

# **WATER SERVICES ETC. (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3: Coal Mine Water Pollution**

##### ***Section 30: Control of water from coal mines***

186. Subsection (1) of section 30 of the Act inserts new sections 4D to 4F and a new schedule 1C into the Coal Industry Act 1994 (“the 1994 Act”). These new sections provide the terms and conditions of powers allowing the Coal Authority (“the Authority”) to act to prevent or mitigate pollution, and to gain access and, if need be, to compulsorily acquire land in order to deal with coal mine water pollution in Scotland. The new provision is set out as a power, rather than a duty in any particular case, in order to enable the Authority to decide what action, if any, would be appropriate, depending on the circumstances.
187. The new section 4D of the 1994 Act makes provision for the Authority to take action to prevent or mitigate pollution of the water environment caused by discharges of water from coal mines which are vested in the Authority. This provides a statutory basis for the Authority's remediation work beyond its existing powers and general duties in Part I of the 1994 Act.
188. The new section 4E of the 1994 Act defines the powers that are given to the Authority to enter premises (within the meaning of section 4E(8), which includes land) for the purpose of investigating or dealing with water discharging from coal mines. The new schedule 1C to the 1994 Act (as set out in schedule 4 to the Act) sets out additional provisions on the administrative and operational procedures concerning these powers of entry. Before invoking these powers, the Authority would usually seek to reach agreement with the relevant owners of the land. These provisions therefore only concern situations where the Authority is unable to gain entry by agreement.
189. Subsections (1) and (2) of new section 4E sets out the reasons why the Authority would need to have access to premises (in exercise of its powers under subsection (3)). These are to carry out work to determine the extent, or the likelihood, of any pollution or danger, and to take any remedial action required under section 4D, where coal mine water has caused, or is causing, or is likely to cause either serious pollution of the environment or a danger to life or health. While actual ownership of the mine remains with the Authority, Part II of the 1994 Act provides for the licensing of coalmining operations; this new provision therefore makes provision to enable another person, such as a licensee or a specialist, to undertake the required investigative works on behalf of the Authority.
190. Subsections (3) and (4) of new section 4E set out the extent of the powers of entry and the purposes for which they might be used in order to allow a broad spectrum of investigative and remedial work, including the power to carry out experimental borings. As read with paragraph 1 of schedule 1C, the powers enable the Authority to take others onto the premises, for example, engineering experts, and any necessary equipment, for use in tracing the source of leaks.

*These notes relate to the Water Services etc. (Scotland) Act  
2005 (asp 3) which received Royal Assent on 17 March 2005*

191. In an emergency (as defined in new section 4E(8) to cover cases where there is an immediate risk of serious pollution of the environment or immediate danger to life or health), the provisions of new section 4E(3) permit the Authority to enter premises at any time and, if need be, by force.
192. Subsections (5), (6) and (7) of new section 4E require the Authority either to give at least seven days' notice before entering a premises (in cases other than an emergency), or to obtain a warrant granted under the terms of paragraph 2 of schedule 1C (where the occupier of the premises does not consent to the entry). Whilst the immediacy of the threat to the water environment may not be such that it could be described as an "emergency", there may still nevertheless be a need to exercise the powers of entry under the authority of a warrant to deal with potentially significant pollution of the water environment. For example, where the Authority had identified the need for a new monitoring point but could not gain the agreement of the landowner to install the monitoring equipment or subsequently to take measurements. In order to establish clearly the evidential basis which underpins the issue of a warrant, the new schedule 1C sets out the required evidence which must be adduced in writing before a warrant may be issued. These include circumstances where the Authority requires access urgently and the occupier is absent. However, this would rarely be necessary, for example, where the Authority needed to work quickly and the occupier was uncontactable for an extended period.
193. The new section 4F of the 1994 Act enables the Authority to compulsorily acquire land in Scotland. This new provision is in addition to section 5(2) of the 1994 Act which enables the Authority to acquire land by agreement for the purposes of carrying out its general functions under that Act.
194. Subsections (1) and (2) of new section 4F enable the Authority, if authorised by the Scottish Ministers, to acquire land compulsorily for the purpose of preventing or mitigating the effects of a mine water discharge which has caused, is causing or is likely to cause serious pollution of the water environment or danger to life or health. The Authority is also able, where necessary, to acquire a right of servitude in or over land to ensure access to the land for the purpose of carrying out its works.
195. Subsection (3) of new section 4F applies the requirements of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to compulsory acquisitions under new section 4F. Wherever the 1947 Act refers to 'a local authority', it will apply as if it were a reference to the Coal Authority. The provisions of the 1947 Act enable Scottish Ministers to confirm an Order with or without modifications in the absence of any outstanding objections, failing which a public local inquiry must be held. Additionally, following confirmation of an Order, the Authority is required to notify it in the prescribed form. These new powers will not affect the requirements, in section 5(7) and (8) of the 1994 Act, for the Authority to obtain the agreement of Treasury and the Secretary of State for Trade and Industry before acquiring any land.
196. Subsection (2) of section 30 of the Act inserts a new subsection (6) into section 66 of the 1994 Act, so that the provisions apply to land held by non-ministerial office holders in the Scottish Administration as well as other government departments.
197. Subsection (3) of section 30 of the Act amends section 68 of the 1994 Act to provide that the provisions inserted by the Act apply to Scotland only.