



Water (Scotland) Act 1980

1980 CHAPTER 45

PART VI

CONSERVATION AND PROTECTION OF WATER RESOURCES

68 Agreements as to drainage.

- (1) A water authority ^{F1} may enter into agreements—
- (a) with the owners and occupiers of any land, in so far as their interest enables them to bind it, or
 - (b) with a [^{F2}local authority],

with respect to the execution and maintenance by any party to the agreement of such works as the authority ^{F1} consider necessary for the purpose of draining that land, or for more effectually collecting, conveying, or preserving the purity of, water which they are for the time being authorised to take:

Provided that where the execution of any such works would result in the discharge of water, otherwise than through public sewers, into any watercourse which is within a fishery district or is subject to the jurisdiction of a navigation authority or from which any public undertakers are authorised by any enactment to take or use water, the authority ^{F1} shall, before entering into the agreement, consult with the fishery district board or the navigation authority or the undertakers concerned.

- (2) An agreement under this section with an owner of land shall, if it is so expressed therein, on being recorded in the appropriate Register of Sasines, be binding upon and enforceable against any person subsequently acquiring the land or any estate or interest therein.

^{F1F3}(3)

Textual Amendments

F1 Words in s. 68(1) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(35)(a)(i), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

Status: Point in time view as at 01/04/1996.

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- F2** Words in s. 68(1)(b) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(35)(a)(ii)**; S.I. 1996/323, **art. 4(1)(c)**
- F3** S. 68(3) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), **Sch. 13 para. 119(35)(b)**, **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**

69 Power to restrict use of hose pipes.

- (1) If a water authority are of opinion that a serious deficiency of water available for distribution by them exists, or is threatened, they may for such period as they think necessary prohibit or restrict as respects the whole or any part of their limits of supply the use for the purpose of watering private gardens or washing private motor cars of any water supplied by them and drawn through a hosepipe or similar apparatus.

In this subsection the expression “private motor car” means a mechanically propelled vehicle intended or adapted for use on roads other than a public service vehicle [^{F4}as defined in section 1 of the ^{M1}Public Passenger Vehicles Act 1981], or a goods vehicle [^{F4}as defined in section 192(1) of the ^{M2}Road Traffic Act 1988], and includes any vehicle drawn by a private motor car.

- (2) The authority shall, before the prohibition or restriction comes into force, give notice by publication in two or more newspapers circulating within the area affected and by such other means as the authority may think proper of the prohibition or restriction and of the date when it will come into force.
- (3) Any person who, while the prohibition or restriction is in force, contravenes its provisions, shall in respect of each offence be liable on summary conviction to a fine not exceeding [^{F5}level 3 on the standard scale].

Textual Amendments

- F4** Words in s. 69(1) substituted (4.1.1995) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(36)(a)(b)**; S.I. 1994/2850, **art. 3(c)**
- F5** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1)**, **s. 289G**

Marginal Citations

- M1** 1981 c. 14.
M2 1988 c. 52.

70 Byelaws for preventing misuse of water.

- (1) A water authority ^{F6} may make byelaws for preventing waste, undue consumption, misuse or contamination of water supplied by them, and such byelaws may, without prejudice to the foregoing generality, include provisions—
- (a) prescribing the size, nature, design, materials, strength and workmanship, and the mode of arrangement, connection, disconnection, alteration and repair of the water fittings to be used; and
 - (b) forbidding the use of any water fittings which are of such a nature or design or are so arranged or connected as to cause or permit, or be likely to cause or permit, waste, undue consumption, misuse, erroneous measurement or contamination of water, or reverberation in pipes.

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- (2) If a person contravenes the provisions of any byelaw made under this section, the authority ^{F6} may, whether proceedings have been taken in respect of the offence or not, cause any water fittings belonging to or used by that person which are not in accordance with the requirements of the byelaws to be altered, repaired or replaced, and may recover the expenses reasonably incurred by them in so doing from the person in default.
- (3) Nothing in this section, or in any byelaw made thereunder, shall apply to any fittings used on premises which belong to a railway company and are held or used by them for the purposes of their railway, so long as those fittings are not of such a nature or design or so arranged or connected as to cause or permit waste, undue consumption, misuse or contamination of water supplied by the authority or board or reverberation in pipes:

Provided that the exemption conferred by this subsection shall not extend to fittings used in hotels or dwelling houses or in offices not forming part of a railway station.

- [^{F7}(4) Where a water authority ^{F6} consider that a byelaw made by them under this section ought not to operate in relation to any particular case or class of cases they may, with the consent of the Secretary of State, relax the requirements of, or dispense with compliance with, that byelaw accordingly:

Provided that the authority ^{F6} shall, in such manner and to such person, if any, as the Secretary of State may direct, give notice of any such proposed relaxation or dispensation; and the Secretary of State—

- (a) shall not give his consent before the expiration of one month from the giving of the notice; and
- (b) shall, before giving his consent, take into consideration any relevant objection which may have been received by him.]

Textual Amendments

- F6** Words in s. 70(1)(2)(4) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(37)(a)-(d), Sch. 14; S.I. 1996/323, art. 4(1)(c)(d), Sch. 2
- F7** S. 70(4) added by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 33

Modifications etc. (not altering text)

- C1** S. 70 amended (27.8.1993) by 1993 c. 12, s. 40(4), Sch. 3 Pt. II para. 17 (with ss. 42, 46)

71 Byelaws for preventing pollution of water.

- (1) If it appears to a water authority ^{F8} to be necessary for the purpose of protecting against pollution any water whether on the surface or underground, which belongs to them or which they are for the time being authorised to take, they may by byelaws—
- (a) define the area within which they deem it necessary to exercise control; and
- (b) prohibit or regulate the doing within that area of any act specified in the byelaws.

Byelaws made under this section may contain different provisions for different parts of the area defined by the byelaws.

- (2) Where an area has been defined by byelaws under this section, the [^{F9}water authority] may by notice require either the owner or the occupier of any premises within that

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area to execute and keep in good repair such works as they consider necessary for preventing pollution of their water, and, if he fails to comply with any such requirement, he shall be liable on summary conviction to the same penalties as if he had committed an act prohibited by the byelaws:

Provided that an owner or occupier who considers that a requirement made on him under this subsection is unreasonable may, within 28 days after service on him of the requirement, appeal to the sheriff who may, if he decides that the requirement is unreasonable, modify or disallow the requirement.

- (3) The [^{F10}water authority] shall pay compensation to the owners and occupiers of, and other persons interested in, any premises within the area defined by byelaws made under this section in respect of—
- (a) any curtailment or injurious affection of their legal rights by restrictions imposed by the byelaws; and
 - (b) any expenses incurred by them in complying with a requirement to construct and maintain any works the construction of which could not, apart from this section, lawfully have been required otherwise than upon payment of compensation by the [^{F10}local authority];

and any question as to the amount of compensation to be paid shall in case of dispute be determined by arbitration.

In this subsection the expression “legal rights” includes the use of land in respect of which proceedings might have been taken by the [^{F10}local authority] or otherwise under any public general Act or under byelaws made thereunder, but have not been so taken, either by reason of the character or situation of the land or for some other reason.

- (4) Where any person has failed to comply with a requirement made on him under subsection (2) and either—
- (a) he has not appealed to the sheriff against that requirement and the time for appealing has expired, or
 - (b) his appeal has been dismissed or the requirement has been modified on his appeal and he has failed to comply with the requirement as so modified,
- the [^{F11}local authority] may, whether proceedings have been taken in respect of such failure or not, execute and keep in good repair the works specified in the requirement as originally made or, as the case may be, as modified on appeal, and may recover the expenses reasonably incurred by them in so doing from the person in default, except expenses incurred in respect of works the construction of which could not, apart from this section, lawfully have been required otherwise than upon payment of compensation by the [^{F11}local authority].
- (5) Two or more [^{F12}water authorities] may combine for the purpose of making and enforcing byelaws under this section, and this section and section 72(2) shall in any such case have effect as if the references to an authority ^{F13} were references to those two or more authorities ^{F13} acting jointly.
- (6) Nothing in this section shall be construed as empowering the authorities ^{F13} to make any byelaws restricting the rights of a navigation authority under any enactment.

Textual Amendments

- F8** Words in s. 71(1) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(38)(a), Sch. 14; S.I. 1996/323, art. 4(1)(c)(d), Sch. 2

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- F9** Words in s. 71(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(38)(b)**; S.I. 1996/323, **art. 4(1)(c)**
- F10** Words in s. 71(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(38)(c)**; S.I. 1996/323, **art. 4(1)(c)**
- F11** Words in s. 71(4) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(38)(d)**; S.I. 1996/323, **art. 4(1)(c)**
- F12** Words in s. 71(5) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(38)(e)(i)**; S.I. 1996/323, **art. 4(1)(c)**
- F13** Words in s. 71(5)(6) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), **Sch. 13 para. 119(38)(e)(ii)(f)**, **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**

Modifications etc. (not altering text)

- C2** S. 71 amended (27.8.1993) by 1993 c. 12, s. 40(4), **Sch. 3 Pt. II para. 17** (with ss. 42, 46)

72 General provisions as to byelaws.

- (1) The Secretary of State shall be the confirming authority as respects byelaws made under either of the last two foregoing sections, and the provisions of Part IV of Schedule 1 shall apply to the making and confirming of such byelaws.
- (2) It shall be the duty of a water authority ^{F14} by whom such byelaws are made to enforce those byelaws, so however that nothing in this subsection shall be construed as authorising the authority to institute proceedings for any offence against those byelaws.
- (3) Any such byelaws may contain provisions for imposing on any person contravening the byelaws a fine, recoverable on summary conviction, not exceeding the sum of [^{F15}level 4 on the standard scale] in respect of each offence, and in the case of a continuing offence a further fine not exceeding £50 for each day during which the offence continues after conviction therefor.
- (4) Any byelaw made under either of the last two foregoing sections shall cease to have effect on the expiration of the period of 10 years beginning with the date on which it was made; but the Secretary of State may by order extend the period during which any such byelaw is to remain in force.

Subordinate Legislation Made

- P1** S. 72: power previously exercised by S.I. 1981/1801, 1988/327 and 1990/2250.
- P2** S. 72(4): s. 72(4) power exercised (12.11.1991) by S.I. 1991/2573
S. 72(4): s. 72(4) power exercised (20.11.1991) by S.I. 1991/2639

Textual Amendments

- F14** Words in s. 72(2) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), **Sch. 13 para. 119(39)**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**
- F15** Words in s. 72(3) substituted by virtue of **Criminal Procedure (Scotland) Act 1975 (c. 21)**, s. 289G, 289H, **Sch. 7D** (as inserted by **Criminal Justice Act 1982 (c. 48)**, s. 54, **Sch. 6**, which Sch. 6 was repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5**) and those same words substituted (1.4.1996) by 1995 c. 40, ss. 3, 7(2), **Sch. 1 para. 10**, **Sch. 2 Pt. III**

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73 Power of Secretary of State to require the making of byelaws.

- (1) The Secretary of State may by notice require a water authority^{F16} to make byelaws under section 70 or 71 in relation to such matters as he may specify, and, in the case of byelaws made under section 71, he shall specify the area for which the byelaws are to be made, and if the authority^{F16} do not within three months after such requirement make in relation to the matters specified byelaws satisfactory to him, the Secretary of State may himself make byelaws with respect to those matters.
- (2) If, after they have been in operation for a period of not less than three years, the Secretary of State considers unsatisfactory any byelaws made by an authority^{F16} under section 70 or 71 or any byelaws or regulations made by an authority^{F16} under any other enactment conferring power to make byelaws or regulations for purposes similar to the purposes for which byelaws may be made under either of the said sections, he may by notice require the authority^{F16} to revoke those byelaws or regulations and to make such new byelaws under section 70 or 71 as he considers necessary; and if the authority^{F16} do not within three months after such requirement comply therewith, the Secretary of State may himself revoke the byelaws or regulations and make such new byelaws under section 70 or 71 as he considers necessary.
- (3) Any byelaws made by the Secretary of State under this section shall have effect as if they had been made by the authority^{F16} concerned and confirmed by the Secretary of State.

Textual Amendments

F16 Words in s. 73(1)-(3) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(40), Sch. 14; S.I. 1996/323, art. 4(1)(c)(d), Sch. 2

74 Regulations to prevent waste, misuse or contamination of water.

- (1) The Secretary of State may make regulations for any of the purposes for which byelaws may be made under section 70 (byelaws for the prevention of waste, misuse or contamination of water); and any such regulations shall have effect in substitution for any such byelaws in force immediately before the coming into force of these regulations.
- (2) Any reference in this Act to a byelaw made under the said section 70 (other than a reference in section 72(1), (2) and (4) to byelaws) shall include a reference to a regulation made under this section.
- (3) Regulations made under this section may be made so as to apply in all parts of Scotland or to apply only in such part or parts as may be specified in the regulations, and may contain different provisions for different parts, or for different circumstances in any such part.

75 Penalty for polluting water.

- (1) If any person is guilty of any act or neglect whereby any spring, well or adit, the water from which is used or likely to be used for human consumption or domestic purposes or for manufacturing food or drink for human consumption, is polluted or likely to be polluted, he shall be guilty of an offence.
- (2) Nothing in this section shall be construed as prohibiting or restricting—

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- (a) any method of cultivation or use of land which is in accordance with the principles of good husbandry; or
 - (b) the reasonable use of oil or tar on any [^{F17}public road, so long as the roads] authority take all reasonable steps for preventing the oil or tar, or any liquid or matter resulting from the use thereof, from polluting any such spring, well or adit.
- (3) Any person guilty of an offence by virtue of this section shall be liable in respect of each offence—
- (a) on summary conviction, to a fine not exceeding the prescribed sum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both a fine and such imprisonment.
- (4) In this section, “the prescribed sum” has the same meaning as in [^{F18}section 225(8) of the Criminal Procedure (Scotland) Act 1995].

Textual Amendments

F17 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(9)**

F18 Words in s. 75(4) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\)](#), **Sch. 4 para. 30**

Modifications etc. (not altering text)

C3 [S. 75](#) amended (27.8.1993) by [1993 c. 12, s. 40\(4\)](#), **Sch. 3 Pt. II para. 17** (with ss. 42, 46)

76 Acquisition of land for protection of water.

- (1) For the purpose of any provision of this Act [^{F19}, or of the Local Government etc. (Scotland) Act 1994,] conferring power on a water authority [^{F20} to acquire land for the purposes of their undertaking [^{F19} or functions], there shall be deemed to be included among those purposes the purpose of protecting against pollution any water, whether on the surface or underground, which belongs to the authority [^{F20} or which they are for the time being authorised to take.
- (2) A water authority [^{F21} may on any land belonging to them, or over or in which they have acquired the necessary servitudes or rights, construct or maintain drains, sewers, watercourses, catchpits and other works for intercepting, treating or disposing of any foul water arising or flowing upon that land, or for otherwise preventing water which belongs to the authority [^{F21} or which they are for the time being authorised to take from being polluted:

Provided that—

- (a) before constructing any such works the authority [^{F21} shall, if the proposed works will affect any watercourses in a fishery district or which is subject to the jurisdiction of a navigation authority, consult with the fishery district board or the navigation authority concerned;
- (b) nothing in this subsection shall authorise the authority [^{F21} to intercept or take any water which a navigation authority or any public undertakers are authorised by any enactment to take or use for the purposes of their undertaking without the consent of that navigation authority or those public undertakers.

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- (3) A water authority ^{F22} proposing to construct any drain, sewer or water-course for the purposes mentioned in subsection (2) may, with the consent of the [^{F23}roads] authority concerned, which may be given subject to such conditions as the [^{F23}roads] authority think fit, carry the drain, sewer or water-course under, across or along any [^{F24}road] whether within or outside their limits of supply ^{F22}, and such statutory provisions with respect to the breaking open of [^{F24}roads] as are applicable to the authority ^{F22} shall, with any necessary modifications and adaptations, apply accordingly:

Provided that the consent of the [^{F23}roads] authority shall not be required by virtue of this subsection for the carrying by any authority ^{F25} of any drain, sewer or water-course under any [^{F26}public road] which is within the limits of supply of that authority ^{F25}.

- (4) A consent required for the purposes of subsection (2) or (3) shall not be unreasonably withheld nor shall any unreasonable conditions be attached to such a consent, and any question whether or not such a consent is unreasonably withheld or whether any condition which it is sought to impose is unreasonable shall in case of dispute be determined by arbitration.

Textual Amendments

- F19** Words in s. 76(1) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(41)(a)(i)(iii)**; S.I. 1996/323, **art. 4(1)(c)**
- F20** Words in s. 76(1) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(41)(a)(ii), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**
- F21** Words in s. 76(2) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), SCh. 13 para. 119(41)(b), Sch. 14; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**
- F22** Words in s. 76(3) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), SCh. 13 para. 119(41)(c), Sch. 14; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**
- F23** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(10)(a)**
- F24** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(10)(b)**
- F25** Words in the proviso to s. 76(3) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 119(41)(d), **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**
- F26** Words substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 81(10)(c)**

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