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*Changes to legislation: Water (Scotland) Act 1980, SCHEDULE 4 is up to date with all changes known to be in force on or before 07 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

#### PROVISIONS TO BE INCORPORATED IN ORDERS RELATING TO WATER UNDERTAKINGS

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

- C1** Sch. 4 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 3, **Sch. 7 para. 2** (1) (xxxviii), Sch. 8 para. 33
- C2** Sch. 4: power to apply conferred (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1, 130), s. 20(10), **Sch. 7 para. 5(1)(b)**

#### PART I

##### INTERPRETATION

###### *Definitions, etc.*

- 1 (1) In this Schedule the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say:
- “authorised” means authorised by the special Act;
  - “consumer” means a person supplied, or about to be supplied, with water by the undertakers;
  - “factory” means factory within the meaning of the <sup>M1</sup>Factories Act 1961;
  - “fire authority” has the same meaning as in the <sup>M2</sup>Fire Services Act 1947;
  - “prescribed” means prescribed by the special Act;
  - “special Act” means the Act or Part of an Act, or order with which any provisions of this Schedule are incorporated, with or without modification, and includes those provisions as so incorporated;
  - .....<sup>F1</sup>.....
  - “trunk main” means a main constructed for the purpose of conveying water from a source of supply to a filter or reservoir, or from one filter or reservoir to another filter or reservoir, or for the purpose of conveying water in bulk from one part of the limits of supply to another part of those limits, or for the purpose of giving or taking a supply of water in bulk;
  - “undertakers” means the persons whose water undertaking is authorised or regulated by the special Act.
- (2) Other expressions in this Schedule have the respective meanings assigned to them in this Act.
- (3) References in this Schedule to any enactment shall be construed as including references to that enactment as amended by any subsequent enactment including this Act.

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### Textual Amendments

**F1** Definition repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, **Sch. 7 Pt. I**

### Marginal Citations

**M1** 1961 c. 34.

**M2** 1947 c. 41.

## PART II

### WORKS AND LANDS

#### *Permissible limits of deviation.*

2 In the construction of any authorised works the undertakers may deviate laterally to any extent not exceeding the limits of deviation shown on the plans submitted to the Secretary of State and, where on any [<sup>F2</sup>road] no such limits are shown, the boundaries of the [<sup>F2</sup>road] (including for this purpose any verge or roadside waste adjoining it) shall be deemed to be such limits, and they may also deviate vertically from the levels shown on the deposited sections to any extent:

Provided that—

- (a) no embankment for a reservoir shall be constructed at a greater height above the general surface of the ground than that shown on the said plans and six feet in addition thereto; and
- (b) except for the purpose of crossing a stream, canal, dyke, watercourse or railway, or of crossing any lands where the consent of all persons interested in those lands has been obtained, no pipe or other conduit or aqueduct shall be raised above the surface of the ground otherwise than in accordance with the said plans.

### Textual Amendments

**F2** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(a)**

### Modifications etc. (not altering text)

**C3** Sch. 4 para. 2 applied (with modifications) (15.1.1992) by S.I. 1992/30, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (3.3.1992) by S.I. 1992/393, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (20.4.1992) by S.I. 1992/998, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (17.6.1994) by S.I. 1994/1556, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (1.1.1995) by S.I. 1994/3308, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (3.4.1997) by S.I. 1997/1115, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (12.11.1999) by S.S.I. 1999/127, art. 3, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (9.10.2001) by S.S.I. 2001/369, art. 3, **Sch. 1**  
 Sch. 4 para. 2 applied (with modifications) (14.10.2005) by S.S.I. 2005/508, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (14.10.2005) by S.S.I. 2005/509, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (21.10.2005) by S.S.I. 2005/513, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (11.11.2005) by S.S.I. 2005/576, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (11.11.2005) by S.S.I. 2005/577, **art. 3**, **Sch. 2**  
 Sch. 4 para. 2 applied (with modifications) (11.11.2005) by S.S.I. 2005/578, **art. 3**, **Sch. 2**

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- Sch. 4 para. 2 applied (with modifications) (23.12.2005) by S.S.I. 2005/649, art. 3, Sch. 2
- Sch. 4 para. 2 applied (with modifications) (14.3.2006) by S.S.I. 2006/152, art. 3, Sch. 2
- Sch. 4 para. 2 applied (with modifications) (14.3.2006) by S.S.I. 2006/153, art. 3, Sch. 2
- Sch. 4 para. 2 applied (with modifications) (2.6.2006) by S.S.I. 2006/296, art. 3, Sch. 2
- Sch. 4 para. 2 applied (with modifications) (21.6.2006) by S.S.I. 2006/360, art. 3, Sch. 2
- Sch. 4 para. 2 applied (with modifications) (21.6.2006) by S.S.I. 2006/361, art. 3, Sch. 2

*Limit on powers of undertakers to take water.*

- 3 The undertakers shall not construct any works for taking or intercepting water (other than works for intercepting foul water) from any lands acquired by them, unless the works are authorised by, and the lands on which the works are to be constructed are specified in, the special Act or some other enactment.

*General power to construct subsidiary works.*

- 4 Subject to the provisions of the last foregoing section and to any other provisions of the special Act limiting the powers of the undertakers to abstract water, the undertakers, in addition to any works specifically authorised, may, in, on or over any land for the time being held by them in connection with their water undertaking construct, lay or erect for the purposes thereof or in connection therewith, and may maintain such reservoirs, sluices, tanks, cisterns, aqueducts, tunnels, culverts, mains, pipes, filters, engines, pumps, machinery, buildings and things for or in connection with the supply of water as they deem necessary:

Provided that any electrical works or apparatus constructed, laid or erected under this section shall be so constructed, laid or erected and so maintained and used, as to prevent interference with any [<sup>F3</sup>electronic communications apparatus kept installed for the purposes of an electronic communications code network or with the service provided by any such network] .

**Textual Amendments**

- F3** Words in Sch. 4 para. 4 substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 3(1), Sch. 1 para. 9(2)

- 5 ..... **F4**

**Textual Amendments**

- F4** Sch. 4 sect. 5 repealed by Telecommunications Act 1984 (c. 12, SIF 96), ss. 2, 109, Sch. 4 para. 74(2) (5), Sch. 5 para. 45, Sch. 7 Pt. I

*Penalty for obstructing construction of works.*

- 6 Any person who wilfully obstructs a person engaged by or under authority of the undertakers in setting out the line or site of any authorised works, or knowingly pulls up any peg or stake driven into the ground for the purpose of setting out such line or site or knowingly defaces or destroys anything made or erected for that purpose, shall be liable to a fine not exceeding [<sup>F5</sup>level 1 on the standard scale].

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#### Textual Amendments

**F5** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Power to acquire servitudes for underground work.*

- 7 (1) Where the undertakers are authorised by the special Act to acquire any land compulsorily for the purpose of executing any underground works, they may, instead of purchasing the land, purchase only such servitudes and rights over or in the land as may be sufficient for the purpose, and the Lands Clauses Acts and the enactments relating to the compensation payable in respect of the compulsory acquisition of land shall apply accordingly subject to any exceptions and modifications with which those enactments are incorporated with the special Act and to any other necessary adaptations.
- (2) The undertakers shall not be required or, except by agreement, be entitled to fence off or sever from adjoining lands any lands in respect of which they have acquired only servitudes or rights under the provisions of this section, and subject to those servitudes or rights and to any other restrictions imposed by the special Act, the owners or occupiers for the time being of those lands shall have the same rights of using and cultivating them as if that Act had not been passed.

#### *Persons under disability may grant servitudes, etc.*

- 8 Persons empowered by the Lands Clauses Acts to sell, convey and dispose of any lands may, subject to the provisions of those Acts and of the special Act, grant to the undertakers any servitude or right required for the purposes of the special Act over or in those lands, and the provisions of the Lands Clauses Acts with respect to lands and <sup>F6</sup> . . . rents or other annual or recurring payments shall, so far as applicable, apply in relation to such grants and to such servitudes and rights:

Provided that nothing in this section shall be construed as empowering persons to grant any servitude or right of water in which any other person has an interest, unless that other person concurs in the grant.

#### Textual Amendments

**F6** Words in [Sch. 4 para. 8](#) repealed (28.11.2004) by [2000 asp 5, ss. 71, 76\(1\)\(2\), 77\(2\)](#), [Sch. 12 para. 42\(3\)](#), [Sch. 13 Pt. 1](#) (with [ss. 58, 62, 75](#)); [S.S.I. 2003/456, art. 2](#)

#### *Extinction of private rights of way.*

- 9 (1) Any private right of way over land which the undertakers are authorised to acquire compulsorily shall, if they so resolve and give notice of their resolution to the owner of the right, be extinguished as from the acquisition by them of the land, or as from the expiration of one month from the service of the notice, whichever may be the later.
- (2) The undertakers shall pay compensation to all persons interested in respect of any such right so extinguished, and such compensation shall, in case of dispute, be settled in manner provided by the Lands Clauses Acts with respect to the taking of lands otherwise than by agreement.

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### PART III

#### COMPENSATION WATER

*Provisions as to compensation water.*

- 10 (1) During the construction of any authorised impounding reservoir the undertakers may, subject as hereinafter provided, take from any stream to be impounded thereby such water as they may require:

Provided that before taking any water from the stream they shall, on an approved site, construct an approved gauge to gauge the flow of the stream, and, while the flow of water through or over the gauge is less than the prescribed flow, they shall not take any water.

- (2) After the completion of the reservoir the undertakers shall, at an approved point within such limits as may be prescribed, discharge into the stream from, or from streams feeding, the reservoir during every day of 24 hours reckoned from midnight in a uniform and continuous flow a quantity of water not less than the prescribed quantity, and, for the purpose of gauging such discharge, they shall construct and maintain in good order approved gauges on approved sites.

- (3) If the undertakers—

- (a) fail to construct or maintain in good order any such gauge as aforesaid, or refuse to allow any person interested to inspect and examine any such gauge or any records made thereby or kept by them in connection therewith or to take copies of any such records; or
- (b) take any water from the stream contrary to the provisions of subsection (1) of this section, or fail to comply with the requirements of subsection (2) of this section with respect to the discharge of water into the stream,

they shall, without prejudice to their civil liability, if any, to a person aggrieved, be liable, in the case of an offence under paragraph (a) of this subsection, on summary conviction to a fine not exceeding [<sup>F7</sup>level 3 on the standard scale], and in the case of an offence under paragraph (b) of this subsection—

- (i) on summary conviction, to a fine not exceeding [<sup>F8</sup>the statutory maximum] ; and
- (ii) on conviction on indictment, to a fine <sup>F9</sup>.

- (4) In this section, the expression “gauge” includes a gauge weir or other apparatus for measuring the flow of water, and the expression “approved” means approved by the Secretary of State; and for the purposes of this section a fishery district board and a navigation authority shall be deemed to be interested in the flow of water in, and the discharge of water into, any stream within their fishery district or, as the case may be, any part of their system of navigation or any stream feeding such a stream or any part of that system, and shall be deemed to be aggrieved by the commission of an offence under this section in relation to any such stream.

- (5) The foregoing provisions of this section shall be deemed to have been accepted by all persons interested as providing full compensation for all water impounded by the authorised works, except in respect of any land between the foot of the embankment of the reservoir and the point of discharge approved for the purposes of subsection (2) of this section.

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### Textual Amendments

- F7** Words in Sch. 4 para. 10(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**
- F8** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 15 para. 27(a)**
- F9** Words repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 15 para. 27(b)**

### Modifications etc. (not altering text)

- C4** Sch. 4 para. 10(3) applied (with modifications) (3.4.1997) by S.I. 1997/1115, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (12.11.1999) by S.S.I. 1999/127, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (12.11.1999) by S.S.I. 1999/128, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (28.8.2000) by S.S.I. 2000/294, **arts. 1(1), 3**  
 Sch. 4 para. 10(3) applied (with modifications) (17.7.2000) by S.S.I. 2000/236, arts. 1(1)(3), **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (1.8.2000) by S.S.I. 2000/237, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3) applied (with modifications) (14.10.2005) by S.S.I. 2005/508, **art. 3, Sch. 2**  
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 Sch. 4 para. 10(3) applied (with modifications) (2.6.2006) by S.S.I. 2006/296, **art. 3, Sch. 2**
- C5** Sch. 4 para. 10(3)(4) applied (with modifications) (15.1.1992) by S.I. 1992/30, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (3.3.1992) by S.I. 1992/393, art. 3, **Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (20.4.1992) by S.I. 1992/998, art. 3, **Sch. 2**  
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 Sch. 4 para. 10(3)(4) applied (with modifications) (11.11.2005) by S.S.I. 2005/576, **art. 3, Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (21.6.2006) by S.S.I. 2006/360, **art. 3, Sch. 2**  
 Sch. 4 para. 10(3)(4) applied (with modifications) (21.6.2006) by S.S.I. 2006/361, **art. 3, Sch. 2**
- C6** Sch. 4 para. 10(3)(4)(5) applied (with modifications) (17.6.1994) by S.I. 1994/1556, art. 3, **Sch. 2**
- C7** Sch. 4 para. 10(3)(5) applied (with modifications) (1.1.1995) by S.I. 1994/3308, art. 3, **Sch. 2**
- C8** Sch. 4 para. 10(3)(4) applied (with modifications) (10.12.2007) by [The Scottish Water \(Loch Horn and Loch Lunndaidh\) Water Order 2007 \(S.S.I. 2007/554\)](#), **art. 3, Sch. 2**

## PART IV

### MINERALS UNDERLYING WATERWORKS

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

- C9** Sch. 4 Pt. IV incorporated (with modifications) (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 46(3)(b) (with s. 67); S.S.I. 2002/118, **art. 2(3)**

*Undertakers not entitled to underlying minerals unless expressly purchased.*

- 11 When the undertakers purchase any land, they shall become entitled to such parts of any mines of coals, ironstone, slate or other minerals under that land as it may be

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necessary for them to dig, carry away or use in the construction of any waterworks authorised by the special Act, but, save as aforesaid, they shall not by virtue only of their purchase of the land become entitled to any such mines or minerals which shall, save as aforesaid, be deemed to be excepted from the conveyance of the land unless expressly mentioned therein as conveyed thereby.

*Map of underground works to be prepared and kept up to date.*

- 12 (1) The undertakers shall, within six months after the first occasion on which any pipes or other conduits or underground works are laid or constructed by them after this section is incorporated with their enactments, cause the course and situation of all existing pipes or other conduits for the collection, passage or distribution of water and underground works belonging to them to be marked on a map (drawn on a scale of not less than six inches to one mile), and shall, from time to time within six months after the making of any alterations or additions, cause the said map to be so corrected as to show the course and situation of all such pipes and conduits and underground works for the time being belonging to them, and the map or a copy thereof bearing the date of its preparation and of the last occasion on which it was corrected shall be kept at the office of the undertakers.

In this subsection the expression “pipes” does not include service pipes.

- (2) The said map shall at all reasonable hours be open to inspection by any person interested free of charge.

*Mines lying near the works not to be worked without notice to undertakers.*

- 13 Subject to any agreement to the contrary, if the owner, lessee or occupier of any mines of coal, ironstone, slate or other minerals lying under the reservoirs or buildings of the undertakers or any of their pipes or other conduits or underground works shown on the map referred to in the last foregoing section, or lying within the prescribed distance therefrom, or, if no distance be prescribed, within 40 yards therefrom, desires to work the said mines or minerals, he shall give to the undertakers 30 days' notice of his intention so to do.

*If undertakers unwilling to pay compensation, mines may be worked in usual manner.*

- 14 (1) Upon receipt of such a notice as aforesaid, the undertakers may cause the said mines or minerals to be inspected by any person appointed by them for the purpose, and if it appears to them that the working thereof is likely to damage any of their reservoirs or buildings or pipes or other conduits or underground works shown on the said map, and if they are willing to pay compensation for the mines or minerals to the owner, lessee or occupier thereof, then he shall not work them, and the amount of the compensation to be paid shall, in case of dispute, be determined by the Lands Tribunal for Scotland.
- (2) If the undertakers have not, before the expiration of the said 30 days, stated their willingness to treat with the owner, lessee or occupier for the payment of compensation, it shall be lawful for him to work the said mines and minerals and to drain them by means of pumps or otherwise as if the special Act had not been passed, so however that no wilful damage be done to any of the said property or works of the undertakers and that the mines and minerals be not worked in an unusual manner.

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- (3) Any damage or obstruction occasioned to any of the said property or works of the undertakers by the working of such mines or minerals in an unusual manner shall be forthwith repaired or removed and the damage made good by the owner, lessee or occupier of the mines or minerals, and if such repair or removal be not effected forthwith, or if the undertakers deem it necessary to take action without waiting for the work to be done by the owner, lessee or occupier, the undertakers may execute the work and recover from the owner, lessee or occupier the expenses reasonably incurred by them in so doing.

*Power to make mining communication where continuous working is prevented.*

- 15 If the working of any such mines or minerals as aforesaid lying under the reservoirs or buildings of the undertakers or any of their pipes or other conduits or underground works shown on the map referred to in section 12 of this Schedule or lying within the abovementioned distance therefrom mentioned in section 13 of this Schedule, be prevented as aforesaid by reason of apprehended injury thereto, the respective owners, lessees and occupiers of the mines or minerals may cut and make such and so many airways, headways, gateways or water levels through the mines, measures or strata the working whereof is so prevented as may be requisite to enable them to ventilate, drain and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, or, if no dimensions are prescribed eight feet wide and eight feet high, nor be cut or made upon any part of the said property or works of the undertakers so as to cause injury thereto.

*Undertakers to pay compensation for expenses incurred by reason of severance.*

- 16 (1) Subject to any agreement to the contrary, the undertakers shall from time to time pay compensation to the owner, lessee or occupier of any mines of coal, slate, ironstone and other minerals lying on both sides of any reservoir, building, pipe or other conduit or other works of the undertakers for any loss and additional expense incurred by him by reason of the severance of the lands above such mines or minerals by the reservoir or other works, or by reason of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of their being worked under the restrictions imposed by the special Act, and also for any such mines or minerals not purchased by the undertakers as cannot be worked or won by reason of the making and continuance of the said works, or by reason of such apprehended injury from the working thereof as aforesaid.
- (2) The amount of any such compensation shall, in case of dispute, be determined by the Lands Tribunal for Scotland.

*Undertakers may enter and inspect the working of mines.*

- 17 For the purpose of ascertaining whether any such mines or minerals as aforesaid are being, have been or are about to be, worked so as to damage any of their said works, any authorised officer of the undertakers, after giving 24 hours' notice and on producing, if so required, some duly authenticated document showing his authority, may enter upon any lands in, on or near which the works are situate and under which they know or suspect that any such mines are being, have been or are about to be, worked, and may enter any such mines and the works connected therewith, using for his entry, inspection and return any apparatus or machinery belonging to the owner,



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lessee or occupier of the mines, and may use all necessary means for discovering the distance from the said works to the parts of the mines which are being, have been, or are about to be, worked.

*Undertakers not exempted from liability for injury to mines.*

- 18 Nothing in the special Act shall exempt the undertakers from liability to any action or other legal proceeding to which they would have been liable in respect of any damage or injury done or occasioned to any mines by means, or in consequence, of their waterworks, if those works had been constructed or maintained otherwise than by virtue of the special Act.

## PART V

### SUPPLY OF WATER FOR PUBLIC PURPOSES

*Undertakers to fix and maintain fire hydrants on pipes.*

- 19 The undertakers shall, at the request of the fire authority concerned, fix fire hydrants on their mains (other than trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the limits of supply, and shall keep in good order and from time to time renew every such hydrant.

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

**C10** Sch. 4 paras. 19-22 applied (2.8.2005) by virtue of [Fire \(Scotland\) Act 2005 \(asp 5\)](#), **s. 21(1)** (with s. 77); S.S.I. 2005/392, **art. 2**

*Undertakers to deposit keys of hydrants at certain places.*

- 20 As soon as any such hydrant is complete, the undertakers shall, if required by the fire authority, deposit a key thereof at each place within the limits of supply where any public fire engine is kept, and in such other places as may be appointed by the fire authority.

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

**C11** Sch. 4 paras. 19-22 applied (2.8.2005) by virtue of [Fire \(Scotland\) Act 2005 \(asp 5\)](#), **s. 21(1)** (with s. 77); S.S.I. 2005/392, **art. 2**

*Cost of hydrants.*

- 21 The cost of such hydrants as aforesaid and of fixing, maintaining and renewing them, and of providing such keys as aforesaid shall be defrayed by the fire authority.

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

**C12** Sch. 4 paras. 19-22 applied (2.8.2005) by virtue of [Fire \(Scotland\) Act 2005 \(asp 5\)](#), **s. 21(1)** (with s. 77); S.S.I. 2005/392, **art. 2**

VALID FROM 02/08/2005

**[<sup>F10</sup>21A** The Scottish Ministers may by regulations make provision as to—  
 (a) the persons (other than Scottish Water) from whom; or  
 (b) the circumstances in which,  
 fire authorities may recover costs defrayed under section 21 of this Schedule.]

**Textual Amendments**

**F10** Sch. 4 para. 21A inserted (2.8.2005) by virtue of [Fire \(Scotland\) Act 2005 \(asp 5\)](#), **s. 22(2)** (with s. 77); S.S.I. 2005/392, **art. 2**

*Hydrants to be placed near factories, etc., at request of owners or occupiers.*

22 The undertakers shall, at the request and expense of the owner or occupier of any factory or place of business situated in, or near to, a [<sup>F11</sup>road] in which a pipe of the undertakers is laid (not being a trunk main, and being of sufficient dimensions to carry a hydrant) fix on the pipe and keep in good order and from time to time renew one or more fire hydrants, to be used only for extinguishing fires, as near as conveniently may be to that factory or place of business, and shall also at his expense comply as respects each such hydrant with the requirements of the last but one foregoing section.

**Textual Amendments**

**F11** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(b)**

23 ..... <sup>F12</sup>

**Textual Amendments**

**F12** Sch. 4 para. 23 repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), s. 66(2), **Sch. 4 Pt. I**

*Supply of water for cleansing sewers, etc., and for other public purposes.*

24 (1) In every pipe on which a hydrant is fixed the undertakers shall provide a supply of water for cleansing sewers and drains, for cleansing and watering [<sup>F13</sup>roads] and for supplying any public pumps, baths or washhouses.  
 (2) A supply of water for the said purposes shall be provided at such rates, in such quantities and upon such terms and conditions as may be agreed between the [<sup>F14</sup>local] authority concerned and the undertakers [<sup>F15</sup>or, in relation to roads for which

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the Secretary of State is roads authority, between the Secretary of State and the undertakers].

#### Textual Amendments

- F13** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 81\(15\)\(c\)\(i\)](#)
- F14** Word in [Sch. 4 section 24\(2\)](#) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 119\(57\)\(a\)\(i\)](#); [S.I. 1996/323](#), [art. 4\(1\)\(c\)](#)
- F15** Words in [Sch. 4 section 24\(2\)](#) added (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 119\(57\)\(a\)\(ii\)](#); [S.I. 1996/323](#), [art. 4\(1\)\(c\)](#)

## PART VI

### CONSTANCY AND PRESSURE OF SUPPLY

*Duty of undertakers as respects constant supply and pressure.*

- 25 Subject as hereinafter provided, the undertakers shall cause the water in all pipes on which hydrants are fixed, or which are used for giving supplies for domestic purposes, to be laid on constantly and at such a pressure as will cause the water to reach to the topmost storey of every building within the limits of supply:

Provided that—

- (a) nothing in this section shall require them to deliver water at a height greater than that to which it will flow by gravitation through their existing mains from the service reservoir or tank from which the supply in question is taken;
- (b) they may in their discretion determine the service reservoir or tank from which any supply is to be taken; and
- (c) the provisions of this section shall not apply if the undertakers are prevented from complying therewith by reason of frost, drought, unavoidable accident, or other unavoidable cause, or during the execution of necessary works.

## PART VII

### PROVISIONS AS TO WASTE AND AS TO METERS

*Power to require provision of cisterns in certain cases.*

- 26 (1) The undertakers may require that—
- (a) any building the supply of water to which need not under the special Act be constantly laid on under pressure, and
  - (b) any house the erection of which was not commenced before 16th May 1946 and to which water is required to be delivered at a height greater than 35 feet below the draw-off level of the service reservoir from which a supply of water is being or is to be furnished by them,
- shall be provided with a cistern having a ball-tap and stopcock fitted on the pipe conveying water to it and, in the case of such a house as is mentioned in paragraph (b)

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of this subsection, may require that the cistern shall be capable of holding sufficient water to provide an adequate supply to the house for a period of 24 hours.

- (2) Where, in the case of any house—
- (a) the erection of which was begun on or after the 16th May 1968, or
  - (b) to which a supply of piped water was given for the first time on or after that date, or
  - (c) in which water fittings likely to lead, in the opinion of the undertakers, to an increase in the consumption of water were installed after that date,

the undertakers consider that, in order to provide for an adequate supply of water throughout any 24-hour period, a cistern requires to be fitted, they shall serve a notice on the owner of the house requiring that the house shall be provided with a cistern capable of providing an adequate supply of water as aforesaid to that house, and that a ball-tap and stopcock shall be fitted on the pipe conveying water to it; and that notice shall include an intimation that any person aggrieved by the notice may, within 28 days of the service thereof, appeal against it to the Secretary of State; and, where such an appeal is made, the Secretary of State shall give such directions in the matter as may seem to him proper; and, subject to any such directions, the next following subsection shall have effect in relation to this subsection:

Provided that the undertakers shall not exercise any power conferred on them by that subsection until the determination by the Secretary of State of any appeal under this subsection.

- (3) If the owner of the building or house whom the undertakers have in accordance with the foregoing provisions required to provide a cistern fails to comply with the requirement, or if any cistern in use in the building or house or the ball-tap and stopcock pertaining to that cistern are not kept in good repair, the undertakers may themselves provide a cistern or execute any repairs necessary to prevent waste of water, and may recover the expenses reasonably incurred by them in so doing as a civil debt from the owner of the building or house, but without prejudice to the rights and obligations, as between themselves, of the owner and the occupier.

*Power to test water fittings.*

- 27 The undertakers may test any water fittings used in connection with water supplied by them.

*Power to enter premises to detect waste or misuse of water.*

- 28 An authorised officer of the undertakers may, between the hours of eight in the forenoon and eight in the afternoon, on producing, if required, evidence of his authority, enter any premises supplied with water by the undertakers in order to ascertain if there be any waste or misuse of such water, and, if, after production of his authority, he is refused admittance to the premises or is obstructed in making his examination, the person refusing him admittance or so obstructing him shall be liable on summary conviction to a fine not exceeding [<sup>F16</sup>level 3 on the standard scale].

**Textual Amendments**

- F16** Words in Sch. 4 para. 28 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

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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**

*Power to repair supply pipes.*

- 29 (1) If the undertakers have reason to think that some injury to or defect in a pipe which they are not under obligation to maintain is causing, or is likely to cause, waste of water or injury to person or property, they may execute such work as they think necessary or expedient in the circumstances of the case without being requested so to do, and, if any injury to or defect in the pipe is discovered, the expenses reasonably incurred by the undertakers in discovering it and in executing repairs shall be recoverable by them as a civil debt from the owner of the premises supplied, but without prejudice to the rights and obligations, as between themselves, of the owner and occupier of the premises.
- (2) Where several houses in the ownership of different persons are supplied with water by one common supply pipe, the amount of any such expenses as aforesaid reasonably incurred from time to time by the undertakers in the maintenance and repair of that pipe may be recovered by them from those owners in such proportions as, in case of dispute, may be settled by arbitration.

*Penalty for waste, etc., of water by non-repair of pipes, etc.*

- 30 (1) If any person wilfully or negligently causes or suffers any water fitting which he is liable to maintain to—
- (a) be or remain so out of order, or so in need of repair; or
  - (b) be or remain so constructed or adapted, or be so used,
- that the water supplied by the undertakers is, or is likely to be, wasted, misused or unduly consumed, or contaminated before use, or that foul air or any impure matter is likely to return into any pipe belonging to, or connected with a pipe belonging to, the undertakers, he shall be liable to a fine not exceeding [<sup>F17</sup>level 3 on the standard scale].
- (2) If any water fitting is in such a condition, or so constructed or adapted, or so used, as aforesaid, the undertakers, whether proceedings have or have not been taken in respect of the offence, may require the owner or the occupier of the premises to carry out repairs or alterations or to substitute another type of fitting, as they may reasonably consider necessary, and, if he fails to do so within 48 hours, may themselves carry out the work and recover from him as a civil debt the expenses reasonably incurred by them in so doing, but without prejudice to the rights and obligations, as between themselves, of the owner and the occupier.

**Textual Amendments**

**F17** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

*Penalty for misuse of water.*

- 31 (1) An owner or occupier of premises supplied with water by the undertakers who without their consent supplies any of that water to another person for use in other premises, or wilfully permits another person to take any of that water for use in other

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premises, shall be liable to a fine not exceeding [<sup>F18</sup>level 1 on the standard scale], unless that other person requires the water for the purpose of extinguishing a fire, or is a person supplied with water by the undertakers but temporarily unable, through no default of his own to obtain water.

- (2) If a person wrongfully takes, uses or diverts water from a reservoir, watercourse, conduit, pipe or other apparatus belonging to the undertakers, or from a pipe leading to or from any such reservoir, watercourse, conduit, pipe or other apparatus, or from a cistern or other receptacle containing water belonging to the undertakers or supplied by them for the use of a consumer of water from them, he shall be liable to a fine not exceeding [<sup>F18</sup>level 1 on the standard scale].
- (3) Any person who, having from the undertakers a supply of water otherwise than by meter, uses any water so supplied to him for a purpose not being a purpose for which he is entitled to use it shall be liable to a fine not exceeding [<sup>F18</sup>level 1 on the standard scale], without prejudice to the right of the undertakers to recover from him the value of the water misused.

#### Textual Amendments

**F18** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Penalty for injuring water fittings, etc., or for fraudulent use of water.*

- 32 (1) If any person wilfully or negligently injures, or suffers to be injured, any water fitting belonging to the undertakers, or fraudulently alters the index of any meter used by them for measuring the water supplied by them, or prevents any such meter from registering correctly the quantity of water supplied, or fraudulently abstracts or uses water of the undertakers, he shall, without prejudice to any right or remedy competent to the undertakers in the matter, be liable to a fine not exceeding [<sup>F19</sup>level 1 on the standard scale], and the undertakers may do all such work as is necessary for repairing any injury done, or for securing the proper working of the meter, and may recover the expenses seasonably incurred by them so doing from the offender.
- (2) For the purpose of this section, if it is proved that a consumer has altered the index of a meter, it shall rest upon him to prove that he did not alter it fraudulently, and the existence of any artificial means under the control of a consumer for preventing a meter from registering correctly or for enabling him fraudulently to abstract or use water, shall be evidence that he has fraudulently prevented the meter from registering correctly, or, as the case may be, has fraudulently abstracted or used water.

#### Textual Amendments

**F19** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Penalty for interference with valves and apparatus.*

- 33 If any person either—
- (a) wilfully and without the consent of the undertakers, or
  - (b) negligently,

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turns on, opens, closes, shuts off or otherwise interferes with any valve, cock or other work or apparatus belonging to the undertakers and thereby causes the supply of water to be interfered with, he shall be liable to a fine not exceeding [<sup>F20</sup>level 3 on the standard scale] and, whether proceedings have been taken in respect of his offence or not, the undertakers may recover from him the amount of any damage sustained by them:

Provided that this section shall not apply to a consumer closing the stopcock fixed on the service pipe supplying his premises, so long as he has obtained the consent of any other consumer whose supply will be affected thereby.

#### Textual Amendments

**F20** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Penalty for extension or alteration of pipes, etc.*

- 34 (1) Any person who without the consent of the undertakers attaches any pipe or apparatus to a pipe belonging to the undertakers, or to a supply pipe, or makes any alteration in a supply pipe or in any apparatus attached to a supply pipe, shall be liable to a fine not exceeding [<sup>F21</sup>level 1 on the standard scale], and any person who uses any pipe or apparatus which has been so attached or altered shall be liable to the same penalty, unless he proves that he did not know and had no grounds for suspecting that it had been so attached or altered.
- (2) When an offence under this section has been committed, then, whether proceedings have been taken in respect of his offence or not, the undertakers may recover from the offender the amount of any damage sustained by them and the value of any water wasted, misused or improperly consumed.

#### Textual Amendments

**F21** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

#### *Meters to be connected, or disconnected by undertakers.*

- 35 (1) A person who has not obtained the consent of the undertakers shall not connect or disconnect any meter by means of which water supplied by the undertakers is intended to be, or has been, measured for the purposes of the payment to be made to them, but, if he requires such a meter to be connected or disconnected, shall give to the undertakers not less than 24 hours' notice of his requirements and of the time when the work can be commenced, and thereupon the undertakers shall carry out the necessary work and may recover from him the expenses reasonably incurred by them in so doing.
- (2) A person who contravenes any of the provisions of this section and undertakers who fail to carry out with all reasonable despatch any such work as aforesaid, shall be liable to a fine not exceeding [<sup>F22</sup>level 1 on the standard scale].

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### Textual Amendments

**F22** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

*Meters, etc., to measure water or detect waste.*

36 Subject to the provisions of the special Act with respect to the breaking open of [<sup>F23</sup>roads], the undertakers may, for the purpose of measuring the quantity of water supplied, or preventing and detecting waste, affix and maintain meters and other apparatus on their mains and service pipes, and may insert in any [<sup>F23</sup>road], but as near as is reasonably practicable to the boundary thereof, the necessary covers or boxes for giving access and protection thereto, and may for that purpose temporarily obstruct, break open, and interfere with [<sup>F23</sup>roads], tramways, sewers, pipes, wires and apparatus:

Provided that the undertakers shall not under the powers of this section interfere with

- [<sup>F24</sup>(a) any [<sup>F25</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F26</sup>an electronic communications code network] , except in accordance with, and subject to the provisions of, [<sup>F27</sup>the electronic communications code] ; or]
- (b) any works or apparatus of any [<sup>F28</sup>public electricity supplier (within the meaning of Part I of the Electricity Act 1989) or any person authorised by a licence under that Part to generate or [<sup>F29</sup>participate in the transmission of] electricity.], except in accordance with the provisions of [<sup>F30</sup>the code in Part II of the <sup>M3</sup>Public Utilities Street Works Act 1950][<sup>F30</sup>Part IV of the New Roads and Street Works Act 1991]; or
- (c) any pipes or apparatus of any [<sup>F31</sup>public gas transporter (within the meaning of Part I of the Gas Act 1986)], except under the supervision (if given) of an authorised officer of [<sup>F31</sup>such public gas transporter] and in accordance with plans approved by them or by such officer or in case of any difference as determined by the sheriff.

### Textual Amendments

- F23** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(d)**
- F24** Para. (a) of the proviso substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), ss. 2, 109, Sch. 4 para. 74(4)(5), **Sch. 5 para. 45**
- F25** Words in Sch. 4 para. 36(a) substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 3(1), **Sch. 1 para. 9(3)(a)**
- F26** Words in Sch. 4 para. 36(a) substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 3(1), **Sch. 1 para. 9(3)(b)**
- F27** Words in Sch. 4 para. 36(a) substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 3(1), **Sch. 1 para. 9(3)(c)**
- F28** Words substituted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 26(3)(b)**
- F29** [Sch. 4 section 36](#): words in para. (b) of proviso substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 143, **Sch. 19 para. 1**; [S.I. 2004/2184](#), **art. 2(2)**, Sch. 2



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- F30** Words "Part IV of the New Roads and Street Works Act 1991" substituted (1.1.1993) for words from "the code" to the end of paragraph (b) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8](#), Pt. IV para. 108(8)(b); S.I. 1992/2990, art. 2(2), [Sch. 2](#)
- F31** [Sch. 4 section 36](#): words in para. (c) of proviso substituted (1.3.1996) by [1995 c. 45, s. 16\(1\)](#), [Sch. 4 para. 12](#); S.I. 1996/218, [art. 2](#)

#### Marginal Citations

- M3** [1950 c. 39](#).

## PART VIII

### POLLUTION OF WATER BY MANUFACTURE OF GAS, ETC.

*Provisions as to pollution by liquids resulting from manufacture of gas, etc.*

- 37 Any person engaged in the manufacture or supply of gas, whether under statutory authority or not, or in any of the manufactures or trades mentioned in this subsection who—
- (a) causes or suffers any washing or other liquid produced in, or resulting from, the manufacture or supply of gas, or the treatment of any residual products of the manufacture of gas, or any product, washing or other substance produced in the manufacture of naphtha, vitriol, paraffin, dye stuffs or other deleterious substance or in any trade in which the refuse produced in any such manufacture is used, to run or be conducted—
    - (i) into, or into any drain communicating with, any stream, reservoir, aqueduct or other waterworks belonging to the undertakers; or
    - (ii) into any depression in the ground or excavation in such proximity to any spring, well or adit belonging to the undertakers that contamination of water there is reasonably probable; or
  - (b) wilfully does any other act connected with the manufacture or supply of gas or the treatment of any such residual products as aforesaid, or connected with any of the other manufactures or trades specified as aforesaid whereby any water of the undertakers is fouled,
- shall be liable—
- (a) on summary conviction to a fine not exceeding [<sup>F32</sup>the statutory maximum] and to a further fine not exceeding £25 for each day during which his offence continues after conviction therefor; or
  - (b) on conviction on indictment to imprisonment for a period not exceeding three months or to a fine and to a further fine for each such day as aforesaid.

#### Textual Amendments

- F32** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 28](#)

*Provision as to pollution by gas.*

- 38 If water belonging to the undertakers is fouled by gas belonging to any person manufacturing or supplying gas, he shall be liable to a fine not exceeding [<sup>F33</sup>level 2

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on the standard scale], and to a further fine not exceeding £25 for each day during which his offence continues after conviction therefor.

#### Textual Amendments

**F33** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**

*Power to examine pipes and other works to ascertain source of pollution.*

- 39 (1) For the purpose of ascertaining whether water belonging to them is being fouled by gas or otherwise, the undertakers may open the ground, and examine any pipes or other works from which they have reason to suspect that their water is being fouled:

Provided that, before proceeding so to do, they shall give 24 hours' notice of the time at which the examination is intended to take place both to the owners of the pipes or other works and also <sup>F34</sup>—

- (a) where the ground is, or comprehends, part of—
  - (i) a public road, to the roads authority; or
  - (ii) any other road, to the person responsible for the maintenance of that road, or, if no authority or person is so responsible, to the owners of the solum of that part; and
- (b) where or in so far as the ground is not mentioned in head (a) above, to the person having the control or management of the ground;

and the undertakers] shall be subject to the like obligations and liable to the same penalties in relation to reinstatement, maintenance and other matters as those to which they are subject and liable when breaking open <sup>F35</sup>roads] for the purpose of laying water pipes.

- (2) If, upon such examination as aforesaid, it appears that water of the undertakers has been fouled by gas or otherwise from pipes or other works, the undertakers may recover from the owner of such pipes or other works the expenses reasonably incurred by them in connection with the examination and the repair of the <sup>F36</sup>road] or place disturbed in the examination, but otherwise the undertakers shall pay all expenses of the examination and repair, and shall also make good to the said owner any injury which may be occasioned to his pipes or other works by the examination.

The amount of the expenses of any such examination and repair, and of any injury so occasioned, shall in case of dispute be determined by arbitration.

#### Textual Amendments

**F34** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(e)(i)**

**F35** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(e)(i)**

**F36** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 81(15)(e)(ii)**

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## PART IX

### GENERAL AND MISCELLANEOUS

#### *Notice of discontinuance.*

- 40 A consumer who wishes the supply of water to his premises to be discontinued shall give not less than [<sup>F37</sup>48] hours' notice to the undertakers.

#### **Textual Amendments**

- F37** Words in Sch. 4 section 40 substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 119(57)(b); S.I. 1996/323, art. 4(1)(c)

#### *Duty of undertakers to give notice of certain works.*

- 41 The undertakers before commencing to execute repairs or other work which will cause any material interference with the supply of water shall, except in a case of emergency, give to all consumers likely to be affected such notice as is reasonably practicable and shall complete the work with all reasonable dispatch.

#### *Penalty for obstructing execution of special Act.*

- 42 A person who wilfully obstructs any person acting in the execution of the special Act or of any byelaw or warrant made or issued thereunder shall be liable to a fine not exceeding [<sup>F38</sup>level 1 on the standard scale] and to a further fine not exceeding £25 for each day on which the offence continues after conviction therefor.

#### **Textual Amendments**

- F38** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289G, 457A

#### *Proceedings for offences.*

- 43 (1) Save as otherwise expressly provided, all offences and fines under the special Act or any byelaws made thereunder may be prosecuted and recovered under the <sup>M4</sup>Criminal Procedure (Scotland) Act 1975 [<sup>F39</sup>but all such offences shall be triable only summarily.]
- (2) Any offence under the special Act or under any byelaws made thereunder (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 [<sup>F40</sup>level 1 on the standard scale] 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.
- [<sup>F41</sup>(3) For the avoidance of doubt it is declared that conduct in respect of which a person is made liable to a fine by or under the provisions of this Schedule is an offence.]

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#### Textual Amendments

- F39** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, **Sch. 15 para. 29(a)**
- F40** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289G, 457A**
- F41** [Sch. 4](#) sect. 43(3) inserted by [Criminal Justice Act 1982 \(c.48, SIF 39:1\)](#), s. 80(2), s. 77, **Sch. 15 para. 29(b)**

#### Marginal Citations

- M4** [1975 c. 21.](#)

#### *Liability of undertakers to pay compensation.*

- 44 In any case where no express provision with respect to compensation is made by the special Act, the undertakers shall pay to the owners and occupiers of, and all other persons interested in, any lands or streams taken or used for the purposes of that Act, or injuriously affected by the construction or maintenance of the works thereby authorised or otherwise by the execution of the powers thereby conferred, compensation for the value of the lands or streams so taken or used and for all damage sustained by those owners, occupiers and other persons by reason of the exercise as to those lands and streams of the powers conferred on the undertakers by the special Act or any Act incorporated therewith.

The amount of such compensation shall, in case of dispute, be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

#### *Protection for works of navigation authorities and for railways.*

- 45 (1) Subject to the provisions of this section and to any provisions of the special Act empowering the undertakers to execute works specified therein, nothing in the special Act shall authorise the undertakers without the consent of the navigation authority concerned—
- (a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation thereon or the use thereof or the access thereto, or to interfere with any towing path so as to interrupt the traffic thereon;
  - (b) to interfere with any bridge crossing any river, canal, dock, harbour or basin;
  - (c) to execute any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to a navigation authority and is held or used by them for the purposes of their undertaking;
  - (d) to execute any works which will interfere with the improvement of or the access to any river, canal, dock, harbour, basin, lock, reservoir, or towing path or with any works pertaining thereto or any land necessary for the enjoyment or improvement thereof;

or, without the consent of the railway company concerned, to execute any works along, across or under any railway of a railway company:

Provided that consent under this section shall not be unreasonably withheld, and any question as to whether or not consent is unreasonably withheld shall be determined by arbitration.

- (2) Upon an arbitration under this section, the arbiter shall determine—

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- (i) whether any works which the undertakers propose to execute are such works as under the last foregoing sub-section they are not entitled to execute without consent; and
- (ii) if they are such works, whether the injury, if any, to the navigation authority or railway company will be of such a nature as to admit of being fully compensated by money; and
- (iii) if the works are of such a nature, the conditions including conditions of a financial character with respect to the payment of compensation, future liabilities and otherwise, subject to which—
  - (a) the navigation authority or railway company shall, if they so elect, carry out the works on behalf of the undertakers; or
  - (b) in default of such election, the undertakers may themselves carry out the works.

If the arbiter should determine that the proposed works are such works as the undertakers are not entitled to execute without consent and that the works would cause injury to the navigation authority or railway company of such a nature as not to admit of being fully compensated by money, the undertakers shall not proceed to execute the works, but in any other case they may execute the works, subject to compliance with such conditions, including the payment of such compensation, as the arbiter may have determined.

- (3) For the purposes of this section, a navigation authority shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if it belongs to them and forms part of their undertaking or if they have statutory rights of navigating on or using it or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (4) Nothing in this section shall be construed as limiting the powers of the undertakers under the special Act in respect of the opening and breaking up of streets and bridges.

*Copies of special Act to be deposited.*

- 46 The undertakers shall, at all times after the expiration of six months from the date on which the special Act was passed or made, keep at their principal office a copy thereof printed by the Queen's printer, [<sup>F42</sup>or the Queen's Printer for Scotland] and shall also within the said six months deposit such a copy with the sheriff clerk of every sheriff court district and with the [<sup>F43</sup>local authority for every area] within which they supply, or propose to supply, water or have or propose to construct any waterworks.

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**Textual Amendments**

- F42** Words in [Sch. 4 section 46](#) inserted (1.7.1999) by S.I. 1999/1820 arts. 1(2), 4, Sch. 2, Pt. 1, para. 64; S.I. 1998/3178; [art. 2\(1\)](#)
- F43** Words in [Sch. 4 section 46](#) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\)](#), [Sch. 13 para. 119\(57\)\(c\)](#); S.I. 1996/323, [art. 4\(1\)\(c\)](#)

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