



# Water Services etc. (Scotland) Act 2005

## 2005 asp 3

### PART 2 **S**

#### PROVISION OF WATER AND SEWERAGE SERVICES

##### *Sewerage nuisance: code of practice*

### 25 Sewerage nuisance: code of practice **S**

- (1) The Scottish Ministers may make an order containing a code of practice (referred to in this section and section 26 as a “sewerage code”) for the purposes of assessing, controlling and minimising sewerage nuisance.
- (2) In this section and section 26, “sewerage nuisance” means—
  - (a) smells and discharges;
  - (b) insects; or
  - (c) any other thing,emanating from, or present at, any part of the public sewerage system so as to be prejudicial to health (that is to say, injurious, or likely to cause injury, to health) or a nuisance.
- (3) A sewerage code may, in particular, set out—
  - (a) guidance as to the best practicable means of assessing, controlling and minimising sewerage nuisance; and
  - (b) circumstances in which—
    - (i) Scottish Water; or
    - (ii) any other person to whom the code applies,is to be regarded for the purposes of this section and section 26 as complying, or (as the case may be) not complying, with the code.
- (4) In subsection (3)(a), “best practicable means” is to be construed by reference to the following provisions—
  - (a) “practicable” means reasonably practicable having particular regard to—
    - (i) local conditions and circumstances;
    - (ii) the current state of technical knowledge; and

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- (iii) financial implications; and
- (b) “means” includes—
  - (i) the design, installation, maintenance and manner and periods of operation of plant and machinery; and
  - (ii) the design, construction and maintenance of buildings and other structures.
- (5) A sewerage code is to apply to—
  - (a) Scottish Water in respect of its core functions relating to the provision of sewerage and the disposal of sewage; and
  - (b) any other person to the extent that the person is acting on Scottish Water's behalf, or under its authority, in that respect.
- (6) Scottish Water and any other person to whom a sewerage code applies must comply with the code.
- (7) The Scottish Ministers and every local authority must publicise any sewerage code.
- (8) Before making an order under subsection (1), the Scottish Ministers must consult—
  - (a) Scottish Water;
  - (b) every local authority; and
  - (c) such other persons as they consider appropriate, about the proposed sewerage code.
- (9) For the purposes of subsection (5), the provision of sewerage and the disposal of sewage does not include such provision or disposal through any part of the public sewerage system which is regulated by a permit granted by virtue of regulations made under section 2 of the Pollution Prevention and Control Act 1999 (c. 24) [<sup>F1</sup>or by an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014].
- (10) Subsection (9) is subject to any direction made by the Scottish Ministers by virtue of any enactment in relation to the application of a sewerage code to any such part of the public sewerage system.

#### Textual Amendments

- F1** Words in s. 25(9) inserted (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [Sch. 3 para. 9](#); [S.S.I. 2014/160](#), art. 2(1)(2), Sch.

#### Commencement Information

- II** S. 25 in force at 10.2.2006 by [S.S.I. 2006/40](#), art. 2(a)

## 26 Monitoring and enforcement S

- (1) Each local authority must—
  - (a) monitor compliance in its area with any sewerage code; and
  - (b) where a complaint of sewerage nuisance is made to it by a person living in its area, investigate the complaint.
- (2) Where a local authority is satisfied that Scottish Water or another person to whom a sewerage code applies is—

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- (a) not complying with; or
  - (b) likely not to comply with,
- the code in a material regard, the authority must serve a notice (an “enforcement notice”) on Scottish Water or (as the case may be) that other person.
- (3) An enforcement notice—
- (a) may require—
    - (i) the execution of such works; and
    - (ii) the taking of such other steps,as are necessary for securing compliance with a sewerage code in any particular respects; and
  - (b) must specify the date by which the requirements of the notice, or any particular requirements of it, are to be fulfilled.
- (4) A person on whom an enforcement notice has been served may, by summary application made within 21 days of the date of service of the notice, appeal to the sheriff against the notice; and the notice is of no effect until the appeal is withdrawn or finally determined.
- (5) In an appeal under subsection (4), the sheriff may make such order as the sheriff thinks fit; and the decision of the sheriff in the appeal is final.
- (6) If a person, without reasonable excuse, contravenes an enforcement notice, the person is guilty of an offence and liable on summary conviction to a fine not exceeding £40,000.
- (7) Where an enforcement notice is contravened, the local authority may (whether or not proceedings have been taken for an offence under subsection (6)) take proceedings in the sheriff court for the purposes of securing that the requirements of the notice are fulfilled.
- (8) Where an enforcement notice is contravened, the local authority may (whether or not proceedings have been taken for an offence under subsection (6)) take any action it considers necessary in fulfilment of the requirements of the notice.
- (9) Any expenses reasonably incurred by a local authority in taking action under subsection (8) may be recovered by the authority from the person on whom the enforcement notice was served.
- (10) The functions of a local authority under sections 79 to 81 of the Environmental Protection Act 1990 (c. 43) in respect of statutory nuisance (within the meaning of Part III of that Act) do not apply in relation to any [<sup>F2</sup>nuisance—
- (a) which constitutes a sewerage nuisance; and
  - (b) in respect of which a sewerage code applies.]
- [<sup>F3</sup>(10A) Paragraphs 2, 3 and 5 of Schedule 3 to the Environmental Protection Act 1990 (c. 43) apply to the exercise of functions by a local authority under this section as they apply to the exercise of functions under Part III of that Act, with the following modifications—
- (a) in paragraph 2(1)(a), for “statutory nuisance” substitute “sewerage nuisance”
  - (b) in paragraph 2(1)(b) and (4)(b), for “Part III” substitute “section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3)” ;
  - (c) in paragraph 3(1), for the words from “, on summary conviction” to the end substitute—

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- “(a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.”;
- (d) in paragraph 3(2), for the words from “, on summary conviction” to the end substitute—
- “(a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.”;
- (e) in paragraph 5—
- (i) for the words “executing Part III” substitute “ exercising functions under section 26 of the Water Services etc. (Scotland) Act 2005 ” ;
- (ii) the words from “(other” to the end are to be disregarded.]
- (11) This section and section 25 are without prejudice to section 82 (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990.
- (12) In this section and section 25, “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

#### **Textual Amendments**

- F2** Words in s. 26(10) substituted (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#), **ss. 115(2), 128(2)** (with s. 127); [S.S.I. 2009/9, art. 2\(a\), Sch. 1](#)
- F3** S. 26(10A) inserted (26.1.2009) by [Public Health etc. \(Scotland\) Act 2008 \(asp 5\)](#), **ss. 115(3), 128(2)** (with s. 127); [S.S.I. 2009/9, art. 2\(a\), Sch. 1](#)

#### **Commencement Information**

- I2** S. 26(1)-(9) (11) in force at 22.4.2006 by [S.S.I. 2006/167, art. 2, Sch. 2](#)
- I3** S. 26(10) in force at 22.4.2006 for specified purposes by [S.S.I. 2006/167, art. 2, Sch. 2](#)
- I4** S. 26(12) in force at 10.2.2006 for specified purposes by [S.S.I. 2006/40, art. 2\(b\)](#)
- I5** S. 26(12) in force at 22.4.2006 in so far as not already in force by [S.S.I. 2006/167, art. 2, Sch. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Water Services etc. (Scotland) Act 2005, Cross Heading: Sewerage nuisance: code of practice.