of the authority or board in default as he thinks fit; or
  - (b) the Court of Session may on the application of the Lord Advocate on behalf of the Secretary of State order specific performance of the functions and do otherwise as to the Court appears to be just.
- (4) Any expenses incurred by the authority or board to whom functions are transferred by an order under this section (in this section referred to as “the transferee authority” or “the transferee board”) in discharging those functions shall be defrayed in the first instance by the transferee authority or board in such manner as the order may provide and shall be a debt due by the authority or board in default to the transferee authority or board and recoverable accordingly.
- (5) The transferee authority or board shall keep separate accounts of all income and expenditure in respect of the transferred functions.
- (6) The authority or board in default shall have the like power of raising the money required to meet the expenses of the transferee authority or board as they have of raising money for defraying expenses incurred directly by themselves, and the payment of any such expenses shall, to such extent as may be sanctioned by the Secretary of State, be a purpose for which the authority or board in default may borrow money in accordance with the statutory provisions relating to borrowing by such authority or board.
- (7) An order made under subsection (3) may provide for the transfer to the transferee authority or board of such of the property and liabilities of the authority or board in default as in the opinion of the Secretary of State may be necessary or expedient, and when any such order is revoked the Secretary of State may, either by the revoking order or by a subsequent order, make such provision as appears to him to be desirable with respect to any property or liabilities acquired or incurred by the transferee authority or board in discharging any of the functions to which the order so revoked related.



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**Modifications etc. (not altering text)**

C5 S. 11 extended (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 20(6)(b)

## PART III

### POWERS OF WATER AUTHORITIES FOR THE PURPOSES OF WATER SUPPLY

**Modifications etc. (not altering text)**

C6 Pt. III (ss. 12 - 38): power to apply conferred (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 20(10), [Sch. 7 para. 5\(1\)\(b\)](#)

#### 12 Supply of water by water authority to premises outside limits of supply.

- (1) A water authority, with the consent of the water authority within whose limits of supply the premises are situated, may give a supply of water to premises situated outside their limits of supply.
- (2) Where a water authority are supplying water to premises outside their limits of supply, whether by virtue of subsection (1) or otherwise, the water authority within whose limits of supply those premises are situated may at any time give not less than three months' notice to the authority giving the supply that they are able and intend to give a supply of water to all the premises in that part of their limits of supply in which the premises in question are situated.
- (3) When, after the expiration of a notice given under subsection (2), the authority in whose limits of supply the premises are situated commence to supply water to the part of their limits of supply in which those premises are situated, the authority previously giving the supply shall, except for the purpose of recovering any charges or expenses recoverable by them, and of removing any pipes, plant or apparatus belonging to them, cease to have any functions in respect of a supply to those premises.
- (4) The authority previously giving the supply shall not remove any pipes, plant or apparatus which they are required by the authority in whose limits of supply the premises are situated to leave in position, and any such pipes, plant or apparatus shall vest in the second-mentioned authority.
- (5) The authority in whose limits of supply the premises are situated shall pay to the authority previously giving the supply—
  - (a) such portion of any expenses reasonably incurred by them for the purpose of giving a supply to those premises, and
  - (b) such sum, in respect of any pipes, plant and apparatus vested in the authority in whose limits of supply the premises are situated, by subsection (4),as may be agreed, or in default of agreement, determined by arbitration.

#### 13 Supply of water in bulk.

- (1) A water authority or water development board may enter into an agreement with any other persons, whether a water authority or water development board or not, for the

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giving by those other persons, and the taking by the authority or board, of a supply of water in bulk for any period and on any terms and conditions, and, where the supply is to be given by persons who are themselves such an authority or board, either within or outside their limits of supply or area as the case may be.

- (2) Where it appears to the Secretary of State that it is expedient that a water authority or water development board should give to any other such authority or board, and that that other authority or board should take, a supply of water in bulk, either within or outside the limits of supply or area of the authority or board by whom the supply is to be given, and he is satisfied that the giving and taking of such supply cannot be secured by agreement, he may by order require the respective authorities or boards to give and to take such supply for such period and on such terms and conditions as may be provided in the order.
- (3) For the purpose of laying any pipes or installing any apparatus connected therewith, being pipes or apparatus required for giving or taking a supply of water in pursuance of an agreement or order made under this section, a water authority or water development board may exercise, either within or outside their limits of supply or area, as the case may be, the like powers with respect to laying mains and breaking open streets as are exercisable by them under this Act for the purpose of laying mains, but subject to the like conditions and obligations.
- (4) Subject to subsection (5) the provisions of Part II of Schedule 1 shall apply to the making of orders under subsection (2).
- (5) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain or by reason of any accident or other unforeseen circumstances, a serious deficiency in the supply of water exists or is threatened in any locality, the provisions of Part II of Schedule 1 shall not apply to the making of an order under this section, and the Secretary of State may, if he considers that the interests of public health so require, direct that the provisions of this Act with respect to laying mains and breaking open [<sup>F13</sup>roads] and [<sup>F14</sup>the street works code in the <sup>M8</sup>Public Utilities Street Works Act 1950][<sup>F14</sup>the provisions of Part IV of the New Roads and Street Works Act 1991] shall, in relation to any works to be carried out for the purposes of that order, have effect subject to such modifications as he may think necessary for the avoidance of delay, but any agreement or order to which this subsection applies shall cease to have effect at the expiration of such period not exceeding two years as the Secretary of State may direct.
- (6) Nothing in this section shall affect any right of a navigation authority under any enactment to prohibit, or impose restrictions on, the supply of water in bulk by a water authority or water development board.

#### Textual Amendments

- F13** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(4\)](#)
- F14** Words “the provisions of Part IV of the New Roads and Street Works Act 1991” substituted (*prosp.*) for “the street works code in the Public Utilities Street Works Act 1950” by [New Roads and Street Works Act 1991 \(c.22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(3\)](#)

#### Marginal Citations

- M8** 1950 c. 39.

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VALID FROM 01/04/1996

### **[<sup>F15</sup>13A Supply of water for use outwith Scotland.**

- (1) A water authority may, if for the time being they are satisfied that such supplies of water as are available to them are likely to be more than sufficient to enable them to fulfil their duties as respects the supply of water to premises in Scotland, enter into an agreement with any other person to give him, on such terms and conditions as they think fit and whether or not in bulk, a supply of water for use outwith Scotland.
- (2) For the purposes of laying any pipes or installing any apparatus connected therewith, being pipes or apparatus required for giving a supply of water in pursuance of an agreement entered into under subsection (1) above, a water authority may exercise, either within or outwith their limits of supply, the like powers with respect to laying mains or breaking open roads as are exercisable by them under this Act for the purposes of laying mains, but subject to the like conditions and obligations.]

#### **Textual Amendments**

**F15** S. 13A inserted (1.4.1996) by 1994 c. 39, s. 107 (with s. 74(4)); S.I. 1996/323, art. 4(1)(a), Sch. 1

### **14 Power of water authority to give guarantee for supply of water.**

A water authority may undertake to pay to any person supplying water, or guarantee payment to any such person of, such periodical or other sums as may be agreed as a consideration for the giving by that person of a supply of water, so far as he can lawfully do so, within any part of the limits of supply of the authority, and the execution by him of any works necessary for that purpose.

### **15 Power to acquire land.**

- (1) A water authority or water development board shall have power under this section to acquire land (other than water rights) by agreement, whether by way of purchase, feu, lease, excambion or otherwise, for any of the purposes of their undertaking.
- (2) Without prejudice to the generality of subsection (1), a water authority or water development board may acquire land under that subsection for the purpose of erecting houses on the land for the use of persons employed by them for the purposes of their undertaking.
- (3) A water authority or water development board may be authorised by the Secretary of State to purchase land (other than water rights) compulsorily for any of the purposes of their water undertaking or proposed water undertaking.
- (4) A water authority or water development board may be authorised by the Secretary of State to purchase compulsorily, or may acquire by agreement, land for giving in exchange for land belonging to the National Trust for Scotland for Places of Historic Interest or Natural Beauty which is inalienable under section 22 of the order confirmed by the <sup>M9</sup>National Trust for Scotland Order Confirmation Act 1935, or for any land forming part of a common or open space, which they are authorised under this section to purchase compulsorily.

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In this subsection—

- (a) “common” includes any town or village green;
  - (b) “open space” means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground.
- (5) The following enactments are, subject to any necessary adaptations and modifications, incorporated with this section, that is to say—
- (a) the Lands Clauses Acts (except the provisions relating to the acquisition of land otherwise than by agreement, the provisions relating to access to the special Act, sections 93 to 98 and 120 to 125 of the <sup>M10</sup>Lands Clauses Consolidation (Scotland) Act 1845);
  - (b) section 6 of the <sup>M11</sup>Railway Clauses Consolidation (Scotland) Act 1845; and
  - (c) Part IV of Schedule 4.

**Modifications etc. (not altering text)**

C7 S. 15 amended (*temp.* from 4.1.1995 to 1.4.1996) by 1994 c. 39, s. 182(1)(c); S.I. 1994/2850, art. 3(a), Sch. 2

**Marginal Citations**

M9 1935 c. ii.

M10 1845 c. 19.

M11 1845 c. 33.

**16 Powers of survey and search for water on land.**

- (1) The Secretary of State may, on application made to him by any water authority or water development board who propose to acquire any land for the purposes of their water undertaking or proposed water undertaking, authorise them to survey that land in accordance with the provisions of this section.
- (2) Notice of any application under subsection (1) shall be given by the authority or board to the owner and the occupier of the land, and the Secretary of State shall, before giving his authority under subsection (1), consider any representations made to him by any such owner or occupier within 14 days after the receipt of the notice.
- (3) Where an authority or board are authorised to survey any land under this section, any officer of the authority or board authorised for the purpose shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours to enter on and survey the land.
- (4) Section 38(3) to (7) shall apply to any right of entry conferred by this section.
- (5) Admission to any land shall not be demanded in the exercise of any right under subsection (3) unless 24 hours’ notice of the intended entry has been given to the occupier; but where such notice has been given on the first occasion on which the right of entry is exercised, no further notice shall be required before entering on the land on a subsequent occasion in connection with the completion of the survey.
- (6) The power to survey land under this section shall include power to carry out experimental borings or other works for the purpose of ascertaining the nature of the

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sub-soil or the presence of underground water therein or the quality or quantity of such water, and to reinstate the land after carrying out any such works.

- (7) A person shall not carry out any works authorised by subsection (6) on land which is occupied unless at least seven days' notice of his intention to do so has been given to the occupier of the land; and if the occupier of the land objects to the proposed works on the ground that the carrying out thereof would be seriously detrimental to the carrying on of any undertaking, trade or business carried on by him on that land, the works shall not be carried out except with the authority of the Secretary of State.
- (8) If any damage or injury is caused by the escape of water from any land on which works have been carried out in pursuance of this section, not being damage in respect of which compensation is payable under section 10, nothing in this section shall be construed as exonerating the authority or board on whose behalf the works were carried out from any liability in respect of that damage to which they would be subject if the works had been carried out otherwise than in the exercise of statutory powers.

**Modifications etc. (not altering text)**

C8 S. 16 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 3, Sch. 7 para. 2(1)(xxxviii), Sch. 8 para. 33

**17 Acquisition of water rights.**

- (1) A water authority or water development board may acquire by agreement rights to take water from any stream or other source, but no such agreement shall have effect unless the Secretary of State has made an order approving it.
- (2) The Secretary of State may, on the application of a water authority or water development board, by order provide for the compulsorily acquisition by them of such rights to take water from any stream or other source as may be specified in the order; and the order may contain such incidental, consequential and supplementary provisions as the Secretary of State thinks necessary or expedient for the purposes of the order, and such provisions may (but without prejudice to the generality of this subsection) include provisions enabling the authority or board to carry on any business or trade ancillary to taking of water; and where such provisions include a provision requiring the payment of compensation, the amount of such compensation shall, in case of dispute, be settled in the manner provided by the Lands Clauses Acts with reference to taking of land otherwise than by agreement.
- (3) Where the acquisition of water rights by a water authority or water development board under this Part will result in the impounding of any stream—
  - (a) the Secretary of State shall not approve any agreement for the acquisition of such rights unless he is satisfied that the agreement requires the authority or board to provide an adequate amount of compensation water and incorporates the appropriate provisions of Part III of Schedule 4 subject to such modifications and adaptations as he may approve; or
  - (b) the Secretary of State shall, in any order for the compulsory acquisition of such rights, prescribe the quantity of compensation water to be provided by the authority or board, and shall incorporate in the order the appropriate provisions of the said Part III subject to such modifications and adaptations as he thinks fit.

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- (4) Where the acquisition of water rights by a water authority or water development board under this Part will, in the opinion of the Secretary of State, substantially reduce the flow of any stream—
  - (a) the Secretary of State shall not approve any agreement for the acquisition of such rights unless he is satisfied that the agreement contains adequate provisions for limiting the extent to which and the circumstances in which water may be taken from the stream; or
  - (b) the Secretary of State shall in any order for the compulsory acquisition of such rights prescribe the extent to which and the circumstances in which water may be taken.
- (5) In assessing the quantity of compensation water to be provided under any such agreement or order or in determining the extent to which and the circumstances in which water may be taken under any such agreement or order, the Secretary or State shall have regard to all the circumstances of the particular case, including—
  - (a) the interests of public health;
  - (b) the character and flow of the stream;
  - (c) the extent to which the stream is or may in the future be used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply by other undertakers, agriculture, transport and navigation;
  - (d) the effect on land drainage or on any canal or inland navigation of any alterations in the flow of the stream;
 and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or salmon fishings.
- (6) The provisions of Part III of Schedule 1 shall apply to the approval of agreements under this section.
- (7) The provisions of Part I of Schedule 1 shall apply to the making of applications and orders under subsection (2).

**Subordinate Legislation Made**

**P1** S. 17: for previous exercises of this power before 01. 02. 1991 see Index to Government Orders.

**P2** S. 17(1): s. 17(1) power exercised (11.12.1991) by [S.I.1991/2819](#)

**P3** S. 17(2): s. 107(1)(b) (with s. 17(2)) power exercised (30.12.1991) by [S.I.1991/2939](#)

**18 Compulsory acquisition of land for water works.**

- (1) Subject to the provisions of this section, an order under section 17 may authorise an authority or board to which that section applies to acquire compulsorily such land as may be necessary for the purposes of the order, being land which an authority or board could be authorised to acquire under section 15.
- (2) The provisions of Schedule 2 shall have effect in relation to an order under section 17 which authorises any such acquisition of land.



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### Textual Amendments

- F16** S. 19 repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), ss. 25, 41, Sch. 2 para. 39, **Sch. 4**

## 20 Power to hold and dispose of land.

Notwithstanding anything in the Lands Clauses Acts, a water authority or water development board may hold and use for the purposes of their water undertaking for such time as they think fit any land acquired or appropriated by them for such purposes, and may <sup>F17</sup>, under section 74 of the Local Government (Scotland) Act 1973,] from time to time sell, feu, lease, excamb or otherwise dispose of any such land in such manner, for such consideration and on such terms and conditions as they think fit and, in particular, may reserve to themselves any water rights or other servitudes in, over or belonging to the land disposed of and may dispose of the land subject to such other reservations, conditions, restrictions and provisions with respect to the use of water, the carrying on of noxious trades or the discharge or deposit of manure, sewage or any other foul matter as they think fit: <sup>F18</sup>.

### Textual Amendments

- F17** Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c.23, SIF 81:2\)](#), s. 40, **Sch. 3 para. 38(a)**
- F18** Proviso repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), ss. 40, 41, **Sch. 3 para. 38(b)**, Sch. 4

## 21 Power to carry out works.

- (1) For the purpose of providing the whole or part of their limits of supply or their area with a supply of water under this Act, a water authority or water development board may, subject to the provisions of this Act and without prejudice to any other powers they may have—
  - (a) construct, or alter or acquire by purchase, lease or otherwise, or renew or maintain waterworks;
  - (b) acquire by purchase, lease or otherwise any undertaking belonging to persons, not being a water authority or a water development board, who are supplying or are authorised to supply water in any part of their limits of supply or their area as the case may be;
  - (c) contract with any person for a supply by that person of water in bulk or otherwise;
  - (d) erect and maintain houses for the use of persons employed by them for the purposes of their undertaking; and
  - (e) acquire by purchase, lease or otherwise premises to be used for the purposes of the authority or board and maintain such premises.
- (2) Where under this section a water authority or water development board propose to acquire the water undertaking of persons who are supplying or are authorised to supply water outside their limits of supply or their area as the case may be, they shall give notice in writing to every water authority and water development board whose limits of supply or area, as the case may be, lie wholly or partly within the area in which those

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persons are supplying or are authorised to supply water, and shall not proceed with their proposal unless the consent of each such authority or board has been obtained.

- (3) The consent of an authority or board under subsection (2) shall not be unreasonably withheld, and any question whether or not a consent is unreasonably withheld shall be referred to and determined by the Secretary of State.

## 22 Power to break open streets.

The provisions of Part I of Schedule 3 shall have effect in relation to the breaking open of [<sup>F19</sup>roads] by a water authority or water development board for the purpose of carrying out any works which they are authorised to execute by or under this Act or any local enactment incorporating any provisions of Schedule 4.

### Textual Amendments

**F19** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(4\)](#)

## 23 Power to lay mains, etc.

- (1) A water authority or water development board may for the purposes of their functions lay a main—

- (a) in, under or over any [<sup>F20</sup>roads] or under any cellar or vault below any [<sup>F20</sup>roads] after giving reasonable notice to [<sup>F20</sup>—
- (i) where the road is a public road, the roads authority; and
  - (ii) in any other case, the authority or person responsible for the maintenance of the road, or, if no authority or person is so responsible, to the owners of the solum of the road,], and
- (b) in, on or over any land not forming part of a [<sup>F21</sup>road], after giving reasonable notice to the owner and the occupier of that land;

and may from time to time inspect, repair, maintain, alter, or renew or may at any time remove a main previously laid whether by virtue of this section or otherwise.

- (2) Where an authority or board in the exercise of their powers under this section lay a main in, on or over any land not forming part of a [<sup>F22</sup>road], or inspect, repair, maintain, alter, renew or remove a main laid in or over any such land, they shall from time to time pay compensation to every person interested in that land for any damage done to or injurious affection of that land by reason of the laying, inspection, repair, maintenance, alteration, renewal or removal of the main; and any question as to the amount of compensation to be paid under this subsection shall, in case of dispute, be determined by arbitration.

- (3) A water authority or water development board may erect and maintain in any street notices indicating the position of underground water fittings used for controlling the flow of water through their mains whether laid by virtue of this section or otherwise and may affix such a notice to any house or other building, or any wall or fence.

[<sup>F23</sup>(4) In the case of works in respect of which notice is required to be given under section 114 of the New Roads and Street Works Act 1991 (notice of starting date of road works), notice duly given to a person in accordance with that section and section 156 of that Act (service of notice) shall be treated as reasonable notice for the purposes of subsection (1) above.]



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#### Textual Amendments

- F20** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(5\)\(a\)\(i\)](#)
- F21** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(5\)\(a\)\(ii\)](#)
- F22** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(5\)\(b\)](#)
- F23** [S. 23\(4\)](#) inserted (*prosp.*) by [New Roads and Street Works Act 1991 \(c.22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(4\)](#)

## 24 Communication and supply pipes.

- (1) Where a service pipe is required to be laid for the purpose of supplying water to premises for domestic purposes, the water authority providing the supply shall lay the communication pipe and also so much of the supply pipe as is to be laid in a [<sup>F24</sup>road].
- (2) The provisions of Part II of Schedule 3 shall apply to all water authorities.
- (3) All communication pipes whether laid before or after the commencement of this Act shall vest in the water authority and the authority shall at their own expense carry out any necessary work of maintenance, repair or renewal of such pipes and any work on their mains incidental thereto.
- (4) The water authority shall also carry out any such necessary works in the case of so much of any supply pipe as is laid in a [<sup>F24</sup>road] and may recover from the owner of the premises the expenses reasonably incurred by them in so doing, but without prejudice to the rights and obligations as between themselves of the owner and the occupier of the premises.

#### Textual Amendments

- F24** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(6\)](#)

VALID FROM 01/04/1996

### [<sup>F25</sup>24A Keeping of map showing water mains, etc.

- (1) A water authority shall keep deposited at their principal office a map showing and distinguishing so far as is reasonably practicable all water mains, communication pipes and supply pipes which are vested in them by virtue of this Act or of Part II of the Local Government etc. (Scotland) Act 1994; and the authority shall provide reasonable facilities at that office for inspection of the map by any person and shall permit a copy of the map, or of an extract of it, to be taken by a person on his paying such reasonable amount as the authority may determine.
- (2) A water authority shall keep deposited at such of their offices, other than their principal office, as they consider appropriate, a copy relevant to the office in question of part of the map mentioned in subsection (1) above; and the authority shall provide the like facilities and permission in relation to the copy part, at the office at which that copy is deposited, as, under subsection (1) above, they do in relation to the map mentioned in that subsection at their principal office.

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- (3) For the purposes of subsection (2) above, a copy is relevant to an office if it is of such part of the map mentioned in subsection (1) above as appears to the water authority to be appropriate having regard to the geographical location of that office.]

#### Textual Amendments

**F25** S. 24A inserted (1.4.1996) by 1994 c. 39, s. 111 (with s. 74(4)); S.I. 1996/323, art. 4(1)(a), Sch. 1

VALID FROM 01/04/2002

#### **[<sup>F26</sup>24B Works in connection with metering**

- (1) This section applies where, in relation to any premises (“the premises concerned”), the conditions specified in subsection (2) are satisfied.
- (2) The conditions referred to in subsection (1) are that—
  - (a) Scottish Water is supplying or proposes to supply water to the premises,
  - (b) such supply is or is to be by meter, and
  - (c) there is a service pipe which is connected with a water main vested in Scottish Water and by which a supply of water is or could be provided to those premises.
- (3) Where this section applies, Scottish Water may serve a notice on the owner of the premises concerned requiring the execution, within such period of not less than 3 months as the notice shall specify, of such of the works mentioned in subsection (4) as the notice may specify.
- (4) The works referred to in subsection (3) are, in relation to the premises concerned—
  - (a) works consisting of the installation and connection of any meter for use in determining the quantity of water supplied to the premises,
  - (b) where a supply of water is or could be provided by the service pipe referred to in subsection (2)(c) to other premises as well as the premises concerned, works consisting of the installation, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for the premises concerned, but only to the extent that such a pipe will constitute a supply pipe and is not required to be laid in a road,
  - (c) works for the purpose of maintaining, repairing, disconnecting or removing—
    - (i) any meter which has been installed for use in determining the quantity of water supplied to the premises, or
    - (ii) any pipes or apparatus installed in the course of any works specified in this section, and
  - (d) any other works appearing to Scottish Water to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c), including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.

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- (5) In the case of any of the works mentioned in paragraph (a) of subsection (4) and paragraph (c)(i) of that subsection so far as relating to maintenance and repair of a meter, Scottish Water may execute the works itself instead of requiring the owner, under subsection (3), to execute the works.
- (6) If an owner upon whom a notice has been served under subsection (3) fails to comply with it, Scottish Water may itself execute the works which the owner was required by the notice to execute.
- (7) Where Scottish Water has served a notice under that subsection requiring the execution of the works mentioned in paragraph (b) of subsection (4), it shall, within 14 days after those works have been executed, lay so much of the separate service pipe referred to in that paragraph as will constitute a communication pipe or a supply pipe to be laid in a road and shall make all necessary connections.
- (8) Scottish Water may recover from the owner of the premises concerned any expenses reasonably incurred by it in executing any works under subsection (5), (6) or (7).
- (9) Subsection (8) is without prejudice to the rights and obligations, as between themselves, of the owner and occupier of the premises.]

#### Textual Amendments

**F26** S. 24B inserted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 64 (with s. 67); S.S.I. 2002/118, art. 2(3)

## 25 Power of authority to provide public wells.

- (1) A district council or a water authority may construct and maintain public pumps, wells, stand-pipes or other works for supplying water for the use of the inhabitants within their district or, as the case may be, their limits of supply.
- (2) An islands or district council may erect and maintain or authorise to be erected and maintained in any [<sup>F27</sup>road] or public place within their area or district any drinking fountain or trough; but [<sup>F28</sup>there shall be no such erection by the district council without the roads authority's consent] which consent shall not be unreasonably withheld.

#### Textual Amendments

**F27** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(7\)\(a\)](#)

**F28** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(7\)\(b\)](#)

## 26 Power to close, or restrict use of, wells.

If a district council or a water authority are satisfied that—

- (a) any public well, drinking fountain or other work within their district or, as the case may be, their limits of supply and vested in them or any work constructed under section 25 is no longer required, or
- (b) the water obtained therefrom is so polluted as to be injurious or dangerous to health and that it is not reasonably practicable to remedy the cause of the pollution,

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they may close the well, fountain or other work or restrict the use of the water obtained from it.

## **27 Power to close, or restrict use of water from, polluted source.**

- (1) If an islands or district council are of opinion that the water in or obtained from any source of supply not vested in them, being water which is or is likely to be used within their area or district for domestic purposes or in the preparation of food or drink for human consumption, is or is likely to become so polluted as to be injurious or dangerous to health, the council may apply to the sheriff who, after giving the person to whom the source of supply belongs and any other person alleged to have control of the source of supply an opportunity of being heard, may make—
  - (a) an order directing the source of supply to be permanently or temporarily closed or cut off, or
  - (b) an order directing the water from the the source of supply to be used for certain purposes only, or
  - (c) such other order as appears to him to be necessary to prevent injury or danger to the health of persons using the water or consuming food or drink prepared with or from the water.
- (2) The sheriff shall hear any person using the water who claims to be heard and may cause the water to be analysed and examined at the cost of the council.
- (3) If a person on whom an order is made under this section fails to comply with it the sheriff may, on the application of the council, authorise the council to do whatever may be necessary for giving effect to the order, and any expenses reasonably incurred by the council in so doing may be recovered by them from the person in default.

## **28 Water works code.**

- (1) For the purpose of enabling a water authority or a water development board to supply water under this Part the following provisions of Schedule 4 shall, subject to any necessary modifications, apply to this Part, that is to say—
  - (a) .....<sup>F29</sup>
  - (b) Part V;
  - (c) Part VII;
  - (d) Part VIII; and
  - (e) sections 40, 41 and 45 of Part IX.
- (2) For the purposes of construction of any reservoir, filter or distribution tank or works connected therewith, sections 25 to 37 of the <sup>M12</sup>Railways Clauses Consolidation (Scotland) Act 1845 (which relate to the temporary occupation of lands near the railway during its construction) shall apply to this Part subject to the modifications that for references to the company, to the railway and to the centre of the railway there shall be substituted respectively references to the water authority or water development board, to the reservoir, filter, distribution tank or works and to the boundaries of the reservoir, filter, distribution tank or works, and for any reference to a justice or justices there shall be substituted a reference to the sheriff, and the prescribed limits shall be 200 yards from such boundaries.

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#### Textual Amendments

**F29** S. 28(1)(a) repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, [Sch. 7 Pt. I](#)

#### Marginal Citations

**M12** 1845 c. 33.

### 29 Applications of enactments by order.

- (1) The Secretary of State may by any order under section 13 or 17 apply to any water undertaking to which the order relates such of the provisions contained in Schedule 4 as appear to him to be appropriate, subject to such modifications and adaptations as may be specified in the order.
- (2) The Secretary of State may at any time by order apply the provisions of Schedule 4 or any of them to the undertaking of any water authority or water development board, subject to such modifications and adaptations as may be specified in the order, and may by the order repeal any provision previously applicable to the undertaking to the extent to which it appears to him, having regard to the provisions of this Act which apply or are applied by the order to the undertaking, to be no longer required, or amend any provision previously applicable to the undertaking to any extent which appears to him necessary to bring it into conformity with the said provisions of this Act.
- (3) The provisions of Part I of Schedule 1 shall apply to an order made under subsection (2) on the application of the authority or board concerned, and the provisions of Part II of that Schedule shall apply to an order so made without any such application.

### 30 Exemption from stamp duty.

- (1) Any conveyance, lease, standard security, mortgage, assignation, agreement, receipt or other document granted or made for any of the purposes of this Act by to or in favour of a water authority or water development board shall be exempt from all stamp duties.

### 31 Consultation with authorities in England.

- (1) Where the limits of supply of a water authority adjoin any part of England and it appears to that water authority that there may be water in watercourses or underground strata in that part of England, or in the limits of supply, which could be transferred from that part of England to the limits of supply, or from the limits of supply to that part of England, as the case may be, the water authority shall, insofar as they consider it appropriate to do so, consult with
  - <sup>F30</sup>(a) the <sup>F31</sup>water undertakers] and other appropriate authorities in that part of England with a view to securing the best use of that water in the public interest <sup>F32</sup>, and
  - (b) the river purification board in whose area any watercourse or underground strata from which or to which it is proposed to transfer water under this subsection is situated.]
- (2) In subsection (1) the reference to water in underground strata shall be construed as a reference to water contained in strata subjacent to the surface of any land otherwise than in a sewer, pipe, reservoir, tank or other underground works constructed in any such strata.

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#### Textual Amendments

- F30** “(a)” inserted (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), [Sch. 10 para. 9\(2\)\(a\)](#)
- F31** Words substituted by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190, [Sch. 25 para. 60\(1\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F32** Word “;and” and s. 31(1)(b) inserted (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), [Sch. 10 para. 9\(2\)\(b\)](#)

### 32 Power of water undertakers to supply water to water authorities.

- (1) Any person supplying water, whether under statutory powers or not, may—
  - (a) contract to supply water to a water authority; or
  - (b) subject to subsection (2), sell or lease to a water authority all or any of his waterworks and all his rights, powers and privileges attaching thereto but subject to all liabilities attaching thereto.
- (2) A sale by a company under subsection (1) must be authorised by special resolution of the members passed in the manner provided in Part IV of the <sup>M13</sup>Companies Act 1948 if the company is a company within the meaning of that Act, and if the company is not such a company, by resolution passed by three-fourths in number and value of the members present, either personally or by proxy at a meeting specially convened for the purpose with a notice of the business to be transacted.

#### Marginal Citations

- M13** 1948 c. 38.

### 33 Temporary discharge of water into watercourses.

- (1) Subject to this section a water authority or water development board who are carrying out or are about to carry out the construction, alteration, repair, cleaning or examination of any reservoir, well or borehole, line of pipes or other work forming part of their undertaking may cause the water therein to be discharged into any available watercourse, and for that purpose may lay and maintain in any [<sup>F33</sup>road] or in any land not forming part of a [<sup>F33</sup>road], whether within or outside their limits of supply or their area, as the case may be, all necessary discharge pipes and apparatus; and such statutory provisions with respect to the breaking open of [<sup>F33</sup>roads] as are applicable to the authority or board shall, with any necessary modifications and adaptations, apply accordingly.
- (2) The power conferred by subsection (1) to lay and maintain discharge pipes and apparatus in land, other than land forming part of a [<sup>F34</sup>road], shall not be exercised unless reasonable notice has been given to the owner and the occupier of that land.
- (3) Except in a case of emergency and except insofar as may be otherwise agreed in writing between the water authority or water development board and the authority or board concerned, the water authority or water development board shall—
  - (a) not less than seven days before commencing to discharge any such water through a pipe exceeding nine inches in diameter, give notice of their intentions

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- [<sup>F35</sup>(i)] to the fishery district board of any fishery district within which [<sup>F36</sup>; and  
(ii) the river purification board in whose area,] any watercourse into which the water is to be discharged is situated;
- (b) have due regard to any representations which may be made to them as to the time, mode and rate of discharge with a view to avoiding or minimising injury or inconvenience therefrom; and
- (c) where the water is to be discharged into any river, canal or other inland navigation in respect of which a navigation authority exercise functions, not discharge the water without the written approval of the navigation authority, or except at such times as that authority may approve and in a manner approved by them as not likely to injure the river, canal or navigation or the banks thereof, or interfere with traffic thereon.
- (4) Whenever the authority or board propose to discharge water on a number of occasions during a period, the giving by them of a general notice to that effect, accompanied by such particulars as it is reasonably practicable for them to give, shall constitute sufficient compliance by them with the provisions of subsection (3)(a).
- (5) In the case of a river, subsection (3)(c) shall not apply if the point of discharge into the river is more than three miles above the limits within which the navigation authority exercise jurisdiction.
- (6) An approval under subsection (3)(c)—
- (a) shall not be withheld unreasonably, and any question whether it is withheld unreasonably or not shall be determined by the Secretary of State;
- (b) shall be deemed to have been given unless notice of disapproval is given to the authority or board within seven days after the making of the application for the approval.
- (7) If the Authority or board are requested by—
- (a) the owner or occupier of any land which abuts on a watercourse at a point within three miles of any work of the authority or board from which water may be discharged into that watercourse under this section, or
- (b) the clerk to any association of mill owners any of whose constituent members is such an owner or occupier, or
- (c) the owner or occupier of a salmon fishing on a watercourse at such a point if such watercourse is within a fishery district for which no fishery district board has been constituted,
- to register him for the purposes of this section, the authority or board shall enter his name and address in a register kept by them for the purpose and, so long as his name and address appear in the register, shall, except in a case of emergency and except insofar as may be otherwise agreed with him in writing, and unless the point at which the water is to be discharged is situated downstream of the land in respect of which he is so registered, send to him in respect of that watercourse the like notices as they are (in the absence of any emergency or agreement to the contrary) required under subsection (3)(a) to send to a fishery district board.
- (8) Except insofar as may be otherwise agreed in writing, where the authority or board discharge water during an emergency, they shall forthwith give to the boards, authorities and persons registered under subsection (7) notice of such discharge and such further particulars relating to it as may reasonably be required.



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- (9) The authority or board shall take all necessary steps to secure that any water discharge by them under the provisions of this section shall be as free as reasonably practicable from mud and silt, from solid, polluting offensive or injurious matter and from any matter prejudicial to fish or spawn or to spawning beds or food of fish.
- (10) A power conferred by this section shall not be exercised so as to damage or injuriously affect any works or other property of a railway company or navigation authority or so as to flood or damage any <sup>F37</sup>public road].
- (11) In the exercise of the powers conferred by this section the authority or board shall do as little damage as possible and shall pay compensation to all persons for any damage sustained by them or liability to which they may become subject by reason of the exercise of those powers; and for the purposes of this subsection any extra expenditure which it becomes reasonably necessary for any public authority to incur for the purpose of properly discharging their statutory functions shall be deemed to be damage sustained by them.
- (12) Any question as to the amount of the compensation to be paid under subsection (11) shall in case of dispute be determined by arbitration.

#### Textual Amendments

- F33** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(8)(a)**
- F34** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(8)(b)**
- F35** “(i)” inserted (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), **Sch. 10 para. 9(3)(a)**
- F36** Words inserted (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), **Sch. 10 para. 9(3)(b)**
- F37** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(8)(c)**

### 34 Persons supplying water to supply to authority.

Any person supplying water within the limits of supply of a water authority shall furnish such supply to that authority as they may require and as it is reasonably practicable for that person to provide, and that on such terms and conditions as may be agreed between him and the authority; and, if they fail to agree, the amount of the supply and terms and conditions of the supply shall be determined by the Secretary of State or if he thinks fit, referred for determination to an arbiter appointed by him.

### 35 Power to supply water fittings.

- (1) A water authority may, on the request of any person to whom they supply or propose to supply water, supply to him by way either of sale or hire any such water fittings as are required or allowed by their byelaws and may, on such request, install, repair or alter (but not manufacture) any such water fittings, whether supplied by them or not, and may provide any materials and do any work required in connection with installation, repair or alteration of water fittings.

The authority may make such charges as may be agreed, or in default of agreement as may be reasonable, for any fittings supplied, or any materials provided or work done under this subsection, and may recover such charges.



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- (2) If any fittings let for hire by the authority bear either a distinguishing plate affixed thereto, or a distinguishing brand or other mark conspicuously impressed or made thereon, sufficiently indicating the authority as the actual owners of the fittings, those fittings—
  - (a) shall, notwithstanding that they fixed to some part of the premises in which they are situated or that they be laid in the soil thereunder, continue to be the property of, and removable by, the authority; and
  - (b) shall not be subject to poinding or other diligence or to the landlord's hypothec for rent, or be liable to be taken under any process of law or in any proceedings in bankruptcy against the persons in whose possession they may be.
- (3) Nothing in subsection (2) shall affect the valuation for rating of any lands and heritages.
- (4) The authority shall so adjust the charges to be made by them under this section as to meet any expenditure by them thereunder, including interest upon any moneys borrowed for the purposes thereof and any sum carried to a sinking fund or otherwise required for repayment of moneys so borrowed, and the total sums expended and received by the authority in connection with the purposes of this section in each year, including interest and any sums carried to a sinking fund or otherwise required for repayment of moneys borrowed, shall be separately shown in the published accounts of the authority for that year.
- (5) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to the authority, he shall be liable on summary conviction to a fine not exceeding [<sup>F38</sup>level 1 on the standard scale] and the authority may do all such work as is necessary for repairing any injury done and may recover the expenses reasonably incurred by them in so doing from the offender.

#### Textual Amendments

**F38** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 36 Power to execute work on behalf of owner or occupier.

A water authority may by agreement with the owner or occupier of any premises execute at his expense any work in connection with the laying, maintenance, repair, alteration, renewal or removal of any water pipe, cock or meter which he is required or entitled to execute by or under this Act or any local enactment incorporating any provisions of Schedule 4, and for that purpose shall have all such rights as he has and may provide necessary materials.

### 37 Power to require occupier to permit works to be executed by owner.

If on a complaint by the owner of any premises it appears to the sheriff that the occupier of those premises prevents the owner from executing any work which he is required to execute by or under this Act or any local enactment incorporating any provisions contained in Schedule 4 or by or under any byelaws made under this Act or under any such enactment, the sheriff may authorise the owner to enter for the purpose of executing the work.

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### 38 Entry of premises.

- (1) Subject to the provisions of this section, an authorised officer of a water authority or water development board shall, on producing if so required some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—
  - (a) for the purpose of inspecting and examining meters used by the authority or board for measuring the water supplied by them and of ascertaining therefrom the quantity of water consumed;
  - (b) for the purpose of ascertaining whether there is or has been on or in connection with the premises any contravention of the provisions of this Act or of any byelaws made thereunder;
  - (c) for the purpose of ascertaining whether or not circumstances exist which would authorise the authority or board to take any action or execute any work under this Act or any such byelaws;
  - (d) for the purpose of taking any action or executing any work authorised or required by this Act or any such byelaws to be taken or executed by the authority or board.
  
- (2) Admission to any premises, not being a factory within the meaning of the <sup>M14</sup>Factories Act 1961 or a place in which persons are employed otherwise than in domestic service, shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.
  
- (3) If it is shown to the satisfaction of the sheriff, or a justice having jurisdiction in the place, on a sworn information in writing—
  - (a) that admission to any premises which any person is entitled to enter by virtue of such a right of entry has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied, or the occupier is temporarily absent, or that the case is one of urgency, or that the application for admission would defeat the object of the entry; and
  - (b) that there is reasonable ground for entry into the premises for any purpose for which the right of entry is exercisable;

the sheriff or justice may by warrant under his hand authorise that person to enter the premises if need be by force:

Provided that such a warrant shall not be issued unless the sheriff or justice is satisfied either that notice of intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.
  
- (4) Any person entitled to enter any premises by virtue of such a right of entry, or of a warrant issued under this section, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectually secured against trespassers as he found them.
  
- (5) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.
  
- (6) If any person who, in compliance with any of the provisions of this Act or with a warrant issued thereunder, is admitted into any premises makes use of or discloses to any person any information obtained by him there with regard to any manufacturing

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process or trade secret, he shall, unless such use or disclosure was made in the performance of his duty, be liable in respect of each offence—

- (a) on summary conviction, to a fine not exceeding [<sup>F39</sup>the statutory maximum] or to imprisonment for a term not exceeding three months or to both such fine and imprisonment;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.
- (7) Any person who wilfully obstructs any person upon whom a right of entry has been conferred by any of the provisions of this Act or by a warrant issued under this section shall in respect of each offence be liable on summary conviction to a fine not exceeding [<sup>F40</sup>level 3 on the standard scale].
- (8) This section, except subsection (6), shall not apply to any right conferred by section 93.

**Textual Amendments**

**F39** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 23](#)

**F40** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 6](#)

**Modifications etc. (not altering text)**

**C9** [S. 38\(1\)–\(7\)](#) applied with modifications by [Local Government \(Scotland\) Act 1973 \(c. 65, SIF 81:2\)](#), [s. 170B\(2\)](#) (as inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), [s. 102](#), [Sch. 13](#))

**Marginal Citations**

**M14** [1961 c. 34](#).

**PART IV**

FINANCE

**39** ..... <sup>F41</sup>

**Textual Amendments**

**F41** [S. 39](#) repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), [s. 34](#), [Sch. 6](#)

<sup>F42</sup>**40 Non-domestic water rate.**

- (1) Subject to the provisions of this Part of this Act [<sup>F43</sup>and section 6(1A) of the Local Government (Scotland) Act 1975 (exemption of formula valued premises from non-domestic water rate)] each council of a region or an islands area shall, in respect of the financial year 1989-90 and each subsequent financial year, determine a non-domestic water rate, which shall be levied in respect of those lands and heritages described in subsection (2) below—
- (a) which are subjects (other than part residential subjects) in respect of which there is an entry in the valuation roll, according to their net annual value; or

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- (b) which are part residential subjects, according to that part of their net annual value which is shown in the apportionment note as relating to the non-residential use of those subjects.
- (2) The lands and heritages mentioned in subsection (1) above are lands and heritages—
- (a) in respect of which the water authority is supplying water, whether for domestic or for non-domestic purposes; and
- (b) which are not being—
- (i) wholly supplied with water by meter, or
- (ii) occupied by a water authority for the purposes of a water undertaking or by a water development board.
- (3) The person who is liable to pay the non-domestic water rate in respect of any lands and heritages shall be the person who is liable to pay non-domestic rates in respect of those lands and heritages [<sup>F44</sup>or who would be liable to pay those non-domestic rates but for any enactment which exempts the lands and heritages from those rates or by or under which any relief or remission from liability for those rates is given.]
- (4) Each council of a region or islands area shall, in respect of the financial year 1989-90 and each subsequent financial year, determine, before such date as may be prescribed in relation to each of those years, such amount of the non-domestic water rate as will provide sufficient moneys to meet the proportion of their estimated expenditure for that year which they have determined under paragraph 2 of Schedule 5 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987 is to be met out of that rate.
- (5) The non-domestic water rate shall not be leviable in respect of any premises, being lands and heritages situated within the region or area of a council of a region or islands area, unless a supply of water provided by a water authority is used for any purposes for or in connection with which the premises are used or by or for persons employed or otherwise engaged on or about the premises in connection with such purpose.
- (6) Where premises are for the first time provided with a supply of water otherwise than on the first day of a financial year, the person who is liable to pay the non-domestic water rate shall be liable to pay in respect of that year such part only of that rate which would be leviable if a supply had been provided throughout that year as is proportionate to the part of that year which had not elapsed when the supply was provided.
- (7) .....<sup>F45</sup>]

#### Textual Amendments

- F42** S. 40 substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 29](#)
- F43** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\)](#), s. 145, [Sch. 6 para. 19\(a\)](#)
- F44** Words inserted (*retrospectively*) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\)](#), s. 145, [Sch. 6 para. 16](#)
- F45** Subsection (7) repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\)](#), ss. 145, 194(4), [Sch. 6 para. 19\(b\)](#), [Sch. 12 Pt. II](#)

#### Modifications etc. (not altering text)

- C10** S. 40 extended by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. I para. 12](#)

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#### 41 Levy of domestic water rate on business and commercial premises.

- (1) Where the [<sup>F46</sup>non-domestic water rate] is leviable in respect of lands and heritages being premises to which this section applies, it shall be levied according to one-half of the net annual value [<sup>F47</sup>or, in respect of part residential subjects, one half of the part which is shown in the apportionment note as relating to the non-residential use of those subjects] thereof:

Provided that if the water authority providing a supply of water to the premises so resolve not later than such date in any year as may be prescribed by regulations made by the Secretary of State under section 111 of the <sup>M15</sup>Local Government (Scotland) Act 1973 with respect to any particular premises such as aforesaid [<sup>F48</sup>or to any class of such premises] this subsection shall have effect in that year in relation to those premises [<sup>F49</sup>or, as the case may be, to premises in that class] with the substitution for one-half of such other fraction, not exceeding one-half and not less than one-quarter, as may be specified in the resolution.

- (2) [<sup>F50</sup>Subject to subsection (2A) below,] where a supply of water is provided to any premises to which this section applies and which are entered in the valuation roll at a net annual value exceeding such amount as the water authority providing a supply of water to the premises may from time to time determine, the occupier thereof shall have the option of taking the supply by meter.

[<sup>F51</sup>(2A) Where the Secretary of State considers that the amount of the net annual value determined by a water authority under subsection (2) above is too high, he may determine an amount of net annual value in place of that determined by the authority, and subsection (2) shall thereafter have effect accordingly.]

- (3) ..... <sup>F52</sup>

- (4) This section applies to lands and heritages being premises occupied wholly or partly as a shop, offices, a warehouse, factory, cinematograph theatre, theatre, town hall, dance hall or concert hall, and such other premises [<sup>F53</sup>of whatsoever kind but] not being such premises as are mentioned in section 42 or 43 as the water authority providing a supply of water to the premises may from time to time resolve.

#### Textual Amendments

- F46** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 25, Sch. 5 Pt. IV para. 30\(a\)\(i\)](#)
- F47** Words inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 25, Sch. 5 Pt. IV para. 30\(a\)\(ii\)](#)
- F48** Words inserted (*retrospectively*) by [Local Government and Housing Act 1989 \(c.42, SIF 81:2\), s. 145, Sch. 6 para. 17\(1\)\(a\)\(i\)\(2\)](#)
- F49** Words inserted (*retrospectively*) by [Local Government and Housing Act 1989 \(c.42, SIF 81:2\), s. 145, Sch. 6 para. 17\(1\)\(a\)\(ii\)\(2\)](#)
- F50** Words inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 25, Sch. 5 Pt. IV para. 30\(b\)](#)
- F51** S. 41(2A) inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2\), s. 25, Sch. 5 Pt. IV para. 30\(c\)](#)
- F52** S. 41(3) repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 34, Sch. 6](#)
- F53** Words inserted (*retrospectively*) by [Local Government and Housing Act 1989 \(c.42, SIF 81:2\), s. 145, Sch. 6 para. 17\(1\)\(b\)\(2\)](#)

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### Marginal Citations

**M15** 1973 c. 65.

VALID FROM 01/04/1993

### [<sup>F54</sup>41A Supply of water by meter.

- (1) Where premises to which water is supplied are premises in respect of which there is an entry on the valuation roll, the occupier shall have the option of taking the supply by meter.
- (2) Where premises to which water is supplied constitute a dwelling within the meaning of section 72(2) of the 1992 Act—
  - (a) the owner of the dwelling; or
  - (b) the person or persons who, in terms of section 75 of that Act—
    - (i) are liable to pay council tax on the dwelling; or
    - (ii) would have been so liable had the building not been exempt from council tax under section 72(6) of that Act,
 shall have the option of taking the supply by meter.
- (3) Neither of the parties mentioned in paragraph (a) or (b) of subsection (2) above may exercise the option mentioned in that subsection without the consent of the other.
- (4) The exercise of the option mentioned in subsections (1) and (2) above is subject to—
  - (a) the payment by the person exercising the option of any reasonable charges made by the authority under section 35 of this Act; and
  - (b) the acceptance by him of such reasonable terms and conditions as may be published by the authority under section 55(1) of this Act,
 and any question as to whether any such charges or terms and conditions are reasonable shall, in default of agreement, be referred to the Secretary of State who may determine it himself or, if he thinks fit, refer it for arbitration.]

### Textual Amendments

**F54** S. 41A inserted (1.4.1993) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 107, [Sch. 11](#), Pt. IV, para.32 (with s. 118(1)(2)(4)); S.I. 1993/575, [art. 2\(b\)](#)

### [<sup>F55</sup>42 Levy of non-domestic water rate on certain subjects.

Where the non-domestic water rate is leviable in respect of premises being lands and heritages occupied as waterworks or sewage works, or as a mine or a quarry, or as a public park or recreation ground, it shall be levied according to one quarter of the net annual value or, in respect of part residential subjects, one quarter of the part which is shown in the apportionment note as relating to the non-residential use of those subjects.]

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#### Textual Amendments

**F55** Ss. 42, 43 substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 31](#)

### 43 Levy of non-domestic water rate on shootings and fishings.

Where the non-domestic water rate is leviable in respect of premises being lands and heritages occupied as shootings or as fishings it shall be levied according to one eighth of the net annual value thereof.

44, 45. .... <sup>F56</sup>

#### Textual Amendments

**F56** Ss. 44, 45 repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 34, [Sch. 6](#); and ss. 44, 45 expressed to be repealed (1.4.1996) by [1994 c. 39, s. 180\(2\)](#), [Sch. 14](#); [S.I. 1996/323, art. 4\(1\)\(d\)](#), [Sch. 2](#)

### 46 Transport hereditaments.

- (1) Without prejudice to the provisions contained in section 17(4C) (payment in lieu of rates) of the <sup>M16</sup>Local Government (Scotland) Act 1966, it is hereby declared that nothing in the foregoing provisions of this Part affects the exemption from liability to be rated or to be included in any valuation roll or in any rate conferred by Part V of the <sup>M17</sup>Local Government Act 1948 on premises being a railway or canal hereditament.
- (2) Subject to the said section 17(4C), where a water rate was in the year 1947-48 levied in respect of premises being a railway or canal hereditament and no charge calculated by reference to the amount of water consumed was made, no charge by way of meter [<sup>F57</sup>, community water charge or the non-domestic water rate] shall be made in any subsequent year during which the premises are occupied as such a hereditament in respect of a supply of water (whether for domestic purposes or otherwise) to those premises by a water authority.
- (3) Subject to the said section 17 (4C), where no payment by way of water was made in the year 1947-48 in respect of any such premises as aforesaid, or where in that year a charge calculated in accordance with the amount of water consumed was made in respect of a supply of water to such premises (whether a water rate was levied in addition to such charge or not), the water authority shall be entitled to make in any subsequent year in respect of any supply of water to those premises a charge calculated by reference to the amount of water consumed thereon.
- (4) In this section the expression “railway or canal hereditament” has the meaning assigned to it by the Local Government Act 1948 for the purposes of part V of that Act; and the expression “1947-48” has the meaning assigned to it by Part VIII of that Act.



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### Textual Amendments

**F57** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 32](#)

### Modifications etc. (not altering text)

**C11** [S. 46](#) repealed so far as it relates to premises of the British Waterways Board in Scotland by [S.I. 1985/194, art. 7\(3\)\(b\)](#) and so far as it relates to premises of the British Railways Board and any subsidiary of that Board in Scotland by [S.I. 1985/196, art. 7\(3\)](#)

### Marginal Citations

**M16** 1966 c. 51.

**M17** 1948 c. 26.

## 47 Domestic water rate in certain cases.

(1) Notwithstanding anything in the foregoing provisions of this Part, no <sup>[F58]</sup>non-domestic water rate] shall be payable in respect of any premises to which a water authority were immediately before 16th May 1949 by virtue of any enactment or agreement under an obligation to provide a supply of water free of charge, and no charge or other payment shall be required by the authority to be made in respect of that supply.

(2) Where by virtue of any local enactment in force immediately before 16th May 1949 the domestic water rate was leviable in any area specified in the local enactment at an amount per pound determined by the local enactment (whether as an amount per pound specified therein or as an amount per pound being a proportion so specified of the amount per pound at which the domestic water rate would otherwise be payable, or otherwise), the <sup>[F59]</sup>non-domestic water rate] shall during such period as is specified in the local enactment <sup>[F60]</sup>in relation to the domestic water rate] be payable in that area at the amount per pound so specified <sup>[F61]</sup>in relation to the domestic water rate]:

<sup>[F62]</sup>Provided that if in any financial year during the said period the non-domestic water rate levied generally within the region or islands area is lower than the non-domestic water rate falling to be levied for that financial year in accordance with the foregoing provisions of this subsection, the non-domestic water rate to be levied in such area as aforesaid shall not exceed the amount of that rate levied generally within the region or islands area.]

(3) Notwithstanding anything in the foregoing provisions of this Part, <sup>[F63]</sup>non-domestic water rate shall not be payable] in respect of the provision of a supply of water to any premises to which a water authority were, by virtue of any enactment or agreement in force immediately before 16th May 1949, under an obligation to provide such a supply on terms more favourable to the person having the vested interest in the obligation than those which, apart from the obligation, would have been applicable under the enactments in force immediately before that date relating to the supply of water by the authority in the limits of supply in which the premises are situated, and the supply shall continue to be provided on the following, and no other, terms, that is to say—

- (a) where immediately before 16th May 1949 there was leviable under such an enactment a rate other than a public water rate, on such terms as may be agreed between the authority and the person having the vested interest in the obligation;



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- (b) in any other case on the terms on which immediately before that date it was provided under the enactment or agreement.
- (4) In determining for the purposes of the foregoing provisions of this section whether a supply of water provided under any enactment or agreement in force immediately before 16th May 1949 was provided free of charge or was such a supply as is mentioned in subsection (3), or in determining the sum which by virtue of that subsection is to be paid in respect of such a supply, no account shall be taken of any public water rate levied under any such enactment in respect of the premises so supplied or of any undertaking (other than an undertaking to pay a rate or a charge) entered into by the person having the vested interest in the obligation in consideration of which the supply was provided.
- (5) Any question arising under this section whether a water authority are required to provide a supply of water free of charge, or whether a supply is such a supply as is mentioned in subsection (3), or as to the terms on which a supply was provided immediately before 16th May 1949, or on which by virtue of this section a supply is to continue to be provided or otherwise, shall, in default of agreement, be referred to the Secretary of State, and the Secretary of State may determine it himself or, if he thinks fit, may refer it for determination by arbitration.
- (6) In this section the expression “public water rate” means in relation to any supply any rate called the public water rate in the local enactment by virtue of which the supply is provided on special terms.
- (7) Nothing in the provisions of subsection (1) or (3) shall be construed as continuing any exemption conferred by either of these subsections from the payment in whole or in part of [<sup>F64</sup>non-domestic water rate], where the water authority have ceased to be under the obligation which gave rise to that exemption.

#### Textual Amendments

- F58** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 33](#)
- F59** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 34\(a\)](#)
- F60** Words inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c.47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 34\(b\)](#)
- F61** Words inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 34\(c\)](#)
- F62** Proviso substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 35](#)
- F63** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 36](#)
- F64** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 37](#)

#### 48 Levying of, and exemptions from, rates.

- (1) The provisions of Part XI of the <sup>M18</sup>Local Government (Scotland) Act 1947 (which relate to the levy and collection of rates and to requisitions), Part VII of the <sup>M19</sup>Local Government (Scotland) Act 1973 and sections 7 to 10 of the <sup>M20</sup>Local Government (Scotland) Act 1975 shall, in their application to the [<sup>F65</sup>non-domestic water rate]

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levied under this Part, have effect subject to such adaptations and modifications as may be prescribed.

- (2) The amount of the annual value of any lands and heritages according to which the [<sup>F66</sup>non-domestic water rate] is leviable in accordance with the foregoing provisions of this Part shall, if it includes a fraction of a pound, be increased or reduced as the case may be, to the nearest complete pound or, if the fraction is 50 pence, the fraction shall be disregarded.
- (3) Nothing in this part shall affect the total exemption from any rates [<sup>F67</sup>or charges] conferred in respect of any lands and heritages by or under any enactment in force at the passing of the <sup>M21</sup>Water (Scotland) Act 1949.

#### Textual Amendments

- F65** Words substituted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 38**
- F66** Words substituted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 39**
- F67** Words inserted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2), 103:2, s. 25, Sch. 5 Pt. IV para. 40

#### Marginal Citations

- M18** 1947 c. 43.
- M19** 1973 c. 65.
- M20** 1975 c. 30.
- M21** 1949 c. 31.

### 49 Payment for supplies by meter.

- (1) Where water is supplied by meter by a water authority, the charge in respect of the supply shall be calculated by reference to the amount of water consumed on the premises, but there may, in respect of that supply, be a fixed minimum charge of such amount as from time to time may be determined by the water authority.

[<sup>F68</sup>(1A) Charges payable under this section shall be payable by the occupier of the premises in respect of which they are due.]

- (2) Charges payable under this section, including charges for any meter supplied by the authority, shall be recoverable in the manner in which [<sup>F69</sup>non-domestic rates] in respect of the premises supplied are recoverable.

#### Textual Amendments

- F68** S. 49(1A) inserted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 41**
- F69** Words substituted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 42**

### 50 Power to require supply by meter.

A water authority shall not be bound to supply with water otherwise than by meter—

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- (a) any premises whereof part is used as a dwelling house and part for any business, trade or manufacturing purpose for which water is required;
- (b) any public institution, hospital, asylum, nursing home, sanatorium, school, club, hostel, camp, assembly hall, place of public entertainment, hotel or restaurant or any licensed premises for which a licence is required under the <sup>M22</sup>Licensing (Scotland) Act 1976;
- (c) any boarding-house capable of accommodating 12 or more persons, including the persons usually resident therein; or
- (d) any premises which are used solely for business, trade or manufacturing purposes and in which a supply of water for domestic purposes only is required.

**Marginal Citations**

M22 1976 c. 66.

**51 Power to require supplies for refrigerating apparatus, etc., to be taken by meter.**

Where a person who takes a supply of water for domestic purposes from a water authority otherwise than by meter desires to use any of the water so supplied—

- (a) for operating a water-cooled or refrigerating apparatus;
- (b) for operating any apparatus depending while in use upon a supply of continuously running water, not being an apparatus used solely for heating the water; or
- (c) for cleaning, regenerating or supplying motive power to an apparatus used for softening water,

the authority may require that all water so supplied shall be taken by meter.

**52 Power to require supply for hose pipe to be taken by meter.**

Where water which a water authority supply for domestic purposes is used by means of a hosepipe or similar apparatus for watering a garden or for horses, washing vehicles or other purposes in stables, garages or other premises where horses or vehicles are kept, the authority may require that all water so supplied shall be taken by meter.

**53 Provision as to supply to tents, vans, sheds, etc.**

(1) No person shall be entitled to demand or to continue to receive from a water authority a supply of water to any habitation to which this subsection applies unless he has—

- (a) agreed with the authority to take a supply of water by meter and to pay to them such minimum annual sum as will give them a reasonable return on the capital expenditure incurred by them in providing the required supply and will cover other standing charges incurred by them in order to meet the possible maximum demand for his habitation, and will yield a reasonable return on the cost of the water supplied; and
- (b) secured to the reasonable satisfaction of the authority by way of deposit or otherwise, payment of such a sum as may be reasonable having regard to his possible maximum demand for water.

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The annual sum to be so paid and the security to be so given shall be determined, in default of agreement, by the sheriff, whose decision shall be final.

- (2) The habitations to which subsection (1) applies are tents, vans or other conveyances, whether on wheels or not, and sheds or similar structures.
- (3) . . . . . <sup>F70</sup>

#### Textual Amendments

**F70** S. 53(3) repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 34, [Sch. 6](#)

### 54 Register of meter to be evidence.

- (1) Where a water authority supply water by meter, the register of the meter shall be [<sup>F71</sup>sufficient] evidence of the quantity of water supplied
- (2) Any question arising between the authority and a consumer with respect to the quantity of water supplied may, on the application of either party, be determined by the sheriff.
- (3) If the meter on being tested is proved to register incorrectly to any degree exceeding five per cent—
  - (a) the meter shall be deemed to have registered incorrectly to that degree since the last occasion but one before the date of the test on which a reading of the index of the meter was taken by the authority, unless it is proved to have begun to register incorrectly on some later date; and
  - (b) the amount of any refund to be made to, or of any extra payment to be made by, the consumer shall be paid or allowed by the authority or paid by the consumer, as the case may be, and in the case of an extra payment shall be recoverable in the manner in which [<sup>F72</sup>non-domestic rates] in respect of the premises supplied are recoverable.

#### Textual Amendments

**F71** Word substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 43](#)

**F72** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 44](#)

### 55 Charges for water supplied by meter.

- (1) Every water authority shall prepare and maintain a schedule of the terms and conditions on which they are prepared in general to give a supply of water by meter or otherwise, and that schedule shall be published in such manner as in the opinion of the authority will secure adequate publicity for it.
- (2) Nothing in the foregoing subsection shall be construed as prejudicing the rights or duties under section 9 of a water authority or of any person supplied or proposed to be supplied by them under that section.

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- (3) Every water authority shall keep a register in which they shall enter particulars of every agreement entered into by them for the giving of a supply of water for purposes other than domestic purposes to any person on terms and conditions other than the terms and conditions for the time being set forth in the schedule maintained by them under subsection (1).
- (4) The register kept under subsection (3) shall be kept at the office of the authority and shall be open at all reasonable hours to the inspection of [<sup>F73</sup>the public] without payment of any fee.

**Textual Amendments**

**F73** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, [Sch. 5 Pt. IV para. 45](#)

**56 Provisions as to supply of water to agricultural subjects.**

- (1) Where a supply of water for purposes other than domestic purposes is provided for premises being agricultural lands and heritages, the water authority shall require the supply to be taken either by meter or on other specified terms as they may from time to time in their discretion determine.
- (2) Where a water authority supply water by meter for purposes other than domestic purposes to any premises being agricultural lands and heritages and also supply water for domestic purposes to any dwelling house comprised in such premises, the authority shall, if it is reasonably practicable so to do, provide the whole supply of water to such premises and dwelling house through a single meter.

VALID FROM 01/04/1993

[<sup>F74</sup>56A **Regulations as to meters.**

The Secretary of State may make regulations under this Act as to the installation, connection, use, maintenance, authentication and testing of meters, and as to any related matters.]

**Textual Amendments**

**F74** [S. 56A](#) inserted (1.4.1993) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 107, [Sch. 11, Pt. IV](#), para. 35 (with s. 118(1)(2)(4)); S.I. 1993/575, [art. 2\(b\)](#)

**57** ..... <sup>F75</sup>

**Textual Amendments**

**F75** [S. 57](#) repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c.47, SIF 81:2, 103:2\)](#), s. 34, [Sch. 6](#)

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## 58 Termination of right to supply of water on special terms.

- (1) Where by virtue of any enactment including any enactment in this Act) or of any agreement a water authority are under an obligation to which this section applies, the authority and the person having the vested interest in the obligation may <sup>F76</sup> enter into an agreement to terminate the obligation on such terms and conditions as to compensation or otherwise as they may agree; and any such agreement shall be enforceable against any person deriving title from the person who entered into the agreement.
- (2) The Secretary of State may, on the application of the water authority and after affording to the person having the vested interest in the obligation an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, by order provide for the termination compulsorily of an obligation to which this section applies on payment of compensation, the amount of which shall, in default of agreement, be determined in manner provided by the Lands Clauses Acts with references to the taking of lands otherwise than by agreement, and the order may contain such incidental, consequential and supplementary provisions, including provisions for the amendment and repeal of any local enactment, as the Secretary of State thinks necessary or expedient.
- (3) The amount of the compensation to be paid under subsection (2) shall be assessed by reference to the value of the rights secured under the obligation as at the date of the making of the order, and in assessing that value regard shall be had to [<sup>F77</sup>the amount of any charge under section 49, community water charge or non-domestic water rate], as the case may be, which may reasonably be expected to become payable as a result of the termination of the obligation.
- (4) This section applies to any obligation on the part of any water authority providing to any person other than a district council or a water authority a supply of water (whether for domestic purposes or for purposes other than domestic purposes) to provide that supply free of charge or on terms more favourable to the person having the vested interest in the obligation than those which apart from the obligation would be applicable.
- (5) The water authority shall record in the appropriate Register of Sasines any agreement entered into or order made under the foregoing provisions of this section terminating an obligation to which this section applies if the obligation was itself recorded in the Register of Sasines.
- (6) Where an application under subsection (2) relates to an obligation under which the water authority making the application are required to provide a supply of water to premises in the limits of supply of another water authority or the district of a district council the order may, with the concurrence of the authorities concerned, contain provisions for the payment by that other water authority or by that district council of such part of the compensation payable by virtue of the order as the order may prescribe.
- (7) An obligation to furnish a supply of water or to grant a wayleave for pipes or to give any other benefit or advantage to a water authority entered into in consideration of an obligation to which this section applies shall not be deemed to be terminated by reason only of the termination under this section of the last mentioned obligation.
- (8) No water authority shall by agreement or otherwise incur any obligation of the kind to which this section applies.

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#### Textual Amendments

- F76** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\), Sch. 2 para. 40, Sch. 4](#)
- F77** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 25, Sch. 5 Pt. IV para. 46](#)

### 59 Limitation of liability of water authority to supply water on special terms.

- (1) Notwithstanding anything in any such obligation as is mentioned in section 58(4) a water authority shall not be liable under the obligation to provide to any premises in any year a quantity of water greater than the quantity supplied thereto in the year immediately preceding 27th October 1948, or to provide to any premises not provided by them with a supply of water on that day a supply otherwise than on the terms on which the supply would, apart from the obligation, have been provided under the <sup>M23</sup>Water (Scotland) Act 1946 and the <sup>M24</sup>Water (Scotland) Act 1949.
- (2) Any question arising under the foregoing subsection shall in case of dispute be determined by arbitration.

#### Marginal Citations

- M23** 1946 c. 42.  
**M24** 1949 c. 31.

### 60 Requisitions.

- (1) Each water authority—
- (a) who are a regional council, and
  - (b) whose limits of supply extend beyond their own region or who supply water to premises in another region,
- shall in respect of any financial year determine <sup>F78</sup>the amount required to be requisitioned by the water authority under this Part from each of their contributing authorities <sup>F78</sup>.
- (2) Each such water authority shall, by such date or dates as may be prescribed, cause a requisition in respect of any financial year to be sent to their contributing authorities requiring each of them to pay such sum as may be apportioned to each under the subsequent provisions of this Part, and each of those authorities shall, at such intervals and by such instalments as may be prescribed, pay over to the water authority the sum so requisitioned.
- (3) In this section “prescribed” means prescribed by regulations made by the Secretary of State under section 111 of the <sup>M25</sup>Local Government (Scotland) Act 1973.

#### Textual Amendments

- F78** Words repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\), s. 34, Sch. 6](#)



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**Marginal Citations**

M25 1973 c. 65.

**61 Calculation of amount to be requisitioned by water authorities.**

[<sup>F79</sup>(1) Subject to subsection (2) below, the amount of the requisition made by a requisitioning authority on any contributing authority shall be calculated by—

- (a) estimating the cost to the requisitioning authority of supplying the volume of water which is to be supplied to the contributing authority in the financial year; and
- (b) deducting therefrom the estimated income which will be received by the requisitioning authority in that financial year by way of charges or other sources (not being community water charges or the non-domestic water rate) from the parts of the contributing authority’s area supplied.

(2) In respect of any financial year, the sum of the requisition made on any contributing authority and the estimated income mentioned in subsection (1)(b) above shall bear the same relationship to the expenditure incurred by the requisitioning authority in the exercise of all its water supply functions as the estimated volume of water to be supplied to that contributing authority bears to the total volume of water to be supplied by the requisitioning authority, whether for consumption inside its own area or elsewhere.

(3) For the purposes of this section “requisitioning authority” means a water authority such as is mentioned in section 60(1) above.]

(5) Where, in the case of any water authority, the Secretary of State considers, having regard to all the circumstances, that it would be unreasonable or inequitable that the methods of calculating the sums to be requisitioned, as required by [<sup>F79</sup>subsections (1) and (2)], should apply, he may by order modify the requirements of either or both of the said subsections or specify a different method of calculation and, in either event, may so specify the financial years during which the provisions of the said order are to operate, and in relation to that authority in respect of those years the provisions of those subsections as so modified, or, where the said order specifies a different method of calculation, the provisions of that order, shall have effect for the purposes of this section.

(6) ..... <sup>F80</sup>

**Textual Amendments**

**F79** S. 61(1)–(3) substituted for s. 61(1)–(4) by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 47**

**F80** Words substituted by Abolition of Domestic Rates Etc. (Scotland) Act 1987 (c. 47, SIF 81:2, 103:2), s. 25, **Sch. 5 Pt. IV para. 48**

62 ..... <sup>F81</sup>



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### Textual Amendments

- F81** S. 62 repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c.23, SIF 81:2\)](#), s. 41, [Sch. 4](#)

## PART V

### HOUSES, ETC., TO BE SUPPLIED WITH WATER

#### 63 Provision of water supply for new buildings and houses.

- (1) Subject to the provisions of this section, it shall be the duty of any person erecting or causing to be erected a building the erection of which is begun after 15th May 1946 to make adequate provision to the satisfaction of the local authority for a sufficient supply of wholesome water in pipes for the domestic purposes of the persons occupying or using the building.
- (2) In the case of a building being a factory within the meaning of the <sup>M26</sup>Factories Act 1961, other than a factory in which the production or the preparation of food or drink for human consumption is carried on by way of trade, where the Secretary of State, after consulting the water authority is satisfied—
  - (a) that the authority would be unable to provide a sufficient supply of wholesome water in pipes for the purposes aforesaid without endangering their ability to meet existing obligations to supply water for any purpose or probable future requirements to supply water for domestic purposes or without having to incur unreasonable expense, and
  - (b) that it would not be reasonably practicable to obtain a sufficient supply as aforesaid from any other source,

it shall be a sufficient compliance with the requirements of this section if adequate provision is made to the satisfaction of the local authority for the installation of a sufficient supply of wholesome water in pipes for drinking, cooking and personal ablution and of a sufficient supply of suitable water in pipes for sanitary and other domestic purposes.

- (3) Subject to, and without prejudice to the generality of, the provisions of this section, no person shall after 15th May 1946 erect or cause to be erected a house or shall use or permit to be used as a house any building the erection of which is begun after that date, unless there is provided within the house or building a sufficient supply of wholesome water for domestic purposes in pipes.
- (4) For the purposes of this section a building or house shall be deemed to be erected where the building or house is re-erected after an outer wall of the building or house has been broken or pulled or burned down to within 10 feet of the surface of the ground adjoining the lowest storey.
- (5) If any person contravenes any of the provisions of this section, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F82</sup>level 3 on the standard scale] and in the case of a house or building being occupied as a house contrary to the provisions of subsection (3) he shall be liable to a further fine not exceeding £25 for each day on which the house or building is occupied as a house after conviction; and without prejudice to proceedings for the recovery of any such

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fine, the local authority may institute civil proceedings for the purpose of interdicting the occupation of any building in the case of which the provisions of subsection (1) are not complied with, or the occupation of a house as a house or the use of a building as a house in the case of which the provisions of subsection (3) are not complied with.

- (6) In this section “local authority” has the same meaning as in the <sup>M27</sup>Building (Scotland) Act 1959.

#### Textual Amendments

**F82** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**

#### Marginal Citations

**M26** 1961 c. 34.

**M27** 1959 c. 24.

## 64 Provision of supply of water to other houses.

- (1) It shall be the duty of the owner of every house within which there is not a sufficient supply of wholesome water for domestic purposes to provide such a supply of water in pipes within the house, unless it is not reasonably practicable to do so, and in that event, he shall, so far as not already done, provide such a supply of water immediately outside the house or as near thereto as is reasonably practicable.

It shall be the duty of every islands or district council to give such notices as are necessary to secure compliance with the provisions of this subsection, and every such notice shall be served on the owner and on every person known to the council to be interested as a heritable creditor in the house and shall state the time within which the works to which it relates are to be executed.

- (2) Where an islands or district council are required by the subsection (1) to serve a notice on the owner of any house, they shall require such owner to furnish a written statement specifying the name and address of every person interested as a heritable creditor in the house; and if any person fails to give the council any information required by them under this subsection, or knowingly makes any misstatement with reference thereto, he shall be liable on summary conviction to a fine not exceeding [<sup>F83</sup>level 3 on the standard scale].
- (3) The owner or any person interested as a heritable creditor in the house may, within 28 days after the service of the notice required to be served under subsection (1), appeal against the notice to the sheriff, who may make such order confirming or varying or annulling the notice as seems to him proper in the circumstances.
- (4) If and in so far as the appeal is based on the ground of some informality, defect or error in or in connection with the notice, the sheriff shall dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.
- (5) Subject to such right of appeal, if an owner on whom such a notice requiring the execution of any work is served fails to execute the work within the time thereby limited, the islands or district council—
- (a) may themselves execute the work and for that purpose may exercise the like powers as a water authority may exercise under this Act for the purposes

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- of their water undertaking, and may recover from the owner the expenses reasonably incurred by them in executing the work; or
- (b) may agree with the occupier of the house that he shall execute the works, in which case, on the works being executed and paid for by the occupier, he shall be entitled to recover from the owner the expenses reasonably incurred by him in so doing, together with interest thereon at the rate of five per cent per annum from the date of service of a demand for payment of the said expenses, or to deduct the amount of such expenses and interest from the rent of the house from time to time becoming due to the owner.
- (6) Where the owners of two or more houses have failed to comply with the requirements of such notices and the islands or district council might execute the necessary works for the supply of water for each house, the council may, if it appears to them desirable and that no greater expense would be occasioned thereby, execute works for the joint supply of water for those houses, and may recover the whole or a reasonable part of the expenses incurred by them from the owners of the houses in such proportions as may be determined by the council or, in case of dispute, by arbitration.
- (7) Where an islands or district council are satisfied that an owner on whom such a notice requiring the execution of any work is served is unable to comply with the requirements thereof by reason of his being unable on reasonable terms to acquire any necessary rights to take water from a suitable source or to lay pipes through any land not belonging to him or to do any other work, the council may at the expense of the owner themselves take such steps as are necessary for the execution of the work, and for that purpose may exercise the like powers as a water authority may exercise under this Act for the purposes of their water undertaking.
- (8) An islands or district council may, if they think fit, contribute towards the cost of complying with any requirement made by them under the foregoing provisions of this section, and where they agree to make such a contribution the expenses shall be deemed to be the net expenses after deducting such contribution.
- (9) Without prejudice to any of the foregoing provisions of this section, an owner on whom a notice given under this section has been served shall, if he fails to comply with any requirement thereof, be guilty of an offence and shall on summary conviction be liable to a fine not exceeding [<sup>F84</sup>level 1 on the standard scale] and to a further fine not exceeding £25 for each day on which the default continues after conviction therefor.
- (10) Where proceedings for the recovery of expenses incurred under this section are taken against an owner on whom a notice under this section has been served, it shall not be open to him to raise in those proceedings any question which he could have raised on an appeal under this section.
- (11) In this section and in the three next following sections the expression “owner” has the same meaning as in the <sup>M28</sup>Public Health (Scotland) Act 1897:

Provided that a landholder within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931 shall, for the purposes of the said sections, be deemed to be the owner of any house on his holding in respect of which he would, on the termination of his tenancy, be entitled to compensation under the said Acts.

#### Textual Amendments

**F83** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 6](#)

**F84** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#)

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#### Marginal Citations

M28 1897 c. 38.

### 65 Power of council to make charging order for expenses of executing works.

- (1) Where an islands or district council have under section 64 required any owner of a house to execute any works and the work has been completed, the council may on the application of the owner and on being satisfied as to the due execution of the work and as to the amount of the expenditure thereon make an order (in this section referred to as a “charging order”) declaring that the house and any land held in connection therewith are thereby charged and burdened with an annuity to repay the amount of the expenditure together with an annuity to repay the amount of the expenditure together with the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines [<sup>F85</sup>or registering it in the Land Register of Scotland, as the case may be].
- (2) Subject as hereinafter provided, the annuity charged shall be such sum (not exceeding such sum as may from time to time be prescribed) as the council may determine in respect of every hundred pounds of the said amount, and so in proportion in respect of any fraction of that amount, and shall commence from the date of the order and be payable by equal half-yearly payments to the person named in the order by whom the expenditure was incurred, his executors or assignees until the expiration of a period of 30 years from the date on which the council were satisfied as to the due execution of the work.
- (3) Where a council have incurred expenses in the execution of works under section 64 then, without prejudice to any other remedy for, or any preference with respect to, the recovery thereof, it shall be competent for them, on giving not less than 14 days’ notice to the owner, to make a charging order in favour of themselves in respect of such expenses (including the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines [<sup>F86</sup>or registering it in the Land Register of Scotland, as the case may be]) in like manner as they may make a charging order in favour of a person under the foregoing provisions of this section.
- (4) A charging order shall not have effect until it is recorded in the appropriate Register of Sasines [<sup>F87</sup>or (as the case may be) in the Land Register of Scotland in a case where the interest in land affected by the order is registered in that Register].
- (5) Every annuity constituted a charge by a charging order which is recorded in the appropriate Register of Sasines [<sup>F88</sup>or registered in the Land Register of Scotland, as the case may be] shall be a charge on the house and land specified in the order, having priority over all existing and future estates, interests and incumbrances with the exception of—
  - (a) feuduties and teinds;
  - (b) any charges on the premises by virtue of charging orders under the Housing (Scotland) Acts 1966 to 1975 recorded before the recording of the order under this section; and
  - (c) any charge created under any Act authorising advances of public money;
 and where more annuities than one are charged under this section on any house and land such annuities shall as between themselves have order and preference according to the respective dates of the recording of the charging orders in the appropriate Register of Sasines.

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- (6) A charging order recorded in the appropriate Register of Sasines [<sup>F89</sup>or registered in the Land Register of Scotland, as the case may be] shall be conclusive evidence that all notices, acts and proceedings by this Part of this Act required in connection with the execution of the work or with reference to or consequent on obtaining or making such an order have been duly served, done and taken, and that the charge has been duly created and is a valid charge on the house and land declared to be subject thereto.
- (7) Every annuity charged by any such charging order may be recovered by the person for the time being entitled to it by the same means and in the like manner in all respects as if it were a rentcharge secured on the subjects by absolute order made under and in terms of the <sup>M29</sup>Improvement of Land Act 1864.
- (8) A charging order and all sums payable thereunder may from time to time be transferred in like manner as a standard security or rentcharge.
- (9) Any owner of, or other person interested in, a house and land on which an annuity has been charged by any such charging order shall at any time be entitled to redeem the annuity on payment to the person entitled to the annuity of such sum as may be agreed upon or, in default of agreement, determined by the Secretary of State [<sup>F90</sup>and shall, on request, be entitled to receive a discharge in respect of the redemption which may be registered, notwithstanding its form, in the Register of Sasines or Land Register of Scotland, as the case may be.]
- (10) A charging order [<sup>F91</sup>or discharge] shall be in such form as may be prescribed [<sup>F92</sup>by the islands or district council].

#### Textual Amendments

- F85** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F86** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F87** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(c)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F88** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(d)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F89** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(e)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F90** Words added by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(f)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F91** Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 60(2)(g)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F92** Words added by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 25, **Sch. 2 para. 41**

#### Modifications etc. (not altering text)

- C12** S. 65(2) applied (with modifications) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), **s. 75(4)** (with ss. 45(3), 87, Sch. 12 para. 3)
- C13** S. 65(4) applied (with modifications) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), **s. 75(4)** (with ss. 45(3), 87, Sch. 12 para. 3)
- C14** S. 65(6) applied (with modifications) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), **s. 75(4)** (with ss. 45(3), 87, Sch. 12 para. 3)



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- C15** S. 65(7)(8) applied (with modifications) (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), **s. 75(4)** (with ss. 45(3), 87, Sch. 12 para. 3)
- C16** S. 65(9) applied (with modifications) (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), **s. 75(4)** (with ss. 45(3), 87, Sch. 12 para. 3)
- C17** S. 65(10) applied (with modifications) (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), **s. 75(4)** (with ss. 45(3), 87, Sch. 12 para. 3)

#### Marginal Citations

**M29** 1864 c. 114.

## 66 Recovery of expenses from owner.

- (1) Where an islands or district council have incurred expenses, for the repayment of which the owner of premises in respect of which the expenses were incurred is liable under this Part of this Act or the corresponding provisions contained in any enactment repealed by this Act, those expenses, together with interest from the date of service of a demand for payment of those expenses, may be recovered by the council from the person who is the owner of the premises at the date when the works are completed, or, if he has ceased to be the owner of the premises before the date when a demand for payment of the expenses is served from the person who is the owner at the date when the demand is served.
- (2) An islands or district council may by order declare any expenses so recoverable by them to be payable with interest by instalments for a period not exceeding 30 years until the whole amount is paid; and any such expenses and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and if recovered from the occupier may be deducted by him from the rent of the premises:

Provided that an occupier shall not be required to pay at any one time any sum in excess of the amount which was due from him on account of rent at, or has become due from him on account of rent since, the date on which he received a demand from the council, together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded.

An order may be made under this subsection at any time with respect to any unpaid balance of expenses and accrued interest, so however that the period for repayment shall not in any case extend beyond 30 years from the service of the first demand for payment of the expenses.

- (3) The rate of interest chargeable under subsection (1) or (2) shall be such [<sup>F93</sup>reasonable rate] as the islands or district council may determine: <sup>F94</sup>

#### Textual Amendments

**F93** Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), s. 25, **Sch. 2 para. 42(a)**

**F94** Proviso repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), ss. 25, 41, **Sch. 2 para. 42(b)**, Sch. 4

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## **67 Limitation of liability of certain owners.**

—Where an islands or district council claim to recover any expenses under this Part of this Act from a person as being the owner of the premises in respect of which the expenses were incurred, and that person proves that he—

- (a) is receiving the rent of those premises merely as a trustee, tutor, curator, factor or agent for some other person, and
- (b) has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the council,

his liability shall be limited to the total amount of the money which he has or has had in his hands as aforesaid; but an islands or district council who are or would be debarred by the foregoing provisions from recovering the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover the whole or any unpaid balance thereof from the person on whose behalf he receives the rent.

## **PART VI**

### **CONSERVATION AND PROTECTION OF WATER RESOURCES**

## **68 Agreements as to drainage.**

- (1) A water authority or water development board may enter into agreements—
  - (a) with the owners and occupiers of any land, in so far as their interest enables them to bind it, or
  - (b) with a regional, islands or district council,

with respect to the execution and maintenance by any party to the agreement of such works as the authority or board consider necessary for the purpose of draining that land, or for more effectually collecting, conveying, or preserving the purity of, water which they are for the time being authorised to take:

Provided that where the execution of any such works would result in the discharge of water, otherwise than through public sewers, into any watercourse which is within a fishery district or is subject to the jurisdiction of a navigation authority or from which any public undertakers are authorised by any enactment to take or use water, the authority or board shall, before entering into the agreement, consult with the fishery district board or the navigation authority or the undertakers concerned.

- (2) An agreement under this section with an owner of land shall, if it is so expressed therein, on being recorded in the appropriate Register of Sasines, be binding upon and enforceable against any person subsequently acquiring the land or any estate or interest therein.
- (3) An agreement under this section with a regional or islands council may extend to the execution and maintenance by that council or works of sewerage and sewage disposal.

## **69 Power to restrict use of hose pipes.**

- (1) If a water authority are of opinion that a serious deficiency of water available for distribution by them exists, or is threatened, they may for such period as they think necessary prohibit or restrict as respects the whole or any part of their limits of supply



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the use for the purpose of watering private gardens or washing private motor cars of any water supplied by them and drawn through a hosepipe or similar apparatus.

In this subsection the expression “private motor car” means a mechanically propelled vehicle intended or adapted for use on roads other than a public service vehicle within the meaning of section 117(1) of the <sup>M30</sup>Road Traffic Act 1960, or a goods vehicle within the meaning of section 196 of the <sup>M31</sup>Road Traffic Act 1972, and includes any vehicle drawn by a private motor car.

- (2) The authority shall, before the prohibition or restriction comes into force, give notice by publication in two or more newspapers circulating within the area affected and by such other means as the authority may think proper of the prohibition or restriction and of the date when it will come into force.
- (3) Any person who, while the prohibition or restriction is in force, contravenes its provisions, shall in respect of each offence be liable on summary conviction to a fine not exceeding [<sup>F95</sup>level 3 on the standard scale].

#### Textual Amendments

**F95** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

#### Marginal Citations

**M30** 1960 c. 16.

**M31** 1972 c. 20.

## 70 Byelaws for preventing misuse of water.

- (1) A water authority or water development board may make byelaws for preventing waste, undue consumption, misuse or contamination of water supplied by them, and such byelaws may, without prejudice to the foregoing generality, include provisions—
  - (a) prescribing the size, nature, design, materials, strength and workmanship, and the mode of arrangement, connection, disconnection, alteration and repair of the water fittings to be used; and
  - (b) forbidding the use of any water fittings which are of such a nature or design or are so arranged or connected as to cause or permit, or be likely to cause or permit, waste, undue consumption, misuse, erroneous measurement or contamination of water, or reverberation in pipes.
- (2) If a person contravenes the provisions of any byelaw made under this section, the authority or board may, whether proceedings have been taken in respect of the offence or not, cause any water fittings belonging to or used by that person which are not in accordance with the requirements of the byelaws to be altered, repaired or replaced, and may recover the expenses reasonably incurred by them in so doing from the person in default.
- (3) Nothing in this section, or in any byelaw made thereunder, shall apply to any fittings used on premises which belong to a railway company and are held or used by them for the purposes of their railway, so long as those fittings are not of such a nature or design or so arranged or connected as to cause or permit waste, undue consumption, misuse or contamination of water supplied by the authority or board or reverberation in pipes:

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Provided that the exemption conferred by this subsection shall not extend to fittings used in hotels or dwelling houses or in offices not forming part of a railway station.

[<sup>F96</sup>(4) Where a water authority or water development board consider that a byelaw made by them under this section ought not to operate in relation to any particular case or class of cases they may, with the consent of the Secretary of State, relax the requirements of, or dispense with compliance with, that byelaw accordingly:

Provided that the authority, or as the case may be the Board, shall, in such manner and to such person, if any, as the Secretary of State may direct, give notice of any such proposed relaxation or dispensation; and the Secretary of State—

- (a) shall not give his consent before the expiration of one month from the giving of the notice; and
- (b) shall, before giving his consent, take into consideration any relevant objection which may have been received by him.]

#### Textual Amendments

**F96** S. 70(4) added by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), s. 33

#### Modifications etc. (not altering text)

**C18** S. 70 amended (27.8.1993) by [1993 c. 12, s. 40\(4\)](#), [Sch. 3 Pt. II para.17](#) (with ss. 42, 46)

## 71 Byelaws for preventing pollution of water.

- (1) If it appears to a water authority or water development board to be necessary for the purpose of protecting against pollution any water whether on the surface or underground, which belongs to them or which they are for the time being authorised to take, they may by byelaws—
- (a) define the area within which they deem it necessary to exercise control; and
  - (b) prohibit or regulate the doing within that area of any act specified in the byelaws.

Byelaws made under this section may contain different provisions for different parts of the area defined by the byelaws.

- (2) Where an area has been defined by byelaws under this section, the authority or board may by notice require either the owner or the occupier of any premises within that area to execute and keep in good repair such works as they consider necessary for preventing pollution of their water, and, if he fails to comply with any such requirement, he shall be liable on summary conviction to the same penalties as if he had committed an act prohibited by the byelaws:

Provided that an owner or occupier who considers that a requirement made on him under this subsection is unreasonable may, within 28 days after service on him of the requirement, appeal to the sheriff who may, if he decides that the requirement is unreasonable, modify or disallow the requirement.

- (3) The authority or board shall pay compensation to the owners and occupiers of, and other persons interested in, any premises within the area defined by byelaws made under this section in respect of—

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- (a) any curtailment or injurious affection of their legal rights by restrictions imposed by the byelaws; and
- (b) any expenses incurred by them in complying with a requirement to construct and maintain any works the construction of which could not, apart from this section, lawfully have been required otherwise than upon payment of compensation by the regional, islands or district council;

and any question as to the amount of compensation to be paid shall in case of dispute be determined by arbitration.

In this subsection the expression “legal rights” includes the use of land in respect of which proceedings might have been taken by the regional, islands or district council or otherwise under any public general Act or under byelaws made thereunder, but have not been so taken, either by reason of the character or situation of the land or for some other reason.

- (4) Where any person has failed to comply with a requirement made on him under subsection (2) and either—
  - (a) he has not appealed to the sheriff against that requirement and the time for appealing has expired, or
  - (b) his appeal has been dismissed or the requirement has been modified on his appeal and he has failed to comply with the requirement as so modified,

the authority or board may, whether proceedings have been taken in respect of such failure or not, execute and keep in good repair the works specified in the requirement as originally made or, as the case may be, as modified on appeal, and may recover the expenses reasonably incurred by them in so doing from the person in default, except expenses incurred in respect of works the construction of which could not, apart from this section, lawfully have been required otherwise than upon payment of compensation by the regional, islands or district council.

- (5) Two or more authorities or boards may combine for the purpose of making and enforcing byelaws under this section, and this section and section 72(2) shall in any such case have effect as if the references to an authority or board were references to those two or more authorities or boards acting jointly.
- (6) Nothing in this section shall be construed as empowering the authorities or boards to make any byelaws restricting the rights of a navigation authority under any enactment.

**Modifications etc. (not altering text)**

**C19** S. 71 amended (27.8.1993) by 1993 c. 12, s. 40(4), **Sch. 3 Pt. II para.17** (with ss. 42, 46)

**72 General provisions as to byelaws.**

- (1) The Secretary of State shall be the confirming authority as respects byelaws made under either of the last two foregoing sections, and the provisions of Part IV of Schedule 1 shall apply to the making and confirming of such byelaws.
- (2) It shall be the duty of a water authority and water development board by whom such byelaws are made to enforce those byelaws, so however that nothing in this subsection shall be construed as authorising the authority to institute proceedings for any offence against those byelaws.

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- (3) Any such byelaws may contain provisions for imposing on any person contravening the byelaws a fine, recoverable on summary conviction, not exceeding the sum of [<sup>F97</sup>level 4 on the standard scale] in respect of each offence, and in the case of a continuing offence a further fine not exceeding £50 for each day during which the offence continues after conviction therefor.
- (4) Any byelaw made under either of the last two foregoing sections shall cease to have effect on the expiration of the period of 10 years beginning with the date on which it was made; but the Secretary of State may by order extend the period during which any such byelaw is to remain in force.

#### Subordinate Legislation Made

**P4** S. 72: power previously exercised by S.I. 1981/1801, 1988/327 and 1990/2250.

**P5** S. 72(4): s. 72(4) power exercised (12.11.1991) by S.I. 1991/2573

S. 72(4): s. 72(4) power exercised (20.11.1991) by S.I.1991/2639

#### Textual Amendments

**F97** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), Sch. 6

### 73 Power of Secretary of State to require the making of byelaws.

- (1) The Secretary of State may by notice require a water authority or water development board to make byelaws under section 70 or 71 in relation to such matters as he may specify, and, in the case of byelaws made under section 71, he shall specify the area for which the byelaws are to be made, and if the authority or board do not within three months after such requirement make in relation to the matters specified byelaws satisfactory to him, the Secretary of State may himself make byelaws with respect to those matters.
- (2) If, after they have been in operation for a period of not less than three years, the Secretary of State considers unsatisfactory any byelaws made by an authority or board under section 70 or 71 or any byelaws or regulations made by an authority or board under any other enactment conferring power to make byelaws or regulations for purposes similar to the purposes for which byelaws may be made under either of the said sections, he may by notice require the authority or board to revoke those byelaws or regulations and to make such new byelaws under section 70 or 71 as he considers necessary; and if the authority or board do not within three months after such requirement comply therewith, the Secretary of State may himself revoke the byelaws or regulations and make such new byelaws under section 70 or 71 as he considers necessary.
- (3) Any byelaws made by the Secretary of State under this section shall have effect as if they had been made by the authority or board concerned and confirmed by the Secretary of State.

### 74 Regulations to prevent waste, misuse or contamination of water.

- (1) The Secretary of State may make regulations for any of the purposes for which byelaws may be made under section 70 (byelaws for the prevention of waste, misuse or contamination of water); and any such regulations shall have effect in substitution

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for any such byelaws in force immediately before the coming into force of these regulations.

- (2) Any reference in this Act to a byelaw made under the said section 70 (other than a reference in section 72(1), (2) and (4) to byelaws) shall include a reference to a regulation made under this section.
- (3) Regulations made under this section may be made so as to apply in all parts of Scotland or to apply only in such part or parts as may be specified in the regulations, and may contain different provisions for different parts, or for different circumstances in any such part.

## 75 Penalty for polluting water.

- (1) If any person is guilty of any act or neglect whereby any spring, well or adit, the water from which is used or likely to be used for human consumption or domestic purposes or for manufacturing food or drink for human consumption, is polluted or likely to be polluted, he shall be guilty of an offence.
- (2) Nothing in this section shall be construed as prohibiting or restricting—
  - (a) any method of cultivation or use of land which is in accordance with the principles of good husbandry; or
  - (b) the reasonable use of oil or tar on any [<sup>F98</sup>public road, so long as the roads] authority take all reasonable steps for preventing the oil or tar, or any liquid or matter resulting from the use thereof, from polluting any such spring, well or adit.
- (3) Any person guilty of an offence by virtue of this section shall be liable in respect of each offence—
  - (a) on summary conviction, to a fine not exceeding the prescribed sum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both a fine and such imprisonment.
- (4) In this section, “the prescribed sum” has the same meaning as in section 289B(6) of the <sup>M32</sup>Criminal Procedure (Scotland) Act 1975.

### Textual Amendments

**F98** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(9)**

### Modifications etc. (not altering text)

**C20** [S. 75](#) amended (27.8.1993) by [1993 c. 12, s. 40\(4\)](#), **Sch. 3 Pt. II para.17** (with ss. 42, 46)

### Marginal Citations

**M32** [1975 c. 21](#).

## 76 Acquisition of land for protection of water.

- (1) For the purpose of any provision of this Act conferring power on a water authority or water development board to acquire land for the purposes of their undertaking, there shall be deemed to be included among those purposes the purpose of protecting

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against pollution any water, whether on the surface or underground, which belongs to the authority or board or which they are for the time being authorised to take.

- (2) A water authority or water development board may on any land belonging to them, or over or in which they have acquired the necessary servitudes or rights, construct or maintain drains, sewers, watercourses, catchpits and other works for intercepting, treating or disposing of any foul water arising or flowing upon that land, or for otherwise preventing water which belongs to the authority or board or which they are for the time being authorised to take from being polluted:

Provided that—

- (a) before constructing any such works the authority or board shall, if the proposed works will affect any watercourses in a fishery district or which is subject to the jurisdiction of a navigation authority, consult with the fishery district board or the navigation authority concerned;
- (b) nothing in this subsection shall authorise the authority or board to intercept or take any water which a navigation authority or any public undertakers are authorised by any enactment to take or use for the purposes of their undertaking without the consent of that navigation authority or those public undertakers.
- (3) A water authority or water development board proposing to construct any drain, sewer or water-course for the purposes mentioned in subsection (2) may, with the consent of the [F99 roads] authority concerned, which may be given subject to such conditions as the [F99 roads] authority think fit, carry the drain, sewer or water-course under, across or along any [F100 road] whether within or outside their limits of supply or their area, and such statutory provisions with respect to the breaking open of [F100 roads] as are applicable to the authority or board shall, with any necessary modifications and adaptations, apply accordingly:

Provided that the consent of the [F99 roads] authority shall not be required by virtue of this subsection for the carrying by any authority or board of any drain, sewer or water-course under any [F101 public road] which is within the limits of supply of that authority or the area of that board.

- (4) A consent required for the purposes of subsection (2) or (3) shall not be unreasonably withheld nor shall any unreasonable conditions be attached to such a consent, and any question whether or not such a consent is unreasonably withheld or whether any condition which it is sought to impose is unreasonable shall in case of dispute be determined by arbitration.

#### Textual Amendments

**F99** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 81(10)(a)

**F100** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 81(10)(b)

**F101** Words substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 81(10)(c)



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## [<sup>F102</sup>PART VIA

### QUALITY OF WATER]

#### Textual Amendments

**F102** Pt. VIA (ss. 76A–76L) inserted by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 168, **Sch. 22** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

#### 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 [<sup>F103</sup>domestic or food production 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 [<sup>F103</sup>domestic or food production 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.

#### Subordinate Legislation Made

**P6** [S. 76A](#): s. 76B (with ss. 76A, 76J, 101(1) and 109(1)) power exercised by [S.I.1991/1333](#)  
[S. 76A](#) power previously exercised by [S.I. 1990/119](#)

#### Textual Amendments

**F103** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), s. 56(2)



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## **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 [F104domestic or food production 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 [F104domestic or food production purposes];
  - (c) to ensure that a source which that authority is using or proposing to use for supplying water for [F104domestic or food production 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 [F104domestic or food production 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;
  - (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

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- (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 [<sup>F104</sup>domestic or food production 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.

#### Subordinate Legislation Made

- P7** [S. 76B](#): s. 76B (with ss. 76A, 76J, 101(1) and 109(1)) power exercised by [S.I.1991/1333](#)  
[S. 76B](#) power previously exercised by [S.I. 1990/119](#)

#### Textual Amendments

- F104** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), [s. 56\(2\)](#)

### 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.

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## **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
- (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.

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## **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 [<sup>F105</sup>domestic or food production 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 [<sup>F106</sup>domestic 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.
- (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

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the authority in the exercise of any such power or the performance of any such duty.

#### Textual Amendments

**F105** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), s. 56\(3\)](#)

**F106** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\), s. 56\(3\)](#)

### 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 [<sup>F107</sup>domestic or food production 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—
- (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.

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- (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.

#### Textual Amendments

**F107** Words substituted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), s. 56(4)

### **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 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;

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- (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—
- (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



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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.

VALID FROM 03/07/2006

#### **[<sup>F108</sup>76H] Application of sections 76G and 76H to certain private supplies**

- (1) In their application to a private supply which is a private water supply to which the Private Water Supplies (Scotland) Regulations 2006 (S.S.I. 2006/209) apply, sections 76G and 76H above have effect subject to the modifications in subsections (2) and (3).
- (2) In section 76G—
- (a) in subsection (1)—
    - (i) for “domestic or food production purposes” substitute “ human consumption purposes ”; and
    - (ii) for “may” substitute “ shall, in the case of a private supply which is a Type A supply or may, in the case of a private supply which is a Type B supply, ”;
  - (b) in subsection (2)(d), for “section 76H(2) and (3)” substitute “ section 76H(2), (3) and (11) ”;
  - (c) in subsection (4)—
    - (i) for “The power of a local authority to” substitute “ A local authority may ”;
    - (ii) omit “shall be exercisable”;
    - (iii) in paragraph (b), for “powers” substitute “ functions ”;
  - (d) in subsection (5), for “powers conferred by” substitute “ functions under ”; and
  - (e) for subsection (7), substitute—
 

“(7) For the purposes of this section and section 76H below the relevant person, in relation to a private supply of water to any premises in the area of a local authority, is the person determined by that

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authority to be the “relevant person” in accordance with regulation 4 of the Private Water Supplies (Scotland) Regulations 2006 (S.S.I. 2006/209).”; and

(f) after subsection (7) insert—

“(8) In this section—

“human consumption purposes”, “Type A supply” and “Type B supply” shall have the same meanings as in the Private Water Supplies (Scotland) Regulations 2006; and

“private supply” and “private supply of water” mean a private water supply to which those Regulations apply.”.

(3) In section 76H, after subsection (10), insert—

“(11) Any relevant person on whom a notice is served under section 76G above, who fails without reasonable excuse to take any step as specified in the notice within the period so specified shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.]

#### Textual Amendments

**F108** S. 76HA inserted (3.7.2006) by [The Private Water Supplies \(Notices\) \(Scotland\) Regulations 2006 \(S.S.I. 2006/297\)](#), [art. 2](#)

### 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 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,

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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;
  - (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.

### **Subordinate Legislation Made**

- P8** [S. 76J](#): s. 76B (with ss. 76A, 76J, 101(1) and 109(1)) power exercised by [S.I.1991/1333](#)  
[S. 76J](#) power previously exercised by [S.I. 1990/119](#)

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## 76K Power to give effect to international obligations.

[<sup>F109</sup>(1)] 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

- [<sup>F110</sup>(a) to give effect to any Community obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.]

[<sup>F111</sup>(2) In this section—

“modifications” includes additions, alterations and omissions; and  
“related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.]

### Textual Amendments

**F109** S. 76K renumbered (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), [Sch. 10 para. 9\(4\)](#)

**F110** Words substituted (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), [Sch. 10 para. 9\(4\)\(a\)](#)

**F111** S. 76K(2) added (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), [Sch. 10 para. 9\(4\)\(b\)](#)

## 76L Interpretation etc. of Part VIA.

(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;

[<sup>F112</sup> “food production purposes” shall be construed in accordance with subsection (1A) below;]

“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.

[<sup>F113</sup>(1A) In this Part references to food production purposes are references to the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used; and in this subsection ‘food production premises’ means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises.]

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- (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 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.

#### Textual Amendments

**F112** Definition inserted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), s. **56(5)**

**F113** [S. 76L\(1A\)](#) inserted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), s. **56(6)**

## PART VII

### POWERS TO SUPPLY WATER DURING DROUGHT

77— ..... <sup>F114</sup>  
 79.

#### Textual Amendments

**F114** [Ss. 77–79](#) repealed (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(2), [Sch. 11](#); [S.I. 1991/2187](#), [art. 3](#), Schedule

## PART VIII

### WATER DEVELOPMENT BOARDS

#### 80 Central Scotland Water Development Board.

- (1) The Central Scotland Water Development Board (in this Act referred to as “the Central Board”) established under section 3 of the <sup>M33</sup>Water (Scotland) Act 1967 shall continue to perform the functions assigned or transferred to them by or under that Act.
- (2) The area for which the Central Board is established shall comprise the limits of supply as water authorities of the Tayside, Fife, Lothian, Central and Strathclyde regional councils.

#### Marginal Citations

**M33** 1967 c. 78.

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## **81 Functions of Central Board.**

- (1) The Central Board shall continue to perform the functions transferred to them on 16th May 1968 under section 4 of the Water (Scotland) Act 1967 from joint water boards whose limits of supply were comprised in their area and whose principal function was the supply of water in bulk to the constituent authorities of those boards.
- (2) There shall be assigned to the Central Board the function of developing new sources of water supply for the purposes of giving a supply of water in bulk to two or more water authorities whose limits of supply are comprised in the area of the Board.

## **82 Establishment of new water development boards.**

- (1) Subject to the provisions of this section, the Secretary of State may at any time by order—
  - (a) designate an area for the purpose of establishing a new water development board (consisting of any part of Scotland, whether wholly or partly comprised in such an area already existing or not) and establish such a board; or
  - (b) alter the area of any water development board, specified or designated by virtue of this Act.
- (2) Any order under this section may contain such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient for the purposes of the order including (but without prejudice to the generality of this subsection) such provisions as he considers necessary or expedient with respect to the transfer of functions, assets and liabilities, the amendment, adaptation or repeal of local enactments, or the application (subject to such exceptions, adaptations and modifications as may be specified in the order) of any of the provisions of this Act.
- (3) Where a new water development board are established by an order under this section, they shall have, in addition to any other functions assigned or transferred to them by the order, the like functions as the Central Board.
- (4) The provisions of Schedule 7 shall have effect in relation to the making of an order under this section.

## **83 Duty of water authorities and development boards to collaborate.**

- (1) Water authorities and water development boards shall, in matters of common interest in relation to the performance of their functions, consult together and collaborate.
- (2) Where a water authority or a water development board propose to investigate a potential new source of water supply, they shall give notice thereof as early as possible to any water authority or water development board likely to be interested so that the consultation required by the foregoing subsection may begin as soon as possible.

## **84 Constitution of water development boards.**

- (1) The members of a water development board shall be appointed from and by the constituent water authorities of which they are members.
- (2) The number of members of a water development board to be appointed by each constituent authority shall be two or such greater number as the Secretary of State may

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by order specify in relation to any constituent authority where he is satisfied that the greater number is necessary in view of special circumstances relating to that authority or their limits of supply.

- (3) In this Act, “constituent water authority”, in relation to a water development board, means a water authority any part of whose limits of supply is comprised in the area of that water development board.
- (4) The provisions of Schedule 8 shall have effect in relation to water development boards.

## **85 Requisitions.**

- (1) Each water development board shall in respect of any financial year determine the aggregate amount required to be requisitioned by the board under this Part from their contributing authorities.
- (2) Each water development board shall, by such date or dates as may be prescribed, cause a requisition in respect of any financial year to be sent to their contributing authorities requiring each of them to pay such sum as may be apportioned to each under the subsequent provisions of this Part, and each of those authorities shall, at such intervals and by such instalments as may be prescribed, pay over to the board the sum so requisitioned.
- (3) In this section “prescribed” means prescribed by regulations made by the Secretary of State under section 111 of the <sup>M34</sup>Local Government (Scotland) Act 1973.

### **Marginal Citations**

**M34** 1973 c. 65.

## **86 Calculation of amount to be requisitioned by water development boards.**

For the purposes of a requisition referred to in section 85(1), the aggregate amount required to be raised from their constituent water authorities by a water development board for any financial year shall be apportioned in accordance with a scheme prepared and approved in accordance with the provisions of this Part and referred to as an “apportionment scheme”, and such aggregate amount shall be the sum by which the estimated expenditure of the water development board chargeable to the revenue account of their general fund exceeds the estimated income of that account, and there shall be added to, or as the case may be, deducted from that sum any sum required to be brought forward either as a debit or as a credit from a previous financial year.

## **87 Apportionment schemes.**

- (1) By such a date as the Secretary of State may specify a water development board shall prepare and submit to him a scheme for his approval as an apportionment scheme.
- (2) Such a scheme as aforesaid shall provide for an apportionment between the constituent water authorities of a water development board of the aggregate amount to be requisitioned from those authorities and shall have regard to the general principle that the amount to be requisitioned from each constituent authority is to be proportionate to the quantities of water supplied and expected to be supplied to that authority by the water development board.



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**88 Duration of scheme.**

When an apportionment scheme has been approved, with or without modifications, by the Secretary of State as an apportionment scheme, it shall come into operation on such a date and for such a period (if any) as may be specified in the apportionment scheme, and, where any period is so specified, the Secretary of State may approve an application for an extension of that period.

**89 Revision of apportionment schemes.**

- (1) Where an apportionment scheme is for the time being in force in respect of a water development board, the board may apply to the Secretary of State for a revision of that scheme, and any such application shall include the submission for his approval of a new apportionment scheme prepared by the board either by way of variation of, or substitution for, the apportionment scheme in force at the time of the application.
- (2) The Secretary of State may require a water development board to make, by such a date as he may specify, such an application as aforesaid.
- (3) Sections 87(2) and 88 shall apply to a new apportionment scheme as it does to an apportionment scheme.
- (4) The reference in section 86 to an apportionment scheme in relation to any water development board shall be construed as a reference to an apportionment scheme which is for the time being in force in respect of requisitions made by that board.

**90 Default by water development board on apportionment scheme.**

In the event of a water development board failing to submit an apportionment scheme, or, as the case may be, a new apportionment scheme, for approval by the date by which it is due, the Secretary of State shall, after consultation with the water development board and their constituent water authorities, make on behalf of that board an apportionment scheme or a new apportionment scheme (whichever is appropriate) and the scheme so made shall be binding on the water development board and their constituent authorities.

**91 Provision of services for water authorities and development boards.**

A regional, islands or district council may provide the water authority or water development board with such services as the authorities or board may request for the performance of their functions; and any water development board may make such provision as aforesaid for any water authority or any other such board.

**92 Power of water development boards to promote or oppose private legislation.**

- (1) Subject to the provisions of this section, a water development board may petition for the issue of a provisional order under the <sup>M35</sup>Private Legislation Procedure (Scotland) Act 1936 or oppose any private legislation in Parliament where they are satisfied that it is expedient so to do, and may defray the expenses incurred in relation thereto.
- (2) A water development board shall not petition for the issue of a provisional order as aforesaid without the consent of the Secretary of State, and the Secretary of State shall not give such a consent unless he is satisfied that the powers sought by the proposed order cannot be obtained by means of an order under this Act.

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- (3) An application for the consent of the Secretary of State for the purposes of this section shall be accompanied by a concise summary of the purposes of the proposed order.
- (4) In this section “private legislation in Parliament” includes a provisional order, and the confirmation Bill relating thereto under the said Act of 1936, and any local or personal Bill.

#### Marginal Citations

M35 1936 c. 52.

## PART IX

### GENERAL

#### 93 Obtaining of information as to underground water.

- (1) Any person who proposes to sink, for the purpose of searching for or abstracting water, a well or borehole intended to reach a depth of more than 50 feet below the surface shall, before he begins to do so, give to the Natural Environmental Research Council notice in writing of his intention to do so, and shall keep a journal of the progress of the work, which shall include measurements of the strata passed through, and all the levels at which water is struck and subsequently rests, and shall allow any person authorised by the said council for the purpose, on the production of some duly authenticated document showing his authority, at all reasonable times—
  - (a) to have free access to any such well or borehole;
  - (b) to inspect the well or borehole and the material excavated therefrom;
  - (c) to take specimens of such material and of water abstracted from the well or borehole; and
  - (d) to inspect and take copies of or extracts from the journal required to be kept under this section.
- (2) The person sinking any such well or borehole shall, on completion or abandonment of the work, send a complete copy of the journal kept under subsection (1) to the council and shall also send them particulars of any test made, before such completion or abandonment, of the flow of water, specifying the rate of flow throughout the test and the duration of the test, and also, where practicable, specifying the water levels during the test and thereafter until the water has returned to its natural level.
- (3) Where any such well or borehole is sunk in connection with an existing pumping station, the particulars of any test to be supplied to the council shall also include the rate of pumping at the existing works during the test.
- (4) Where the person sinking a well or borehole on any land is not the occupier of the land, the obligation to allow a person authorised by the council to exercise the rights specified in paragraphs (a) to (d) of subsection (1) shall be the obligation of the occupier as well as of the person sinking the well or borehole.
- (5) Where any person contracts to sink any well or borehole on land belonging to or occupied by any other person and the execution of the work is under the control of the

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contractor, the contractor and no other person shall be deemed for the purposes of this section to be the person sinking the well or borehole.

- (6) The person sinking a well or borehole or (if a different person) the owner or occupier of the land on which it is sunk may give notice in writing to the council requiring them to treat as confidential any copy of or extract from the journal required to be kept under subsection (1) or any specimen taken under that subsection, and the council shall thereupon not allow that copy, extract or specimen, except in so far as it contains or affords information as to water resources and supplies, to be published or shown to any person not being an officer of the council or of the Secretary of State, unless the person giving the notice consents thereto:

Provided that, if at any time the council give notice to that person that in their opinion his consent is unreasonably withheld, then that person may, within three months after the notice is given by the council, appeal to the Court of Session, but if at the expiration of that period no such appeal has been made, or if after hearing the appeal the Court does not make an order restraining them from doing so, the council may proceed as if such consent had been given.

- (7) Any person who fails to comply with any obligation imposed on him by the provisions of this section shall be guilty of an offence against this Act and shall on summary conviction be liable to a fine not exceeding [<sup>F115</sup>level 4 on the standard scale] and, where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

#### Textual Amendments

**F115** Words in s. 93(7) substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), s. 289G, 289H, [Sch. 7D](#) (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), s. 54, [Sch. 6](#))

## 94 False information.

Any person who, in keeping any record or journal or in furnishing any return, abstract or information which he is required by or under this Act to keep or furnish, knowingly or recklessly makes any statement which is false in a material particular shall be liable in respect of each offence—

- (a) on summary conviction, to a fine not exceeding [<sup>F116</sup>the statutory maximum] or to imprisonment for a term not exceeding three months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

#### Textual Amendments

**F116** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 6](#)

## 95 Penalties for offences.

Any person guilty of an offence under this Act shall, except where the provision by or under which the offence is created provides for the penalty to be imposed, be liable in respect of each offence—

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- (a) on summary conviction, to a fine not exceeding [<sup>F117</sup>the statutory maximum] and in the case of a continuing offence to a further fine not exceeding £25 for every day during which the offence is continued after conviction;
- (b) on conviction on indictment, to imprisonment for a period not exceeding three months or to a fine, and in the case of a continuing offence to a fine for every day during which the offence is continued after conviction.

#### Textual Amendments

F117 Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), Sch. 15 para. 26

96 ..... <sup>F118</sup>

#### Textual Amendments

F118 S. 96 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 59(2), Sch. 4

### 97 Continuing offences and penalties.

Where provision is made by or under this Act or any local enactment incorporating any provisions of Schedule 4 for the imposition of a daily penalty in respect of a continuing offence, the court by which a person is convicted may fix a reasonable period from the date of the conviction for compliance by that person with any directions given by the court, and, where the court has fixed such a period, the daily penalty shall not be recoverable in respect of any day before the expiration thereof.

### 98 Local inquiries.

The Secretary of State may cause such local inquiries to be held as he may consider necessary or proper in connection with the discharge by him of any of his functions under this Act or under any other enactment with respect to water supplies or water undertakings, and the provisions of section 210(2) to (9) of the <sup>M36</sup>Local Government (Scotland) Act 1973 shall apply to any such local inquiry and to any other local inquiry which he is required by this Act or any other such enactment to cause to be held.

#### Marginal Citations

M36 1973 c. 65.

### 99 Orders subject to special parliamentary procedure.

- (1) Any inquiry in relation to an order under this Act which in certain events becomes subject to special parliamentary procedure shall, if the Secretary of State so directs, be held by commissioners under the <sup>M37</sup>Private Legislation Procedure (Scotland) Act 1936; and any direction so given shall be deemed to have been given under section 2, as read with section 10, of the <sup>M38</sup>Statutory Orders (Special Procedure) Act 1945.

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- (2) Nothing in section 210(2) to (9) of the Local Government (Scotland) Act 1973 shall apply to any inquiry under this section by commissioners under the Private Legislation Procedure (Scotland) Act 1936.
- (3) The provisions of the <sup>M39</sup>Statutory Orders (Special Procedure) Act 1945 with regard to the publication of notices in the Edinburgh Gazette and in a newspaper shall, notwithstanding anything in that Act contained, not apply to any order under this Act which is subject to special parliamentary procedure.

#### Marginal Citations

**M37** 1936 c. 52.

**M38** 1945 c. 18.

**M39** 1945 c. 18.

### 100 Orders.

- (1) Any power to make orders under this Act may be exercisable by statutory instrument.
- (2) Before making an order under section 4, 61, 82, 84 or 107 of this Act the Secretary of State shall consult all water authorities and water development boards whose limits of supply or areas are affected by the order; but nothing in this subsection shall require the Secretary of State to have such consultation as aforesaid—
  - (a) with a water development board, where the order relates only to any water authority or their limits of supply, or
  - (b) where the order is being made under section 107(1) on the application of a water authority or a water development board.

### 101 Regulations.

- (1) The Secretary of State may make regulations prescribing anything required to be prescribed for the purpose of any provision of this Act.

[<sup>F119</sup>(1A) Regulations made under this Act may make—

- (a) such supplemental, consequential or transitional provision as the Secretary of State thinks fit;
- (b) different provision for different cases or classes of case.]

- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument; and any instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Subordinate Legislation Made

**P9** S. 101 power previously exercised by S.I. 1990/119

**P10** S. 101(1): s. 76B (with ss. 76A, 76J, 101(1) and 109(1)) power exercised by S.I.1991/1333

#### Textual Amendments

**F119** S. 101(1A) inserted (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1, 130), s. 27(1), Sch. 10 para. 9(5)

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## 102 Expenses.

There shall be paid out of moneys provided by Parliament any expenses incurred by the Secretary of State in the exercise of his functions under this Act.

## 103 Notices to be in writing.

All notices, consents, approvals, demands and other documents authorised or required by or under this Act or any local enactment incorporating any provisions of Schedule 4 to be given, made or issued by the Secretary of State or any regional, island or district council, or water authority or water development board, and all notices and applications authorised or required by or under this Act or any such local enactment to be given or made to the Secretary of State or to, or to any officer of, any regional, islands or district council, or water authority or water development board, shall <sup>F120</sup>, subject to section 23(4) of and paragraph 4(1) of Schedule 3 to this Act,] be in writing.

### Textual Amendments

**F120** Words inserted (*prosp.*) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(5\)](#)

## 104 Appeal to sheriff-principal.

- (1) It shall be competent to appeal to the sheriff-principal against the decision of a sheriff on any application to him under this Act within 21 days after the date of that decision, but subject thereto the decision of the sheriff-principal or sheriff shall be final.
- (2) The provisions of this section shall also apply in the case of applications to the sheriff-principal under any local enactment incorporating any provisions of Schedule 4.

## 105 Reference to arbitration.

In arbitrations under this Act or under any local enactment incorporating any provisions contained in Schedule 4, the reference shall, except where otherwise expressly provided, be to a single arbiter to be appointed by agreement between the parties or in default of agreement by the Secretary of State.

## 106 Supplementary provisions relating to determination of disputes.

- (1) Where for the purposes of this Act the Secretary of State or an arbiter is required to determine a dispute, the following provisions of this section shall apply in relation to that determination.
- (2) Any such arbiter shall have the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath and the awarding of expenses, as if the arbitration were under a submission.
- (3) The arbiter may, and if so directed by the Court of Session shall, state a case for the opinion of that Court on any question of law arising in the proceedings.
- (4) Any award of the Secretary of State or, as the case may be, of an arbiter, under the said Acts may be recorded in the Books of Council and Session for execution, and may be enforced accordingly.

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**107 Repeal, amendment and adaptation of local enactments.**

- (1) The Secretary of State may by order—
  - (a) on his own initiative, repeal or amend any local enactment relating to the supply of water, or
  - (b) on the application of a water authority or a water development board, repeal or amend any local enactment relating to the supply of water—
    - (i) by or to the applicant, or
    - (ii) by any other water authority or board to premises in any area within the limits of supply of the applicant.
- (2) The power conferred on the Secretary of State by the foregoing subsection shall include power to consolidate any such local enactments as aforesaid, with or without amendments.
- (3) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient.
- (4) The provisions of this section shall have effect without prejudice to the exercise of any power to repeal, amend or adapt local enactments which is conferred by any other enactment, including any enactment contained in this Act.
- (5) The provisions of Part I of Schedule 1 shall apply to orders made under this section on the application of a water authority or a water development board.

**Subordinate Legislation Made**

P11 S. 107(1)(b): s. 107(1)(b) (with s. 17(2)) power exercised (30.12.1991) by S.I.1991/2939

**108 Transitional provisions and savings.**

The transitional provisions and savings contained in Schedule 9 shall have effect.

**109 Interpretation.**

- (1) In this Act the following expressions shall subject to any express provision or anything in the context to the contrary have the meanings hereby respectively assigned to them, that is to say—
  - “agricultural lands and heritages” has the like meaning as in the <sup>M40</sup>Rating and Valuation (Apportionment) Act 1928;
  - <sup>F121</sup>“apportionment note” has the meaning assigned to it in paragraph 2 of Schedule 1 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987;]
  - “apportionment scheme” has the meaning assigned to it by section 86;
  - .....<sup>F122</sup>
  - “Central Board” means the Central Scotland Water Development Board;
  - “communication pipe”, subject to section 110, means—
    - (a) where the premises supplied with water abut on the part of the [<sup>F123</sup>road] in which the main is laid and the service pipe enters those premises otherwise than through the outer wall of a building abutting on the [<sup>F123</sup>road] and has a stopcock placed in those premises and as near to the boundary of that [<sup>F123</sup>road]



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as is reasonably practicable, so much of the service pipe as lies between the main and that stopcock;

- (b) in any other case, so much of the service pipe as lies between the main and the boundary of the part of the <sup>F123</sup>road] in which the main is laid; and includes the ferrule at the junction of the service pipe with the main, and also—
- (i) where the communication pipe ends at a stopcock, that stopcock; and
- (ii) any stopcock fitted on the communication pipe between the end thereof and the main;

<sup>F124</sup>“community water charges” shall be construed in accordance with the provisions of paragraph 6 of Schedule 5 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987;]

“constituent water authority” has the meaning assigned to it by section 84(3);

“contravention” includes failure to comply, and “contravene” shall be construed accordingly;

“contributing authority” means—

- (a) in relation to a water authority, any other regional council the whole or part of whose region is within the limits of supply of the water authority or in whose region water is supplied to premises by the water authority, and
- (b) in relation to a water development board, a constituent water authority;

<sup>F125</sup>

“enactment” means any Act of Parliament, whether public general, local or private, any statutory order or any provision in an Act of Parliament or statutory order;

“fishery district” means a district for the purposes of the <sup>M41</sup>Salmon Fisheries (Scotland) Act 1862; and

“fishery district board” means the district board for a fishery district and for the purposes of this Act the Commissioners appointed under the <sup>M42</sup>Tweed Fisheries Act 1969 shall be deemed to be a fishery district board, and the river, as defined by the said Act of 1969, shall be deemed to be their fishery district;

“functions” includes powers and duties;

<sup>F126</sup>

“house” means a dwelling-house, whether a private dwelling-house or not, and includes any part of a building if that part is occupied as a separate dwelling-house;

“land” includes land covered with water and any interest in land and any right or servitude in, to or over land and shall be interpreted accordingly for the purposes of any provisions of any Act incorporated with this Act;

“limits of supply” has the meaning assigned to it in section 3(3);

“local enactment” means any local Act of Parliament, any statutory order or any provision in any such Act of Parliament or statutory order;

“main” means a pipe laid for the purpose of giving a general supply of water as distinct from a supply to individual consumers, and includes any apparatus used in connection with such a pipe;

“navigation authority” means any persons or body of persons, whether incorporated or not, having powers under an enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

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“net annual value” has the same meaning as in the <sup>M43</sup>Valuation and Rating (Scotland) Act 1956;

“occupier” means the tenant or sub-tenant or any person in the actual occupation of premises, but does not include a lodger or person in the occupation as tenant of a furnished house let for a period of less than a year, but includes the person by whom such a furnished house is let;

“outer wall”, in relation to a building abutting on a street, does not include the outer wall of a cellar, or other structure, belonging to that building but situated beneath the street;

“owner”, save in section 64 to 67, includes in relation to any land or other premises any person who under the Lands Clauses Acts would be enabled to sell and convey the land or other premises to the promoters of an undertaking;

[<sup>F127</sup>“part residential subjects” has the meaning assigned to it in section 26 (interpretation) of the Abolition of Domestic Rates Etc. (Scotland) Act 1987;]

“performance”, in relation to functions, includes the exercise of powers as well as the performance of duties, and “perform” shall be construed accordingly;

“premises” includes land and also tents, vans, sheds and similar structures;

“prescribed” means prescribed by regulations made by the Secretary of State under this Act;

[<sup>F128</sup>“private road” and “public road” have the same meanings as in the Roads (Scotland) Act 1984;]

“reasonably practicable” means reasonably practicable in all the circumstances, including in any case where works are involved the expense involved in executing the works;

“repeal”, in relation to a local enactment not contained in an Act, means revoke;

“river purification authority” has the meaning assigned to it by section 17 of the <sup>M44</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951; [<sup>F129</sup>and “river purification board” shall be construed in accordance with section 135 of the Local Government (Scotland) Act 1973]

[<sup>F130</sup>“road” has the same meaning as in the [<sup>F131</sup>Public Utilities Street Works Act 1950][<sup>F131</sup>Part IV of the New Roads and Street Works Act 1991];]

[<sup>F130</sup>“roads authority” has the same meaning as in the Roads (Scotland) Act 1984;]

“service pipe” means so much of any pipe for supplying water from a main to any premises as is subject to water pressure from that main, or would be so subject but for the closing of some tap;

“statutory order” means an order or scheme made under an Act of Parliament, including an order or scheme confirmed by Parliament;

“stream” includes a river, burn, spring or other running water;

<sup>F132</sup>

.....  
“a supply of water for domestic purposes” has the meaning assigned to it in section 7, and any reference to domestic purposes in relation to the supply of water shall be construed accordingly;

“supply of water in bulk” means a supply of water for distribution by the water authority taking the supply;

“supply pipe” means so much of any service pipe as is not a communication pipe;

“water authority” has the meaning assigned to it in section 3;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices and passages through which water flows;

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“water development board” means a board established by virtue of section 82(1) (a) and includes the Central Board;

“water fittings” includes pipes (other than mains), taps, cocks, valves, ferrules, meters, cisterns, baths, sinks, water-closets, soil-pans and other similar apparatus used in connection with the supply and use of water;

“waterworks” includes streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines and all machinery, lands, buildings and things for supplying, or used for supplying, water or used for protecting sources of water supply.

(2) ..... F133

(3) In the construction of any enactment incorporated with this Act, the expressions “the promoters of the undertaking” or “the company”, and “the special Act”, shall be construed as meaning respectively the water authority and water development board, and this Act.

(4) In this Act, except where otherwise indicated—

- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
- (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
- (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

[<sup>F134</sup>(5) For the purposes of section 29(2) of the Land Registration (Scotland) Act 1979 (construction of reference to Register of Sasines etc.) this Act shall be deemed to be an enactment passed before that Act.]

#### Subordinate Legislation Made

**P12** S. 109: for previous exercises of this power see Index to Government Orders

**P13** S. 109(1): s. 76B (with ss. 76A, 76J, 101(1) and 109(1)) power exercised by S.I. 1991/1333

#### Textual Amendments

**F121** Definition inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, **Sch. 5 Pt. IV para. 49(a)**

**F122** Definition repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), **Sch. 9 para. 81(12)(a)(i)**, Sch. 11

**F123** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(12)(a)(ii)**

**F124** Definition inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, **Sch. 5 Pt. IV para. 49(b)**

**F125** Definitions repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 34, **Sch. 6**

**F126** Definitions repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), **Sch. 9 para. 81(12)(a)(iii)**, Sch. 11

**F127** Definition inserted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 25, **Sch. 5 Pt. IV para. 49(c)**

**F128** Definition inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(12)(a)(iv)**

**F129** Words added (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1, 130\)](#), s. 27(1), **Sch. 10 para. 9(6)**; S.I. 1991/2187, art. 3, **Sch.**

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- F130** Definitions inserted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(12)(a)** (v)
- F131** “Part IV of the New Roads and Street Works Act 1991” substituted (*prosp.*) for “Public Utilities Street Works Act 1950” by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), ss. 168(1), 170, **Sch. 8 para. 108(6)**
- F132** Definition repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1)(3), **Sch. 9 para. 81(12)(a)(vi)**, Sch. 11
- F133** S. 109(2) repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1)(3), **Sch. 9 para. 81(12)(b)**, Sch. 11
- F134** S. 109(5) added by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 40, **Sch. 3 para. 39**

#### Modifications etc. (not altering text)

- C21** S. 109: definitions applied (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1, 130), **s. 22(1)**, S.I. 1991/2187, art. 3, Sch.

#### Marginal Citations

- M40** 1928 c. 44.  
**M41** 1862 c. 97.  
**M42** 1969 c. xxiv.  
**M43** 1956 c. 60.  
**M44** 1951 c. 66.

## 110 Further provisions as to communication pipes, etc.

- (1) Where any main is laid alongside and within 60 feet of the middle of a [<sup>F135</sup>road], then, for the purposes of the definition of “communication pipe” contained in section 109(1), the land in which the main is laid, and any land between the main and the [<sup>F135</sup>road], shall be deemed to form part of the [<sup>F135</sup>road], and references in that definition to the part of the [<sup>F135</sup>road] in which the main is laid, and to the boundary of the [<sup>F135</sup>road] in which the main is laid, shall be construed accordingly;

Provided that where the premises supplied with water lie between any such main as aforesaid and the [<sup>F135</sup>road], only that land in which the main is laid together with any land between the main and those premises shall be deemed to form part of the [<sup>F135</sup>road].

- (2) Where any main is laid as mentioned in subsection (1), the power of the water authority to lay service pipes, stopcocks and other fittings under paragraph 4 of Schedule 3 shall include power, with the consent of every owner and occupier of the land, and subject to payment of compensation for any damage done by the authority, to lay such pipes, stopcocks and fittings in, on or over any land which is deemed to form part of a [<sup>F135</sup>road] for the purposes specified in subsection (1).
- (3) Any consent required for the purposes of subsection (2) shall not be unreasonably withheld, and any question whether such consent is, or is not, unreasonably withheld shall be referred to and determined by the Secretary of State; and any dispute as to the amount of compensation to be paid under subsection (2) shall be determined by arbitration in the manner provided by section 105.
- (4) For the avoidance of doubt, it is hereby declared that the provisions of section 24(3) apply to any pipe laid before the commencement of this Act which, by virtue of this section, is deemed to be a communication pipe.

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### Textual Amendments

**F135** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(13\)](#)

## 111 Saving for protective clauses in other Acts.

Except with the consent of the persons interested, no order made under section 29 shall abrogate or affect—

- (a) any provision contained in a local enactment for the protection or benefit of any specified person or class of persons or body of persons whether incorporated or not, other than a provision with respect to the discharge of compensation water into any watercourse;
- (b) any provision contained in a local enactment for conferring on or preserving to the public rights of enjoyment of air, exercise and recreation on land or rights of access to land for those purposes or for conferring any right of way.

## 112 Amendments and repeals.

- (1) The enactments specified in Schedule 10 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.
- (2) The enactments specified in Schedule 10 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.

### Modifications etc. (not altering text)

**C22** The text of s. 112(2) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## 113 Short title and extent.

- (1) This Act may be cited as the Water (Scotland) Act 1980.
- (2) This Act shall extend to Scotland only.

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## SCHEDULES

### SCHEDULE 1

Sections 13, 17, 19 29, 72, 107.

#### PROCEDURE FOR MAKING ORDERS AND MAKING AND CONFIRMING BYELAWS

##### PART I

*Orders made by the Secretary of State under section 17(2) and (if made on application of water authority or water development board) sections 19, 29(2) and 107(1)).*

- 1 Applicants for any order to which this part of this Schedule applies shall submit to the Secretary of State a draft of the order which they desire him to make and shall publish once at least in each of two successive weeks in one or more local newspapers circulating in the area affected by the order a notice—
  - (a) stating the general effect of the order;
  - (b) specifying a place in or near the said area where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice;
  - (c) stating that within the said period any person may by notice to the Secretary of State object to the application.
  
- 2 Not later than the date on which the said notice is first published, the applicants shall serve a copy thereof—
  - (i) on the water authority, regional council, district council and water development board for every area affected by the order along with a copy of the draft order;
  - (ii) where it is proposed that the order shall authorise the acquisition of rights to take water, on the fishery district board of any fishery district from which water is to be taken under the rights acquired, on any navigation authority exercising functions in relation to any watercourse from which water is to be taken under the rights acquired and on any public undertakers [<sup>F136</sup>or licence holder within the meaning of Part I of the Electricity Act 1989] known by the applicants to be authorised by [<sup>F136</sup>or by virtue of] any enactment to take or use water from any such watercourse and in the case of an order under section 17(2), where the river purification authority within whose area the stream affected is situated are not the same authority as the applicants, on that authority.

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#### Textual Amendments

**F136** Words inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 26(2)(a)**

3 The applicants shall also publish in the Edinburgh Gazette a notice stating that they are about to apply for an order under the appropriate section, naming the limits of supply of the water authority and the area of the water development board affected by the order, specifying a place where a copy of the draft order and of any relevant map or plan may be inspected, and giving the name and date of issue of a local newspaper in which the notice explaining the effect of the order applied for will be found.

4 The applicants shall, at the request of any person interested, furnish to him a copy of the draft order upon payment of such charge <sup>F137</sup> as they think reasonable.

#### Textual Amendments

**F137** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), s. 41, **Sch. 4**

5 The Secretary of State may make an order in the terms of the draft submitted to him or in those terms as modified in such manner as he thinks fit, but, where he proposes to make any modification and considers that persons other than the applicants may be adversely affected thereby, he shall require the applicants to give and publish additional notices in such manner as he thinks best adapted for informing all persons so affected of the modification proposed.

6 If before the expiration of the 28 days referred to in paragraph 1 of this Schedule or of 25 days from the publication of the said notice in the Edinburgh Gazette, or before the expiration of any period specified in notices given under the last foregoing paragraph, an objection is received by the Secretary of State from any authority or board or undertakers [<sup>F138</sup>or licence holder] on whom a notice is required to be served under paragraph 2 of this Schedule, or from any other person appearing to him to be affected by the application, or, as the case may be, by the proposed modification, and the objection is not withdrawn, the Secretary of State, before making any order on the application, shall cause a local inquiry to be held.

#### Textual Amendments

**F138** Words inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 26(2)(b)**

7 After considering the report of any local inquiry under the last foregoing paragraph, and before making the order, the Secretary of State shall give to any person who has duly objected thereto, and has not withdrawn his objection, notice as to the order which he proposes to make, and shall not make the order until the expiration of 28 days from the date of the notice and, if within that period that person gives notice to the Secretary of State that he objects to the proposed order, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.



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8 The expenses incurred by the Secretary of State in connection with the making, notification and confirmation of an order under this Part of this Schedule shall be paid by the applicants and the Secretary of State may, in a case where there are two or more applicants, apportion such expenses between them.

9 ..... F139

**Textual Amendments**

**F139** Sch. 1 para. 9 repealed by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 41, Sch. 4

**PART II**

*Orders made by the Secretary of State under section 13(2) and (if no application by the water authority or water development board) sections 19 and 29(2).*

10 Before making an order to which this Part of this Schedule applies, the Secretary of State shall publish once at least in each of two successive weeks in one or more local newspapers circulating in the area affected by the order, a notice—

- (a) stating the general effect of the order;
- (b) specifying a place in or near the said area where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice; and
- (c) stating that within the said period any person may by notice to the Secretary of State object to the making of the order.

11 Not later than the date on which the said notice is first published the Secretary of State shall serve a copy thereof—

- (i) on the water authority, regional council, district council and water development board for every area affected by the order along with a copy of the draft order;
- (ii) where it is proposed that the order shall authorise the transfer of rights to take water, on the fishery district board of any fishery district, and on any navigation authority and any river purification authority exercising functions in relation to any watercourse, from which water is taken under the rights transferred where the river purification authority are not the same authority as the water authority and on any public undertakers [F140 or licence holder within the meaning of Part I of the Electricity Act 1989] known by the Secretary of State to be authorised by [F140 or by virtue of] any enactment to take or use water from any such watercourse;
- (iii) where it is proposed that the order shall provide for the furnishing of a supply of water in bulk, on the fishery district board of any fishery district from which water is taken by the persons who are to give the bulk supply.

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#### Textual Amendments

**F140** Words inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 26(2)(c)**

- 12 The Secretary of State shall also publish in the Edinburgh Gazette a notice stating that he is about to make the order, naming the limits of supply of the authority and the area of the board affected by the order, specifying a place where a copy of the draft order and of any relevant map or plan may be inspected, and giving the name and date of issue of a local newspaper in which the notice explaining the effect of the order will be found.
- 13 The Secretary of State shall, at the request of any person interested, furnish him with a copy of the draft order upon payment of such charge not exceeding 10 pence as the Secretary of State thinks reasonable.
- 14 The Secretary of State may make the order either in the terms of the draft or in those terms as modified in such manner as he thinks fit, but, where he proposes to make any modification and considers that persons other than the authority or board to whom the order relates may be adversely affected thereby, he shall give and publish additional notices in such manner as he thinks best adapted for informing all persons likely to be affected by the modification proposed.
- 15 If before the expiration of the 28 days referred to in paragraph 10 of this Schedule, or of 25 days from the publication of the said notice in the Edinburgh Gazette, or before the expiration of any period specified in notices given under the last foregoing paragraph, an objection is received by the Secretary of State from any authority or board or undertakers [<sup>F141</sup>or licence holder] on whom a notice is required to be served under paragraph 11 of this Schedule or from any person appearing to him to be affected by the order or, as the case may be, by the proposed modification, and the objection is not withdrawn, the Secretary of State before making the order shall cause a local inquiry to be held.

#### Textual Amendments

**F141** Words inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 26(2)(d)**

- 16 After considering the report of any local inquiry under the last foregoing paragraph, and before making the order, the Secretary of State shall give to any person who has duly objected thereto, and has not withdrawn his objection, notice as to the order which he proposes to make, and shall not make the order until the expiration of 28 days from the date of the notice and, if within that period that person gives notice to the Secretary of State that he objects to the proposed order, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- 17 The expenses incurred by the Secretary of State in connection with the making, notification and confirmation of an order under this Part of this Schedule shall be

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paid by the authority or board to whom the order relates, and the Secretary of State may, in a case where there are two or more such authorities or boards, apportion such expenses between them.

18 ..... F142

**Textual Amendments**

**F142** Sch. 1 para. 18 repealed by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 41, Sch. 4

**PART III**

*Agreements made by water authorities or water development boards under section 17*

19 A water authority or water development board who propose to enter into an agreement to which this Part of this Schedule applies shall publish once at least in each of two successive weeks in one or more local newspapers circulating within their limits of supply or area a notice explaining the effect of the proposals and stating that objections thereto may be made to the Secretary of State within 28 days after the first publication of the notice, and shall send a copy of the notice to the water authority, regional council, district council and water development board for any area, the fishery district board of any fishery district, and any navigation authority exercising jurisdiction in relation to any watercourse, from which water is proposed to be taken under the rights to be acquired, and where the river purification authority within whose area the stream affected is situated are not the same authority as the water authority, to that authority, and to any public undertakers known by the water authority or water development board to be authorised by any enactment to take or use water from any such watercourse.

20 The water authority or water development board shall also publish in the Edinburgh Gazette a notice stating that they propose to enter into such an agreement as aforesaid with the persons specified in the notice and giving the name and date of issue of a local newspaper in which the notice explaining the effect of the proposals will be found.

21 The Secretary of State shall not approve the agreement before the expiration of the said 28 days or before the expiration of 25 days from the publication of the said notice in the Edinburgh Gazette, and before approving it shall consider any objections which may have been received by him before the expiration of either of the said periods, and if before such expiration an objection is received by the Secretary of State from any authority or board or undertakers to whom a notice is required to be sent under paragraph 19 of this Schedule or who appear to him to be affected by the proposed agreement and the objection is not withdrawn, the Secretary of State shall, before approving the agreement, cause a local inquiry to be held.

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- 22 After considering the report of any local inquiry under the last foregoing paragraph, and before making the order approving the agreement, the Secretary of State shall give to any person who has objected thereto under the said paragraph, and has not withdrawn his objection, notice as to the order which he proposes to make, and shall not make the order until the expiration of 28 days from the date of notice and, if within that period that person gives notice to the Secretary of State that he objects to the proposed order and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- 23 The expenses incurred by the Secretary of State in connection with the approval of agreements under this Part of this Schedule (whether by order or otherwise) and the confirmation of orders thereunder shall be paid by the authority or board to whom the agreement or order relates, and in a case where there are two or more such authorities or boards, the Secretary of State may apportion such expenses between them.

#### PART IV

##### *Byelaws made by water authorities or water development boards under sections 70 and 71*

- 24 Byelaws to which this Part of this Schedule applies shall be made under the common seal of the water authority or water development board and shall not have effect until they are confirmed by the Secretary of State.
- 25 At least one month before application for confirmation of the byelaws is made—
- (a) notice of the intention to apply for confirmation shall be published in the Edinburgh Gazette and in one or more local newspapers circulating in the area to which the byelaws apply, and
  - (b) a copy of the byelaws shall be sent to the council of every region or district wholly or partly comprised in the area to which the byelaws apply.
- 26 For at least one month before such application is made, a copy of the byelaws shall be deposited at the offices of the water authority or water development board and shall at all reasonable hours be open to public inspection without payment.
- 27 The water authority or water development board shall, at the request of any person interested, furnish to him a copy of the proposed byelaws upon payment of such sum <sup>F143</sup> as they may determine.

#### **Textual Amendments**

**F143** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), s. 41, [Sch. 4](#)

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- 28 Any person aggrieved by any such byelaws may, within one month after the publication of the notice required by paragraph 25 hereof, notify his objection and the ground of his objection to the Secretary of State who shall consider them before confirming the byelaws.
- 29 The Secretary of State may confirm with or without modification or refuse to confirm any byelaws submitted to him under this Part of this Schedule for confirmation, and may fix a date on which the byelaws are to come into operation and if no date is so fixed the byelaws shall come into operation at the expiration of one month from the date of their confirmation.
- 30 A copy of the byelaws when confirmed shall be printed and deposited at the offices of the water authority or water development board and shall at all reasonable hours be open to public inspection without payment, and a copy thereof shall, on application, be furnished to any person on payment of such sum <sup>F144</sup>, as the authority or board may determine.

#### Textual Amendments

**F144** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), s. 41, [Sch. 4](#)

- 31 The production of a printed copy of the byelaws on which is endorsed a certificate purporting to be signed by the proper officer of the authority or board, stating—
- (a) that the byelaws were made by the authority or board;
  - (b) that the copy is a true copy of the byelaws;
  - (c) that on a specified date the byelaws were confirmed by the Secretary of State; and
  - (d) the date, if any, fixed by the Secretary of State for the coming into operation of the byelaws;
- shall be prima facie evidence of the facts stated in the certificate and without proof of the handwriting or official position of any person purporting to sign a certificate in pursuance of this paragraph.

## SCHEDULE 2

Section 18.

### ORDERS UNDER SECTION 17 AUTHORISING COMPULSORY ACQUISITION OF LAND

- 1 The order shall incorporate the Lands Clauses Acts and section 6 of the <sup>M45</sup>Railways Clauses Consolidation (Scotland) Act 1845, and those Acts and the enactments relating to the compensation payable in respect of the compulsory acquisition of land shall apply accordingly subject to the exceptions and modifications specified in Parts I and II of Schedule 2 to the Act of 1947, and to such other exceptions and modifications (if any) as may be specified in the order.

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### Marginal Citations

M45 1845 c. 33.

- 2 A copy of the notice required by paragraph 1 or 10 of Schedule 1 to be published shall be served in accordance with the provisions of paragraph 2 or 11 of that Schedule on every owner, lessee and occupier (except tenants for a month or for any period less than a month) of any land authorised by the draft order to be compulsorily acquired.
- 3 Where any such objection as is mentioned in paragraph 6 or 15 of Schedule 1 relates to the compulsory acquisition of land, the Secretary of State may require the objector to state in writing the grounds thereof, and if it is certified by the Secretary of State that the objection relates exclusively to matters that can be dealt with by the tribunal by whom the compensation for the compulsory acquisition is to be assessed—
- (a) the Secretary of State may disregard the objection for the purposes of the said paragraph 6 or 15, as the case may be; and
  - (b) where paragraph 7 or 16 of Schedule 1 applies to the order, the objection shall be disregarded for the purposes of that paragraph.
- 4 Notwithstanding anything in paragraph 5 or 14 of Schedule 1, the order as made by the Secretary of State shall not, unless all persons interested consent, authorise the water authority or water development board to acquire compulsorily any land which they would not have been so authorised to acquire if it had been made in terms of the draft submitted to or prepared by him.
- 5 Subject as hereinafter provided, Part III of Schedule 1 to the Act of 1947 (which makes special provision with respect to land of local authorities and statutory undertakers, inalienable land of the National Trust for Scotland, and land being a common or open space or the site of an ancient monument) shall apply to the order as it applies to a compulsory purchase order:
- Provided that where paragraph 7 or 16 of Schedule 1 applies to the order, this paragraph shall have effect as if for the reference to Part III of Schedule 1 to the Act of 1947 there were substituted a reference to paragraph 10 of the last mentioned Schedule.
- 6 As soon as may be after the order has been made, the water authority or water development board shall publish in one or more newspapers circulating in the locality in which the land authorised to be acquired is situated a notice describing the land and stating that the order has been made authorising the water authority or water development board to acquire it compulsorily, and naming a place where a copy of the order as made may be inspected at all reasonable hours, and shall serve a like notice and a copy of the order as made on any persons on whom notices with respect to the land were required to be served by virtue of paragraph 2 above.
- 7 Part IV of Schedule 1 to the Act of 1947 (which relates to the validity and date of operation of compulsory purchase orders under that Act) shall apply to the order as if it were a compulsory purchase order and as if this Act were included among the enactments specified in section 1(1) of that Act; and paragraph 15(1) of that Schedule shall have effect accordingly in relation to the order as if for the words

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“this Act”, in the third place where those words occur, there were substituted the words “Schedule 2 to the Water (Scotland) Act 1980”, and as if after the words “this Schedule”, in the second place where those words occur, there were inserted the words “or Schedule 2 to the Water (Scotland) Act 1980”:

Provided that nothing in this paragraph shall prohibit or restrict the taking of legal proceedings for questioning the order so far as it relates to matters other than the compulsory acquisition of land.

- 8 In this Schedule the expression “the Act of 1947” means the <sup>M46</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

#### Marginal Citations

M46 1947 c. 42.

### SCHEDULE 3

Sections 22, 24.

#### PROVISIONS AS TO BREAKING OPEN STREETS AND LAYING COMMUNICATION AND SUPPLY PIPES

#### Modifications etc. (not altering text)

C23 Sch. 3: power to apply conferred (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1, 130), s. 20(10), Sch. 7 para. 5(1)(b)

### PART I

#### Modifications etc. (not altering text)

C24 Sch. 3 Pt. I (paras. 1–3) applied with modifications by Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), s. 170A(5) (as inserted by Electricity Act 1989 (c. 29, SIF 44:1), s. 102, Sch. 13)

#### *Provisions as to breaking open streets, etc.*

#### *Power to break open streets.*

- 1 Subject to the provisions of this Part of this Schedule, a water authority and water development board may, within their limits of supply or area for the purpose of laying, constructing, inspecting, repairing, altering, renewing or removing mains, service pipes, plant or other works, and outside those limits of supply or area for the purpose of laying any mains which they are authorised to lay and of inspecting, repairing, altering, renewing or removing mains, break open [<sup>F145</sup>a road], and any cellar or vault below any [<sup>F146</sup>road], and any sewer, drain or tunnel in or under any such [<sup>F147</sup>road], and may remove and use the soil or other materials in or under any such [<sup>F147</sup>road]:



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Provided that they shall in the exercise of the powers conferred by this paragraph cause as little inconvenience and do as little damage as may be, and for any damage done shall pay compensation to be determined, in case of dispute, by arbitration.

#### Textual Amendments

- F145** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(14)(a)(i)**  
**F146** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(14)(a)(ii)**  
**F147** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(14)(a)(iii)**

*Protection for railway companies, navigation authorities, tramway undertakers, etc.*

- 2 (1) Except in cases of emergency arising from defects in existing pipes, plant or works, [<sup>F148</sup>a private road] under the control or management of, or maintainable by, a railway company or navigation authority shall not be broken open without their consent, but that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Secretary of State.
- (2) Where the authority or board propose to break open [<sup>F149</sup>any length of road] which forms a level-crossing belonging to persons not being a railway company or navigation authority and which is not under the control or management of a railway company or navigation authority, they shall give to those persons the like notice as is referred to in [<sup>F150</sup>section 6 of the <sup>M47</sup>Public Utilities Street Works Act 1950][<sup>F150</sup>section 114 of the New Roads and Street Works Act 1991] and, if and in so far as the proposed work is likely to affect the structure of any bridge or other works belonging to those persons, shall carry out the work to the reasonable satisfaction of the engineer or other authorised officer acting on behalf of those persons in accordance with plans approved by him.
- Any dispute arising under this sub-paragraph between the authority or board and those persons shall be determined by arbitration.
- (3) For the protection of persons entitled to the benefit of section 32 of the <sup>M48</sup>Tramways Act 1870 (which relates to the rights of authorities and companies, etc., to open roads) that section shall be construed as applying to operations authorised by the special Act, and in the said section as so applied any reference to a tramway shall be construed as including a reference to a trolley vehicle system.
- (4) Nothing contained in this paragraph for the protection of owners of level-crossings shall affect the decision of any question which may arise as to the legality of the construction of, or the right to continue, any level-crossing.

#### Textual Amendments

- F148** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(14)(b)(i)**  
**F149** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(14)(b)(ii)**  
**F150** Words "section 114 of the New Roads and Street Works Act 1991" substituted (prosp.) for words "section 6 of the Public Utilities Street Works Act 1950" by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), ss. 168(1), 170, **Sch. 8 Pt. IV para. 108(7)(a)**

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**Marginal Citations**

**M47** 1950 c. 39.

**M48** 1870 c. 78.

3 ..... **F151**

**Textual Amendments**

**F151** Sch. 3 para. 3 repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1)(3), **Sch. 9 para. 81(14)(c)**, Sch. 11

**PART II**

**Modifications etc. (not altering text)**

**C25** Sch. 3 Pt. II (paras. 4–9) applied with modifications by Local Government (Scotland) Act 1973 (c. 65, SIF 81:2), **s. 170A(5)** (as inserted by Electricity Act 1989 (c. 29, SIF 44:1), s. 102, **Sch. 13**)

*Provisions as to laying communication and supply pipes, etc.*

*Power to lay service pipes, etc.*

4 (1) A water authority may in any [<sup>F152</sup>road] within their limits of supply lay such service pipes with such stopcocks and other fittings as they deem necessary for supplying water to premises within the said limits, and may from time to time inspect, repair, alter or renew and may at any time remove any service pipe laid in a [<sup>F152</sup>road] whether by virtue of this section or otherwise:

Provided that before exercising any of the powers conferred by this paragraph, the authority shall, except in cases of emergency arising from defects in any existing pipes, plant or works, give [<sup>F153</sup>not less than 72 hours'] [<sup>F153</sup>such] notice, to [<sup>F154</sup>—

- (i) where the road is a public road, the roads authority; and
- (ii) in any other case, the authority or person responsible for the maintenance of the road, or, if no authority or person is so responsible, to the owners of the solum of the road] [<sup>F155</sup>as would require to be given by an undertaker under section 114 of the New Roads and Street Works Act 1991 (notice of starting date of works) in accordance with that section and with section 156 of that Act (service of notice)].

(2) Where a service pipe has been lawfully laid in, on or over any land not forming part of a [<sup>F156</sup>road], the authority may from time to time enter upon that land and inspect, repair, alter, renew or remove the then existing pipe or lay a new pipe in substitution therefor, but shall pay compensation for any damage done by them.

Any dispute as to the amount of compensation to be paid under this sub-paragraph shall be determined by arbitration.

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#### Textual Amendments

- F152** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(d\)\(i\)](#)
- F153** "such" substituted (prosp.) for "not less than 72 hours" by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(7\)\(b\)](#)
- F154** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(d\)\(i\)](#)
- F155** Words added (prosp.) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), ss. 168(1), 170, [Sch. 8 Pt. IV para. 108\(7\)\(b\)](#)
- F156** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(d\)\(ii\)](#)

#### *Laying of supply pipes, etc.*

- 5 An owner or occupier of any premises within the limits of supply who desires to have a supply of water for his domestic purposes from the waterworks of the authority shall, subject as hereinafter provided, comply with the following requirements:
- (a) he shall give to the authority 14 days' notice of his intention to lay the necessary supply pipe; and
  - (b) he shall lay the supply pipe at his own expense, having first obtained, as respects any land not forming part of a [<sup>F157</sup>road], the consent of the owners and occupiers thereof:

Provided that, where any part of the supply pipe is to be laid in a [<sup>F157</sup>road], he shall not himself break open the [<sup>F157</sup>road] or lay that part of the pipe.

#### Textual Amendments

- F157** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(e\)](#)

#### *Laying of communication pipes, etc.*

- 6 (1) Upon receipt of such a notice as is referred to in the last foregoing paragraph, the authority shall, within 14 days after the person by whom the notice was given has laid a supply pipe in accordance with the provisions of the last foregoing paragraph, lay the necessary communication pipe and any part of the supply pipe which is to be laid in a [<sup>F158</sup>road] and shall connect the communication pipe with the supply pipe:

Provided that, where any part of the supply pipe is to be laid in a [<sup>F158</sup>road], they may elect to lay a main in the [<sup>F158</sup>road] for such distance as they think fit in lieu of a supply pipe, and in that case shall lay a communication pipe from that main and connect it with the supply pipe.

- (2) The whole, or such part as the water authority may think fit, of the expenses reasonably incurred by the authority in executing the work which they are required or authorised by this paragraph to execute shall be repaid to them by the person by whom the notice was given and may be recovered by them from him:

Provided that, if under the provisions of this paragraph the authority lay a main in lieu of part of a supply pipe, the additional cost incurred in laying a main instead of a supply pipe shall be borne by them.

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- (3) Notwithstanding anything in the foregoing provisions of this paragraph, an authority to whom such a notice as aforesaid is given may, within seven days after the receipt thereof, require the person giving the notice either to pay to them in advance the cost of the work, as estimated by their engineer, or to give security for payment thereof to their satisfaction, and, where they make such a requirement, the period of 14 days referred to in sub-paragraph (1) of this paragraph shall not commence to run until the requirement has been complied with.

If any payment so made to the authority exceeds the expenses which under the foregoing provisions of this paragraph they would be entitled to recover from the person giving the notice, the excess shall be repaid by them, and, if and so far as those expenses are not covered by the payment, they may recover the balance from him.

#### Textual Amendments

**F158** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 81(14)(e)

*Power of authority to require separate service pipes.*

- 7 (1) Subject to the provisions of this paragraph the authority may require the provision of a separate service pipe for each house supplied, or to be supplied by them, with water.
- (2) If, in the case of a house already supplied with water but not having a separate service pipe, the authority give notice to the owner of the house, requiring the provision of such a pipe, the owner shall within three months lay so much of the required pipe as will constitute a supply pipe and is not required to be laid in a [<sup>F159</sup>road], and the authority shall, within 14 days after he has done so, lay so much of the required pipe as will constitute a communication pipe or a supply pipe to be laid in a [<sup>F159</sup>road] and make all necessary connections.
- (3) If an owner upon whom a notice has been served under the last foregoing sub-paragraph fails to comply therewith, the authority may themselves execute the work which he was required to execute.
- (4) The expenses reasonably incurred by the authority in executing the work which they are required by sub-paragraph (2) to execute, or which they are empowered by the last foregoing sub-paragraph to execute, shall be repaid to them by the owner of the house and may be recovered by them from him, but without prejudice to the rights and obligations as between themselves, of the owner and occupier of the house.
- (5) Where two or more houses are being supplied with water by a single service pipe, the authority shall not require the provision of separate service pipes for those houses until <sup>F160</sup>—
- (a) the existing supply pipe becomes so defective as to require renewal, or is no longer sufficient to meet the requirements of the houses; or
  - (b) the houses are, by structural alterations to one or more of them, converted into a larger number of houses. [<sup>F161</sup>; or
  - (c) the owner or occupier of any of the houses has interfered with, or allowed another person to interfere with, the existing service pipe or the stop-cock fixed to that pipe and has thereby caused the supply of water to any of the houses to be interfered with; or

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- (d) the authority have reasonable grounds to believe that such interference as is mentioned in (c) above is likely to take place.]

**Textual Amendments**

- F159** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(e\)](#)  
**F160** Word repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 58(a), [Sch. 4 Pt. I](#)  
**F161** Word and subparas.(c)(d) added by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 58(b)

*Power to break open streets forming boundary of limits of supply.*

- 8 Where any premises which are within the limits of supply about on, or are situated near to, any [<sup>F162</sup>road] which is, as to the whole or a part of its width, outside those limits, the authority may for the purpose of supplying water to the owner or occupier of those premises exercise with respect to the whole width of the [<sup>F162</sup>road] the like powers of laying, inspecting, repairing, altering, renewing and removing service pipes with any necessary stopcocks and fittings and of breaking open the [<sup>F162</sup>road] for that purpose as are exercisable by them with respect to streets within the said limits, subject however to the like conditions and obligations.

**Textual Amendments**

- F162** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(e\)](#)

*Provisions as to the position of stopcocks.*

- 9 (1) On every service pipe laid after 16th May 1946 the authority shall, and on every service pipe laid before that date the authority may, fit a stopcock enclosed in a covered box, or pit, of such size as may be reasonably necessary.
- (2) Every stopcock fitted on a service pipe after 16th May 1946 shall be placed in such position as the authority deem most convenient:
- Provided that—
- (a) a stopcock in private premises shall be placed as near as is reasonably practicable to the [<sup>F163</sup>road] from which the service pipe enters those premises; and
- (b) a stopcock in a [<sup>F163</sup>road] shall, after consultation with the [<sup>F164</sup>roads] authority concerned, be placed as near to the boundary thereof as is reasonably practicable.

**Textual Amendments**

- F163** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(f\)\(i\)](#)  
**F164** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(14\)\(f\)\(ii\)](#)

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## SCHEDULE 4

### PROVISIONS TO BE INCORPORATED IN ORDERS RELATING TO WATER UNDERTAKINGS

#### Modifications etc. (not altering text)

- C26** Sch. 4 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 3, Sch. 7 para. 2 (1) (xxxviii), Sch. 8 para. 33
- C27** Sch. 4: power to apply conferred (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1, 130), s. 20(10), Sch. 7 para. 5(1)(b)

## PART I

### INTERPRETATION

#### Definitions, etc.

- 1 (1) In this Schedule the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say:
- “authorised” means authorised by the special Act;
  - “consumer” means a person supplied, or about to be supplied, with water by the undertakers;
  - “factory” means factory within the meaning of the <sup>M49</sup>Factories Act 1961;
  - “fire authority” has the same meaning as in the <sup>M50</sup>Fire Services Act 1947;
  - “prescribed” means prescribed by the special Act;
  - “special Act” means the Act or Part of an Act, or order with which any provisions of this Schedule are incorporated, with or without modification, and includes those provisions as so incorporated;
- .....  
F165  
.....
- “trunk main” means a main constructed for the purpose of conveying water from a source of supply to a filter or reservoir, or from one filter or reservoir to another filter or reservoir, or for the purpose of conveying water in bulk from one part of the limits of supply to another part of those limits, or for the purpose of giving or taking a supply of water in bulk;
  - “undertakers” means the persons whose water undertaking is authorised or regulated by the special Act.
- (2) Other expressions in this Schedule have the respective meanings assigned to them in this Act.
- (3) References in this Schedule to any enactment shall be construed as including references to that enactment as amended by any subsequent enactment including this Act.

#### Textual Amendments

- F165** Definition repealed by Telecommunications Act 1984 (c. 12, SIF 96), ss. 2, 109, Sch. 7 Pt. I

#### Marginal Citations

- M49** 1961 c. 34.



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**M50** 1947 c. 41.

## PART II

### WORKS AND LANDS

#### *Permissible limits of deviation.*

- 2 In the construction of any authorised works the undertakers may deviate laterally to any extent not exceeding the limits of deviation shown on the plans submitted to the Secretary of State and, where on any [<sup>F166</sup>road] no such limits are shown, the boundaries of the [<sup>F166</sup>road] (including for this purpose any verge or roadside waste adjoining it) shall be deemed to be such limits, and they may also deviate vertically from the levels shown on the deposited sections to any extent:

Provided that—

- (a) no embankment for a reservoir shall be constructed at a greater height above the general surface of the ground than that shown on the said plans and six feet in addition thereto; and
- (b) except for the purpose of crossing a stream, canal, dyke, watercourse or railway, or of crossing any lands where the consent of all persons interested in those lands has been obtained, no pipe or other conduit or aqueduct shall be raised above the surface of the ground otherwise than in accordance with the said plans.

#### **Textual Amendments**

**F166** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(a)**

#### **Modifications etc. (not altering text)**

**C28** Sch. 4 para. 2 applied (with modifications) (15.1.1992) by S.I. 1992/30, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (3.3.1992) by S.I. 1992/393, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (20.4.1992) by S.I. 1992/998, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (17.6.1994) by S.I. 1994/1556, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (1.1.1995) by S.I. 1994/3308, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (3.4.1997) by S.I. 1997/1115, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (12.11.1999) by S.S.I. 1999/127, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (9.10.2001) by S.S.I. 2001/369, art. 3, **Sch. 1**  
 Sch. 4 para. 2 applied (with modifications) (14.10.2005) by S.S.I. 2005/508, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (14.10.2005) by S.S.I. 2005/509, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (21.10.2005) by S.S.I. 2005/513, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (11.11.2005) by S.S.I. 2005/576, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (11.11.2005) by S.S.I. 2005/577, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (11.11.2005) by S.S.I. 2005/578, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (23.12.2005) by S.S.I. 2005/649, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (14.3.2006) by S.S.I. 2006/152, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (14.3.2006) by S.S.I. 2006/153, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (2.6.2006) by S.S.I. 2006/296, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (21.6.2006) by S.S.I. 2006/360, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (21.6.2006) by S.S.I. 2006/361, **art. 3**, **Sch. 2**



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*Limit on powers of undertakers to take water.*

3 The undertakers shall not construct any works for taking or intercepting water (other than works for intercepting foul water) from any lands acquired by them, unless the works are authorised by, and the lands on which the works are to be constructed are specified in, the special Act or some other enactment.

*General power to construct subsidiary works.*

4 Subject to the provisions of the last foregoing section and to any other provisions of the special Act limiting the powers of the undertakers to abstract water, the undertakers, in addition to any works specifically authorised, may, in, on or over any land for the time being held by them in connection with their water undertaking construct, lay or erect for the purposes thereof or in connection therewith, and may maintain such reservoirs, sluices, tanks, cisterns, aqueducts, tunnels, culverts, mains, pipes, filters, engines, pumps, machinery, buildings and things for or in connection with the supply of water as they deem necessary:

Provided that any electrical works or apparatus constructed, laid or erected under this section shall be so constructed, laid or erected and so maintained and used, as to prevent interference with any [<sup>F167</sup>telecommunication apparatus kept installed for the purposes of a telecommunications code system or with the service provided by any such system.]

**Textual Amendments**

**F167** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, Sch. 4 para. 74(2)(5), [Sch. 5 para. 45](#)

5 ..... <sup>F168</sup>

**Textual Amendments**

**F168** [Sch. 4 sect. 5](#) repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, Sch. 4 para. 74(2)(5), [Sch. 5 para. 45](#), [Sch. 7 Pt. I](#)

*Penalty for obstructing construction of works.*

6 Any person who wilfully obstructs a person engaged by or under authority of the undertakers in setting out the line or site of any authorised works, or knowingly pulls up any peg or stake driven into the ground for the purpose of setting out such line or site or knowingly defaces or destroys anything made or erected for that purpose, shall be liable to a fine not exceeding [<sup>F169</sup>level 1 on the standard scale].

**Textual Amendments**

**F169** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289G, 457A](#)

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*Power to acquire servitudes for underground work.*

- 7 (1) Where the undertakers are authorised by the special Act to acquire any land compulsorily for the purpose of executing any underground works, they may, instead of purchasing the land, purchase only such servitudes and rights over or in the land as may be sufficient for the purpose, and the Lands Clauses Acts and the enactments relating to the compensation payable in respect of the compulsory acquisition of land shall apply accordingly subject to any exceptions and modifications with which those enactments are incorporated with the special Act and to any other necessary adaptations.
- (2) The undertakers shall not be required or, except by agreement, be entitled to fence off or sever from adjoining lands any lands in respect of which they have acquired only servitudes or rights under the provisions of this section, and subject to those servitudes or rights and to any other restrictions imposed by the special Act, the owners or occupiers for the time being of those lands shall have the same rights of using and cultivating them as if that Act had not been passed.

*Persons under disability may grant servitudes, etc.*

- 8 Persons empowered by the Lands Clauses Acts to sell, convey and dispose of any lands may, subject to the provisions of those Acts and of the special Act, grant to the undertakers any servitude or right required for the purposes of the special Act over or in those lands, and the provisions of the Lands Clauses Acts with respect to lands and feu duties, ground annuals, rents or other annual or recurring payments shall, so far as applicable, apply in relation to such grants and to such servitudes and rights:

Provided that nothing in this section shall be construed as empowering persons to grant any servitude or right of water in which any other person has an interest, unless that other person concurs in the grant.

*Extinction of private rights of way.*

- 9 (1) Any private right of way over land which the undertakers are authorised to acquire compulsorily shall, if they so resolve and give notice of their resolution to the owner of the right, be extinguished as from the acquisition by them of the land, or as from the expiration of one month from the service of the notice, whichever may be the later.
- (2) The undertakers shall pay compensation to all persons interested in respect of any such right so extinguished, and such compensation shall, in case of dispute, be settled in manner provided by the Lands Clauses Acts with respect to the taking of lands otherwise than by agreement.

### PART III

#### COMPENSATION WATER

*Provisions as to compensation water.*

- 10 (1) During the construction of any authorised impounding reservoir the undertakers may, subject as hereinafter provided, take from any stream to be impounded thereby such water as they may require:

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Provided that before taking any water from the stream they shall, on an approved site, construct an approved gauge to gauge the flow of the stream, and, while the flow of water through or over the gauge is less than the prescribed flow, they shall not take any water.

(2) After the completion of the reservoir the undertakers shall, at an approved point within such limits as may be prescribed, discharge into the stream from, or from streams feeding, the reservoir during every day of 24 hours reckoned from midnight in a uniform and continuous flow a quantity of water not less than the prescribed quantity, and, for the purpose of gauging such discharge, they shall construct and maintain in good order approved gauges on approved sites.

(3) If the undertakers—

- (a) fail to construct or maintain in good order any such gauge as aforesaid, or refuse to allow any person interested to inspect and examine any such gauge or any records made thereby or kept by them in connection therewith or to take copies of any such records; or
- (b) take any water from the stream contrary to the provisions of subsection (1) of this section, or fail to comply with the requirements of subsection (2) of this section with respect to the discharge of water into the stream,

they shall, without prejudice to their civil liability, if any, to a person aggrieved, be liable, in the case of an offence under paragraph (a) of this subsection, on summary conviction to a fine not exceeding [<sup>F170</sup>level 3 on the standard scale], and in the case of an offence under paragraph (b) of this subsection—

- (i) on summary conviction, to a fine not exceeding [<sup>F171</sup>the statutory maximum] ; and
- (ii) on conviction on indictment, to a fine <sup>F172</sup>.

(4) In this section, the expression “gauge” includes a gauge weir or other apparatus for measuring the flow of water, and the expression “approved” means approved by the Secretary of State; and for the purposes of this section a fishery district board and a navigation authority shall be deemed to be interested in the flow of water in, and the discharge of water into, any stream within their fishery district or, as the case may be, any part of their system of navigation or any stream feeding such a stream or any part of that system, and shall be deemed to be aggrieved by the commission of an offence under this section in relation to any such stream.

(5) The foregoing provisions of this section shall be deemed to have been accepted by all persons interested as providing full compensation for all water impounded by the authorised works, except in respect of any land between the foot of the embankment of the reservoir and the point of discharge approved for the purposes of subsection (2) of this section.

#### Textual Amendments

**F170** Words in Sch. 4 para. 10(3) substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), s. 289G, 289H, Sch. 7D (as inserted by Criminal Justice Act 1982 (c. 48), s. 54, Sch. 6, which Sch. 6 was repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5) and those same words substituted (1.4.1996) by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 10, Sch. 2 Pt. III

**F171** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), Sch. 15 para. 27(a)

**F172** Words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), Sch. 15 para. 27(b)

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**Modifications etc. (not altering text)**

- C29** Sch. 4 para. 10(3) applied (with modifications) (3.4.1997) by S.I. 1997/1115, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (12.11.1999) by S.S.I. 1999/127, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (12.11.1999) by S.S.I. 1999/128, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (28.8.2000) by S.S.I. 2000/294, **arts. 1(1), 3**  
 Sch. 4 para. 10(3) applied (with modifications) (17.7.2000) by S.S.I. 2000/236, arts. 1(1)(3), **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (1.8.2000) by S.S.I. 2000/237, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (14.10.2005) by S.S.I. 2005/508, **art. 3**, Sch. 2  
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 Sch. 4 para. 10(3) applied (with modifications) (21.10.2005) by S.S.I. 2005/513, **art. 3**, Sch. 2  
 Sch. 4 para. 10(3) applied (with modifications) (11.11.2005) by S.S.I. 2005/577, **art. 3**, Sch. 2  
 Sch. 4 para. 10(3) applied (with modifications) (11.11.2005) by S.S.I. 2005/578, **art. 3**, Sch. 2  
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 Sch. 4 para. 10(3) applied (with modifications) (14.3.2006) by S.S.I. 2006/152, **art. 3**, Sch. 2  
 Sch. 4 para. 10(3) applied (with modifications) (14.3.2006) by S.S.I. 2006/153, **art. 3**, Sch. 2  
 Sch. 4 para. 10(3) applied (with modifications) (2.6.2006) by S.S.I. 2006/296, **art. 3**, Sch. 2  
**C30** Sch. 4 para. 10(3)(4) applied (with modifications) (15.1.1992) by S.I. 1992/30, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (3.3.1992) by S.I. 1992/393, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (20.4.1992) by S.I. 1992/998, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (9.10.2001) by S.S.I. 2001/369, art. 3, **Sch. 1**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (11.11.2005) by S.S.I. 2005/576, **art. 3**, Sch. 2  
 Sch. 4 para. 10(3)(4) applied (with modifications) (21.6.2006) by S.S.I. 2006/360, **art. 3**, Sch. 2  
 Sch. 4 para. 10(3)(4) applied (with modifications) (21.6.2006) by S.S.I. 2006/361, **art. 3**, Sch. 2  
**C31** Sch. 4 para. 10(3)(4)(5) applied (with modifications) (17.6.1994) by S.I. 1994/1556, art. 3, **Sch. 2**  
**C32** Sch. 4 para. 10(3)(5) applied (with modifications) (1.1.1995) by S.I. 1994/3308, art. 3, **Sch. 2**  
**C33** Sch. 4 para. 10(3)(4) applied (with modifications) (10.12.2007) by The Scottish Water (Loch Horn and Loch Lunndaidh) Water Order 2007 (S.S.I. 2007/554), **art. 3**, Sch. 2

**PART IV**

MINERALS UNDERLYING WATERWORKS

**Modifications etc. (not altering text)**

- C34** Sch. 4 Pt. IV incorporated (with modifications) (1.4.2002) by Water Industry (Scotland) Act 2002 (asp 3), s. 46(3)(b) (with s. 67); S.S.I. 2002/118, **art. 2(3)**

*Undertakers not entitled to underlying minerals unless expressly purchased.*

- 11 When the undertakers purchase any land, they shall become entitled to such parts of any mines of coals, ironstone, slate or other minerals under that land as it may be necessary for them to dig, carry away or use in the construction of any waterworks authorised by the special Act, but, save as aforesaid, they shall not by virtue only of their purchase of the land become entitled to any such mines or minerals which shall, save as aforesaid, be deemed to be excepted from the conveyance of the land unless expressly mentioned therein as conveyed thereby.

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*Map of underground works to be prepared and kept up to date.*

- 12 (1) The undertakers shall, within six months after the first occasion on which any pipes or other conduits or underground works are laid or constructed by them after this section is incorporated with their enactments, cause the course and situation of all existing pipes or other conduits for the collection, passage or distribution of water and underground works belonging to them to be marked on a map (drawn on a scale of not less than six inches to one mile), and shall, from time to time within six months after the making of any alterations or additions, cause the said map to be so corrected as to show the course and situation of all such pipes and conduits and underground works for the time being belonging to them, and the map or a copy thereof bearing the date of its preparation and of the last occasion on which it was corrected shall be kept at the office of the undertakers.

In this subsection the expression “pipes” does not include service pipes.

- (2) The said map shall at all reasonable hours be open to inspection by any person interested free of charge.

*Mines lying near the works not to be worked without notice to undertakers.*

- 13 Subject to any agreement to the contrary, if the owner, lessee or occupier of any mines of coal, ironstone, slate or other minerals lying under the reservoirs or buildings of the undertakers or any of their pipes or other conduits or underground works shown on the map referred to in the last foregoing section, or lying within the prescribed distance therefrom, or, if no distance be prescribed, within 40 yards therefrom, desires to work the said mines or minerals, he shall give to the undertakers 30 days’ notice of his intention so to do.

*If undertakers unwilling to pay compensation, mines may be worked in usual manner.*

- 14 (1) Upon receipt of such a notice as aforesaid, the undertakers may cause the said mines or minerals to be inspected by any person appointed by them for the purpose, and if it appears to them that the working thereof is likely to damage any of their reservoirs or buildings or pipes or other conduits or underground works shown on the said map, and if they are willing to pay compensation for the mines or minerals to the owner, lessee or occupier thereof, then he shall not work them, and the amount of the compensation to be paid shall, in case of dispute, be determined by the Lands Tribunal for Scotland.
- (2) If the undertakers have not, before the expiration of the said 30 days, stated their willingness to treat with the owner, lessee or occupier for the payment of compensation, it shall be lawful for him to work the said mines and minerals and to drain them by means of pumps or otherwise as if the special Act had not been passed, so however that no wilful damage be done to any of the said property or works of the undertakers and that the mines and minerals be not worked in an unusual manner.
- (3) Any damage or obstruction occasioned to any of the said property or works of the undertakers by the working of such mines or minerals in an unusual manner shall be forthwith repaired or removed and the damage made good by the owner, lessee or occupier of the mines or minerals, and if such repair or removal be not effected forthwith, or if the undertakers deem it necessary to take action without waiting for the work to be done by the owner, lessee or occupier, the undertakers may execute the work and recover from the owner, lessee or occupier the expenses reasonably incurred by them in so doing.

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*Power to make mining communication where continuous working is prevented.*

- 15 If the working of any such mines or minerals as aforesaid lying under the reservoirs or buildings of the undertakers or any of their pipes or other conduits or underground works shown on the map referred to in section 12 of this Schedule or lying within the abovementioned distance therefrom mentioned in section 13 of this Schedule, be prevented as aforesaid by reason of apprehended injury thereto, the respective owners, lessees and occupiers of the mines or minerals may cut and make such and so many airways, headways, gateways or water levels through the mines, measures or strata the working whereof is so prevented as may be requisite to enable them to ventilate, drain and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, or, if no dimensions are prescribed eight feet wide and eight feet high, nor be cut or made upon any part of the said property or works of the undertakers so as to cause injury thereto.

*Undertakers to pay compensation for expenses incurred by reason of severance.*

- 16 (1) Subject to any agreement to the contrary, the undertakers shall from time to time pay compensation to the owner, lessee or occupier of any mines of coal, slate, ironstone and other minerals lying on both sides of any reservoir, building, pipe or other conduit or other works of the undertakers for any loss and additional expense incurred by him by reason of the severance of the lands above such mines or minerals by the reservoir or other works, or by reason of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of their being worked under the restrictions imposed by the special Act, and also for any such mines or minerals not purchased by the undertakers as cannot be worked or won by reason of the making and continuance of the said works, or by reason of such apprehended injury from the working thereof as aforesaid.
- (2) The amount of any such compensation shall, in case of dispute, be determined by the Lands Tribunal for Scotland.

*Undertakers may enter and inspect the working of mines.*

- 17 For the purpose of ascertaining whether any such mines or minerals as aforesaid are being, have been or are about to be, worked so as to damage any of their said works, any authorised officer of the undertakers, after giving 24 hours' notice and on producing, if so required, some duly authenticated document showing his authority, may enter upon any lands in, on or near which the works are situate and under which they know or suspect that any such mines are being, have been or are about to be, worked, and may enter any such mines and the works connected therewith, using for his entry, inspection and return any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and may use all necessary means for discovering the distance from the said works to the parts of the mines which are being, have been, or are about to be, worked.

*Undertakers not exempted from liability for injury to mines.*

- 18 Nothing in the special Act shall exempt the undertakers from liability to any action or other legal proceeding to which they would have been liable in respect of any damage or injury done or occasioned to any mines by means, or in consequence, of their waterworks, if those works had been constructed or maintained otherwise than by virtue of the special Act.

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## PART V

### SUPPLY OF WATER FOR PUBLIC PURPOSES

#### *Undertakers to fix and maintain fire hydrants on pipes.*

- 19 The undertakers shall, at the request of the fire authority concerned, fix fire hydrants on their mains (other than trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the limits of supply, and shall keep in good order and from time to time renew every such hydrant.

**Modifications etc. (not altering text)**

**C35** Sch. 4 paras. 19-22 applied (2.8.2005) by virtue of Fire (Scotland) Act 2005 (asp 5), s. 21(1) (with s. 77); S.S.I. 2005/392, art. 2

#### *Undertakers to deposit keys of hydrants at certain places.*

- 20 As soon as any such hydrant is complete, the undertakers shall, if required by the fire authority, deposit a key thereof at each place within the limits of supply where any public fire engine is kept, and in such other places as may be appointed by the fire authority.

**Modifications etc. (not altering text)**

**C36** Sch. 4 paras. 19-22 applied (2.8.2005) by virtue of Fire (Scotland) Act 2005 (asp 5), s. 21(1) (with s. 77); S.S.I. 2005/392, art. 2

#### *Cost of hydrants.*

- 21 The cost of such hydrants as aforesaid and of fixing, maintaining and renewing them, and of providing such keys as aforesaid shall be defrayed by the fire authority.

**Modifications etc. (not altering text)**

**C37** Sch. 4 paras. 19-22 applied (2.8.2005) by virtue of Fire (Scotland) Act 2005 (asp 5), s. 21(1) (with s. 77); S.S.I. 2005/392, art. 2

VALID FROM 02/08/2005

- [<sup>F173</sup>21A The Scottish Ministers may by regulations make provision as to—  
(a) the persons (other than Scottish Water) from whom; or  
(b) the circumstances in which,  
fire authorities may recover costs defrayed under section 21 of this Schedule.]



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#### Textual Amendments

**F173** Sch. 4 para. 21A inserted (2.8.2005) by virtue of [Fire \(Scotland\) Act 2005 \(asp 5\)](#), s. 22(2) (with s. 77); S.S.I. 2005/392, art. 2

*Hydrants to be placed near factories, etc., at request of owners or occupiers.*

- 22 The undertakers shall, at the request and expense of the owner or occupier of any factory or place of business situated in, or near to, a [<sup>F174</sup>road] in which a pipe of the undertakers is laid (not being a trunk main, and being of sufficient dimensions to carry a hydrant) fix on the pipe and keep in good order and from time to time renew one or more fire hydrants, to be used only for extinguishing fires, as near as conveniently may be to that factory or place of business, and shall also at his expense comply as respects each such hydrant with the requirements of the last but one foregoing section.

#### Textual Amendments

**F174** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(15\)\(b\)](#)

- 23 ..... <sup>F175</sup>

#### Textual Amendments

**F175** Sch. 4 para. 23 repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 66(2), [Sch. 4 Pt. I](#)

*Supply of water for cleansing sewers, etc., and for other public purposes.*

- 24 (1) In every pipe on which a hydrant is fixed the undertakers shall provide a supply of water for cleansing sewers and drains, for cleansing and watering [<sup>F176</sup>roads] and for supplying any public pumps, baths or washhouses.
- (2) A supply of water for the said purposes shall be provided at such rates, in such quantities and upon such terms and conditions as may be agreed between the regional islands or district council or [<sup>F177</sup>roads] authority concerned and the undertakers.

#### Textual Amendments

**F176** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(15\)\(c\)\(i\)](#)

**F177** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(15\)\(c\)\(ii\)](#)

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## PART VI

### CONSTANCY AND PRESSURE OF SUPPLY

*Duty of undertakers as respects constant supply and pressure.*

25 Subject as hereinafter provided, the undertakers shall cause the water in all pipes on which hydrants are fixed, or which are used for giving supplies for domestic purposes, to be laid on constantly and at such a pressure as will cause the water to reach to the topmost storey of every building within the limits of supply:

Provided that—

- (a) nothing in this section shall require them to deliver water at a height greater than that to which it will flow by gravitation through their existing mains from the service reservoir or tank from which the supply in question is taken;
- (b) they may in their discretion determine the service reservoir or tank from which any supply is to be taken; and
- (c) the provisions of this section shall not apply if the undertakers are prevented from complying therewith by reason of frost, drought, unavoidable accident, or other unavoidable cause, or during the execution of necessary works.

## PART VII

### PROVISIONS AS TO WASTE AND AS TO METERS

*Power to require provision of cisterns in certain cases.*

- 26 (1) The undertakers may require that—
- (a) any building the supply of water to which need not under the special Act be constantly laid on under pressure, and
  - (b) any house the erection of which was not commenced before 16th May 1946 and to which water is required to be delivered at a height greater than 35 feet below the draw-off level of the service reservoir from which a supply of water is being or is to be furnished by them,

shall be provided with a cistern having a ball-tap and stopcock fitted on the pipe conveying water to it and, in the case of such a house as is mentioned in paragraph (b) of this subsection, may require that the cistern shall be capable of holding sufficient water to provide an adequate supply to the house for a period of 24 hours.

- (2) Where, in the case of any house—
- (a) the erection of which was begun on or after the 16th May 1968, or
  - (b) to which a supply of piped water was given for the first time on or after that date, or
  - (c) in which water fittings likely to lead, in the opinion of the undertakers, to an increase in the consumption of water were installed after that date,

the undertakers consider that, in order to provide for an adequate supply of water throughout any 24-hour period, a cistern requires to be fitted, they shall serve a notice on the owner of the house requiring that the house shall be provided with a cistern capable of providing an adequate supply of water as aforesaid to that house, and that

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a ball-tap and stopcock shall be fitted on the pipe conveying water to it; and that notice shall include an intimation that any person aggrieved by the notice may, within 28 days of the service thereof, appeal against it to the Secretary of State; and, where such an appeal is made, the Secretary of State shall give such directions in the matter as may seem to him proper; and, subject to any such directions, the next following subsection shall have effect in relation to this subsection:

Provided that the undertakers shall not exercise any power conferred on them by that subsection until the determination by the Secretary of State of any appeal under this subsection.

- (3) If the owner of the building or house whom the undertakers have in accordance with the foregoing provisions required to provide a cistern fails to comply with the requirement, or if any cistern in use in the building or house or the ball-tap and stopcock pertaining to that cistern are not kept in good repair, the undertakers may themselves provide a cistern or execute any repairs necessary to prevent waste of water, and may recover the expenses reasonably incurred by them in so doing as a civil debt from the owner of the building or house, but without prejudice to the rights and obligations, as between themselves, of the owner and the occupier.

*Power to test water fittings.*

- 27 The undertakers may test any water fittings used in connection with water supplied by them.

*Power to enter premises to detect waste or misuse of water.*

- 28 An authorised officer of the undertakers may, between the hours of eight in the forenoon and eight in the afternoon, on producing, if required, evidence of his authority, enter any premises supplied with water by the undertakers in order to ascertain if there be any waste or misuse of such water, and, if, after production of his authority, he is refused admittance to the premises or is obstructed in making his examination, the person refusing him admittance or so obstructing him shall be liable on summary conviction to a fine not exceeding [<sup>F178</sup>level 3 on the standard scale].

**Textual Amendments**

**F178** Words in Sch. 4 para. 28 substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), s. 289G, 289H, [Sch. 7D](#) (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), s. 54, [Sch. 6](#), which Sch. 6 was repealed (1.4.1996) by [1995 c. 40](#), ss. 6, 7(2), [Sch. 5](#)) and those same words substituted (1.4.1996) by [1995 c. 40](#), ss. 3, 7(2), [Sch. 1 para. 10](#), [Sch. 2 Pt. III](#)

*Power to repair supply pipes.*

- 29 (1) If the undertakers have reason to think that some injury to or defect in a pipe which they are not under obligation to maintain is causing, or is likely to cause, waste of water or injury to person or property, they may execute such work as they think necessary or expedient in the circumstances of the case without being requested so to do, and, if any injury to or defect in the pipe is discovered, the expenses reasonably incurred by the undertakers in discovering it and in executing repairs shall be recoverable by them as a civil debt from the owner of the premises supplied, but

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without prejudice to the rights and obligations, as between themselves, of the owner and occupier of the premises.

- (2) Where several houses in the ownership of different persons are supplied with water by one common supply pipe, the amount of any such expenses as aforesaid reasonably incurred from time to time by the undertakers in the maintenance and repair of that pipe may be recovered by them from those owners in such proportions as, in case of dispute, may be settled by arbitration.

*Penalty for waste, etc., of water by non-repair of pipes, etc.*

- 30 (1) If any person wilfully or negligently causes or suffers any water fitting which he is liable to maintain to—
- (a) be or remain so out of order, or so in need of repair; or
  - (b) be or remain so constructed or adapted, or be so used,
- that the water supplied by the undertakers is, or is likely to be, wasted, misused or unduly consumed, or contaminated before use, or that foul air or any impure matter is likely to return into any pipe belonging to, or connected with a pipe belonging to, the undertakers, he shall be liable to a fine not exceeding [<sup>F179</sup>level 3 on the standard scale].
- (2) If any water fitting is in such a condition, or so constructed or adapted, or so used, as aforesaid, the undertakers, whether proceedings have or have not been taken in respect of the offence, may require the owner or the occupier of the premises to carry out repairs or alterations or to substitute another type of fitting, as they may reasonably consider necessary, and, if he fails to do so within 48 hours, may themselves carry out the work and recover from him as a civil debt the expenses reasonably incurred by them in so doing, but without prejudice to the rights and obligations, as between themselves, of the owner and the occupier.

**Textual Amendments**

**F179** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

*Penalty for misuse of water:*

- 31 (1) An owner or occupier of premises supplied with water by the undertakers who without their consent supplies any of that water to another person for use in other premises, or wilfully permits another person to take any of that water for use in other premises, shall be liable to a fine not exceeding [<sup>F180</sup>level 1 on the standard scale], unless that other person requires the water for the purpose of extinguishing a fire, or is a person supplied with water by the undertakers but temporarily unable, through no default of his own to obtain water.
- (2) If a person wrongfully takes, uses or diverts water from a reservoir, watercourse, conduit, pipe or other apparatus belonging to the undertakers, or from a pipe leading to or from any such reservoir, watercourse, conduit, pipe or other apparatus, or from a cistern or other receptacle containing water belonging to the undertakers or supplied by them for the use of a consumer of water from them, he shall be liable to a fine not exceeding [<sup>F180</sup>level 1 on the standard scale].

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- (3) Any person who, having from the undertakers a supply of water otherwise than by meter, uses any water so supplied to him for a purpose not being a purpose for which he is entitled to use it shall be liable to a fine not exceeding [<sup>F180</sup>level 1 on the standard scale], without prejudice to the right of the undertakers to recover from him the value of the water misused.

#### Textual Amendments

**F180** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Penalty for injuring water fittings, etc., or for fraudulent use of water.*

- 32 (1) If any person wilfully or negligently injures, or suffers to be injured, any water fitting belonging to the undertakers, or fraudulently alters the index of any meter used by them for measuring the water supplied by them, or prevents any such meter from registering correctly the quantity of water supplied, or fraudulently abstracts or uses water of the undertakers, he shall, without prejudice to any right or remedy competent to the undertakers in the matter, be liable to a fine not exceeding [<sup>F181</sup>level 1 on the standard scale], and the undertakers may do all such work as is necessary for repairing any injury done, or for securing the proper working of the meter, and may recover the expenses seasonably incurred by them so doing from the offender.
- (2) For the purpose of this section, if it is proved that a consumer has altered the index of a meter, it shall rest upon him to prove that he did not alter it fraudulently, and the existence of any artificial means under the control of a consumer for preventing a meter from registering correctly or for enabling him fraudulently to abstract or use water, shall be evidence that he has fraudulently prevented the meter from registering correctly, or, as the case may be, has fraudulently abstracted or used water.

#### Textual Amendments

**F181** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Penalty for interference with valves and apparatus.*

- 33 If any person either—
- (a) wilfully and without the consent of the undertakers, or
  - (b) negligently,
- turns on, opens, closes, shuts off or otherwise interferes with any valve, cock or other work or apparatus belonging to the undertakers and thereby causes the supply of water to be interfered with, he shall be liable to a fine not exceeding [<sup>F182</sup>level 3 on the standard scale] and, whether proceedings have been taken in respect of his offence or not, the undertakers may recover from him the amount of any damage sustained by them:

Provided that this section shall not apply to a consumer closing the stopcock fixed on the service pipe supplying his premises, so long as he has obtained the consent of any other consumer whose supply will be affected thereby.

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#### Textual Amendments

**F182** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Penalty for extension or alteration of pipes, etc.*

- 34 (1) Any person who without the consent of the undertakers attaches any pipe or apparatus to a pipe belonging to the undertakers, or to a supply pipe, or makes any alteration in a supply pipe or in any apparatus attached to a supply pipe, shall be liable to a fine not exceeding [<sup>F183</sup>level 1 on the standard scale], and any person who uses any pipe or apparatus which has been so attached or altered shall be liable to the same penalty, unless he proves that he did not know and had no grounds for suspecting that it had been so attached or altered.
- (2) When an offence under this section has been committed, then, whether proceedings have been taken in respect of his offence or not, the undertakers may recover from the offender the amount of any damage sustained by them and the value of any water wasted, misused or improperly consumed.

#### Textual Amendments

**F183** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Meters to be connected, or disconnected by undertakers.*

- 35 (1) A person who has not obtained the consent of the undertakers shall not connect or disconnect any meter by means of which water supplied by the undertakers is intended to be, or has been, measured for the purposes of the payment to be made to them, but, if he requires such a meter to be connected or disconnected, shall give to the undertakers not less than 24 hours' notice of his requirements and of the time when the work can be commenced, and thereupon the undertakers shall carry out the necessary work and may recover from him the expenses reasonably incurred by them in so doing.
- (2) A person who contravenes any of the provisions of this section and undertakers who fail to carry out with all reasonable despatch any such work as aforesaid, shall be liable to a fine not exceeding [<sup>F184</sup>level 1 on the standard scale].

#### Textual Amendments

**F184** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Meters, etc., to measure water or detect waste.*

- 36 Subject to the provisions of the special Act with respect to the breaking open of [<sup>F185</sup>roads], the undertakers may, for the purpose of measuring the quantity of water supplied, or preventing and detecting waste, affix and maintain meters and other apparatus on their mains and service pipes, and may insert in any [<sup>F185</sup>road], but as near as is reasonably practicable to the boundary thereof, the necessary covers or boxes for giving access and protection thereto, and may for that purpose temporarily

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obstruct, break open, and interfere with [<sup>F185</sup>roads], tramways, sewers, pipes, wires and apparatus:

Provided that the undertakers shall not under the powers of this section interfere with

- [<sup>F186</sup>(a) any telecommunication apparatus kept installed for the purposes of a telecommunications code system, except in accordance with, and subject to the provisions of, the telecommunications code; or]
- (b) any works or apparatus of any [<sup>F187</sup>public electricity supplier (within the meaning of Part I of the Electricity Act 1989) or any person authorised by a licence under that Part to generate or transmit electricity.], except in accordance with the provisions of [<sup>F188</sup>the code in Part II of the <sup>M51</sup>Public Utilities Street Works Act 1950][<sup>F188</sup>Part IV of the New Roads and Street Works Act 1991]; or
- (c) any pipes or apparatus of any gas undertakers, except under the supervision (if given) of an authorised officer of those undertakers and in accordance with plans approved by them or by such officer or in case of any difference as determined by the sheriff.

#### Textual Amendments

**F185** Word substituted by *Roads (Scotland) Act 1984 (c. 54, SIF 108)*, s. 156(1), **Sch. 9 para. 81(15)(d)**

**F186** Para. (a) of the proviso substituted by *Telecommunications Act 1984 (c. 12, SIF 96)*, ss. 2, 109, **Sch. 4 para. 74(4)(5)**, **Sch. 5 para. 45**

**F187** Words substituted by *Electricity Act 1989 (c. 29, SIF 44:1)*, s. 112(1), **Sch. 16 para. 26(3)(b)**

**F188** Words "Part IV of the New Roads and Street Works Act 1991" substituted (prosp.) for words from "the code" to the end of paragraph (b) by *New Roads and Street Works Act 1991 (c. 22, SIF 59, 108)*, ss. 168(1), 170, **Sch. 8 Pt. IV para. 108(8)(b)**

#### Marginal Citations

**M51** 1950 c. 39.

## PART VIII

### POLLUTION OF WATER BY MANUFACTURE OF GAS, ETC.

*Provisions as to pollution by liquids resulting from manufacture of gas, etc.*

- 37 Any person engaged in the manufacture or supply of gas, whether under statutory authority or not, or in any of the manufactures or trades mentioned in this subsection who—
- (a) causes or suffers any washing or other liquid produced in, or resulting from, the manufacture or supply of gas, or the treatment of any residual products of the manufacture of gas, or any product, washing or other substance produced in the manufacture of naphtha, vitriol, paraffin, dye stuffs or other deleterious substance or in any trade in which the refuse produced in any such manufacture is used, to run or be conducted—
    - (i) into, or into any drain communicating with, any stream, reservoir, aqueduct or other waterworks belonging to the undertakers; or



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- (ii) into any depression in the ground or excavation in such proximity to any spring, well or adit belonging to the undertakers that contamination of water there is reasonably probable; or
- (b) wilfully does any other act connected with the manufacture or supply of gas or the treatment of any such residual products as aforesaid, or connected with any of the other manufactures or trades specified as aforesaid whereby any water of the undertakers is fouled,
- shall be liable—
- (a) on summary conviction to a fine not exceeding [<sup>F189</sup>the statutory maximum] and to a further fine not exceeding £25 for each day during which his offence continues after conviction therefor; or
- (b) on conviction on indictment to imprisonment for a period not exceeding three months or to a fine and to a further fine for each such day as aforesaid.

#### Textual Amendments

**F189** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 28](#)

#### *Provision as to pollution by gas.*

- 38 If water belonging to the undertakers is fouled by gas belonging to any person manufacturing or supplying gas, he shall be liable to a fine not exceeding [<sup>F190</sup>level 2 on the standard scale], and to a further fine not exceeding £25 for each day during which his offence continues after conviction therefor.

#### Textual Amendments

**F190** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289G, 457A](#)

#### *Power to examine pipes and other works to ascertain source of pollution.*

- 39 (1) For the purpose of ascertaining whether water belonging to them is being fouled by gas or otherwise, the undertakers may open the ground, and examine any pipes or other works from which they have reason to suspect that their water is being fouled:

Provided that, before proceeding so to do, they shall give 24 hours' notice of the time at which the examination is intended to take place both to the owners of the pipes or other works and also [<sup>F191</sup>—

- (a) where the ground is, or comprehends, part of—
- (i) a public road, to the roads authority; or
- (ii) any other road, to the person responsible for the maintenance of that road, or, if no authority or person is so responsible, to the owners of the solum of that part; and
- (b) where or in so far as the ground is not mentioned in head (a) above, to the person having the control or management of the ground;

and the undertakers] shall be subject to the like obligations and liable to the same penalties in relation to reinstatement, maintenance and other matters as those to which they are subject and liable when breaking open [<sup>F192</sup>roads] for the purpose of laying water pipes.

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- (2) If, upon such examination as aforesaid, it appears that water of the undertakers has been fouled by gas or otherwise from pipes or other works, the undertakers may recover from the owner of such pipes or other works the expenses reasonably incurred by them in connection with the examination and the repair of the [<sup>F193</sup>road] or place disturbed in the examination, but otherwise the undertakers shall pay all expenses of the examination and repair, and shall also make good to the said owner any injury which may be occasioned to his pipes or other works by the examination.

The amount of the expenses of any such examination and repair, and of any injury so occasioned, shall in case of dispute be determined by arbitration.

#### Textual Amendments

**F191** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(e)(i)**

**F192** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(e)(i)**

**F193** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(e)(ii)**

## PART IX

### GENERAL AND MISCELLANEOUS

#### *Notice of discontinuance.*

- 40 A consumer who wishes the supply of water to his premises to be discontinued shall give not less than 24 hours' notice to the undertakers.

#### *Duty of undertakers to give notice of certain works.*

- 41 The undertakers before commencing to execute repairs or other work which will cause any material interference with the supply of water shall, except in a case of emergency, give to all consumers likely to be affected such notice as is reasonably practicable and shall complete the work with all reasonable dispatch.

#### *Penalty for obstructing execution of special Act.*

- 42 A person who wilfully obstructs any person acting in the execution of the special Act or of any byelaw or warrant made or issued thereunder shall be liable to a fine not exceeding [<sup>F194</sup>level 1 on the standard scale] and to a further fine not exceeding £25 for each day on which the offence continues after conviction therefor.

#### Textual Amendments

**F194** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Proceedings for offences.*

- 43 (1) Save as otherwise expressly provided, all offences and fines under the special Act or any byelaws made thereunder may be prosecuted and recovered under the

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<sup>M52</sup>Criminal Procedure (Scotland) Act 1975 [<sup>F195</sup>but all such offences shall be triable only summarily.]

(2) Any offence under the special Act or under any byelaws made thereunder (other than an offence in respect of which, if it is continued, a further penalty may be imposed) for which the maximum penalty that may be imposed does not exceed [<sup>F196</sup>level 1 on the standard scale] may be prosecuted in any court of summary jurisdiction within the meaning of the Criminal Procedure (Scotland) Act 1975, having jurisdiction in the place where the offence was committed.

[<sup>F197</sup>(3) For the avoidance of doubt it is declared that conduct in respect of which a person is made liable to a fine by or under the provisions of this Schedule is an offence.]

#### Textual Amendments

**F195** Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 77, **Sch. 15 para. 29(a)**

**F196** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289G, 457A**

**F197** **Sch. 4** sect. 43(3) inserted by Criminal Justice Act 1982 (c.48, SIF 39:1), s. 80(2), s. 77, **Sch. 15 para. 29(b)**

#### Marginal Citations

**M52** 1975 c. 21.

#### *Liability of undertakers to pay compensation.*

44 In any case where no express provision with respect to compensation is made by the special Act, the undertakers shall pay to the owners and occupiers of, and all other persons interested in, any lands or streams taken or used for the purposes of that Act, or injuriously affected by the construction or maintenance of the works thereby authorised or otherwise by the execution of the powers thereby conferred, compensation for the value of the lands or streams so taken or used and for all damage sustained by those owners, occupiers and other persons by reason of the exercise as to those lands and streams of the powers conferred on the undertakers by the special Act or any Act incorporated therewith.

The amount of such compensation shall, in case of dispute, be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

#### *Protection for works of navigation authorities and for railways.*

45 (1) Subject to the provisions of this section and to any provisions of the special Act empowering the undertakers to execute works specified therein, nothing in the special Act shall authorise the undertakers without the consent of the navigation authority concerned—

- (a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation thereon or the use thereof or the access thereto, or to interfere with any towing path so as to interrupt the traffic thereon;
- (b) to interfere with any bridge crossing any river, canal, dock, harbour or basin;

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- (c) to execute any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to a navigation authority and is held or used by them for the purposes of their undertaking;
- (d) to execute any works which will interfere with the improvement of or the access to any river, canal, dock, harbour, basin, lock, reservoir, or towing path or with any works pertaining thereto or any land necessary for the enjoyment or improvement thereof;

or, without the consent of the railway company concerned, to execute any works along, across or under any railway of a railway company:

Provided that consent under this section shall not be unreasonably withheld, and any question as to whether or not consent is unreasonably withheld shall be determined by arbitration.

- (2) Upon an arbitration under this section, the arbiter shall determine—
  - (i) whether any works which the undertakers propose to execute are such works as under the last foregoing sub-section they are not entitled to execute without consent; and
  - (ii) if they are such works, whether the injury, if any, to the navigation authority or railway company will be of such a nature as to admit of being fully compensated by money; and
  - (iii) if the works are of such a nature, the conditions including conditions of a financial character with respect to the payment of compensation, future liabilities and otherwise, subject to which—
    - (a) the navigation authority or railway company shall, if they so elect, carry out the works on behalf of the undertakers; or
    - (b) in default of such election, the undertakers may themselves carry out the works.

If the arbiter should determine that the proposed works are such works as the undertakers are not entitled to execute without consent and that the works would cause injury to the navigation authority or railway company of such a nature as not to admit of being fully compensated by money, the undertakers shall not proceed to execute the works, but in any other case they may execute the works, subject to compliance with such conditions, including the payment of such compensation, as the arbiter may have determined.

- (3) For the purposes of this section, a navigation authority shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if it belongs to them and forms part of their undertaking or if they have statutory rights of navigating on or using it or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (4) Nothing in this section shall be construed as limiting the powers of the undertakers under the special Act in respect of the opening and breaking up of streets and bridges.

*Copies of special Act to be deposited.*

- 46 The undertakers shall, at all times after the expiration of six months from the date on which the special Act was passed or made, keep at their principal office a copy thereof printed by the Queen's printer, and shall also within the said six months deposit such a copy with the sheriff clerk of every sheriff court district and with the clerk of the

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local authority of every district within which they supply, or propose to supply, water or have or propose to construct any waterworks.

## <sup>F198</sup>SCHEDULES 5 AND 6.

### Textual Amendments

**F198** Schs. 5 and 6 repealed (1.10.1991) by *Natural Heritage (Scotland) Act 1991* (c. 28, SIF 46:1, 130), s. 27(2), **Sch. 11**; S.I. 1991/2187, **art. 3**, Schedule

## SCHEDULE 7

Sections 4, 82.

### PROCEDURE FOR MAKING AN ORDER UNDER SECTION 4 OR 82

- 1 Before making an order under section 4 or 82 the Secretary of State shall prepare a draft order, and shall cause a notice to be published in the Edinburgh Gazette and in such other manner as he thinks best for the purpose of the informing of persons affected by the order—
  - (a) stating the general effect of the order;
  - (b) specifying the places where copies of the draft order, and any map relating thereto, may be inspected by any person free of charge at all reasonable times during a period of not less than 28 days beginning with the date on which the notice is published as aforesaid; and
  - (c) stating that any person affected by the order may within that period, by notice in writing to the Secretary of State, object to the making of the order.
- 2 The Secretary of State shall cause a copy of a notice published in pursuance of the foregoing paragraph to be served on every water authority and board which he has consulted in pursuance of section 100(2).
- 3 If no objection is duly made under paragraph 1 or if all objections so made are withdrawn, the Secretary of State may proceed to make the order either in the form of the draft order or, subject to paragraph 5, as amended by him.
- 4 If any objection duly made as aforesaid is not withdrawn, and the Secretary of State does not sustain the objection, the order shall not be made unless approved by a resolution of each House of Parliament.
- 5 The Secretary of State shall not make an amendment order unless an amended draft order has been prepared by him and the provisions of paragraphs 1 to 4 shall apply to the amended draft order as they apply to a draft order.

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## SCHEDULE 8

Section 84.

### PROVISIONS AS TO WATER DEVELOPMENT BOARDS

#### *Corporate status of boards*

- 1           A board shall be a body corporate with perpetual succession and a common seal.

#### *Terms of office of members of boards*

- 2           (1) The first members of a board shall come into office on the day on which the board comes into existence, or, in the case of such a member for any reason appointed after that day, on the day on which the appointment is made.
- (2) Any other member shall come into office on the day following that on which the member he replaces vacates office, or, in the case of such a member for any reason appointed after that day, on the day on which the appointment is made.
- (3) Subject to the following provisions of this Schedule, a member shall vacate office at the end of June in the year in which the election of members of regional councils next take place:
- Provided that the Central Board shall be reconstituted on 1st July 1982 and thereafter quadriennially.
- (4) Where the constitution of a board is varied by order any members who are required by or under the order to vacate their office shall do so notwithstanding the foregoing provisions of this paragraph.

#### *Vacation of office by members of boards*

- 3           A member of a board may resign his office at any time by notice in writing signed by him and delivered to the proper officer of the board and the resignation shall take effect on such date as may be stated in the notice, or, if no date is so stated, three weeks after the delivery of the notice.
- 4           A member of a board shall vacate his office if he—
- (a) ceases to be a member of the constituent water authority from which he was appointed in pursuance of section 84, or
- (b) has, for a period of 12 consecutive months, been absent from meetings of the board, otherwise than by reason of illness or some other cause approved during that period by the board;

Provided that for the purposes of head (b) of this paragraph, the attendance of a member at a meeting of any committee of the board shall be treated as attendance at a meeting of the board.

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### *Appointments to fill casual vacancies*

- 5           Where, for any reason whatsoever, the place of a member of a board becomes vacant before the end of his term of office, the vacancy shall be filled by the appointment of a new member by the constituent water authority by whom the vacating member was appointed.

### *Disqualification for, and re-appointment to, membership of boards*

- 6           (1) Subject to the following provisions of this paragraph, a person shall be disqualified for appointment as a member of a board if he is a paid officer or servant of the board.
- (2) For the purposes of the foregoing sub-paragraph, a person shall not be regarded as a paid officer or servant of a board by reason only that expenses incurred by him in the performance of his duties are defrayed by the board.

- 7           Subject to the provisions of this Act, a vacating member of a board shall be eligible for re-appointment.

### *First meetings of boards*

- 8           The first meeting of a board shall be held on such day, and at such time and place, and shall be convened by such person as may be determined by the Secretary of State.

### *Chairman*

- 9           The chairman of a board shall be elected by the board from the members of the board.
- 10          The election of the chairman shall be the first business transacted at the first meeting of the board and, thereafter, at the first meeting of the board held after each reconstitution of the board, and at any such meeting until the chairman is elected the person by whom under paragraph 8 the meeting was convened, or the proper officer of the board, as the case may be, shall preside.

### *Appointment of committees*

- 11          (1) A board may appoint from their number such committees for any such purpose as the board consider necessary or desirable.
- (2) A board may delegate to a committee appointed under this paragraph, with or without restrictions or conditions, as they think fit, any of the functions of the board.



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### *Members of committees*

- 12 The number of members of a committee appointed under this Schedule, and the terms of office of the members thereof, shall be fixed by the board.

### *Proceedings of boards and committees*

- 13 The proceedings of a board, or of any committee appointed under this Schedule, shall not be invalidated by any vacancy in their number or by any defect in the appointment, or the qualification for appointment, of any person as a member, or as chairman or vice-chairman, of the board or committee.

- 14 (1) A board may make standing orders with respect to—
- (a) the proceedings and conduct (including quorum, place of meeting and notices to be given of meetings) of the board or any committee appointed by the board under this Schedule; and
  - (b) subject to paragraphs 9 and 10, the appointment of a chairman and a vice-chairman of the board or any such committee.
- (2) Subject to standing orders made under this paragraph, the proceedings of any committee appointed under this Schedule shall be such as the committee may determine.

- 15 At any meeting of a board or of a committee appointed under this Schedule, each member shall have one vote:

Provided that in the event of an equality of votes—

- (a) as to the appointment of the chairman of a board, the matter shall be decided by lot, and
- (b) in regard to any other matter, the chairman or other member presiding at the meeting shall have a casting vote as well as a deliberative vote.

- 16 The provisions of sections 38 to 42 of the <sup>M53</sup>Local Government (Scotland) Act 1973 (restrictions on voting) shall apply in relation to members of a board, or of any committee appointed under this Schedule, as those provisions apply in relation to members of local authorities, as if, for the references therein to the local authority, there were substituted references to the board.

#### **Marginal Citations**

**M53** 1973 c. 65.

- 17 (1) Subject to the next following sub-paragraph, the minutes of proceedings of meetings of a board shall be open to the inspection of any local government elector in any part

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of the board's area on payment of a fee not exceeding five pence, and any such local government elector may make a copy of, or extracts from, any such minutes.

- (2) The foregoing sub-paragraph does not apply to any part of such minutes which contains information with respect to any manufacturing process or trade secret obtained in the exercise of powers under this Act.

#### *Authentication of documents*

- 18 The provisions of section 194 of the <sup>M54</sup>Local Government (Scotland) Act 1973 (execution of deeds by local authority and use of seal) shall apply to a board as those provisions apply to a council as if for references therein to a council there were substituted references to the board.

#### **Marginal Citations**

**M54** 1973 c. 65.

- 19 (1) Any notice or other document which a board are required or authorised to give, make or issue by or under this Act or any other enactment may be signed on behalf of the board by the proper officer of the board or by any other officer authorised by them in writing to sign documents of the particular kind or, as the case may be, the particular document and may be withdrawn by notice similarly authenticated, and any document purporting to bear the signature of the proper officer of the board, or of a person expressed to be duly authorised by them to sign such a document, or that particular document, shall be deemed, until the contrary is proved, to be duly given, made or issued by authority of the board.
- (2) In this paragraph the expression “signature” includes a facsimile of a signature by whatever process reproduced.
- (3) Where any enactment or instrument made under an enactment makes, in relation to any document or class of documents, provision with respect to the matters dealt with by one of the two foregoing sub-paragraphs, that sub-paragraph shall not apply in relation to that document or class of documents.

#### *Officers and servants*

- 20 A board shall appoint such officers and servants as the board think fit and may pay the officer and servants appointed by them such reasonable remuneration as they may determine.
- 21 The provisions of sections 66 (security to be taken in relation to officers), 67 (members of local authorities not to be appointed as officers) and 68 (disclosure by officers of interest in contracts) of the Local Government (Scotland) Act 1973 shall apply in relation to officers of a board and other persons as those provisions apply in relation to officers of a local authority and other persons, as if for any reference therein to the local authority there were substituted a reference to the board.

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### *Expenses, subscriptions and contributions*

- 22 A board may defray—
- (a) any expenses incurred in the reception and entertainment by way of official courtesy of—
    - (i) distinguished persons residing in the area of the board, or visiting that area or any works outside the area operated by the board, or
    - (ii) persons representative of, or connected with, other boards or similar services, whether inside or outside the United Kingdom, or in the supply of information to any such persons;
  - (b) any reasonable expenses incurred in connection with ceremonies connected with the performance by the board of any of their functions.
- 23 A board may pay reasonable subscriptions, whether annually or otherwise, or contributions to the funds—
- (a) of any association formed for the purpose of consultation as to the common interests of boards and the discussion of matters connected with the performance of functions of boards or similar services;
  - (b) of associations of officers of boards or similar services, being associations formed for the purpose mentioned in the foregoing sub-paragraph,
- and may make reasonable contributions for furthering research in matters with which boards and their officers are concerned.

### *General*

- 24 The following provisions of the <sup>M55</sup>Local Government (Scotland) Act 1973 shall apply to a board for the purposes of this Act as those provisions apply to a local authority for the purposes of that Act—
- (a) section 81 (contracts of local authorities),
  - (b) section 189(2) (legal proceedings),
  - (c) section 190 (service of legal proceedings, notices, etc.),
  - (d) section 191 (claims in sequestrations and liquidations),
  - (e) section 192 (service of notices),
  - (f) section 196 (misnomers),
  - (g) section 208(1) (provisions as to Sundays, etc),
  - (h) paragraph 7(1) of Schedule 7 (minutes of proceedings receivable in evidence).

#### **Marginal Citations**

**M55** 1973 c. 65.

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- 25 In this Schedule “board” means a water development board, and “area” means the area of such a board; and “proper officer” in relation to any purpose and any board, means an officer appointed for that purpose by that board.

## SCHEDULE 9

Section 108.

### TRANSITIONAL PROVISIONS AND SAVINGS

- 1 In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.
- 2 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.
- 3 Any reference in any enactment or document, whether express or implied, to an enactment repealed by this Act shall, unless the context otherwise requires, be construed as a reference to the corresponding enactment in this Act.
- 4 (1) Nothing in this Act shall affect the enactments repealed by this Act in their operation in relation to offences committed before the commencement of this Act.
- (2) Where an offence, for the continuance of which a penalty may be provided, has been committed under an enactment repealed by this Act, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act in the same manner as if the offence had been committed under the corresponding provision of this Act.

## SCHEDULE 10

Section 112.

### AMENDMENT OF ENACTMENTS

#### PART I

##### GENERAL

Any reference in any enactment, order, scheme, regulations, award or byelaws passed or made before the coming into operation of this Act to a local water authority shall, unless the context otherwise requires, be construed as a reference to a water authority.

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## PART II

### SPECIFIC ENACTMENTS.

#### **Modifications etc. (not altering text)**

**C38** The text of Sch. 10 Pt. II is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### *Fire Services Act 1947 (c. 41.)*

In section 36(2), for the words “local authority”, “1946” and “Fourth Schedule” there shall be substituted respectively the words “ water authority ”, “ 1980 ” and “ Schedule 4 ”.

#### *Requisitioned Land and War Works Act 1948 (c. 17)*

In section 18(3)(c), for the words “section 70”, “Third Schedule” and “1946” there shall be substituted respectively the words “ sections 95 and 96 ”, “ Schedule 3 ” and “ 1980 ”.

#### *Prevention of Damage by Pests Act 1949 (c. 55).*

In section 7(4), for the words from “55”, to “capacity)” there shall be substituted the words “ 65 to 67 of the Water (Scotland) Act 1980 ”, and for the words “a local authority” where those words last occur in the subsection there shall be substituted the words “ an islands or district council ”.

#### *Rivers (Prevention of Pollution) (Scotland) Act 1951 (c. 66)*

In section 35(7), for the words “section fifty of the Water (Scotland) Act 1946” and “said section fifty” there shall be substituted respectively the words “ section 33 of the Water (Scotland) Act 1980 ” and “ said section 33 ”.

In section 35(8), for the words “61 to 63” and “1946” there shall be substituted respectively the words “ 71 to 73 ” and “ 1980 ”.

#### *Town and Country Planning (Scotland) Act 1959 (c. 70)*

In Schedule 4, for paragraph 3 there shall be substituted the following paragraph—

“ 3. A water authority within the meaning of section 109(1) of the Water (Scotland) Act 1980. ”

#### *Water Officers Compensation Act 1960 (c. 15)*

In section 1(1), in paragraphs (e) and (f), for the words “2 or 4”, “1967” and “section 5 of the said Act of 1967” there shall be substituted respectively the words “ 81 ”, “ 1980 ” and “ section 4 or 82 of the said Act of 1980 ”.

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*Radioactive Substances Act 1960 (c. 34)*

In Schedule 1, in paragraph 14, for the words “60, 61 and 64” and “1946” there shall be substituted respectively the words “70, 71 and 75” and “1980”.

*Local Government (Financial Provisions etc.) (Scotland) Act 1962 (c. 9)*

In section 3(d), for the word “1946” there shall be substituted the word “ 1980 ”.

*Spray Irrigation (Scotland) Act 1964 (c. 90)*

In section 1(2), for the word “1946” there shall be substituted the word “ 1980 ”.

*Airports Authority Act 1965 (c. 16)*

In section 19(5), for the words “1946” and “local water authority” wherever those words occur there shall be substituted respectively the words “ 1980 ” and “ water authority ”.

*Gas Act 1965 (c. 36)*

In section 15(11)(d), for the word “1946” there shall be substituted the word “ 1980 ”.

In section 23(5) for the words “Acts 1946 and 1949” there shall be substituted the words “ Act 1980 ”.

In section 28(1)—

- (a) in the definition of “limits of supply”, for the words “5” and “1946” there shall be substituted respectively the words “ 109(1) ” and “ 1980 ”;
- (b) for the definition of “local water authority” there shall be substituted the words—

““local water authority” means a water authority within the meaning of section 109(1) of the Water (Scotland) Act 1980”;
- (c) in the definition of “statutory right to take water” for the words “21” and “1946” there shall be substituted respectively the words “ 17 ” and “ 1980 ”.

In Schedule 3, in paragraph 9(b), for the words “21(1)” and “1946” there shall be substituted respectively the words “ 17(1) ” and “ 1980 ”.

*Countryside (Scotland) Act 1967 (c. 86)*

In section 63(1), (10) and (11), for the words “1946”, “61(6)”, “62”, “61” and “1967” wherever those words occur there shall be substituted respectively the words “ 1980 ”, “ 72 ”, “ 71 ” and “ 1980 ”.

In section 65(5), for paragraph (f) there shall be substituted the words—

- “(f) water authorities within the meaning of section 109(1) of the Water (Scotland) Act 1980;”

and in paragraph (g), for the word “1967” there shall be substituted the word “ 1980 ”.

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*Sewerage (Scotland) Act 1968 (c. 47)*

In section 47, for the words “55”, “56”, “57”, “1946” and “Part III” (wherever those words occur) there shall be substituted the respectively the words “ 65 ”, “ 66 ”, “ 67 ”, “ 1980 ” and “ Part V ”.

*Town and Country Planning (Scotland) Act 1972 (c. 52)*

In section 88(4), for the words “1946”, “57”, “Part III” and “68” there shall be substituted respectively the words “ 1980 ”, “ 67 ”, “ Part V ” and “ 37 ”.

*Local Government (Scotland) Act 1973 (c. 65)*

In section 106(1)(c), for the word “1967” there shall be substituted the word “1980”.

In section 111(1)(e), for the word “1967” there shall be substituted the word “1980”.

In section 112(6), for the word “1949” there shall be substituted the word “1980”.

In section 118(5), for the word “1967” there shall be substituted the word “1980”.

In section 121(1), for the words “56(3)” and “1946” there shall be substituted respectively the words “66(3)” and “1980”

In section 202(1A), for the words “60 or 61” and “1946” there shall be substituted respectively the words “70 or 71” and “1980”.

In section 235(1), in the definition of “water authority”, for the words “148 of this Act” there shall be substituted the words “109(1) of the Water (Scotland) Act 1980”.

In section 236(2), for paragraph (e) there shall be substituted—

“(e) The Water (Scotland) Act 1980.”

*Control of Pollution Act 1974 (c. 40)*

In section 31(2)(b)(i), for the words “50” and “1946” there shall be substituted the words “ 33 ” and “ 1980 ”.

In section 33(7), for the word “1946” there shall be substituted the word “ 1980 ”.

*Local Government (Scotland) Act 1975 (c. 30)*

<sup>F199</sup>In Schedule 6, in paragraph 53(b), for the words “60 or 61” and “1946” there shall be substituted respectively the words “ 70 or 71 ” and “ 1980 ”.

**Textual Amendments**

**F199** Entry repealed by [Local Government Finance Act 1988 \(c. 41, SIF 81:1, 103:2\)](#), s. 149, [Sch. 13 Pt. IV](#)



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*Airports Authority Act 1975 (c. 78)*

In section 19(4), for the word “1946” there shall be substituted the word “ 1980 ”.

SCHEDULE 11

Section 112.

REPEALS

**Modifications etc. (not altering text)**

**C39** The text of Sch. 11 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

<b>Chapter</b>	<b>Short Title</b>	<b>Extent of Repeal</b>
9 & 10 Geo.6. c. 42.	The Water (Scotland) Act 1946.	The whole Act
9 & 10 Geo.6. c. 49.	The Acquisition of Land (Authorisation Procedure) Act 1946.	In Schedule 4, the entry relating to the Water (Scotland) Act 1946.
12 & 13 Geo.6. c. 31	The Water (Scotland) Act 1949.	The whole Act.
14 Geo. 6. c. 39.	The Public Utilities Street Works Act 1950.	In Schedule 5, the entry relating to the Water (Scotland) Act 1946.
4 & 5 Eliz. 2. c. 60.	The Valuation and Rating (Scotland) Act 1956.	Section 18.
6 & 7 Eliz. 2. c. 67.	The Water Act 1958.	The whole Act.
7 & 8 Eliz. 2. c. 24.	The Building (Scotland) Act 1959.	In Schedule 9, paragraph 5.
1965 c. 4.	The Science and Technology Act 1965.	In Schedule 2, the entry relating to the Water (Scotland) Act 1946.
1967 c. 78.	The Water (Scotland) Act 1967.	The whole Act except section 4(3) and, in Schedule 2, paragraphs 14, 17 and 18.
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, paragraph 40.
1970 c. 38.	The Building (Scotland) Act 1970.	In Schedule 1, in Part II, paragraph 4.
1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 148(2) to (7) and (9).  In Schedule 15, paragraph 27.

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		In Schedule 17, paragraphs 3 to 63.
		In Schedule 23, paragraph 5(c).
		In Schedule 25, paragraphs 18 to 23 and 39.
		In Schedule 27, paragraph 158(b).
1974 c. 40.	The Control of Pollution Act 1974.	In Schedule 2, paragraphs 17 and 18.
1975 c. 30.	The Local Government (Scotland) Act 1975.	In Schedule 6, paragraphs 10, 15, 16, 39 and 56(b).

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