



Water (Scotland) Act 1980

1980 CHAPTER 45

PART IX

GENERAL

93 Obtaining of information as to underground water

- (1) Any person who proposes to sink, for the purpose of searching for or abstracting water, a well or borehole intended to reach a depth of more than 50 feet below the surface shall, before he begins to do so, give to the Natural Environmental Research Council notice in writing of his intention to do so, and shall keep a journal of the progress of the work, which shall include measurements of the strata passed through, and all the levels at which water is struck and subsequently rests, and shall allow any person authorised by the said council for the purpose, on the production of some duly authenticated document showing his authority, at all reasonable times—
 - (a) to have free access to any such well or borehole;
 - (b) to inspect the well or borehole and the material excavated therefrom;
 - (c) to take specimens of such material and of water abstracted from the well or borehole ; and
 - (d) to inspect and take copies of or extracts from the journal required to be kept under this section.
- (2) The person sinking any such well or borehole shall, on completion or abandonment of the work, send a complete copy of the journal kept under subsection (1) to the council and shall also send them particulars of any test made, before such completion or abandonment, of the flow of water, specifying the rate of flow throughout the test and the duration of the test, and also, where practicable, specifying the water levels during the test and thereafter until the water has returned to its natural level.
- (3) Where any such well or borehole is sunk in connection with an existing pumping station, the particulars of any test to be supplied to the council shall also include the rate of pumping at the existing works during the test.

Status: This is the original version (as it was originally enacted).

- (4) Where the person sinking a well or borehole on any land is not the occupier of the land, the obligation to allow a person authorised by the council to exercise the rights specified in paragraphs (a) to (d) of subsection (1) shall be the obligation of the occupier as well as of the person sinking the well or borehole.
- (5) Where any person contracts to sink any well or borehole on land belonging to or occupied by any other person and the execution of the work is under the control of the contractor, the contractor and no other person shall be deemed for the purposes of this section to be the person sinking the well or borehole.
- (6) The person sinking a well or borehole or (if a different person) the owner or occupier of the land on which it is sunk may give notice in writing to the council requiring them to treat as confidential any copy of or extract from the journal required to be kept under subsection (1) or any specimen taken under that subsection, and the council shall thereupon not allow that copy, extract or specimen, except in so far as it contains or affords information as to water resources and supplies, to be published or shown to any person not being an officer of the council or of the Secretary of State, unless the person giving the notice consents thereto:

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

- (7) Any person who fails to comply with any obligation imposed on him by the provisions of this section shall be guilty of an offence against this Act and shall on summary conviction be liable to a fine not exceeding £200 and, where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

94 False information

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

- (a) on summary conviction, to a fine not exceeding £50 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

95 Penalties for offences

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

- (a) on summary conviction, to a fine not exceeding £50 and in the case of a continuing offence to a further fine not exceeding £25 for every day during which the offence is continued after conviction;

- (b) on conviction on indictment, to imprisonment for a period not exceeding three months or to a fine, and in the case of a continuing offence to a fine for every day during which the offence is continued after conviction.

96 Trial of offences

Any offence under this Act or under any byelaw made under this Act (other than an offence in respect of which, if it is continued, a further penalty may be imposed) for which the maximum penalty that may be imposed does not exceed £25 may be prosecuted in any court of summary jurisdiction within the meaning of the Criminal Procedure (Scotland) Act 1975 having jurisdiction in the place where the offence was committed.

97 Continuing offences and penalties

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

98 Local inquiries

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

99 Orders subject to special parliamentary procedure

- (1) Any inquiry in relation to an order under this Act which in certain events becomes subject to special parliamentary procedure shall, if the Secretary of State so directs, be held by commissioners under the Private Legislation Procedure (Scotland) Act 1936; and any direction so given shall be deemed to have been given under section 2, as read with section 10, of the Statutory Orders (Special Procedure) Act 1945.
- (2) Nothing in section 210(2) to (9) of the Local Government (Scotland) Act 1973 shall apply to any inquiry under this section by commissioners under the Private Legislation Procedure (Scotland) Act 1936.
- (3) The provisions of the Statutory Orders (Special Procedure) Act 1945 with regard to the publication of notices in the Edinburgh Gazette and in a newspaper shall, notwithstanding anything in that Act contained, not apply to any order under this Act which is subject to special parliamentary procedure.

100 Orders

- (1) Any power to make orders under this Act may be exercisable by statutory instrument.

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

101 Regulations

- (1) The Secretary of State may make regulations prescribing anything required to be prescribed for the purpose of any provision of this Act.
- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument; and any instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

102 Expenses

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

103 Notices to be in writing

All notices, consents, approvals, demands and other documents authorised or required by or under this Act or any local enactment incorporating any provisions of Schedule 4 to be given, made or issued by the Secretary of State or any regional, island or district council, or water authority or water development board, and all notices and applications authorised or required by or under this Act or any such local enactment to be given or made to the Secretary of State or to, or to any officer of, any regional, islands or district council, or water authority or water development board, shall be in writing.

104 Appeal to sheriff-principal

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

105 Reference to arbitration

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

106 Supplementary provisions relating to determination of disputes

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

107 Repeal, amendment and adaptation of local enactments

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

108 Transitional provisions and savings

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

109 Interpretation

- (1) In this Act the following expressions shall subject to any express provision or anything in the context to the contrary have the meanings hereby respectively assigned to them, that is to say—
 - " agricultural lands and heritages " has the like meaning as in the Rating and Valuation (Apportionment) Act 1928 ;

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- " apportionment scheme " has the meaning assigned to it by section 86;
- " bridge authority " means the authority who are the highway authority in respect of the highway carried by the bridge;
- " Central Board " means the Central Scotland Water Development Board;
- " communication pipe ", subject to section 110, means—
- (a) where the premises supplied with water abut on the part of the street in which the main is laid and the service pipe enters those premises otherwise than through the outer wall of a building abutting on the street and has a stopcock placed in those premises and as near to the boundary of that street as is reasonably practicable, so much of the service pipe as lies between the main and that stopcock;
 - (b) in any other case, so much of the service pipe as lies between the main and the boundary of the part of the street in which the main is laid;
- and includes the ferrule at the junction of the service pipe with the main, and also—
- (i) where the communication pipe ends at a stopcock, that stopcock; and
 - (ii) any stopcock fitted on the communication pipe between the end thereof and the main;
- " constituent water authority " has the meaning assigned to it by section 84(3);
- " contravention " includes failure to comply, and " contravene " shall be construed accordingly ;
- " contributing authority " means—
- (a) in relation to a water authority, any other regional council the whole or part of whose region is within the limits of supply of the water authority or in whose region water is supplied to premises by the water authority, and
 - (b) in relation to a water development board, a constituent water authority;
- " domestic water rate " and " public water rate " have the meanings assigned to them by section 39 ;
- " enactment " means any Act of Parliament, whether public general, local or private, any statutory order or any provision in an Act of Parliament or statutory order;
- " fishery district " means a district for the purposes of the Salmon Fisheries (Scotland) Act 1862; and
- " fishery district board " means the district board for a fishery district and for the purposes of this Act the Commissioners appointed under the Tweed Fisheries Act 1969 shall be deemed to be a fishery district board, and the river, as defined by the said Act of 1969, shall be deemed to be their fishery district;
- " functions " includes powers and duties ;
- " highway " means a highway, road, street, or bridge for the maintenance and management of which a local or public authority is responsible ; and " highway authority " means the local or public authority responsible for the maintenance and management of a highway.
- " house " means a dwelling-house, whether a private dwelling-house or not, and includes any part of a building if that part is occupied as a separate dwelling, house;

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

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

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

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

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

" net annual value " has the same meaning as in the Valuation and Rating (Scotland) Act 1956 ;

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

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

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

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

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

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

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

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

" river purification authority " has the meaning assigned to it by section 17 of the Rivers (Prevention of Pollution) (Scotland) Act 1951;

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

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

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

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

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

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

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

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

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

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

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

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

- (2) Any reference in this Act to persons having the control or management of a street or bridge shall be construed as a reference in the case of a street or bridge maintainable at the public expense, to the authority who are the highway authority or, as the case may be, the bridge authority in respect thereof, and, in the case of any other street or bridge, to the authority or person responsible for the maintenance thereof, or, if no authority or person is responsible therefor, to the owners of the soil of the street or, as the case may be, of the structure of the bridge.
- (3) In the construction of any enactment incorporated with this Act, the expressions " the promoters of the undertaking " or " the company ", and " the special Act ", shall be construed as meaning respectively the water authority and water development board, and this Act.
- (4) In this Act, except where otherwise indicated—
- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
 - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
 - (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

110 Further provisions as to communication pipes, etc.

- (1) Where any main is laid alongside and within 60 feet of the middle of a street, then, for the purposes of the definition of " communication pipe " contained in section 109(1), the land in which the main is laid, and any land between the main and the street, shall be deemed to form part of the street, and references in that definition to the part of the street in which the main is laid, and to the boundary of the street in which the main is laid, shall be construed accordingly:

Provided that where the premises supplied with water lie between any such main as aforesaid and the street, only that land in which the main is laid together with any land between the main and those premises shall be deemed to form part of the street.

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

111 Saving for protective clauses in other Acts

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

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

112 Amendments and repeals

- (1) The enactments specified in Schedule 10 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.
- (2) The enactments specified in Schedule 11 are hereby repealed to the extent specified in column 3 of that Schedule.

113 Short title and extent

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