



# Sewerage (Scotland) Act 1968

## 1968 CHAPTER 47

### PART III

#### MISCELLANEOUS AND GENERAL

#### **39 Local authority to have right to sewage**

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**

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
- (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.**

Subject to the provisions of the Public Utilities Street Works Act 1950, 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 the carriageway and footways of any street and of any bridge carrying a street, and any cellar or vault below any street, and any sewer, drain or tunnel in or under

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any such carriageway or footway, and may remove and use the soil or other materials in or under any such carriageway or footway :

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.

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

- (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**

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**

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 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 £20.

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

- (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 £20.

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

- (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 £20 and a further fine not exceeding £10 for each day on which the offence continues after conviction therefor.

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

- (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 55 of the Water (Scotland) Act 1946 (which relates to charging orders) shall, with the following and any other necessary modifications, apply to a charging order made under the foregoing subsection—
- (a) for references to a house there shall be substituted references to premises ; and
  - (b) for references to Part III of the said Act of 1946 there shall be substituted references to this Act.
- (3) Sections 56 and 57 of the said Act of 1946 (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 Part III of that Act.

#### **48 Powers of entry**

- (1) Subject to the provisions of this section, an authorised officer of a local authority 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—
- (a) 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;

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- (b) 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;
  - (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;
  - (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 the sewers or sewage treatment works of the authority.
- (2) Entry to land or premises not being a factory within the meaning of the Factories Act 1961, or a place in which persons are employed otherwise than in domestic service, shall not be demanded as of right unless at least 24 hours notice of the intended entry has been given to the occupier.
- (3) Before entering upon land or premises for any of the purposes mentioned in subsection (1)(a) above the local authority 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,
- 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 £20 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 local authority shall, as soon as possible, reinstate the land.

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

- (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**

- (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
  - (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.

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- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £100 or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment.

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

- (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**

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

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

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**

- (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**

- (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 or the Postmaster General 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
  - (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.

## **56 Saving for Coast Protection Act 1949**

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

## **57 Expenses**

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**

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**

(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;

" area " in relation to a local authority means, in the case of a county council, the landward area of the county and, in the case of a town council, the burgh;

" 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;

" burgh rate " has the same meaning as in section 224(1) of the Local Government (Scotland) Act 1947 ;

" county rate " has the same meaning as in section 224(1) of the Local Government (Scotland) Act 1947 ;

" 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 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;

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

" local authority " means a county council or a town 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;



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

" 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;

" special district sewer rate " has the same meaning as in section 225(1) of the Local Government (Scotland) Act 1947;

" street " includes any road, including a road over any bridge, and any lane, footway, subway, square, court, alley, passage or length of land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether the road or other thing in question is a thoroughfare or not;

" 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 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.

- (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.

## **60 Amendments and repeals**

- (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 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.

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

- (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.