

WATER SERVICES ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Provision of Water and Sewerage Services

Sewerage nuisance: Code of Practice

Section 25: Sewerage nuisance: code of practice

158. *Section 25* gives the Scottish Ministers powers to issue a code of practice on the assessment, control and minimisation of sewerage nuisance.
159. Subsection (1) gives the Scottish Ministers the power to make an order containing a code of practice on the assessment, control or minimisation of sewerage nuisance. This is referred to as a “sewerage code”.
160. Subsection (2) defines “sewerage nuisance” as any smells and discharges, insects or any other thing emanating from any part of the public sewerage system so as to be prejudicial to health or a nuisance. “Public sewerage system” is defined in section 29 of the Act.
161. Subsection (3) provides that a sewerage code may include guidance on the best practicable means of assessing, controlling and minimising sewerage nuisance, and may set out the circumstances in which a person to whom a sewerage code applies could be regarded as complying or not complying with that code.
162. Subsection (4) contains provisions concerning the interpretation of “best practicable means” for the purposes of subsection (3)(a).
163. Subsection (5) provides that a sewerage code will apply to Scottish Water in respect of its core functions relating to the provision of sewerage and the disposal of sewage and to any other person acting on Scottish Water’s behalf or under its authority in respect of those functions.
164. Subsection (6) requires Scottish Water and any other person to whom the code applies, to comply with that code.
165. Subsection (7) requires the Scottish Ministers and local authorities to publicise a sewerage code.
166. Subsection (8) requires the Scottish Ministers , in advance of making an order containing a sewerage code, to consult Scottish Water, local authorities and any other appropriate persons, on the proposed sewerage code.
167. Subsection (9) exempts from the requirements of sections 25 and 26, those parts of the public sewerage system which are regulated by a permit granted by the Scottish Environment Protection Agency (SEPA) by virtue of regulations made under section 2 of the Pollution Prevention and Control Act 1999. For example, certain sewage treatment works are regulated by permits granted under the Pollution Prevention and

Control (Scotland) Regulations 2000. However, subsection (10) reserves the powers of Ministers under other legislation, to make a direction concerning the application of a sewerage code to any part of the public sewerage system. This would, for example, enable Ministers to give directions to SEPA to have regard to the requirements of any sewerage code when granting permits under the 2000 Regulations.

Section 26: Monitoring and enforcement

168. Section 19C contains monitoring and enforcement provisions relating to sewerage codes.
169. Subsection (1) requires a local authority to monitor compliance with a sewerage code, and to investigate complaints of sewerage nuisance made by persons living in its area.
170. Subsection (2) requires a local authority to serve a notice (referred to as an “enforcement notice”) on Scottish Water or any other person to whom a sewerage code applies, where it is satisfied that there is or is likely to be material non-compliance with a sewerage code.
171. Subsection (3) provides that the enforcement notice may set out the works or steps required to comply with a sewerage code and must specify the date by which these requirements are to be fulfilled.
172. Subsection (4) provides for a right of appeal to the sheriff court against an enforcement notice served by a local authority under subsection (2), as the contravention of an enforcement notice is an offence. The appeal must be made by summary application to the sheriff within 21 days of the date of service of the notice. It further provides that the enforcement notice will have no effect until the appeal is withdrawn or finally determined. This provision is similar to that available to Scottish Water or responsible person under Part III of the Environmental Protection Act 1990.
173. Subsection (5) provides that the sheriff in an appeal under subsection (4) may make such order as the sheriff thinks fit and the decision of the sheriff in the appeal is final.
174. Subsection (6) provides that it is an offence without reasonable excuse to contravene an enforcement notice, and provides for a fine of up to £40,000 on summary conviction.
175. Subsection (7) provides that a local authority may, in the event that an enforcement notice is contravened, take proceedings in the sheriff court to ensure that the requirements of the notice are fulfilled. This is irrespective of whether proceedings have been taken for an offence under subsection (6).
176. Subsections (8) and (9) enables a local authority itself, in the event of non-compliance with an enforcement notice, to undertake works to secure compliance with that notice, and to recover the costs of so doing from the person upon whom the notice was served.
177. Subsection (10) disapplies the statutory nuisance functions of a local authority under sections 79 to 81 of the Environmental Protection Act 1990, so that only this Act’s provisions apply as regards sewerage nuisance (and not the monitoring and enforcement functions under those sections of the 1990 Act so far as relevant in relation to sewerage nuisance). However, the operation of section 82 of the 1990 Act is expressly preserved by subsection (11) so that the abatement procedure under that section, by which individuals may bring summary proceedings regarding a statutory nuisance, continues to apply so far as relevant in relation to sewerage nuisance.