



# Sewerage (Scotland) Act 1968

## 1968 CHAPTER 47

### S

An Act to make new provision as respects sewerage in Scotland, and for connected purposes. [26th July 1968]

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

- C1 Act amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. II para.13** (with s. 46)  
C2 Act modified (17.7.1995) by 1994 c. 39, s. 65(2) (with s. 74(4)); S.I. 1995/1898, art. 2(a), **Sch.**

#### Commencement Information

- II Act partly in force at Royal Assent see s. 61(2); Act wholly in force at 16.5.1973

## PART I S

### GENERAL PROVISIONS AS TO SEWERAGE

#### *Duties and powers of local authorities*

#### 1 Duty of local authority to provide for sewerage of their area. S

(1) Subject to the provisions of this Act, it shall be the duty of every local authority to provide such public sewers as may be necessary for effectually draining their area of domestic sewage, surface water and trade effluent, and to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of their sewers.

[<sup>F1</sup>(2) Without prejudice to the generality of subsection (1) above—

- (a) a sewerage authority shall, subject to paragraph (b) below, take their public sewers to such point or points as will enable the owners of premises which are to be served by the sewers to connect their drains or private sewers with the public sewers at reasonable cost;

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- (b) where the sewerage authority have agreed with some other person (in this section referred to as the “private provider”) that he will take a private sewer to such point or points as will enable owners to make such connection as is mentioned in paragraph (a) above, that paragraph shall not apply while the agreement subsists.]
- (3) The duties imposed by the foregoing subsections shall not require a local authority to do anything which is not practicable at a reasonable cost.
- (4) If any question arises under this section as to whether anything is or is not practicable at a reasonable cost or as to the point or points to which [<sup>F2</sup>a public sewer, or under an agreement such as is mentioned in paragraph (b) of subsection (2) above the private sewer of a private provider,] must be taken to enable drains or private sewers to be connected therewith at a reasonable cost, the Secretary of State, if requested to do so by any person aggrieved, shall, after consultation with that person and with the [<sup>F3</sup>sewerage authority, or as the case may be private provider, concerned], determine that question, and the [<sup>F4</sup>authority or private provider] shall give effect to his determination.
- [<sup>F5</sup>(5) The Secretary of State may by regulations make provision as respects the procedure to be followed as respects a request under subsection (4) above.
- (6) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F1** S. 1(2) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(2)(b)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F2** Words in s. 1(4) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(2)(d)(i)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F3** Words in s. 1(4) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(2)(d)(ii)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F4** Words in s. 1(4) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(2)(d)(iii)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F5** S. 1(5)(6) added (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(2)(e)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)

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

- C3** S. 1: power to modify conferred (*temp.* from 4.1.1995 to 1.4.1996) by 1994 c. 39, s. 182(2); S.I. 1994/2850, **art. 3(a)**, **Sch. 2** (with art. 4)

## 2 Maintenance of public sewers and other works. **S**

Subject to section 4 below, it shall be the duty of every local authority to inspect, maintain, repair, cleanse, empty, ventilate and where appropriate renew all sewers, sewage treatment works and other works vested in them by virtue of this Act.

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

- C4 S. 2 applied with modifications (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), [s. 45\(10\)](#); [S.I. 1992/266](#), [art. 3](#).

### 3 Construction etc. of public sewers and public sewage treatment works. **S**

- (1) Subject to the provisions of this Act, a local authority may, within or outwith their area—
- (a) construct a public sewer—
    - (i) in, under or over any [<sup>F6</sup>road], or under any cellar or vault below any [<sup>F6</sup>road];
    - (ii) in, on or over any land not forming part of a [<sup>F6</sup>road];
  - (b) construct public sewage treatment works in or on any land held by them or appropriated for the purpose.
- (2) Before commencing construction of a sewer in, on or over any land not forming part of a [<sup>F6</sup>road], a local authority shall serve notice of their intention on the owner and the occupier of land concerned together with a description of the proposed works and of the right to object thereto, and if within 2 months after the service of the notice the owner or the occupier objects to the proposed works, and that objection is not withdrawn, the local authority shall not proceed to execute the works without consent aftermentioned but may refer the matter by summary application to the sheriff who may grant consent to the proposed works either unconditionally or subject to such terms and conditions as he thinks just, or who may withhold his consent, and the decision of the sheriff on the matter shall be final.
- (3) Section [<sup>F7</sup>192] of the Local Government (Scotland) Act [<sup>F7M1</sup>1973] (service of notices) shall apply to notices under subsection (2) above relating to land as it applies to notices relating to premises.
- (4) Where a local authority, in the exercise of their powers under subsection (1) above, propose to execute works outwith their area <sup>F8</sup>. . . they shall in addition to any notice served under subsection (2) above serve notice of their intention on the local authority within whose area it is proposed to execute the works together with a description of the proposed works and if within two months after the service of the notice the local authority on whom it was served object to the proposed works, and that objection is not withdrawn, the first-mentioned authority shall not proceed to execute the works without consent aftermentioned but may refer the matter for the determination of the Secretary of State who may grant consent to the proposed works either unconditionally or subject to such terms and conditions as he thinks just, or who may withhold his consent, and his decision on the matter shall be final.

#### Textual Amendments

- F6** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 64\(2\)](#)  
**F7** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 27 Pt. II para. 179](#)  
**F8** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

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

- C5** S. 3 applied (with modifications) (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), [s. 45\(10\)](#); [S.I. 1992/266](#), [art. 3](#)

#### Marginal Citations

- M1** 1973 c. 65.

### [<sup>F9</sup>3A Authorisation of construction of certain private sewers etc. **S**

- (1) Without prejudice to their powers under section 3 of this Act (including any power to authorise the construction, on their behalf, of a public sewer), a sewerage authority may authorise a person to construct, within their area but whether or not connecting with their sewers or sewage treatment works, a sewer—

- (a) in, under or over any road, or under any cellar or vault below any road; or
- (b) in, on or over any land which does not form part of a road and is not land as respects which he is owner, lessee or occupier,

but where authorisation is so given, subsection (2) of section 3 of this Act shall apply in respect of the person and the construction proposed as that subsection applies in respect of a sewerage authority and works proposed by them under subsection (1) of that section.

- (2) The sewerage authority—

- (a) in giving authorisation to a person under subsection (1) above; or
- (b) as respects any sewer (not being a sewer constructed by or on behalf of the authority) whose construction by a person does not require such authorisation,

may, in a case where the proposed sewer will connect with their sewers or sewage treatment works, determine (and by written notice advise the person) that all, or a part which they shall specify in the notice, of the sewer constructed shall not vest in them through the operation of section 16(1)(c) of this Act and shall instead vest in him; but notwithstanding the determination the sewerage authority may, on such terms and conditions as they think fit, then or at some later time enter into an agreement under which the sewer, or as the case may be the part, shall vest in them.]

#### Textual Amendments

- F9** S. 3A and sidenote inserted (4.1.1995) by [1994 c. 39, s. 101](#) (with [s. 74\(4\)](#)); [S.I. 1994/2850](#), [art. 3\(a\)](#), [Sch. 2](#) (with [art. 4](#))

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

- C6** S. 3A: power to modify conferred (*temp.* from 4.1.1995 to 1.4.1996) by [1994 c. 39, s. 182\(2\)](#); [S.I. 1994/2850](#), [art. 3\(a\)](#), [Sch. 2](#) (with [art. 4](#))

### 4 Power of local authority to close or alter public sewers etc. **S**

A local authority may, if they think fit, close, alter, replace or remove any sewer, sewage treatment works or other works vested in them by virtue of this Act, but, before any person who is lawfully using the sewer or works for any purpose is deprived by the authority of that use, they shall provide a sewer or works equally effective for that use and shall at their expense carry out any work necessary to connect his drain or private sewer with the sewer or works so provided.

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

- C7 S. 4 applied with modifications (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), [s. 45\(10\)](#); [S.I. 1992/266](#), [art. 3](#).

<sup>F10</sup>5 ..... **S**

**Textual Amendments**

- F10 Ss. 5, 7(4), 18(4)-(6), 19 repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

**6 Functions outwith the area of a local authority. **S****

Where . . . <sup>F11</sup> in pursuance of section 13 below a local authority exercise any functions in relation to any part of the area of another local authority or in relation to any premises situated therein, they may do so as if that part or those premises were situated within their area.

**Textual Amendments**

- F11 Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

**7 Agreements between highway and local authorities. **S****

- (1) Subject to the provisions of this section, [<sup>F12</sup>the Secretary of State] and a local authority may agree, on such terms and conditions as may be specified in the agreement, as to the provision, management, maintenance or use of their sewers or drains for the conveyance of water from the surface of [<sup>F12</sup>trunk roads] or surface water from premises.
- (2) Where a sewer or drain with respect to which [<sup>F12</sup>the Secretary of State] and a local authority propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage treatment works of another local authority, the agreement shall not be made without the consent of that other authority, who may give their consent upon such terms and conditions as they think fit.
- (3) [<sup>F12</sup>The Secretary of State or a] local authority shall not unreasonably refuse to enter into an agreement for the purposes of this section or insist unreasonably upon terms or conditions unacceptable to the other party, and a local authority shall not, under subsection (2) above, unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms or conditions unacceptable to either party thereto, and any dispute arising under this section to which the Secretary of State is not a party as to whether or not any authority are acting unreasonably, shall be referred to the Secretary of State, who, after consultation with the authorities concerned, shall determine the dispute, and his decision shall be final.

(4) ..... <sup>F13</sup>

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### Textual Amendments

**F12** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 27 Pt. II para. 180](#)

**F13** [Ss. 5, 7\(4\), 18\(4\)—\(6\), 19](#) repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)

## 8 Agreements as to provision of sewers etc. for new premises. **S**

- (1) Subject to subsection (2) below, where a local authority are satisfied that premises are to be constructed within their area by any person, they may enter into an agreement with that person as respects the provision by that person or by them of sewers and sewage treatment works to serve those premises, and any such agreement may specify the terms and conditions on which the work is to be carried out, including provision as to the taking over by the authority of sewage treatment works so provided, and, in relation to any premises served or to be served by the sewers or works, shall be enforceable against the authority by the owner or occupier of the premises for the time being.
- (2) An agreement under the foregoing subsection may only be entered into by an authority where the authority have no duty under section 1 above to provide public sewers to serve the premises.

## 9 Loan of temporary sanitary conveniences. **S**

Where work is to be carried out in connection with a sewer, drain or sewage treatment works which necessitates the disconnection of water closets or other sanitary conveniences provided for or in connection with premises, the local authority concerned may agree with the occupier of the premises, and on such terms and conditions as may be specified in the agreement, to supply on loan to him temporary sanitary conveniences in substitution for any water closets or other sanitary conveniences so disconnected:

Provided that the local authority shall make no charge for the supply, cleansing or removal of the temporary sanitary conveniences for the first 7 days of the period of loan or where the work is made necessary by a defect in a public sewer.

## 10 Emptying of septic tanks. **S**

- (1) A local authority may pass a resolution whereby they elect to empty all septic tanks serving premises situated in their area or in any part thereof specified in the resolution, and where such a resolution has been passed . . . <sup>F14</sup> it shall be the duty of the authority, subject to subsection (2) below, to empty all septic tanks serving such premises, where it is reasonably practicable to do so, at reasonable intervals and at such convenient hours and times as they consider proper.
- (2) The duty imposed by the foregoing subsection does not extend to septic tanks which receive trade effluent or to septic tanks which are, or are part of, public sewage treatment works.
- (3) If any question arises under this section as to whether anything is or is not reasonably practicable or as to whether intervals are or are not reasonable, or if any question arises under subsection (2) above, it shall be determined summarily by the sheriff, whose decision on the matter shall be final.

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- (4) Where in relation to any premises situated in their area a local authority have no duty to empty septic tanks serving those premises, they may, at the request of the owner or occupier of the premises, agree to empty any such tank on such conditions as to payment or otherwise as the authority may think fit.

#### Textual Amendments

**F14** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)

### 11 **Duty of local authority to keep map showing public sewers etc.** **S**

- (1) Every local authority shall keep deposited at their offices, for inspection and copying by any person at all reasonable hours free of charge, a map showing and distinguishing so far as is reasonably practicable all sewers, drains and sewage treatment works which are vested in them by virtue of this Act.
- (2) Where some of the sewers so vested in a local authority are reserved for foul water only or for surface water only, the said map shall show also the purposes which each such sewer is intended to serve.

#### *Rights and duties of owners and occupiers*

### 12 **Rights of owners and occupiers to connect with and drain into public sewers etc.** **S**

- (1) Subject to the provisions of this section and of section 14 below, the owner of any premises within the area of a local authority shall be entitled to connect his drains or private sewers with the sewers or sewage treatment works of that authority, and the occupier of any such premises shall be entitled by means of those drains or private sewers to drain into those sewers or works the domestic sewage and surface water from those premises.
- (2) An owner shall not, under the foregoing subsection, be entitled to connect his drains or sewers with the sewers or works of an authority unless the intervening land is land through which the owner is entitled to construct a drain or sewer.
- (3) The owner of any premises who proposes to connect his drains or sewers with the sewers or works of a local authority, or to alter a drain or sewer connected with such sewer or works in such a manner as may interfere with them, shall give to the authority notice of his proposals, and within 28 days of the receipt by them of the notice the authority may refuse permission for the connection or alteration, or grant permission for the connection or alteration, subject to such conditions as they think fit, and any such permission may in particular specify the mode and point of connection and, where there are separate public sewers for foul water and surface water, prohibit the discharge of foul water into the sewer reserved for surface water, and prohibit the discharge of surface water into the sewer reserved for foul water.
- (4) A local authority shall forthwith intimate to the owner their decision on any proposals made by him under subsection (3) above, and, where permission is refused, or granted subject to conditions, shall inform him of the reasons for their decision and of his right of appeal under subsection (5) below.

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- (5) If a person to whom a decision has been given under subsection (4) above is aggrieved by the decision or any conditions attached thereto, he may appeal to the Secretary of State who may confirm the decision and any such conditions either with or without modification or refuse to confirm it.
- (6) Where permission has been granted as mentioned in subsection (3) above or by virtue of subsection (5) above, the person to whom it was granted shall, before commencing any work in pursuance of that permission, give not less than 3 days' notice to the local authority who granted it so as to enable them to supervise the execution of the work, and shall afford them all reasonable facilities for so doing.
- (7) Where any work to be done in pursuance of a permission granted under subsection (3) above or by virtue of subsection (5) above involves the breaking open of a [<sup>F15</sup>road], the local authority who granted the permission may undertake the work in the [<sup>F15</sup>road] and may recover the expenses reasonably incurred by them in so doing from the person for whom the work was done.
- (8) Any person who connects a drain or sewer to the sewers or works of a local authority or alters a drain or sewer without permission granted under this section, or contrary to any conditions attached thereto, shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F16</sup>£20,000], and the local authority may, whether or not proceedings have been taken under this subsection, close, remove or remake any such unlawful connection, and recover from the offender any expenses reasonably incurred by them in so doing.

#### Textual Amendments

- F15** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 64\(3\)](#)
- F16** Word in [s. 12\(8\)](#) substituted (1.10.1991) by virtue of [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1\)](#), s. 27(1), [Sch. 10, para. 5\(a\)](#); S.I. 1991/2187, [art. 3](#), Sch.

### 13 Rights of owners and occupiers to connect with and drain into sewers etc. of another local authority. **S**

- (1) Subject to the following subsection, the owner or occupier of any premises outwith the area of a local authority shall have the like rights with respect to connection with or drainage into the sewers or works of that authority as he would have under section 12 above if his premises were situated within their area, and the provisions of that section shall apply accordingly:  
Provided that—
  - (a) the owner of the premises concerned shall, at the same time as he gives notice of his proposals under subsection (3) of that section, give notice to the same effect to the authority within whose area the premises are situated; and
  - (b) the Secretary of State in determining an appeal under subsection (5) of that section may, as a condition of granting permission to a connection, require the local authority in whose area the premises are situated to make to the other local authority concerned such reasonable payment or reasonable periodical payments as he thinks fit.
- (2) The foregoing subsection shall not apply where the owner of premises is required by or under any other enactment to connect his drains or sewers with the sewers or sewage treatment works of the local authority within whose area his premises are situated.



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## 14 Direction by local authority as to manner of construction of works. **S**

- (1) Where the owner of any premises proposes to construct a drain or sewer in respect of which notice has been given to the local authority by virtue of section 12(3) above or that subsection as applied by section 13 above, or sewage treatment works in respect of which notice has been given under subsection (2) below, the authority may, if they consider that the proposed drain, sewer or works is, or is likely to be, needed to form part of a general sewerage system which they have provided or propose to provide, within 28 days of the receipt by them of the notice direct him to construct the drain, sewer or works in a manner differing from that in which he proposes to construct the drain, sewer or works.
- (2) Where the owner of any premises proposes to construct sewage treatment works to serve those premises he shall give notice of his proposals to the local authority within whose area the works are to be situated.
- (3) If a person to whom a direction has been issued under subsection (1) above is aggrieved by the direction, he may appeal to the Secretary of State, who may disallow the direction or allow it with or without modification.
- (4) A person to whom a direction is issued under this section shall, before commencing any work in pursuance of that direction, give not less than 3 days' notice to the local authority who issued it so as to enable them to supervise the execution of the work and shall afford them all reasonable facilities for so doing.
- (5) An authority who issue a direction under subsection (1) above shall pay to the person constructing the drain, sewer or sewage treatment works the extra expenses reasonably incurred by him in complying with the direction and, until the drain, sewer or works become vested in the authority, they shall also from time to time pay to him so much of any expenses reasonably incurred by him in repairing, operating or maintaining the drain, sewer or works as may be attributable to their direction having been made and complied with, and, if any question arises as to the amount of any payment to be made to him under this subsection, he may refer it by summary application to the sheriff whose decision on the matter shall be final.
- (6) If any person who under this section has been directed by a local authority to construct a drain, sewer or sewage treatment works in a particular manner constructs them otherwise than in accordance with the terms of the direction, or, if the direction has been modified under subsection (3) above, of the modified direction, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F17</sup>level 4 on the standard scale].

### Textual Amendments

**F17** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**

## 15 Owner or occupier to remedy defects in drains and other works. **S**

- (1) If it appears to a local authority that as respects any premises in their area the drains or sewage treatment works serving such premises (other than drains or works vested in the authority) are defective, they may by notice require the owner or occupier of the premises, within a reasonable time therein specified, to remedy the defect.

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- (2) If an owner or occupier is aggrieved by a notice under the foregoing subsection he may, within the time specified in the notice, refer the matter by summary application to the sheriff, who may issue such directions as he thinks fit, and whose decision on the matter shall be final.
- (3) Where an owner or occupier fails to comply with the terms of a notice under subsection (1) above, or as modified under subsection (2) above, the local authority may, after giving not less than 7 days' notice to the owner or occupier concerned, carry out the work necessary to remedy the defect, and may recover the expenses reasonably incurred by them in so doing from the person on whom the notice was served, but without prejudice to the rights and obligations, as between themselves, of the owner and occupier:  
Provided that the local authority may, if they think fit, remit such part of the expenses as seems to them to be equitable.
- (4) If it appears to the medical officer of health or sanitary inspector that immediate action is required to remedy a defect, and he so certifies in writing to the local authority, the foregoing provisions of this section shall apply with the following modifications—
- (a) the period specified in a notice under subsection (1) shall be 48 hours;
  - (b) subsection (2) shall not apply; and
  - (c) the period specified in subsection (3) shall not apply and the authority may proceed to carry out the work forthwith.
- (5) In this section “defect” includes any obstruction in a drain or sewage treatment works, and “defective” shall be construed accordingly.

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

- C8** References to medical officer of health and sanitary inspector to be construed as references to the proper officer of a local authority: [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 27 Pt. 1 para. 2](#)

*Vesting of sewers, drains and works*

**16 Vesting of sewers and other works in local authority. S**

- (1) All sewers, junctions therewith, drains and sewage treatment works which were immediately before the commencement of this section vested in a local authority shall continue to be vested in them, and there shall also vest in them—
- (a) all sewers and sewage treatment works constructed by them at their expense in pursuance of section 1 above;
  - (b) all junctions with their sewers, . . . <sup>F18</sup> whether constructed at the expense of the authority or otherwise;
  - <sup>F19</sup>(c) subject to any determination notified under subsection (2) of section 3A of this Act, all private sewers connecting with their sewers or sewage treatment works;
  - (cc) where they enter into an agreement under subsection (2) of the said section 3A or under subsection (2) of section 16A of this Act (and subject to the terms of that agreement), all private sewers, or as the case may be parts of sewers, to which the agreement relates;]

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- (d) all sewage treatment works taken over by them by virtue of an agreement under section 8 above; and
  - (e) all sewage treatment works taken over by them under section 17 below.
- (2) Private sewers and junctions with sewers referred to in the foregoing subsection which are completed after the commencement of this section shall vest in the local authority on the date of their completion, and the works referred to in paragraph (e) of the foregoing subsection shall vest in the authority in accordance with the provisions of section 17 below.
- (3) All sewers, junctions therewith, drains and sewage treatment works vested in a local authority shall be the property of the authority who shall be solely responsible for their management, maintenance and renewal.
- (4) In this section “junction” means the junction between a public sewer and any other sewer or drain.

#### Textual Amendments

**F18** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

**F19** [S. 16\(1\)\(c\)\(cc\)](#) substituted for [s. 16\(1\)\(c\)](#) (4.1.1995) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 75\(13\)\(a\)\(ii\)](#); [S.I. 1994/2850, art. 3\(c\)\(vi\)](#) (with [art. 4](#))

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

**C9** [S. 16](#): power to modify conferred (*temp.* from 4.1.1995 to 1.4.1996) by [1994 c. 39, s. 182\(2\)](#); [S.I. 1994/2850, art. 3\(a\)](#), [Sch. 2](#) (with [art. 4](#))

### [<sup>F20</sup>16A Vesting of certain private sewers. **S**

- (1) Subject to any agreement entered into under subsection (2) below, there shall vest in a person authorised, under subsection (1) of section 3A of this Act, by a sewerage authority to construct a sewer not connecting with their sewers or sewage treatment works the sewer constructed; and any sewer vested in a person by this subsection or by a determination under subsection (2) of that section shall be his property and he solely responsible for its management, maintenance and renewal.
- (2) Notwithstanding subsection (1) above, the sewerage authority may, on such terms and conditions as they think fit, at any time enter into an agreement under which the sewer, or any part of it, shall vest in them.]

#### Textual Amendments

**F20** [S. 16A](#) and sidenote inserted (4.1.1995) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 75\(14\)](#); [S.I. 1994/2850, art. 3\(c\)\(vi\)](#) (with [art. 4](#))

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

**C10** [S. 16A](#): power to modify conferred (*temp.* from 4.1.1995 to 1.4.1996) by [1994 c. 39, s. 182\(2\)](#); [S.I. 1994/2850, art. 3\(a\)](#), [Sch. 2](#) (with [art. 4](#))

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**17 Local authority may take over private sewage treatment works. S**

- (1) Subject to the provisions of this section, a local authority within whose area premises served by private sewage treatment works are situated may, by agreement with the owner of the works, or failing such agreement, in pursuance of proposals made by them under subsection (2) below, take over the works.
- (2) A local authority may, by notice served on the owner of works as mentioned in the foregoing subsection, intimate their proposals to take over the works within such period, not being less than 2 months, as may be specified in the notice, and on such conditions, including if they think fit conditions as to payment of compensation by them, as may be so specified, and shall serve copies of the notice on any other local authority within whose area any of the works, or any sewers or drains connected therewith, are situated; any notice served under this subsection shall inform the owner of his right of appeal under subsection (3) below.
- (3) If an owner on whom a notice has been served under subsection (2) above is aggrieved by the notice, he may, within the period specified in the notice, appeal to the Secretary of State who may confirm the proposals of the local authority and any conditions so specified either with or without modification or refuse to confirm them.
- (4) All works taken over by a local authority under this section shall vest in them in accordance with the terms of any agreement made under subsection (1) above, or failing such agreement, at the end of the period specified under subsection (2) above or on such date as may be specified by the Secretary of State in his decision on an appeal under subsection (3) above.
- (5) Subject to the provisions of this Act, a person who immediately before the taking over of works under this section was lawfully entitled to use them shall continue to be so entitled after they have been so taken over.
- (6) An agreement under subsection (1) above or proposals under subsection (2) above may relate to a part only of works.

*Miscellaneous*

**18 Expenses of local authorities and dissolution of drainage districts. S**

- (1) On the appointed day all special drainage districts and drainage districts shall be dissolved, and as from the commencement of this section the power to form such districts under Part VII of the <sup>M2</sup>Local Government (Scotland) Act 1947 or section 218 of the <sup>M3</sup>Burgh Police (Scotland) Act 1892 shall cease to have effect.
- (2) The Secretary of State shall, by regulations made by statutory instrument, provide for the payment by the local authority within whose area any such district was situated, subject to such exceptions or conditions as may be specified in the regulations, of compensation to or in respect of persons who were officers or servants employed for the purposes of the district who suffer loss of employment or loss or diminution of emoluments which is attributable to the dissolution of the district; and the regulations shall include provision as to the manner in which and the persons to whom any claim for compensation under this subsection is to be made and for the determination of all questions arising under the regulations.

<sup>F21</sup>(3) .....

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<sup>F22</sup>(4) .....

**Textual Amendments**

- F21** S. 18(3) repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2\)](#), s. 34, [Sch. 6](#)
- F22** Ss. 5, 7(4), 18(4)-(6), 19 repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

**Marginal Citations**

- M2** 1947 c. 43.
- M3** 1892 c. 55.

19 ..... <sup>F23</sup> **S**

**Textual Amendments**

- F23** Ss. 5, 7(4), 18(4)—(6), 19 repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

**20 Compensation for loss etc. resulting from exercise of powers under this Part of this Act. **S****

- (1) Subject to the provisions of this section, a local authority shall make full compensation for any loss, injury or damage sustained by any person by reason of the exercise by the authority of any of their powers under this Part of 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 loss, injury or damage or as to the amount of compensation shall, in the case of dispute, be referred to a single arbiter to be appointed by agreement between the parties or, in default of agreement, by the Secretary of State, and 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.
  - (3) A claim for compensation against an authority under this section shall not be maintainable unless it is made to the authority within 12 months after the date on which it is alleged to have arisen.
  - (4) Where an owner of land claims compensation in respect of loss, injury or damage sustained by him by reason of a local authority having, in the exercise of their powers under this Part of this Act, constructed a sewer in, on or over his land, the arbiter in determining the amount of compensation shall determine also by what amount, if any, the value to the claimant of any land belonging to him has been enhanced by the construction of the sewer, and the local authority shall be entitled to set off that amount against the amount of any compensation awarded.
- [<sup>F24</sup>(5) The foregoing provisions of this section shall apply to a person constructing a sewer by virtue of having been authorised to do so under section 3A(1), as they would apply to a sewerage authority constructing a sewer under section 3(1), of this Act.]

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#### Textual Amendments

**F24** S. 20(5) added (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(17)(d)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)

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

**C11** S. 20(5): power to modify conferred (4.1.1995) by 1994 c. 39, s. **182(2)**; S.I. 1994/2850, art. 3(a), **Sch. 2** (with art. 4)

## 21 Buildings not to interfere with sewers. **S**

<sup>F25</sup>(1) Unless with the consent of the local authority, which shall not be unreasonably withheld, no building shall be erected over, or in such a way as to interfere with or to obstruct access to, any sewer vested in the authority [<sup>F26</sup>or in respect of which they have made a determination under section 3A(2) of this Act].

(2) If any question arises as to whether consent under the foregoing subsection has been unreasonably withheld or as to what conditions should be attached to the consent, a person aggrieved may refer the question by summary application to the sheriff, whose decision in the matter shall be final.

(3) In this section “building” has the same meaning as in section 29(1) of the <sup>M4</sup>Building (Scotland) Act 1959.

#### Textual Amendments

**F25** S. 21(1): power to modify conferred (4.1.1995) by 1994 c. 39, s. **182(2)**; S.I. 1994/2850, art. 3(a), **Sch. 2** (with art. 4)

**F26** Words in s. 21(1) added (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(18)(c)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)

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

**C12** S. 21 extended by **Control of Pollution Act 1974 (c. 40), s. 28(3)**

#### Marginal Citations

**M4** 1959 c. 24.

## 22 Protection for statutory undertakers. **S**

(1) Subject to the provisions of this section, nothing in this Part of this Act shall authorise a local authority to carry out works which will interfere with the carrying on of a statutory undertaking [<sup>F27</sup>or the running of a telecommunications code system without the consent of the statutory undertakers concerned or, as the case may be, of the operator of that system.]

(2) Consent under the foregoing subsection shall not be unreasonably withheld, and if any question arises as to whether or not consent is unreasonably withheld or as to what conditions, including payment of compensation, should be attached to the consent, either party may require that it shall be referred to a single arbiter to be appointed, in default of agreement, by the President of the Institution of Civil Engineers, and

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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.

[<sup>F28</sup>(2A) The foregoing provisions of this section shall apply to a person constructing a sewer by virtue of having been authorised to do so under section 3A(1), as they would apply to a sewerage authority constructing a sewer under section 3(1), of this Act.]

(3) Nothing in this section shall be construed as limiting the powers of a local authority under section 41 below.

(4) In this section “statutory undertakers” and “statutory undertaking” have the meanings assigned to them by [<sup>F29</sup>section 275(1) of the <sup>M5</sup>Town and Country Planning (Scotland) Act 1972].

#### Textual Amendments

**F27** Words substituted by [Telecommunications Act 1984](#) (c. 12, SIF 96), s. 109, **Sch. 4 para. 49**

**F28** [S. 22\(2A\)](#) inserted (4.1.1995) by [1994 c. 39](#), s. 180(1), **Sch. 13 para. 75(19)(b)**; S.I. 1994/2850, **art. 3(c)(vi)** (with [art. 4](#))

**F29** Words substituted by [Airports Authority Act 1975](#) (c. 78), **Sch. 5 Pt. II para. 2**

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

**C13** [S. 22](#) extended by [Civil Aviation Act 1982](#) (c. 16, SIF 9), s. 19, **Sch. 2 para. 4**

**C14** [S. 22](#) extended by [Gas Act 1986](#) (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxiii), **Sch. 8 para. 33**

**C15** [S. 22](#) extended by [Electricity Act 1989](#) (c. 29, SIF 44:1), s. 1(1)(xxi), **Sch. 17 para. 33**

[S. 22](#) extended (1.3.1996) by [1995 c. 45](#), s. 16(1), **Sch. 4 para. 2(1)(xviii)**; S.I. 1996/218, **art. 2**

**C16** [S. 22](#) extended by [Post Office Act 1969](#) (c. 48), **Sch. 4 para. 93(1)**

**C17** [S. 22](#): power to modify conferred (4.1.1995) by [1994 c. 39](#), s. 182(2); S.I. 1994/2850, **art. 3(a)**, **Sch. 2** (with [art. 4](#))

#### Marginal Citations

**M5** [1972 c. 52](#).

## 23 Restriction on working minerals. **S**

Sections 71 to 78 of the <sup>M6</sup>Railways Clauses Consolidation (Scotland) Act 1845 (which restrict the working of minerals, subject to the payment of compensation), as originally enacted and not as amended for certain purposes by section 15 of the <sup>M7</sup>Mines (Working Facilities and Support) Act 1923, shall apply in relation to

[<sup>F30</sup>(a) any public sewers, public sewage treatment works or public drains; and

(b) any sewers, sewage treatment works or drains not vested in a sewerage authority but forming (or forming part of) any such system as is mentioned in section 98(1)(b) of the Local Government etc. (Scotland) Act 1994,

to which they do not already apply, with the substitution—

(i) for references to the railway, of references to the sewers, works or drains; and

(ii) for references to the company, of references to the sewerage authority, or as the case may be to the person other than a sewerage authority, in whom the sewers, works or drains are vested.]

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#### Textual Amendments

**F30** S. 23(a)(b)(i)(ii) substituted (for subparas. (a), (b) and words)(4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(20)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)

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

**C18** S. 23: power to modify conferred (*temp.* from 4.1.1995 to 1.4.1996) by 1994 C. 39, S. 182(2); S.I. 1994/2850, **art. 3(a)**, **Sch. 2** (with art. 4)

#### Marginal Citations

**M6** 1845 c. 33.

**M7** 1923 c. 20.

## PART II **S**

### TRADE EFFLUENTS

#### *Right to discharge into public sewers*

#### 24 **Right to discharge into public sewers.** **S**

- (1) Subject to the provisions of this Act, the occupier of any trade premises within the area of a local authority may discharge into the sewers or sewage treatment works of the authority any trade effluent from those premises.
- (2) Any occupier of trade premises who discharges trade effluent into the sewers or sewage treatment works of a local authority without the consent of the authority, where such consent is required, or contrary to any direction given or condition imposed by virtue of any provision of this Part of this Act, shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F31</sup>£20,000].

#### Textual Amendments

**F31** Word in s. 24(2) substituted (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), s. 27(1), **Sch. 10**, para. 5(b); S.I. 1991/2187, **art. 3**, Sch.

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

**C19** Ss. 24- 38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.

#### *Control of new discharges*

#### 25 **Meaning of new discharge.** **S**

In this Part of this Act, “new discharge” means a discharge from trade premises into the sewers or sewage treatment works of a local authority of trade effluent where the discharge—

- (a) has not previously been lawfully made into such sewers or works; or



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- (b) not being an existing discharge by virtue of the proviso to section 33(1) below and whether commenced before or after the commencement of this section, has become substantially altered in nature or composition or whose temperature, volume or rate of discharge has been substantially increased since the commencement of this section; or
- (c) has been discontinued for a period of two years or more, the whole or part of which period occurs after the commencement of this section, and is thereafter resumed.

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

**C20** Ss. 24- 38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

**26 New discharge only with consent of the authority. S**

Subject to section 37 below, an occupier or prospective occupier of trade premises who proposes to make a new discharge of trade effluent from those premises into the sewers or sewage treatment works of a local authority shall obtain the consent of the authority to the discharge, which shall be applied for in accordance with section 27 below.

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

**C21** Ss. 24- 38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, reg.3(2)(b).

**27 Procedure on application for consent to new discharge. S**

- (1) An application for the consent of a local authority under section 26 above shall be made by serving a notice on the authority (hereafter in this Part of this Act referred to as a “trade effluent notice”).
- (2) A trade effluent notice shall state so far as is reasonably practicable—
  - (a) the nature, composition and temperature of the effluent;
  - (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
  - (c) the maximum hourly rate at which it is proposed to discharge the effluent.
- (3) Where the person applying for the consent of the authority is not the owner of the premises, he shall, at the same time as serving a trade effluent notice on the authority under subsection (1) above, send a copy of the notice to the owner of the premises and inform him that he may make representations in respect of the application to the authority within 28 days of receipt of the copy.
- (4) The authority on receiving a trade effluent notice shall forthwith send a copy of the notice to—
  - (a) any other local authority into whose sewers or sewage treatment works the new discharge will in due course be made (hereafter in this section referred to as a “second authority”), and
  - (b) any other body acting under statutory powers which, in the opinion of the authority, has an interest in the application.

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and at the same time shall inform the second authority or any body to which a copy of the notice is sent in pursuance of this subsection that they may make representations in respect of the application to the authority within 28 days of receipt of the copy.

- (5) The authority before making a decision on an application shall take into account any representations made in pursuance of subsections (3) and (4) above.
- (6) Where the authority propose in their decision not to give effect to any representations made by a second authority under subsection (4) above, they shall forthwith inform the second authority accordingly; and if the second authority are dissatisfied with that proposal they may, within 7 days of being so informed, refer the matter to the Secretary of State whose decision in the matter shall be final.

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

- C22** Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, **reg.3(2)(b)**.  
Ss. 24- 38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.

**28 Time to dispose of application. S**

- (1) An application for the consent of a local authority under section 26 above shall, subject to the following subsection, be decided by them and intimated in accordance with section 30 below within a period of 3 months of the receipt by them of a trade effluent notice.
- (2) Any such application which has been the subject of a reference to the Secretary of State under section 27(6) above shall be decided and so intimated by the authority within a period of 28 days of the receipt by them of the Secretary of State's decision under the said section 27(6).

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

- C23** Ss. 24- 38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.  
Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, **reg.3(2)(b)**.

**29 Decision on application. S**

- (1) A local authority in their decision on an application under section 26 above may refuse their consent or they may grant their consent either unconditionally or subject to such conditions as they may think fit to impose.
- (2) Where the authority have failed to intimate their decision on an application within the 3 month period referred to in subsection (1), or, as the case may be, the 28 day period referred to in subsection (2), of section 28 above, they shall be deemed to have made a decision on the last day of that period refusing their consent to the application.
- (3) Without prejudice to subsection (1) above, the authority in granting their consent may impose conditions relating to—
  - (a) the sewers into which any trade effluent may be discharged;
  - (b) the nature or composition of any trade effluent which may be discharged;
  - (c) the maximum quantity of any trade effluent which may be discharged on any one day, either generally or into a particular sewer;

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- (d) the maximum hourly rate at which any trade effluent may be discharged, either generally or into a particular sewer;
- (e) the period or periods of the day during which any trade effluent may be discharged into the sewers;
- (f) the elimination from or the diminution in any trade effluent of cooling water;
- (g) the prevention of any injury to the health of persons engaged in carrying out the functions of the authority under this Act as a result of the discharge of any trade effluent into the sewers;
- (h) the elimination or diminution of any specified constituent of any trade effluent, before it enters the sewers, where the authority are satisfied that that constituent would, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers—
  - (i) injure or obstruct those sewers, or make specially difficult or expensive the treatment or disposal of the sewage from those sewers, or
  - (ii) (where the trade effluent is to be discharged into sewers having an outfall in any harbour or in any waters below high water mark of ordinary spring tides or into sewers which connect directly or indirectly with sewers having such an outfall) cause or tend to cause injury or obstruction to the navigation on, or the use of, the said harbour or waters;
- (i) the temperature of any trade effluent at the time when it is discharged into the sewers and its acidity or alkalinity at that time;
- (j) the payment by the occupier of the trade premises to the authority of charges for the reception of any trade effluent into the sewers, and for the treatment and disposal thereof, regard being had to the nature and composition and to the volume and rate of discharge of the trade effluent so discharged, to any additional expense incurred or likely to be incurred by the authority in connection with the reception, treatment or disposal of the trade effluent or in connection with the provision already made by them for the treatment and disposal of trade effluent in their area, and to any revenue likely to be derived by the authority from the trade effluent;
- (k) the provision and maintenance of such inspection chambers or manholes as will enable a person readily to take at any time samples of any effluent passing into the sewers from the trade premises;
- (l) the provision and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewers and for the testing of such meters;
- (m) the provision and maintenance of apparatus for determining the nature, composition and temperature of any trade effluent being discharged from the premises into the sewers and for the testing of the apparatus;
- (n) the keeping of records of the volume, rate of discharge, nature, composition and temperature of any trade effluent being so discharged, and in particular the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition imposed in connection with the consent;
- (o) the making of returns and giving of other information to the authority concerning the volume, rate of discharge, nature, composition and temperature of any trade effluent so discharged.

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- (4) A consent granted under this section, and (where such consent is granted subject to any conditions) all or any of the conditions, may be made to take effect as from a specified date or for a specified period, being not less than two years, or both as from a specified date and for such a specified period.
- (5) Any decision of an authority under this section shall continue to be effective notwithstanding that there has been a change of ownership or occupancy of the premises to which the decision relates.
- (6) Where an application under section 26 above is for the consent of the authority to an increase of volume or rate of discharge of a discharge which is already being made lawfully, no decision of the authority under this section shall have the effect of restricting the discharge already being made.
- (7) In this section, any reference to a sewer or sewers includes a reference to sewage treatment works, and “harbour” has the same meaning as in section 57 of the <sup>M8</sup>Harbours Act 1964.

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

- C24** Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, **reg.3(2)(b)**.  
Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.

**Marginal Citations**

- M8** 1964 c. 40.

**30 Intimation of decision. S**

- (1) A local authority shall intimate their decision under section 29 above, and the reasons therefor, to the owner and occupier or prospective occupier of the trade premises in question and to any authority or other body to which a copy of the trade effluent notice was sent under section 27(4) above.
- (2) An intimation of a decision under this section shall—
  - (a) draw attention to the provisions of section 29(5) above;
  - (b) refer to the applicant’s right of appeal against, and the power of review of, the decision under this Part of this Act.

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

- C25** Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.  
Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, **reg.3(2)(b)**.

**31 Appeal against refusals and conditions. S**

Where the applicant for consent under section 26 above is aggrieved by the decision of the local authority under section 29 above, he may appeal to the Secretary of State, who may dispose of the appeal in any way competent to the authority in their decision on the application.

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

- C26 Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, **reg.3(2)(b)**.  
Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.

**32 Review of consents, conditions and refusals. S**

- (1) A local authority may, and when requested so to do by the occupier of the premises in question shall, by direction review a decision made by them under section 29 above.
- (2) Before making a direction under this section, the local authority shall intimate to the owner and occupier of the premises in question that they propose to make such a direction, and their reasons therefor, and inform the owner and occupier that they may, within 28 days of receipt of the intimation, make representations to the authority in respect of the proposals.
- (3) Before making such a direction the authority shall take into account any representations made in pursuance of subsection (2) above.
- (4) Section 29 above except subsection (2), and section 30 above except subsection (1) so far as relating to intimation to any authority or other body, shall, with any necessary modifications, apply to such a direction as they apply to a decision under the said section 29.
- (5) No review under this section may take place earlier than two years after the making of a decision under the said section 29, and thereafter reviews may take place at intervals of not less than two years, unless in either case the authority and the applicant otherwise agree in writing.
- (6) A direction under this section shall take effect from a date specified therein, but not earlier than 3 months after the date of the direction.
- (7) Where a direction is made under this section relating to the discharge of trade effluent from any premises, the occupier of the premises may appeal against the direction to the Secretary of State, who may dispose of the appeal in any way competent to the authority in making the direction.

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

- C27 Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.  
Ss. 26-32 applied (30.6.1993) by S.I. 1993/1446, **reg.3(2)(b)**.

*Control of existing discharges*

**33 Meaning of existing discharge. S**

- (1) In this Part of this Act, “existing discharge” means a discharge of trade effluent from trade premises into the sewers or sewage treatment works of a local authority which was lawfully made within the period of two years ending on the date of the commencement of this section:  
Provided that where before the said date the local authority and the person making the discharge have agreed that after that date the nature or composition of the discharge

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may be altered or the temperature, volume or rate of discharge may be increased, any discharge made in accordance with such agreement shall be treated for the purposes of this Part of this Act as an existing discharge.

- (2) Any dispute between the local authority and the person making the discharge as to whether the discharge is an existing discharge shall be determined by the sheriff, against whose determination an appeal shall lie to the Court of Session.

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

**C28** Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

**34 Right to continue existing discharge. S**

Subject to this Part of this Act, and except where the local authority and the person making the discharge otherwise agree, an existing discharge shall be allowed to continue.

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

**C29** Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

**35 Furnishing of information. S**

The owner or occupier of premises from which an existing discharge is being made shall, when requested in writing to do so by the local authority, furnish such information to the authority concerning the discharge as an applicant for consent to a new discharge is required to furnish in a trade effluent notice under section 27(2) above, and information concerning the period for which the discharge has continued.

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

**C30** Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

**36 Review of continuation of existing discharge. S**

- (1) A local authority may, and when requested by the person making the discharge shall, review the making of an existing discharge and may direct that any continuation of the discharge shall be either unconditional or subject to such conditions as they may think fit to impose.
- (2) The authority may by direction from time to time, and when requested by the person making the discharge shall, review a direction under the foregoing subsection, but, unless the local authority and the person making the discharge otherwise agree in writing, reviews under this subsection shall not take place at intervals of less than two years.
- (3) Section 29 above, except subsection (1) so far as relating to the refusal of consent and subsection (2), and section 30 above shall, with any necessary modifications, apply to a direction under this section as they apply to a decision under the said section 29; and subsections (2), (3) and (6), and subject to subsection (4) below, subsection (7)

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of section 32 above, shall apply to such a direction as they apply to a direction under the said section 32.

- (4) Where the authority have directed under subsection (1) above that the continuation of the discharge shall be subject to conditions imposed by them which did not previously apply to the making of the discharge, and an appeal is made against the imposition of those conditions, it shall be for the authority to establish that the circumstances of the making of the discharge or its reception, treatment or disposal are so altered as compared with those pertaining before the date of the commencement of section 33 above that it is reasonable that those conditions should be imposed.

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

**C31** Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

S. 36 applied (30.6.1993) by S.I. 1993/1446, reg.3(2)(b).

**C32** S. 36(4) restricted (30.6.1993) by S.I. 1993/1446, reg. 3(1).

*Agreements in lieu of applications for consent*

**37 Agreements as respects trade premises. S**

- (1) A local authority may enter into an agreement with the owner or occupier of any trade premises within their area for the reception, treatment or disposal by the authority of any trade effluent produced on those premises.
- (2) The reference in the foregoing subsection to an agreement shall include a reference to an agreement varying or renewing an existing agreement, whether that existing agreement was entered into before or after the commencement of this section.
- (3) Where a local authority propose to enter into an agreement under this section with an occupier who is not also the owner of trade premises, the authority shall intimate the proposal to the owner who may, within 28 days of receipt of the intimation, make representations in respect of the proposal.
- (4) Before the local authority and such an occupier as is mentioned in subsection (3) above enter into an agreement under this section, the authority shall take into account any representations made by the owner of the premises in question in pursuance of that subsection.
- (5) Without prejudice to subsection (1) above, any agreement under this section may provide for—
- (a) the construction by the authority of such works as may be required for the reception, treatment or disposal of trade effluent;
  - (b) the removal and disposal by the authority of substances produced in the course of treating any trade effluent on or in connection with the premises;
  - (c) the repayment by the owner or, as the case may be, occupier of the premises of the whole or part of the expenses incurred by the authority in carrying out their obligations under the agreement.
- (6) A discharge of trade effluent which is made in accordance with an agreement under this section shall not otherwise require the consent of the local authority nor may the making of such a discharge be reviewed by the direction of the authority; and accordingly sections 26 to 32 and 36 above shall not apply to such a discharge.

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- (7) If the parties to an agreement under this section have failed to renew the agreement, with or without variation, on or before the date of its expiry, the authority may, and if requested by the person making the discharge shall, review the making of the discharge by direction; and subsections (2) to (7) of section 32 above shall, with any necessary modifications, apply to a direction under this subsection.
- (8) Until a direction has been made under subsection (7) above in respect of an agreement, a discharge may continue to be made in accordance with the agreement.
- (9) Any reference in this section to an occupier shall include a reference to a prospective occupier.

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

**C33** Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(3)**.

**C34** S. 37(6) excluded (30.6.1993) by S.I. 1993/1446, **reg.3(2)(a)**.

VALID FROM 30/06/1999

#### [<sup>F32</sup>37A Register for purposes of Part II. **S**

- (1) A sewerage authority shall maintain a register for the purposes of this Part of this Act.
- (2) The authority shall enter in the register—
  - (a) such particulars as may be prescribed—
    - (i) of any consent, affecting their area and for the time being extant, given (whether before or after the coming into force of this section) under this Part of this Act; and
    - (ii) of any agreement, affecting their area and for the time being extant, entered into (whether before or after the coming into force of this section) under section 37 of this Act; and
  - (b) such particulars of other matters relative to their functions under this Part of this Act as may be prescribed.
- (3) It shall be the duty of a sewerage authority—
  - (a) to secure that the register maintained by them in pursuance of subsection (1) above is, after such date as may be prescribed, open to inspection by the public free of charge at all reasonable hours; and
  - (b) to afford members of the public reasonable facilities for obtaining from them, on payment of reasonable charges, copies of entries in the register.
- (4) In subsections (2) and (3) above, “prescribed” means prescribed by the Secretary of State by regulations made under this subsection by statutory instrument.
- (5) An instrument containing regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F32** S. 37A and sidenote inserted (30.6.1999) by 1994 c. 39, s. 103 (with s. 74(4)); S.I. 1998/2532, art. 2



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VALID FROM 30/06/1999

**[<sup>F33</sup>37B Exclusion from register of information affecting national security. S**

- (1) No information shall be included in a register maintained under section 37A of this Act if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or of information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purposes of subsection (1) above, give to a sewerage authority directions—
  - (a) specifying information, or descriptions of information, to be excluded from the register; or
  - (b) specifying descriptions of information to be referred to him for his determination;and no information referred to him in pursuance of paragraph (b) above shall be included in the register until he determines that it should be so included.
- (3) The sewerage authority shall notify the Secretary of State of any information they exclude from the register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which (but for this section) might be included in the register but which he believes may be information whose inclusion would be contrary to the interests of national security, by notice so inform the Secretary of State, specifying the information and indicating its apparent nature; and if the person does so—
  - (a) he shall advise the sewerage authority that he has given such notice; and
  - (b) no information in respect of which such advice has been given shall be included in the register until the Secretary of State has determined that it should be so included.]

**Textual Amendments**

**F33** S. 37B and sidenote inserted (30.6.1999) by 1994 c. 39, s. 103 (with s. 74(4)); S.I. 1998/2532, art. 2

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

**C35** S. 37B: Certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by S.I. 1999/1750, arts. 1, 3, Sch. 2 (with art. 7); S.I. 1998/3178, art. 3

VALID FROM 01/04/2002

**[<sup>F34</sup>37C Exclusion from register of commercially confidential information S**

- (1) Despite subsection (2) of section 37A of this Act, Scottish Water shall not enter in the register maintained under that section information relating to the affairs of any individual or business if—
  - (a) it determines, on the application of the person providing the information, that it is commercially confidential (as regards that or any other person), and

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- (b) the information is not information which is required to be entered in the register in pursuance of a direction under subsection (4) below.
- (2) If, on an application under subsection (1) above, Scottish Water fails to make a determination within the period of 21 days beginning with the date of the application, it shall be treated as having determined that the information is commercially confidential.
- (3) Where, on an application under subsection (1) above, Scottish Water determines that information is not commercially confidential, the information shall not be entered on the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned.
- (4) The Scottish Ministers may give Scottish Water directions as to specified information, or descriptions of information, which the public interest requires to be included in the register regardless of whether the information is commercially confidential.
- (5) Information excluded from the register by virtue of subsection (1) above shall be treated as ceasing to be commercially confidential for the purposes of this section on the expiry of the period of 4 years beginning with the date of the determination by virtue of which it was excluded unless Scottish Water determines, on the application of the person who provided the information, that it is still commercially confidential.
- (6) Subsection (2) above applies in relation to an application under subsection (5) above as it applies in relation to an application under subsection (1) above.
- (7) The Scottish Ministers may, by order made by statutory instrument, substitute (whether in all cases or in such descriptions of case as the order may specify) for the period for the time being specified in subsection (2) above such other period as they consider appropriate.
- (8) A statutory instrument containing an order under subsection (7) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (9) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any person, if its inclusion in the register would prejudice to an unreasonable degree the commercial interests of that person.]

#### Textual Amendments

**F34** S. 37C inserted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\), s. 63](#) (with s. 67); S.S.I. 2002/118, [art. 2](#)

### Supplementary

#### 38 Power to extend Part II to other effluents. **S**

- (1) The Secretary of State may by order made by statutory instrument provide that this Part of this Act shall apply in relation to liquid or other matter of any description specified in the order which is discharged from any premises into the sewers or sewage treatment works of a local authority as they apply in relation to trade effluent, but subject to such

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- modifications, if any, as may be specified in the order, and in particular subject to any modification of the definition of trade premises in this Act which may be so specified.
- (2) An order under this section may designate particular premises in the area of the authority, or may be made to apply to premises throughout the area, or to premises in any part of the area specified in the order.
  - (3) Before making an order under this section, the Secretary of State shall consult such local authorities, river purification authorities, trade organisations and other persons as the Secretary of State considers may have an interest in the order, and, where, in pursuance of subsection (2) above, the order designates particular premises, shall consult the owner and occupier thereof.
  - (4) The Secretary of State may include in an order under this section such provisions as appear to him expedient for modifying any enactment relating to sewage as that enactment applies in relation to the discharge into sewers of any liquid or other matter to which any provisions of this Part of this Act are applied by an order under this section.
  - (5) The Secretary of State may include in an order under this section such transitional, supplemental and incidental provisions as appear to him to be expedient.
  - (6) The Secretary of State shall not make an order under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

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

C36 Ss. 24-38 (Pt. II) excluded (30.6.1993) by S.I. 1993/1446, reg.3(3).

## PART III S

### MISCELLANEOUS AND GENERAL

#### 39 Local authority to have right to sewage. S

A local authority shall have right to all sewage discharged into their sewers or sewage treatment works and to the contents of any septic tank emptied by them under section 10(1) above and may process, sell or otherwise dispose of such sewage or contents.

#### 40 Powers of local authorities as to research and publicity. S

Any local authority may—

- (a) undertake, or contribute towards the cost of, investigations and research relevant to the problems of sewerage and sewage purification;
- (b) arrange for the publication of information on those problems;
- (c) arrange for the delivery of lectures and addresses, and the holding of discussions, on those problems;
- (d) arrange for the display of pictures, cinematograph films or models, or the holding of exhibitions relating to those problems; and

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- (e) prepare, or join in or contribute to the cost of the preparation of, pictures, films, models or exhibitions to be displayed or held as aforesaid.

#### 41 Breaking open of streets, etc. **S**

Subject to the provisions of the [<sup>F35</sup>Part IV of the New Roads and Street Works Act 1991], a local authority or other person may, for the purpose of taking any action or executing work authorised or required by this Act in relation to sewers, drains or sewage treatment works, break open [<sup>F36</sup>any road, any bridge carrying a road,] and any cellar [<sup>F37</sup>, vault, sewer, drain or tunnel in or under a road], and may remove and use the soil or other materials in or under any such [<sup>F38</sup>road]:

Provided that they shall, in the exercise of the powers conferred by this section, cause as little inconvenience and do as little damage as may be, and for any damage done shall pay compensation to be determined, in case of dispute, by the sheriff summarily, whose decision in the matter shall be final.

##### Textual Amendments

- F35** Words in s. 41 substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8, Part IV para. 103\(2\)](#); S.I. 1992/2990, art. 2(2), [Sch.2](#)
- F36** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 64\(4\)\(a\)](#)
- F37** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 64\(4\)\(b\)](#)
- F38** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 64\(4\)\(c\)](#)

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

- C37** [S. 41](#) applied with modifications (1.4.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 45(10); S.I. 1992/266, art. 3.

#### 42 Execution of works by local authorities for other persons. **S**

- (1) Where by virtue of this Act or anything done thereunder a person is authorised or required to carry out any works, the local authority concerned may carry out those works at the request of that person and may recover from him their reasonable expenses for so doing.
- (2) In carrying out such works the local authority shall have all the rights and powers which the person who made the request as aforesaid would have in relation thereto.

#### 43 Power to require occupier to permit works to be executed by owner. **S**

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 or authorised to execute by or under this Act, the sheriff may authorise the owner to enter the premises for the purpose of executing the work.

#### 44 Power of local authorities to require information as to ownership etc. of premises. **S**

A local authority may, for the purpose of enabling them to perform any of their functions under this Act, require the occupier or owner of any premises to state in writing the nature of his own interest therein and the name and address of any other

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person known to him as having an interest therein, whether as owner, tenant, heritable creditor or otherwise, and any person who having been required by a local authority in pursuance of this section to give them any information fails to give them that information, or knowingly makes any misstatement in respect thereof, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [F39]level 3 on the standard scale].

#### Textual Amendments

**F39** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 56, [Sch. 6 para. 41](#)

### 45 Production of plans and furnishing of information to authorities. **S**

- (1) The owner or occupier of any land on or under which is situated any sewer or drain used or intended to be used for discharging any sewage into a sewer or sewage treatment works of a local authority shall, when requested in writing so to do by the authority—
  - (a) produce to the authority all such plans of the sewer or drain as the owner or occupier, as the case may be, possesses or is able without unreasonable expense to obtain, and allow copies of the plans so produced by him to be made by, or under the direction of, the authority, and
  - (b) furnish to the authority all such information as the owner or occupier, as the case may be, can reasonably be expected to supply with respect to the sewer or drain and any sewage discharged therefrom.
- (2) A person who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [F40]level 3 on the standard scale].

#### Textual Amendments

**F40** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#)

### 46 Certain matter not to be passed into drains. **S**

- (1) Without prejudice to the provisions of Part II of this Act, no person shall pass or permit to be passed into, or into a drain connecting with, a public sewer or public sewage treatment works any matter or substance which, either alone or in combination with any matter or substance with which it is likely to come into contact while passing through any sewer or works, is likely to injure the sewer or works, or to interfere with the free flow of their contents, or to affect prejudicially the treatment or disposal of their contents or to be prejudicial to health:  
Provided that it shall be a defence for any person charged with an offence under this section if he proves that at the time he so passed or permitted to be passed the matter or substance concerned he did not know, and could not reasonably be expected to know, that it would be likely to have the aforementioned effects.
- (2) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [F41]£20,000[F42]and 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].

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#### Textual Amendments

- F41** Words in s. 46(2) substituted (1.10.1991) by [Natural Heritage \(Scotland\) Act 1991 \(c. 28, SIF 46:1\)](#), s. 27(1), [Sch. 10, para. 5\(c\)](#); S.I. 1991/2187, [art. 3](#), Sch.
- F42** Words added by [Control of Pollution Act 1974 \(c. 40\)](#), [Sch. 2 para. 25\(b\)](#)

### 47 Recovery of expenses by local authority. **S**

- (1) Where a local authority have incurred expenses for the repayment of which the owner of the premises in respect of which the expenses were incurred is liable either under this Act, or by agreement with the authority, then, without prejudice to any other remedy for, or any preference with respect to, the recovery thereof, they may, on giving not less than 14 days' notice to the owner, make an order (in this section referred to as a "charging order") declaring that the premises and any land held in connection therewith are thereby charged and burdened with an annuity to repay the amount of the expenditure together with the expenses of obtaining the charging order and recording it in the Register of Sasines.
- (2) The provisions of subsection (2) and subsections (4) to (9) of section <sup>[F43]</sup>65 of the Water (Scotland) Act <sup>[F43]</sup>1980 (which relates to charging orders) shall, with the following and any other necessary modifications, apply to a charging order made under the foregoing subsection—
- for references to a house there shall be substituted references to premises; and
  - for references to <sup>[F43]</sup>Part V of the said Act of <sup>[F43]</sup>1980 there shall be substituted references to this Act.
- (3) Sections <sup>[F43]</sup>66 and <sup>[F43]</sup>67 of the said Act of <sup>[F43]</sup>1980 (recovery of expenses and limitation of liability) shall apply for the purposes of recovery of expenses for the repayment of which an owner of premises is liable under this Act, or by agreement with a local authority, as they apply for the purposes of recovery of expenses for the repayment of which an owner is liable under <sup>[F43]</sup>Part V of that Act.

#### Textual Amendments

- F43** Words substituted by [Water \(Scotland\) Act 1980 \(c. 45, SIF 130\)](#), s. 112, [Sch. 10](#)

### 48 Powers of entry. **S**

- (1) Subject to the provisions of this section, <sup>[F44]</sup>any person duly authorised by a sewerage authority (whether or not an employee of the authority and whether such authorisation is special or general) shall, on producing if so required some duly authenticated document showing his authority, have a right to enter any land or premises at all reasonable hours for the purpose of—
- surveying land or boring or carrying out other works in order to ascertain the suitability of the land for the laying of a sewer or the construction of other works under this Act;
  - ascertaining whether there is or has been on or in connection with the land or premises any contravention of the provisions of this Act or of any conditions imposed thereunder;

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- (c) ascertaining whether or not circumstances exist which would authorise the authority to take any action or execute any work under this Act;
  - (d) taking any action or executing any work authorised or required by this Act to be taken or executed by the authority [<sup>F45</sup>or which may be authorised by them under section 3A of this Act];
  - [<sup>F46</sup>(dd) inspecting, maintaining, repairing, cleansing, emptying, ventilating or renewing any sewer which is not a public sewer but forms part of any such system as is mentioned in section 98(1)(b) of the Local Government etc. (Scotland) Act 1994;]
  - (e) inspecting any records and other documents and apparatus which the authority may reasonably require to inspect for the purpose of exercising any of their functions under this Act;
  - (f) taking away for analysis samples of sewage or any other matter or substance which is passing from the premises into [<sup>F47</sup>—
    - (i) public sewers or public sewage treatment works; or
    - (ii) sewers or sewage treatment works not vested in a sewerage authority but forming (or forming part of) any such system as is mentioned in the said section 98(1)(b).]
- (2) Entry to land or premises not being a factory within the meaning of the <sup>M9</sup>Factories Act 1961, or a place in which persons are employed otherwise than in domestic service, shall not be demanded as of right unless at least 24 hours notice of the intended entry has been given to the occupier.
- (3) Before [<sup>F48</sup>entry is made] upon land or premises for any of the purposes mentioned in subsection (1)(a) above the [<sup>F49</sup>the authorised person, or the sewerage authority on his behalf,] shall serve notice of the intended entry upon the owner and occupier, who within 14 days of the receipt of the notice may make representations to the Secretary of State, who, having considered any such representations, may authorise the entry either unconditionally or subject to such conditions as he thinks fit, or refuse to authorise it.
- Every notice under this subsection shall inform the owner and occupier of their right to make representations to the Secretary of State.
- (4) A person carrying out an inspection of documents under subsection (1)(e) above shall have a right to take copies or extracts from the documents.
- (5) Where notice of intended entry for a particular purpose has been given as respects the first occasion on which the right of entry is exercised, no further notice shall be required before entering the land or premises on a subsequent occasion in connection with that purpose.
- (6) If it is shown to the satisfaction of the sheriff, or a magistrate or justice of the peace having jurisdiction in the place where the land or premises are situated, on a sworn information in writing—
  - (a) that admission to land or premises which any person is entitled to enter by virtue of this section has been refused to that person, or that refusal is apprehended, or that the land or 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 are reasonable grounds for entry to the land or premises for any purpose for which the right of entry is exercisable

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

- (7) Any person entitled to enter any land or premises, by virtue of 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 land or premises which he has entered by virtue of such a warrant shall leave them as effectually secured against trespassers as he found them.
- (8) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.
- (9) A person who wilfully obstructs any person upon whom a right of entry has been conferred by any of the provisions of this section or by a warrant issued thereunder shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F50</sup>level 3 on the standard scale] and to a further fine not exceeding £5 for each day on which the offence continues after conviction therefor.
- (10) Where work has been carried out on land in pursuance of this section the [<sup>F51</sup>person who carried it out] shall, as soon as possible, reinstate the land.

#### Textual Amendments

- F44** Words in s. 48(1) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(a)(i)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F45** Words in s. 48(1)(d) added (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(a)(ii)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F46** S. 48(1)(dd) inserted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(a)(iii)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F47** Paras. (i)(ii) substituted for words in s. 48(1)(f) (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(a)(i)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F48** Words in s. 48(3) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(b)(i)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F49** Words in s. 48(3) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(b)(ii)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)
- F50** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, **Sch. 6 para. 42** and by 1995 c. 40, ss. 3, 7(2), **Sch. 1 para. 10, Sch. 2 Pt. III** it is provided (1.4.1996) that s. 48(9) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 5 on the standard scale and £5 per day which the offence continues instead of a fine not exceeding £20
- F51** Words in s. 48(10) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(24)(c)**; S.I. 1994/2850, **art. 3(c)(vi)** (with art. 4)

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

- C38** S. 48: power to modify conferred (*temp.* from 4.1.1995 to 1.4.1996) by 1994 c. 39, s. 182(2); S.I. 1994/2850, **art. 3(a), Sch. 2** (with art. 4)

#### Marginal Citations

- M9** 1961 c. 34.



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#### 49 Admissibility of samples as evidence. **S**

- (1) Subject to subsection (2) below, the result of any analysis of a sample taken under section 48(1)(f) above shall not be admissible as evidence in any legal proceedings in respect of sewage or other matter or substance discharged from any premises unless the person taking the sample—
  - (a) forthwith notifies to the occupier of the premises his intention to have it analysed;
  - (b) there and then divides the sample into three parts and causes each part to be placed in a container which is sealed and marked; and
  - (c) delivers one part to the occupier of the premises, retains one part for future comparison, and, if he thinks fit to have an analysis made, submits one part to the analyst.
- (2) If it is not reasonably practicable for the person taking the sample forthwith to notify to the occupier of the premises his intention to have it analysed, the foregoing subsection shall be construed as requiring the matters specified in paragraphs (a) to (c) thereof to be done as soon as is reasonably practicable.
- (3) In this section any reference to an analysis shall be construed as including a reference to any test of whatever kind, and “analysed” and “analyst” shall be construed accordingly.

#### 50 Restriction on disclosure of information. **S**

- (1) If any person who, in compliance with any of the provisions of this Act or with a warrant issued thereunder, is admitted to any land or 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 guilty of an offence under this section.
- (2) If any person discloses any information which has been furnished to him under this Act, he shall be guilty of an offence under this section, unless the disclosure is made—
  - (a) with the consent of the person by whom the information was furnished; or  
[<sup>F52</sup>(aa) in prescribed circumstances or for prescribed purposes; or]
  - (b) in connection with the execution of this Act; or
  - (c) for the purposes of any proceedings arising out of this Act, or of any criminal proceedings whether so arising or not, or for the purpose of any report of any such proceedings.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding [<sup>F53</sup>level 5 on the standard scale].
- [<sup>F54</sup>(4) In paragraph (aa) of subsection (2) above, “prescribed” means prescribed by the Secretary of State by regulations made under this subsection by statutory instrument.
- (5) An instrument containing regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsections (1) and (2) above are subject to regulation 3(7) of the Environmental Information Regulations 1992 (which disappplies restrictions on disclosure if in pursuance of the <sup>M10</sup>regulations).]

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#### Textual Amendments

- F52** S. 50(2)(aa) inserted (4.1.1995) by 1994 c. 39, s. 104(a) (with s. 74(4)); S.I. 1994/2850, art. 3(c)(vi) (with art. 4)
- F53** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 56, Sch. 6 para. 43 and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 10, Sch. 2 Pt. III it is provided (1.4.1996) that s. 50(3) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 5 on the standard scale instead of a fine not exceeding £100
- F54** S. 50(4)(5)(6) added (4.1.1995) by 1994 c. 39, s. 104(b) (with s. 74(4)); S.I. 1994/2850, art. 3(c)(vi) (with art. 4)

#### Marginal Citations

- M10** S.I. 1992/3240.

## 51 Procedure on appeals to Secretary of State. **S**

- (1) Any appeal to the Secretary of State under this Act shall be made, unless the parties to the appeal otherwise agree, within 28 days of the decision against which the appeal is made.
- (2) At the same time as an appellant makes any such appeal under this Act he shall serve a copy of the appeal on the local authority.
- (3) Before disposing of any such appeal the Secretary of State may afford to the appellant and the authority an opportunity of appearing before and being heard by a person appointed in that behalf by the Secretary of State.
- (4) The decision of the Secretary of State on any such appeal shall be deemed to be the decision of the local authority from whom the appeal is made.
- (5) The decision of the Secretary of State on any such appeal shall be final, but at any stage of the proceedings on the appeal he may, and if so directed by the Court of Session shall, state a case for the opinion of the Court on any question of law arising in those proceedings.
- (6) Pending a decision on any appeal to the Secretary of State under Part II of this Act a discharge of trade effluent being made may continue to be made in accordance with the conditions then applying.

## 52 Exemption from stamp duties. **S**

Any conveyance, lease, bond, mortgage, assignation, agreement, . . . <sup>F55</sup> or other document granted or made for any of the purposes of this Act by, to or in favour of a local authority shall be exempt from all stamp duties.

#### Textual Amendments

- F55** Word repealed by Finance Act 1970 (c. 24), Sch. 8 Pt. V

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### **53 Notices etc. to be in writing. S**

All notices, directions, decisions, applications, appeals and agreements given or made under this Act by a local authority, or an owner, occupier or prospective occupier of premises, and other documents which are given, made, served, authorised or required under this Act shall be in writing.

### **54 Local enactments. S**

- (1) Subject to subsection (2) below, where any local enactment provides for any matter which is also provided for by any provision of this Act or of any order made thereunder, the provision of this Act, or, as the case may be, of that order, shall have effect in substitution for the local enactment, which shall cease to have effect.
- (2) The Secretary of State may by order except from the operation of the foregoing subsection such local enactments as may be specified in the order and direct that the corresponding provisions of this Act or of any order made thereunder as may be so specified shall not have effect in the areas in which the specified local enactments have effect.
- (3) If it appears to the Secretary of State that any local enactment, not being an enactment which has ceased to have effect by virtue of subsection (1) above, is inconsistent with any provision of this Act or of any order made thereunder, or is no longer required, or requires to be amended, having regard to any provision of this Act or of any order made thereunder, he may by order repeal or amend the local enactment as he may consider appropriate.
- (4) Any order made under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **55 Application of Act to Crown premises. S**

- (1) The provisions of this section shall apply in relation to any premises belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.
- (2) The appropriate authority in relation to any premises and the local authority for the area in which the premises are situated may agree that any provisions of this Act specified in the agreement shall apply to those premises and, while the agreement is in force, those provisions shall apply to the premises accordingly, subject however to the terms of the agreement.
- (3) Any such agreement as aforesaid may contain such consequential and incidental provisions, including, with the approval of the Treasury, provisions of a financial character, as appear to the appropriate authority to be necessary or equitable, but agreements made by the Crown Estate Commissioners . . . <sup>F56</sup> shall not require such approval.
- (4) In this section “the appropriate authority” means—
  - (a) in the case of premises belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the premises in question; and

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(b) in the case of premises belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department;

and, if any question arises as to what authority is the appropriate authority in relation to any premises, that question shall be referred to the Treasury, whose decision shall be final.

**Textual Amendments**  
F56 Words repealed by [Post Office Act 1969 \(c. 48\)](#), [Sch. 11 Pt. II](#)

**56 Saving for Coast Protection Act 1949. S**

Nothing in this Act shall affect the application to any operation of sections 34 to 36 of the <sup>M11</sup>Coast Protection Act 1949 (restriction of works detrimental to navigation).

**Marginal Citations**  
M11 [1949 c. 74.](#)

**57 Expenses. S**

There shall be paid out of moneys provided by Parliament any increase attributable to this Act in the sums payable out of moneys so provided under any other Act.

**58 Orders. S**

Any power conferred on the Secretary of State by this Act to make an order shall include power, exercisable in like manner and subject to the same conditions, to vary or revoke the order by a subsequent order.

**59 Interpretation. S**

- (1) In this Act, unless the context otherwise requires—
- “appointed day” means such day as the Secretary of State may by order made by statutory instrument appoint;  
F57
  - “authorised officer” means, as respects any council, an officer of the council authorised by them in writing, either generally or specially, to act in matters of any specified kind, or in any specified matter:  
Provided that the medical officer of health, surveyor and sanitary inspector of a council shall, by virtue of their appointments, be deemed to be authorised officers for the purpose of matters within their respective provinces;  
F57
  - “domestic sewage” in relation to any area or premises means sewage which is not surface water or trade effluent;
  - “drain” in relation to premises, means any pipe or drain within the curtilage of those premises used solely for or in connection with the drainage of one

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building or of any buildings or yards appurtenant to buildings within the same curtilage;

“foul water” means any water contaminated by domestic sewage or trade effluent;

“function” includes power and duty;

<sup>F58</sup> .....

“land” includes land covered with water and any interest or right in or over land;

“local authority” means a [<sup>F59</sup>regional or islands] council;

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

“occupier” means the person in occupation or having the charge, management or control of premises, either on his own account or as the agent of another person;

“owner” means the person for the time being entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the premises, and includes a trustee, factor, tutor or curator, and in the case of public or municipal property applies to the persons to whom the management thereof is entrusted;

“private sewage treatment works” means sewage treatment works which are not vested in a local authority;

“private sewer” means any sewer which is not a public sewer;

“public drain” means any drain which is vested in a local authority;

“public sewage treatment works” means sewage treatment works which are vested in a local authority;

“public sewer” means any sewer which is vested in a local authority;

“river purification authority” has the same meaning as in section 17 of the <sup>M12</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951;

[<sup>F60</sup>“road” has the same meaning as in [<sup>F61</sup>Part IV of the New Roads and Street Works Act 1991];]

“sewage” includes domestic sewage, surface water and trade effluent;

“sewage treatment works” means any works, apparatus or plant used for the treatment or disposal of sewage, and includes a septic tank;

“sewer” does not include a drain as defined in this section, but, save as aforesaid, includes all sewers, pipes or drains used for the drainage of buildings and yards appurtenant to buildings;

<sup>F62</sup> .....

<sup>F63</sup> .....

“surface water” means the run-off of rainwater from roofs and any paved ground surface within the curtilage of premises;

“trade effluent” means any liquid, either with or without particles of matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises, including trade waste waters or waters heated in the course of any trade or industry and, in relation to any trade premises, means any such liquid as aforesaid which is so produced in the course of any trade or industry carried on at those premises;

“trade or industry” for the purpose of the definition of “trade effluent” shall include agriculture, horticulture and scientific research or experiment and the carrying on of a hospital or a nursing home, and for the purpose of the

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definition of “trade premises” shall include premises used or intended to be used in whole or in part for carrying on agriculture, horticulture or scientific research or experiment, or as a hospital or a nursing home;

“trade premises” means any premises used or intended to be used for carrying on any trade or industry.

[<sup>F64</sup>“trunk road” has the same meaning as in the Roads (Scotland) Act 1984;]

- (2) Unless the context otherwise requires any reference in this Act to a drain or to a sewer shall be construed as including a reference to any manholes, ventilating shafts, pumping stations, storm water overflow pipes, outfall pipes or other accessories belonging to a drain or sewer, and any reference in this Act to sewage treatment works shall be construed as including a reference to accommodation used in connection therewith, the machinery and equipment of those works and any necessary pumping stations.
- (3) Any reference in this Act to the construction of a sewer or sewage treatment works shall be construed as including a reference to the extension of an existing sewer or of existing works.
- (4) Unless the context otherwise requires, any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment, including this Act.

#### Textual Amendments

- F57** Definitions repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)
- F58** Definitions of “general rate” and “regional rate” repealed by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2\), s. 34, Sch. 6](#)
- F59** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 27 Pt. II para. 182](#)
- F60** Definition of “road” inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(1\), Sch. 9 para. 64\(5\)\(a\)](#)
- F61** Words in [s. 59\(1\)](#) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\), s. 168\(1\), Sch. 8, Part IV, para. 103\(3\); S.I. 1992/2990, art. 2\(2\), Sch. 2](#)
- F62** Definition repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)
- F63** Definition of “street” repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(1\)\(3\), Sch. 9 para. 64\(5\)\(b\), Sch. 11](#)
- F64** Definition of “trunk road” inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(1\), Sch. 9 para. 64\(5\)\(c\)](#)

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

- C39** References to medical officer of health, surveyor, and sanitary inspector to be construed as references to the proper officer of a local authority; [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 27 Pt. I para. 2](#)

#### Marginal Citations

- M12** [1951 c. 66.](#)

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## 60 Amendments and repeals. **S**

- (1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.
- (2) The enactments described in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule, and so much of that Schedule as relates to the <sup>M13</sup>Local Government (Scotland) Act 1947 (so far as relating to the operation and dissolution of special drainage districts) shall come into force on the appointed day.

### Modifications etc. (not altering text)

**C40** The text of s. 60(1)(2), Sch. 1 paras. 2—4, Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

### Marginal Citations

**M13** 1947 c. 43.

## 61 Short title, extent and commencement. **S**

- (1) This Act may be cited as the Sewerage (Scotland) Act 1968 and shall extend to Scotland only.
- (2) This Act, except this section, shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint, and different dates may be appointed under this subsection for different provisions of this Act or for different purposes.
- (3) Any reference in this Act to the commencement of any provision thereof shall be construed as a reference to the date when that provision comes into force.

### Modifications etc. (not altering text)

**C41** Power of appointment conferred by s. 61(2) fully exercised: [S.I. 1972/363](#)

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SCHEDULE 1 **S**

Section 60(1).

## CONSEQUENTIAL AMENDMENTS

*The<sup>M14</sup>Public Health (Scotland) Act 1897***Marginal Citations**

M14 1897 c. 38.

1 ..... F65

**Textual Amendments**

F65 Sch. 1 para. 1 repealed by Local Government (Scotland) Act 1973 (c. 65), Sch. 29

2 There shall be inserted at the beginning of section 116 the words “Subject to the provisions of Part II of the Sewerage (Scotland) Act 1968”.

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

C42 The text of s. 60(1)(2), Sch. 1 paras. 2—4, Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*The<sup>M15</sup>Local Government (Scotland) Act 1947***Marginal Citations**

M15 1947 c. 43.

3 In Schedule 6, item 11, for the words “Section 139 of the Public Health (Scotland) Act 1897” there shall be substituted the words “The Sewerage (Scotland) Act 1968”.

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

C43 The text of s. 60(1)(2), Sch. 1 paras. 2—4, Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*The<sup>M16</sup>Radioactive Substances Act 1960***Marginal Citations**

M16 1960 c. 34.

F66<sub>4</sub> .....



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### Textual Amendments

**F66** Sch. 1 para. 4 repealed (27.8.1993) by 1993 c. 12, ss. 50, 51(2), Sch.6 Pt. 1 (with s. 46).

## SCHEDULE 2 **S**

Section 60(2).

### ENACTMENTS REPEALED

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

**C44** The text of s. 60(1)(2), Sch. 1 paras. 2—4, Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
39 & 40 Vict. c. 75	The Rivers Pollution Prevention Act 1876.	The whole Act
55 & 56 Vict. c. 55.	The Burgh Police (Scotland) Act 1892.	In section 107, the word “sewers”.  In section 111, the words “and for cleansing the sewers and drains”.  Sections 214 to 222, 224, 225 and 227.  In section 228, the words “No building shall be erected over any sewer belonging to the commissioners”, the words “and so as not to interfere or communicate with any sewers belonging to the commissioners”, the words “any building be erected”, and the words “erecting such building”.  Sections 229 to 232.  In section 233, the words from “guilty of” to “besides being”.  Sections 234 to 237 and section 242.  In section 243 the words “drain or” wherever they occur, and the words

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from “and all branch drains” onwards.

In section 250, the words “and with power to make such drain if none such already exist”, the words from “the sanction” to “street; and”, the words “with the expense of restoring the street, so far as interfered with”, and the words from “with such” to “may fix”.

In section 329, the words from “the special” to “sewers”, the words “rate or”, and the word “rate”.

In sections 330 and 331, the word “rate”.

In section 332, the word “rate” where first occurring.

Sections 361, 362 and 364.

In section 366, the words “special sewer rate, general sewer rate, and”.

In section 367, the words “rates or” wherever they occur.

In section 368, the words “special sewer rate, general sewer rate, and”, the words “rates and”, and the words “rated or” wherever they occur.

In section 369, the words “rates or” wherever they occur.

Schedule VI so far as it relates to general sewer rate and special sewer rate.

60 & 61 Vict. c. 38.

The Public Health (Scotland) Act 1897.

Sections 101 to 112, 114 and 115.

In section 116, the words from “or to use” onwards.

Sections 117, 119, 120, 122 and 139.

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1 Edw. 7. c. 24.	The Burgh Sewerage, Drainage and Water Supply (Scotland) Act 1901.	The whole Act.
3 Edw. 7. c. 33.	The Burgh Police (Scotland) Act 1903.	Section 25.  In section 98(6), the words “sewers, drains”.
10 & 11 Geo. 6. c. 43.	The Local Government (Scotland) Act 1947.	Part VII, so far as relating to the formation, operation and dissolution of special drainage districts.  Section 225(1) so far as relating to the special district sewer rate.
8 & 9 Eliz. 2. c. 34.	The Radioactive Substances Act 1960.	In Part II of Schedule 1, paragraph 10, in paragraph 11 the reference to section 222, and in paragraph 13 the reference to section 120.

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