



Water Environment and Water Services (Scotland) Act 2003

2003 asp 3

PART 2

WATER AND SEWERAGE SERVICES

Duty to provide water and sewerage services

29 Duty to provide water and sewerage services

(1) Section 1 (duty of Scottish Water to provide for sewerage) of the Sewerage (Scotland) Act 1968 (c. 47) (“the 1968 Act”) is amended as follows.

(2) After subsection (3) insert—

“(3A) Subsection (3) shall not apply to such cases or descriptions of case as the Scottish Ministers may direct.

(3B) In determining what is a reasonable cost for the purpose of subsection (3) so far as relating to subsection (2)(a), the costs to be taken into account include the costs of—

- (a) constructing such other public sewers, public SUD systems and such public sewage treatment works, and
- (b) carrying out such other work,

as Scottish Water considers necessary in consequence of the connection referred to in subsection (2)(a).

(3C) Subject to subsection (3B), any question as to what is a reasonable cost for the purposes of this section shall be determined in accordance with regulations made by the Scottish Ministers.

(3D) Such regulations may, in particular, make provision as to—

- (a) the matters to be taken into, or left out of, account,
- (b) the criteria to be applied,
- (c) the method of calculation to be adopted,

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in determining what is a reasonable cost for those purposes, and may make different provision for different cases and descriptions of case.”

- (3) In subsection (4), after “whether” insert “a reasonable cost has been properly determined in accordance with regulations made under subsection (3C) or”.
- (4) In subsection (6), for “subsection” substitute “subsections (3C) and”.
- (5) Section 6 (duty of Scottish Water to provide water supply) of the Water (Scotland) Act 1980 (c. 45) (“the 1980 Act”) is amended as follows.
- (6) In subsection (2), after “shall” in the second place where it occurs insert “, subject to subsection (2A),”.
- (7) After subsection (2) insert—
- “(2A) Subsection (2), so far as requiring Scottish Water to take pipes to the point or points referred to in that subsection, shall not apply for so long as there is in force an agreement between Scottish Water and some other person for that person to take the pipes referred to in that subsection to that point or those points.
- (2B) Subsections (1) and (2), so far as excepting from the duties under those subsections things which cannot be done at a reasonable cost, shall not apply to such cases or descriptions of case as the Scottish Ministers may direct.
- (2C) In determining what is a reasonable cost for the purpose of subsection (2) so far as excepting from the duty under that subsection things which cannot be done at a reasonable cost, the costs to be taken into account include the costs of—
- (a) constructing such other water mains, communication pipes and other waterworks, and
- (b) carrying out such other work,
- as Scottish Water considers necessary in consequence of the connection referred to in that subsection.
- (2D) Subject to subsection (2C), any question as to what is a reasonable cost for the purposes of this section shall be determined in accordance with regulations made by the Scottish Ministers.
- (2E) Such regulations may, in particular, make provision as to—
- (a) the matters to be taken into, or left out of, account,
- (b) the criteria to be applied,
- (c) the method of calculation to be adopted,
- in determining what is a reasonable cost for those purposes, and may make different provision for different cases and descriptions of case.”
- (8) In subsection (3), after the words “as to” insert—
- “(za) whether a reasonable cost has been properly determined in accordance with regulations made under subsection (2D), or”.

30 Private sewers, SUD systems and sewage treatment works etc.: vesting, takeover and connection conditions

(1) In section 3A (authorisation of construction of certain private sewers etc.) of the 1968 Act, after subsection (2) insert—

“(3) An agreement under subsection (2)—

(a) is subject to—

(i) the condition that the sewer or SUD system or part shall vest in Scottish Water only if the sewer, system or part complies with the construction standards specified by virtue of section 14A and, in the case of a SUD system or part, with the SUD systems requirements specified by virtue of section 14B, so far as applicable,

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(1), and

(b) shall not take effect until the person who constructed the sewer or SUD system provides such security as Scottish Water may reasonably require for the performance of that person’s obligations under the agreement by virtue of paragraph (a)(ii).”

(2) In section 8 (agreements as to provision of sewers etc. for new premises) of the 1968 Act—

(a) after subsection (1) insert—

“(1A) An agreement under subsection (1) so far as it makes provision for the taking over by Scottish Water of a SUD system or sewage treatment works—

(a) is subject to—

(i) the condition that the system complies, or the works comply, with the construction standards specified by virtue of section 14A and, in the case of a SUD system, with the SUD systems requirements specified by virtue of section 14B, so far as applicable, and

(ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(2), and

(b) shall not take effect until the person providing the system or works provides such security as Scottish Water may reasonably require for the performance of that person’s obligations under the agreement by virtue of paragraph (a)(ii).”

(b) subsection (2) is repealed.

(3) In section 12 of the 1968 Act (rights of owners and occupiers to connect with and drain into public sewers etc.), after subsection (2) insert—

“(2A) An owner shall not, under subsection (1), be entitled to connect the owner’s drains, sewers or SUD systems with the sewers, SUD systems or works of Scottish Water unless—

(a) the drains, sewers or systems comply with the construction standards specified by virtue of section 14A and, in the case of a SUD

system, with the SUD systems requirements specified by virtue of section 14B, so far as applicable, and

- (b) the owner has, if required to do so under section 14C(3), entered into a connection agreement (within the meaning of that section) and has provided such security as Scottish Water may reasonably require for the performance of the owner’s obligations under the connection agreement.”

(4) After section 14 of the 1968 Act insert—

“14A Private sewers, SUD systems and sewage treatment works etc.: construction standards

- (1) In relation to drains, private sewers, private SUD systems and private sewage treatment works, the construction standards referred to in sections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) are such standards in relation to the construction of drains, sewers, SUD systems or, as the case may be, sewage treatment works as the Scottish Ministers may, by regulations made by statutory instrument, specify.
- (2) The standards which may be specified in regulations under subsection (1) include standards specified in or under other enactments.
- (3) Regulations under subsection (1) may make different provision in relation to different descriptions of person and different cases or descriptions of case.
- (4) Before making regulations under subsection (1) the Scottish Ministers must consult—
 - (a) Scottish Water, and
 - (b) such other persons as they consider appropriate.
- (5) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

14B Sustainable urban drainage systems: requirements

- (1) In relation to SUD systems, the SUD systems requirements referred to in sections 3A(3)(a)(i), 8(1A)(a)(i), 12(2A)(a) and 16A(3)(a)(i) are such requirements in relation to the nature, design and layout of SUD systems as the Scottish Ministers may, by regulations made by statutory instrument, specify.
- (2) Subsections (3) to (5) of section 14A apply in relation to regulations under subsection (1) of this section as they apply in relation to regulations under subsection (1) of that section.

14C Private sewers, SUD systems and sewage treatment works etc.: vesting conditions, takeover agreements and connection agreements

- (1) For the purposes of section 3A(3)(a)(ii) or 16A(3)(a)(ii), Scottish Water may require the inclusion in an agreement under subsection (2) of the section in question of conditions (“vesting conditions”) as to—
 - (a) any sum to be paid by Scottish Water to the person who constructed the sewer or SUD system in respect of its construction,

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- (b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the sewer or system, including in particular the costs of—
 - (i) complying with section 2, both in relation to the sewer or system and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (iii),
 - (ii) connecting the sewer or system to public sewers, public SUD systems or public sewage treatment works,
 - (iii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such other work, as Scottish Water considers necessary in consequence of the connection of the sewer or system,

and where the agreement under section 3A(2) or, as the case may be, 16A(2) relates only to a part of a sewer or SUD system, the references in paragraphs (a) and (b) of this subsection to the sewer or system shall be read as if they were references to the part.

- (2) For the purposes of section 8, Scottish Water may require the inclusion in an agreement under subsection (1) of that section, so far as it makes provision for the taking over by Scottish Water of a SUD system or sewage treatment works, of conditions ("takeover conditions") as to—
 - (a) any sum to be paid by Scottish Water to the person providing the system or works in respect of its or their construction,
 - (b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the system or works, including in particular the costs of—
 - (i) complying with section 2, both in relation to the system or works and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (ii),
 - (ii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such other work, as Scottish Water considers necessary in consequence of the taking over of the system or works in pursuance of the agreement.
- (3) For the purposes of section 12, Scottish Water may require the owner of a drain, sewer or SUD system referred to in subsection (2A) of that section to enter into an agreement (a "connection agreement") with it as to—
 - (a) any sum to be paid by Scottish Water to the owner in respect of the construction of the drain, sewer or system,
 - (b) the liability of the owner to pay Scottish Water sums in respect of Scottish Water's costs in relation to the drain, sewer or system, including in particular the costs of—
 - (i) complying with section 2, both in relation to the drain, sewer or system and in relation to any public sewers, public SUD systems and public sewage treatment works constructed, and any work carried out, as mentioned in sub-paragraph (iii),
 - (ii) connecting the drain, sewer or system to public sewers, public SUD systems or public sewage treatment works,

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- (iii) constructing such public sewers, public SUD systems and public sewage treatment works, and carrying out such work in relation to public sewers, public SUD systems and public sewage treatment works, as Scottish Water considers necessary in consequence of the connection of the drain, sewer or system.
 - (4) The Scottish Ministers may by regulations made by statutory instrument make provision as to—
 - (a) the provisions to be included—
 - (i) by virtue of subsection (1), as vesting conditions in an agreement under section 3A(2) or 16A(2),
 - (ii) by virtue of subsection (2), as takeover conditions in an agreement under section 8(1),
 - (iii) by virtue of subsection (3), in a connection agreement,
 - (b) cases in relation to which subsection (1), (2) or (3) does not apply, or applies with modifications.
 - (5) Regulations under subsection (4) may, in particular, make provision—
 - (a) for determining the sum (if any) to be paid by Scottish Water by virtue of subsection (1)(a), (2)(a) or (3)(a),
 - (b) for determining the liability—
 - (i) by virtue of subsection (1)(b), of the person who constructed the sewer or SUD system,
 - (ii) by virtue of subsection (2)(b), of the person providing the SUD system or works,
 - (iii) by virtue of subsection (3)(b), of the owner,
 by reference to such matters, criteria and methods of calculation as the regulations may specify,
 - (c) as to when sums due under the vesting conditions, the connection agreement or the takeover conditions are payable,
 - (d) as to the security which Scottish Water is entitled to require under section 3A(3)(b), 8(1A)(b), 12(2A)(b) or 16A(3)(b).
 - (6) Regulations under subsection (4) may make different provision in relation to different descriptions of person and different cases or descriptions of case.
 - (7) A statutory instrument containing regulations under subsection (4) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (5) In section 16A (vesting of certain private sewers) of the 1968 Act, after subsection (2) insert—
- “(3) An agreement under subsection (2)—
 - (a) is subject to—
 - (i) the condition that the sewer or SUD system or part shall vest in Scottish Water only if the sewer, system or part complies with the construction standards specified by virtue of section 14A and, in the case of a SUD system or part, with the SUD systems requirements specified by virtue of section 14B, so far as applicable,

- (ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 14C(1), and
- (b) shall not take effect until the person who constructed the sewer or SUD system provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii)."

Mains and pipes provided by persons other than Scottish Water

31 Laying of water mains and communication pipes by persons other than Scottish Water

After section 23 of the 1980 Act insert—

“23A Laying of mains and communication pipes by persons other than Scottish Water

- (1) Without prejudice to sections 23 and 24 (including any power under those sections to authorise the laying of mains or communication pipes on its behalf), Scottish Water may authorise a person to lay a main or communication pipe which is to connect with a main vested in it—
 - (a) in, under or over any road or under any cellar or vault below any road, or
 - (b) in, on or over any land which does not form part of a road and is not land as respects which that person is owner, lessee or occupier.
- (2) Where Scottish Water gives an authorisation to any person under subsection (1) in relation to a main, subsections (1) to (2) of section 23, so far as relating to the laying of a main shall apply in respect of that person as they apply in respect of Scottish Water.
- (3) Where—
 - (a) a main or communication pipe (not being a main pipe or laid by or on behalf of Scottish Water) is laid by any person, and
 - (b) the main or pipe connects with a main vested in Scottish Water,the main or, as the case may be, the communication pipe shall vest in Scottish Water.
- (4) Notwithstanding subsection (3), Scottish Water may, before the completion of a main or communication pipe to which that subsection applies, determine that the main or pipe, or any part of it, shall vest in the person who laid it and that that person shall have sole responsibility for its management, maintenance and renewal.
- (5) Scottish Water shall give notice of a determination under subsection (4) to the person who laid the main or communication pipe.
- (6) Where—
 - (a) a main or communication pipe (not being a main or pipe laid by or on behalf of Scottish Water) is laid by any person, and
 - (b) the main or pipe does not connect with a main vested in Scottish Water,

the main or, as the case may be, the communication pipe shall vest in the person who laid it, who shall have sole responsibility for its management, maintenance and renewal.

- (7) Notwithstanding subsections (4) and (6), Scottish Water may at any time enter into an agreement under which the main or communication pipe in question, or any part of it, shall vest in it.
- (8) An agreement under subsection (7) relating to a main or communication pipe to which subsection (3) applies—
- (a) is subject to—
 - (i) the condition that the main or pipe shall vest in Scottish Water only if it complies with the construction standards specified by virtue of section 23B, so far as applicable,
 - (ii) such further conditions as Scottish Water may require to be included in the agreement by virtue of section 23C, and
 - (b) shall not take effect until the person who laid the main or pipe provides such security as Scottish Water may reasonably require for the performance of that person's obligations under the agreement by virtue of paragraph (a)(ii).

23B Construction standards for mains and communication pipes to vest in Scottish Water

- (1) In relation to a main or communication pipe to which subsection (3) of section 23A applies, the construction standards referred to in subsection (8)(a)(i) of that section are such standards as the Scottish Ministers may, by regulations, specify.
- (2) The standards which may be specified in regulations under subsection (1) include standards specified in or under other enactments.
- (3) Regulations under subsection (1) may make different provision in relation to different cases or descriptions of case.
- (4) Before making regulations under subsection (1) the Scottish Ministers must consult—
 - (a) Scottish Water, and
 - (b) such other persons as they consider appropriate.

23C Vesting conditions for mains and communication pipes

- (1) For the purposes of subsection (8)(a)(ii) of section 23A, Scottish Water may require the inclusion in an agreement under subsection (7) of that section of conditions (“vesting conditions”) as to—
 - (a) any sum to be paid by Scottish Water to the person who laid the main or communication pipe in respect of its laying,
 - (b) the liability of that person to pay Scottish Water sums in respect of Scottish Water's costs in relation to the main or pipe, including in particular the costs of—
 - (i) maintaining, repairing and renewing the main or pipe and such water mains, communication pipes and other waterworks

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- constructed, and work carried out, as are mentioned in subparagraph (iii),
- (ii) connecting the main or pipe to a main vested in Scottish Water,
 - (iii) constructing such water mains, communication pipes and other waterworks, and carrying out such other work, as Scottish Water considers necessary in consequence of the connection.
- (2) The Scottish Ministers may by regulations make provision as to—
- (a) the provisions to be included, by virtue of subsection (1) of this section, as vesting conditions in an agreement under section 23A(7),
 - (b) cases in relation to which subsection (1) of this section does not apply, or applies with modifications.
- (3) Regulations under subsection (2) may, in particular, make provision—
- (a) for determining the sum (if any) to be paid by Scottish Water by virtue of subsection (1)(a),
 - (b) for determining the liability, by virtue of subsection (1)(b), of the person who laid the main or communication pipe by reference to such matters, criteria and methods of calculation as the regulations may specify,
 - (c) as to when sums due under the vesting conditions are payable,
 - (d) as to the security which Scottish Water is entitled to require under section 23A(8)(b).
- (4) Regulations under subsection (2) may make different provision in relation to different descriptions of person and different cases or descriptions of case.”

Vesting of waterworks and mains

32 Vesting in Scottish Water of waterworks and mains

- (1) In section 21 (power to carry out works) of the 1980 Act—
- (a) the existing provision becomes subsection (1),
 - (b) after that subsection insert—
- “(2) For the avoidance of doubt, all waterworks constructed in pursuance of subsection (1) above (whether before or after the commencement of this subsection) vest in Scottish Water.”
- (2) In section 23 (power to lay mains etc.) of that Act, at the end insert—
- “(5) For the avoidance of doubt, all mains laid in pursuance of subsection (1) above (whether laid before or after the commencement of this subsection) vest in Scottish Water.”

Sustainable urban drainage systems

33 Sustainable urban drainage systems

- (1) In section 59(1) (interpretation) of the 1968 Act, insert the following definitions in the appropriate places alphabetically—

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“private SUD system” means any SUD system which is not a public SUD system;

“public SUD system” means any SUD system which is vested in Scottish Water;

“road water” means the run-off of rainwater from any road for the time being entered in a list of public roads kept by a local roads authority under section 1(1) of the Roads (Scotland) Act 1984;

“SUD system” means a sustainable urban drainage system;

“sustainable urban drainage system” means a drainage system which—

- (a) facilitates attenuation, settlement or treatment of surface water from 2 or more premises (whether or not together with road water), and
- (b) includes one or more of the following: inlet structures, outlet structures, swales, constructed wetlands, ponds, filter trenches, attenuation tanks and detention basins (together with any associated pipes and equipment);”.

- (2) Schedule 3 makes modifications of the 1968 Act and the Water Industry (Scotland) Act 2002 (asp 3) in relation to sustainable urban drainage systems.

Supplementary

34 Modifications of Part III of the 1980 Act

Schedule 4 makes modifications of Part III of the 1980 Act which are minor or consequential on this Part.