



# Water (Scotland) Act 1980

## 1980 CHAPTER 45

### 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) to appoint an advisory committee to advise him on those matters.

#### **2 Power to require surveys and formulation of proposals**

(1) The Secretary of State may require any water authority or water development board to—

- (a) carry out a survey of the existing consumption of and demand for water supplies in their area and of the water resources in or available for that area;
- (b) prepare an estimate of the future water supply requirements of that area;
- (c) formulate proposals for meeting the existing or future water supply requirements of that area, including proposals for the joint use with any other water authority or water development board of any existing or proposed new source of water supply;
- (d) submit a report on any of those matters to the Secretary of State within such time as he may specify.

(2) For the purposes of this section " area ", in relation to a water authority, means their limits of supply within the meaning of section 3(3).

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## 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

<i>Area</i>	<i>Regional council to whose limits of supply the area in column 1 is added.</i>
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 Local Government (Scotland) Act 1973, where—
- (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.

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(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.

#### **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 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 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 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 Documentary Evidence Act 1868, as applied to the Secretary of State for Scotland.

#### **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.

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- (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.

## **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 subsections (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

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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 break open streets 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 rates levied by the regional or islands council in respect of the premises supplied are recoverable.

## **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.
- (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.
- (4) The provisions of this section shall be without prejudice to any other provisions in this Act relating to compensation.

## **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—
    - (i) to do anything which they are required to do by or under this Act,

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- (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 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.

## PART III

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

#### 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 then-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 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.

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- (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 streets and the street works code in the Public Utilities Street Works Act 1950 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.

#### **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



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by the 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.

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 Lands Clauses Consolidation (Scotland) Act 1845);
  - (b) section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 ; and
  - (c) Part IV of Schedule 4.

## **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 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.

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- (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.

## 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 compulsory 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.
- (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 of 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).

## **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.

## **19 Transfer from one authority to another**

- (1) Where the Secretary of State, whether on the application of a water authority or a water development board or not, considers that such a transfer would be in the public interest, he may by order authorise the transfer of a part of the undertaking of one authority or board to another.
- (2) Where an order is made under subsection (1), the authority or board to which a part of the undertaking of another authority or board is so transferred shall make to that other authority or board such payment by way of consideration as, failing agreement between them, may be settled by arbitration.
- (3) An order made under subsection (1) shall provide for the transfer of all rights to take water which are exercised for the purposes of the part of the undertaking transferred by the order and, on the coming into force of that order, those rights shall be transferred to and vest in the authority or board to which the part of the undertaking is transferred.
- (4) An order under subsection (1) may for the purposes of the order contain any such provision as an order made under section 82 may contain.
- (5) The provisions of Part I of Schedule 1 shall apply to an order made under subsection (1) on the application of an authority or board concerned, and the provisions of Part II of Schedule 1 shall apply to an order so made without any such application.

## **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

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for such time as they think fit any land acquired or appropriated by them for such purposes, and may 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:

Provided that, subject to Part II of the Town and Country Planning (Scotland) Act 1959, the consent of the Secretary of State shall be required—

- (a) in the case of any sale or feu, otherwise than by public roup;
- (b) in the case of any such excambion ;
- (c) in the case of any such let where the let is for a period exceeding 21 years.

## **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 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 streets 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.

## **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 street or under any cellar or vault below any street after giving reasonable notice to the persons having control or management of the street, and
  - (b) in, on or over any land not forming part of a street, 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 street, 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.

## **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 street.
- (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 street 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.

## **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 street or public place within their area or district any drinking fountain or trough; but if the council are not the highway authority in relation to any

street no such fountain or trough shall be erected in that street without the consent of the highway authority which consent shall not be unreasonably withheld.

## **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,

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 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) section 5 of Part II;
  - (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 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.

## **29 Application 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**

—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 the water authorities and other appropriate authorities in that part of England with a view to securing the best use of that water in the public interest
- (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.

### **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 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.

### **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 street or in any land not forming part of a street, 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 streets 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 street, 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 to the fishery district board of any fishery district within which 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).



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- (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 water course 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.
- (9) The authority or board shall take all necessary steps to secure that any water discharged 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 highway.
- (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.

### **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 the 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 such 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.

- (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 be 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 sums 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 £25 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.

### **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.

### **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 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;

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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 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 £50 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 £25.
- (8) This section, except subsection (6), shall not apply to any right conferred by section 93.

## PART IV

### FINANCE

#### **39 Levy of rates in respect of expenditure on water supply**

- (1) Subject to the provisions of this Part, the expenditure incurred by a council of a region or islands area in meeting any requisition under Part IV or VIII and in the exercise of any of their functions under any enactment in relation to water supply in their region or area shall, in so far as not otherwise met, be defrayed as to such portion thereof as may be determined under section 44 out of the regional rate or the general rate, as the case may be, and as to the remainder out of a rate to be levied as hereafter in this Act provided.
- (2) The portion of the regional rate or of the general rate levied under the foregoing subsection is hereafter in this Act referred to as " the public water rate ".
- (3) For the purpose of defraying the remainder of the expenditure mentioned in subsection (1), the council of a region or islands area shall, subject to the provisions

of this Part, levy annually within their region or area a rate (hereafter in this Act referred to as " the domestic water rate ") which, notwithstanding anything in any other enactment, shall be levied as a separate rate.

#### **40 Provisions as to liability for domestic water rate**

- (1) Subject to the provisions of this Part, the domestic water rate shall be levied by the council of a region or islands area in respect of all lands and heritages within their region or area according to the net annual value of such lands and heritages.
- (2) The domestic water rate shall not be leviable in respect of any premises to which water is supplied wholly by meter or which are occupied by a water authority for the purposes of a water undertaking or by a water development board.
- (3) The 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) in the case of a dwelling house, a sufficient supply of wholesome water provided by a water authority for domestic purposes is provided in pipes within the house or within the premises in which the house is comprised ;
  - (b) in the case of any other premises, a supply of water provided by a water authority is used for any purpose 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.
- (4) Where premises are for the first time provided with a supply of water otherwise than on the first day of a rating year, the occupier of the premises shall be liable to pay in respect of that year such part only of the domestic water 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.
- (5) Notwithstanding the foregoing provisions of this section, the domestic water rate shall not be leviable in respect of—
  - (a) the lands and heritages specified in paragraphs 2(1)(b) and (c), 3, 4 and 5 (rail, gas, electricity and postal undertakings) of Schedule 1 to the Local Government (Scotland) Act 1975 ; and
  - (b) any such lands and heritages specified in paragraph 8 (dock and harbour undertakings) of Schedule 1 to the said Act of 1975 as have their rateable values determined under any order made under sections 6 and 35(3) of that Act.

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

- (1) Where the 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 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 Local Government (Scotland) Act 1973 with respect to any particular premises such as aforesaid this subsection shall have effect in that year in relation to those premises with the substitution for one-half

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of such other fraction, not exceeding one-half and not less than one-quarter, as may be specified in the resolution.

- (2) 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.
- (3) Where the domestic water rate is leviable in respect of lands and heritages being premises to which this section applies and which are occupied partly as a dwelling house, the domestic water rate shall be levied on the part occupied as a dwelling house according to the net annual value (ascertained as hereafter in this Act provided) of that part, and on the remainder of the premises in accordance with the provisions of this section.
- (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 not being premises occupied wholly as a dwelling house or 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.

**42 Levy of domestic water rate on certain public utility undertakings, mines, parks, etc.**

Where the 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 thereof.

**43 Levy of domestic water rate on shootings and fishings**

Where the 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 Contributions by council in aid of domestic water rate**

In any year a council of a region or islands area may defray, out of the regional or, as the case may be, the general rate, such part, as they think fit, of the expenditure incurred by them in meeting any requisition under Part IV or VIII or in performing any of their functions under any enactment in relation to water supply in their region or area in so far as not otherwise met, to an amount which, unless the Secretary of State otherwise approves, shall not exceed one-third of the said expenditure.

**45 Provisions as to valuation roll**

- (1) For the purposes of section 41(3) the net annual value of the premises shall be apportioned by the assessor between the part thereof occupied as a dwelling house and the remainder of the premises, and the net annual value of such part and of such remainder shall be shown separately in the valuation roll.
- (2) The provisions of the Lands Valuation (Scotland) Act 1854 (including, without prejudice to the foregoing generality, the provisions with respect to notices to persons

whose property is valued and with respect to appeals) shall apply with regard to any particular required by any provision of this section to be shown in the valuation roll in like manner as those provisions apply with regard to the particulars required by any other enactment to be so shown.

- (3) For the purpose of enabling the assessor to effect any apportionment required to be effected by him under this section the water authority shall furnish him with such information as to the premises in their limits of supply supplied with water and as to such other matters as he may reasonably require for that purpose.

#### **46 Transport hereditaments**

- (1) Without prejudice to the provisions contained in section 17(4C) (payments in lieu of rates) of the 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 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 or otherwise 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 rate 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

#### **47 Domestic water rate in certain cases**

- (1) Notwithstanding anything in the foregoing provisions of this Part, no 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 domestic water rate shall during such period as is specified in the local enactment be payable in that area at the amount per pound so specified:

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Provided that if in any year during the said period the domestic water rate levied generally in respect of lands and heritages within the region or islands area is lower than the rate falling to be levied for that year in accordance with the foregoing provisions of this subsection, the rate to be levied in such area as aforesaid shall not exceed the amount of the rate levied generally within the region or islands area.

- (3) Notwithstanding anything in the foregoing provisions of this Part, no domestic water rate shall 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;
  - (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 domestic water rate, where the water authority have ceased to be under the obligation which gave rise to that exemption.

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

- (1) The provisions of Part XI of the Local Government (Scotland) Act 1947 (which relate to the levy and collection of rates and to requisitions), Part VII of the Local



Government (Scotland) Act 1973 and sections 7 to 10 of the Local Government (Scotland) Act 1975 shall, in their application to the public water rate and the domestic water rate 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 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 conferred in respect of any lands and heritages by or under any enactment in force at the passing of the Water (Scotland) Act 1949.

#### **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.
- (2) Charges payable under this section, including charges for any meter supplied by the authority, shall be recoverable in the manner in which rates levied by the regional or islands council in respect of the premises supplied are recoverable.

#### **50 Power to require supply by meter**

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

- (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 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.

#### **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 Provisions 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.

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) Where a supply of water is provided by a water authority for domestic purposes for any house or habitation (not being a habitation to which subsection (1) applies) which is not entered in the valuation roll, the occupier thereof shall pay to the authority in respect of such supply such annual sum (not being less than 75p) as may be reasonable having regard to his possible maximum demand for water.

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

**54 Register of meter to be evidence**

- (1) Where a water authority supply water by meter, the register of the meter shall be prima facie 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 rates levied by the regional or islands council in respect of the premises supplied are recoverable.

## **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.
- (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 all ratepayers within the limits of supply of the authority without payment of any fee.

## **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.

## **57 Charge not to be made for provision of small meters**

- (1) Notwithstanding anything in section 35 or 36, where water is supplied by meter by a water authority, the authority shall not be entitled to impose any charge in respect of the provision, installation, repair or maintenance of the meter or of the taking of readings of the meter in any case where the meter is on a pipe not exceeding three-quarters of an inch in diameter.
- (2) The provisions of this section shall have effect notwithstanding anything in the terms and conditions on which the supply of water was agreed to be given, or in any byelaws relating to such supply of water.
- (3) Nothing in this section shall be construed as affecting the right conferred by section 35(5) on a water authority of recovering the cost of repairing any damage wilfully or negligently done to any water fitting belonging to the authority.

**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, with the approval of the Secretary of State, 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 reference 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 the amount of the rate or charge or of the rate and charge, 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.

## **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 Water (Scotland) Act 1946 and the Water (Scotland) Act 1949.
- (2) Any question arising under the foregoing subsection shall in case of dispute be determined by arbitration.

## **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 the aggregate amount by reference to which the amount required to be requisitioned by the water authority under this Part from each of their contributing authorities is to be determined.
- (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 Local Government (Scotland) Act 1973.

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

- (1) For the purposes of a requisition referred to in section 60(1) the aggregate amount referred to in that subsection for any financial year shall be the sum by which the estimated expenditure of the water authority in the exercise of any of their functions under any enactment in relation to water supply and chargeable to the revenue account of their general fund exceeds the estimated income pertaining thereto, but excluding from such expenditure any amount payable by way of requisition to another water authority and from such income any amount receivable by way of rates or requisition, 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.
- (2) Subject to the provisions of subsection (5), in respect of one third of the aggregate amount calculated under the foregoing subsection, the sum to be requisitioned from each contributing authority of a water authority shall bear to that third the same proportion as the rate product of the relevant part of the region of the contributing authority bears to the aggregate of the rate products of the relevant parts of the regions of the authority making the requisition and of all such contributing authorities, and—

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- (a) for the purposes of this subsection "rate product" means the product of a rate of one penny in the pound or the standard penny rate product, whichever is the higher for the relevant financial year, and the expressions "product of a rate of one penny in the pound" and "standard penny rate product" have the meanings assigned to them by section 9 of the Local Government (Financial Provisions) (Scotland) Act 1963 ;
  - (b) for the purposes of this and the next following subsection, "relevant financial year" means, in the case of a requisition in respect of the financial year 1975-76, that year, and in the case of a requisition in respect of any subsequent financial year, the financial year in respect of which the requisition is made or, if the water authority and the contributing authority agree, the financial year of the contributing authority immediately preceding the year in respect of which the requisition is made on the authority, and "relevant part of a region" means—
    - (i) in relation to the region of a regional council, the whole or part of which is within the limits of supply of the water authority, that region, or as the case may be, that part, exclusive of any premises to which a supply of water is given by another water authority but inclusive of any premises outside the limits of supply of the water authority to which a supply of water is given by the water authority, and
    - (ii) in relation to the region of any other contributing authority, any premises in their region to which a supply of water is given by the water authority.
- (3) Subject to the following provisions of this section, in respect of the remainder of the said aggregate amount, the sum to be requisitioned from each contributing authority of a water authority shall bear to that remainder the same proportion as the product of a domestic water rate of one penny in the pound for the relevant financial year, levied on the relevant part of the region of the contributing authority, bears to the aggregate of the products of such a rate levied on the relevant parts of the regions of the authority making the requisition and of all such contributing authorities for the relevant financial year.
- (4) In relation to the reference in subsection (3) to the product of a domestic water rate of one penny in the pound for the relevant financial year levied for the relevant part of a region, section 9(1) of the Local Government (Financial Provisions) (Scotland) Act 1963 shall apply, as it applies to the references in Part I of that Act to the product of the rate of one penny in the pound, with the substitution for the words "that area" of the words "that part".
- (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 subsections (2) and (3), 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) For the purpose of making any calculation required by this section, section 12 of the Local Government (Scotland) Act 1966 (apportionments, allocations, etc. relating

to local authorities) shall apply as that section applies to section 7(1) of the Local Government (Financial Provisions) (Scotland) Act 1963 with the modification that in subsections (1) and (2) after the words " rate product" there shall be inserted the words " and the product of a domestic water rate of one penny in the pound ".

## **62 Moneys borrowed on security of rates**

Any moneys borrowed by a local water authority other than a local authority shall, in so far as they were immediately before 16th May 1949 secured on the rates leviable by the authority, be deemed as from that date to be secured to the like extent on the sums payable to the authority under requisitions issued by them under this Part.

## **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 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.

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- (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 £50 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 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 Building (Scotland) Act 1959.

#### **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 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 £25.
- (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 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



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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 £25 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 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.

## **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

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expenditure together with the expenses of obtaining the charging order and recording it in the appropriate Register of Sasines.

- (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) 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.
- (5) Every annuity constituted a charge by a charging order which is recorded in the appropriate Register of Sasines 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.
- (6) A charging order recorded in the appropriate Register of Sasines 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 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.

- (10) A charging order shall be in such form as may be prescribed.

## **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 as the islands or district council may determine:

Provided that the Secretary of State may from time to time prescribe a maximum rate of interest for the purposes of this section generally or different maximum rates for different purposes and in different cases, but no such maximum shall exceed the rate provided for in section 121(2) of the Local Government (Scotland) Act 1973.

## **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,

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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 of 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 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 Road Traffic Act 1960, or a goods vehicle within the meaning of section 196 of the 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

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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 £200.

## **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:

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.

## **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

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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—
- (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.

## **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.

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- (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.
- (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 £400 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.

### **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 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.

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- (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 highway, so long as the highway 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 Criminal Procedure (Scotland) Act 1975.

## **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 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;



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- (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 highway authority concerned, which may be given subject to such conditions as the highway authority think fit, carry the drain, sewer or water-course under, across or along any street whether within or outside their limits of supply or their area, and such statutory provisions with respect to the breaking open of streets as are applicable to the authority or board shall, with any necessary modifications and adaptations, apply accordingly:

Provided that the consent of the highway 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 street maintainable at the public expense 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.

## PART VII

### POWERS TO SUPPLY WATER DURING DROUGHT

#### 77 Obtaining supplies to meet drought

- (1) If the Secretary of State is satisfied that by reason of an exceptional shortage of rain a serious deficiency of supplies of water in any locality exists or is threatened, he may, subject to the provisions of this section, on the application of any water authority who supply water in that locality, make an order containing such provisions for any of the following purposes as appear to him to be expedient with a view to meeting the deficiency, that is to say—
  - (a) for authorising the authority, subject to any specified conditions or restrictions, to take water from any specified source for a period not exceeding six months, or
  - (b) for suspending or modifying, subject to any specified conditions, and for a period not exceeding six months, any restriction or obligation to which the authority are subject as respects—
    - (i) the taking of water from any source,
    - (ii) the discharge of compensation water, or
    - (iii) the filtration or other treatment of water,

and the Secretary of State may include in the order such supplemental, incidental and consequential provisions as appears to him to be expedient for those purposes.

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Before any water authority make an application under this section they shall consult with any river purification authority and any fishery district board upon whom notice of the application will be required to be served by Schedule 5.

- (2) In an order made under paragraph (a) of subsection (1) for authorising the taking of water from a source from which water is supplied to an inland navigation, or in an order made under paragraph (b) of subsection (1)—
  - (a) for suspending or modifying a restriction as respects the taking of water from a source from which water is supplied to an inland navigation, or
  - (b) for suspending or modifying an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

the Secretary of State may include provisions for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which the navigation authority are subject as respects the discharge of water from the inland navigation.
- (3) An order under this section may authorise the water authority, subject to any specified conditions and restrictions, to execute any works required for the discharge of their functions under the order and—
  - (a) may authorise the authority for that purpose to enter upon any specified land and to occupy and use the land to such extent and in such manner as may be requisite for the execution and maintenance of the works, and
  - (b) may authorise the authority to borrow temporarily any money required to defray the cost of carrying out the works, and
  - (c) may apply in relation to the execution of the works such of the provisions contained in section 23 and Schedules 3 and 4 (which include in particular provisions relating to the laying of mains and the breaking open of streets), as appear to the Secretary of State to be appropriate, subject to such modifications and adaptations as may be specified in the order.
- (4) In an order which authorises the water authority to enter on land the Secretary of State shall include provisions requiring the authority to give to the occupier of the land, and to such other persons concerned with the land as may be specified in the order, not less than seven days' notice of their intended entry on the land.
- (5) In the exercise of his power to make orders under this section the Secretary of State shall have regard to the interests of all persons concerned in the conservation or use of the water to which the order relates.
- (6) The provisions of Schedule 5 shall have effect in relation to the procedure to be followed in connection with the making of orders under the foregoing provisions of this section, and the provisions of Schedule 6 shall have effect with respect to the payment of compensation to persons affected by orders so made.
- (7) The Secretary of State may by order revoke any order made by him under this section.
- (8) If a water authority—
  - (a) take water from a source in contravention of a restriction contained in an order under this section or fail to comply with the requirements of an order under this section as to the discharge of compensation water, or
  - (b) fail to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which they were required to construct or maintain

by an order under this section, or fail to allow some person authorised in that behalf by any such order to inspect and examine any such apparatus or any records made thereby or kept by the authority in connection therewith or to take copies of any such records,

they shall, without prejudice to their civil liability, if any, to a person aggrieved, be liable—

- (i) on summary conviction of an offence under paragraph (a) or (b) of this subsection, to a fine not exceeding £100; and
- (ii) on conviction on indictment of an offence under paragraph (a) of this subsection to a fine.

## **78 Supplying water by temporary means during a drought**

- (1) If the Secretary of State is satisfied that by reason of an exceptional shortage of rain a serious deficiency of supplies of water in any locality exists or is threatened, he may, on the application of any water authority who supply water in that locality, make an order containing such provisions for any of the following purposes as appear to him to be expedient with a view to meeting the deficiency, that is to say—
  - (a) for authorising the authority for a period not exceeding six months to supply water in any area within their limits of supply by means of stand-pipes or water tanks, and to erect or set up and maintain stand-pipes or water tanks in any street in that area,
  - (b) for confirming any right to raise, charge and levy any water rate or minimum charge which might have been raised, charged and levied if there had been no interruption or diminution of the supply of water and for suspending or modifying any enactment or agreement so far as it relates to a failure to make normal supplies of water available in an area where water is being supplied by means of stand-pipes or water tanks, and
  - (c) for applying in relation to any works to be carried out under the order such of the provisions contained in section 23 and Schedules 3 and 4 as appear to the Secretary of State to be appropriate, subject to such modifications and adaptations as may be specified in the order.
- (2) Any works to be carried out in the course of erecting or setting up stand-pipes or water tanks under this section shall be included in the definition of emergency works in section 39(1) of the Public Utilities Street Works Act 1950.
- (3) The provisions of Schedule 5 shall have effect in relation to the procedure to be followed in connection with the making of orders under the foregoing provisions of this section.
- (4) The Secretary of State may by order revoke any order made by him under this section.

## **79 Interpretation of Part VII**

- (1) In this Part, except where the context otherwise requires—
  - " compensation water " means water which any water authority are under an obligation to discharge into a river, stream, brook or other running water or into a canal as a condition of carrying on their undertakings ;
  - " inland navigation " includes any canal or navigable river ;
  - " obligation " includes an obligation imposed by an enactment or agreement and " restriction " has a corresponding meaning;

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" river purification authority " has the meaning assigned to it by the Rivers (Prevention of Pollution) (Scotland) Act 1951;

" take", in relation to water, includes the collection, impounding, diversion and appropriation of water.

- (2) Any power of making orders under this Part shall be exercisable by statutory instrument and shall include power—
- (a) from time to time to extend a period specified in a previous order, but not so as to extend beyond a year any period which under this Act is not to exceed six months,
  - (b) to vary a previous order in any other respect.

## 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 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.

#### **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 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 Local Government (Scotland) Act 1973.

**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.

**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 authority 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 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.
- (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.

## **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.

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- (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 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 £200 and, where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

## **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 £50 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.



## **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—

- (a) on summary conviction, to a fine not exceeding £50 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.

## **96 Trial of offences**

Any offence under this Act or under any byelaw made under this Act (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 £25 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.

## **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 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.

## **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 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 Statutory Orders (Special Procedure) Act 1945.
- (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 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.

#### **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.
- (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.

#### **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 be in writing.

#### **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.

### **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.

### **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 Rating and Valuation (Apportionment) Act 1928 ;

" apportionment scheme " has the meaning assigned to it by section 86;

" bridge authority " means the authority who are the highway authority in respect of the highway carried by the bridge;

" 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 street 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 street and has a stopcock placed in those premises and as near to the boundary of that street 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 street 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;

" 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;

" domestic water rate " and " public water rate " have the meanings assigned to them by section 39 ;

" 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 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 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 ;

" highway " means a highway, road, street, or bridge for the maintenance and management of which a local or public authority is responsible ; and "

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highway authority " means the local or public authority responsible for the maintenance and management of a highway.

" 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;

" net annual value " has the same meaning as in the 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 sections 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;

" 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;

" 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 Rivers (Prevention of Pollution) (Scotland) Act 1951;

" 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;

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" street " includes any highway and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not;

" 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;

" 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) Any reference in this Act to persons having the control or management of a street or bridge shall be construed as a reference in the case of a street or bridge maintainable at the public expense, to the authority who are the highway authority or, as the case may be, the bridge authority in respect thereof, and, in the case of any other street or bridge, to the authority or person responsible for the maintenance thereof, or, if no authority or person is responsible therefor, to the owners of the soil of the street or, as the case may be, of the structure of the bridge.
- (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.

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

- (1) Where any main is laid alongside and within 60 feet of the middle of a street, 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 street, shall be deemed to form part of the street, and references in that definition to the part of the street in which the main is laid, and to the boundary of the street 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 street, 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 street.

- (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 street 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.

#### **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 11 are hereby repealed to the extent specified in column 3 of that Schedule.

#### **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.