



Local Government etc. (Scotland) Act 1994

1994 CHAPTER 39

PART II

WATER AND SEWERAGE REORGANISATION

New water and sewerage authorities

62 New water and sewerage authorities.

- (1) There shall be established—
- (a) a body, to be known as the East of Scotland Water Authority, which, as from 1st April 1996, shall be—
 - (i) the water authority for the eastern water area; and
 - (ii) the sewerage authority for the eastern sewerage area;
 - (b) a body, to be known as the West of Scotland Water Authority, which, as from that date, shall be—
 - (i) the water authority for the western water area; and
 - (ii) the sewerage authority for the western sewerage area; and
 - (c) a body, to be known as the North of Scotland Water Authority, which, as from that date, shall be—
 - (i) the water authority for the northern water area; and
 - (ii) the sewerage authority for the northern sewerage area;

but any reference in any enactment, including this Act, to water authorities generally, shall not be taken to include a reference to any of the above bodies as sewerage authority.

- (2) Schedule 7 to this Act shall have effect with respect to the constitution and proceedings of, and other matters relating to, each of the bodies established by subsection (1) above (those bodies being, in this Act, collectively referred to as the “new water and sewerage authorities”).

Status: Point in time view as at 01/07/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

- (3) The water areas and sewerage areas mentioned in subsection (1) above and in column 1 of Schedule 8 to this Act comprise the areas for the time being respectively described in column 2 of that Schedule.

Modifications etc. (not altering text)

- C1** S. 62 applied (1.4.1996) by 1951 c. 66, s. 35(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 38(8)(b)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1961 c. 41, s. 15(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 56(5)(a)(b)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1967 c. 86, s. 78(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 72(9)(b)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1968 c. 47, s. 59(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 75(28)(a)(f)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1974 c. 40, s. 56 (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 95(5)(a)(b)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1980 c. 45, s. 109(1) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(53)(a)(ii)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1980 c. 45, 109(1) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 119(53)(a)(iii)(v)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1982 c. 43, s. 14(3) (as added (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 128(3)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1984 c. 12, s. 98(9) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(b)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1984 c. 54, s. 151(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 135(10)(a)(iv)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1984 c. 58, s. 115(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 137(6)(b)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1987 c. 26, s. 338(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(7)(b)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1987 c. 26, s. 338(1) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(7)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1991 c. 22, s. 164(1) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 168(6)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 195 c. 63, s. 5 (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 140(5)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1990 c. 43, s. 53(5A) (as inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(8)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**
- S. 62 applied (1.4.1996) by 1984 c. 12, s. 98(9) (as substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 133(3)(c)**); S.I. 1996/323, **art. 4(1)(b)(c)**

63 Alteration of water areas and sewerage areas.

- (1) Subject to subsection (4) below, the Secretary of State may from time to time by order amend column 2 of Schedule 8 to this Act so as to alter water areas or sewerage areas of the new water and sewerage authorities.
- (2) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3) An order under this section may include such incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient for the purposes of the order.
- (4) Before making an order under this section the Secretary of State shall prepare a draft of the order, shall consult with every new water and sewerage authority whose area would be altered by the order and with the Customers Council and shall publish in the Edinburgh Gazette, and in one or more local newspapers circulating in the geographical area affected by the order, a notice—
 - (a) stating the general effect of the order;
 - (b) specifying the places where copies of the draft order, and of any maps relating to it, may be inspected, free of charge and at all reasonable times, during a period of not less than twenty-eight days which begins with the date on which the notice is so published; and
 - (c) stating that any person affected by the order may within that period, by intimation in writing to the Secretary of State, object to the proposed making of the order.
- (5) The Secretary of State shall serve a copy of a notice published under subsection (4) above on every body which he has, in accordance with that subsection, consulted.
- (6) The Secretary of State shall have regard to any objection made by virtue of subsection (4)(c) above and timeously received; and he may then proceed to make the order, either in the form of the draft order or as amended by him.
- (7) For the purposes of subsection (6) above, an objection is timeously received if received by the end of the specified period of not less than twenty-eight days which begins with the latest date on which is published an issue of the Edinburgh Gazette, or of a local newspaper, in which the notice mentioned in subsection (4) above appears by virtue of that subsection.

64 Maps of areas.

- (1) The Secretary of State shall, as soon as is practicable after—
 - (a) the coming into force of section 62(3) of, and Schedule 8 to, this Act, send to each of the new water and sewerage authorities a map of their water area and of their sewerage area, both as described in column 2 of that Schedule;
 - (b) making an order under section 63 of this Act altering water areas or sewerage areas, send to each of the new water and sewerage authorities of the areas altered a map of their water area, or as the case may be their sewerage area, as so altered.
- (2) Any map which is sent to an authority under subsection (1) above shall, until superseded by a map subsequently sent under that subsection, be kept at the principal office of the authority; and the authority shall provide reasonable facilities for inspection of the map by any person and shall permit a copy of it, or of an extract of it, to be taken by a person on his paying such reasonable amount as the authority may determine.

65 General duties of Secretary of State and of new authorities.

- (1) For section 1 of the 1980 Act (which imposes on the Secretary of State certain duties as respects water conservation and supply) there shall be substituted—

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“1 General duties of Secretary of State and of water authorities.

It shall be the duty of the Secretary of State and of the water authorities when exercising their respective functions or powers under or by virtue of this Act—

- (a) to promote the conservation and effective use of the water resources of, and the provision of adequate water supplies throughout, Scotland; and
 - (b) to secure the collection, preparation, publication and dissemination of information and statistics relating to such resources and supplies.”.
- (2) It shall be the duty of the Secretary of State and of the new water and sewerage authorities when exercising their respective functions or powers under or by virtue of this Act, the 1968 Act or the 1980 Act—
- (a) to have regard to the interests of every person who is a customer or potential customer of any such authority and especially of such of those persons as—
 - (i) are likely, by reason of some persistent medical condition or of family circumstances, to require to have a much greater supply of water, or to make much greater use of facilities for the disposal of sewage, than might ordinarily have been expected; or
 - (ii) are ordinarily resident in some rural part of Scotland;
 - (b) to further, so far as may be consistent with the purposes of any enactment relating to their respective functions (whether or not functions under or by virtue of this Act, the 1968 Act or the 1980 Act)—
 - (i) the conservation and enhancement of natural beauty and the conservation of flora and fauna; and
 - (ii) the conservation of geological or physiographical features of special interest;
 - (c) to have regard to the desirability of preserving for the public any freedom of access (including access for recreational purposes) to areas of forest, woodland, mountains, moor, bog, cliff, foreshore, loch or reservoir and to other places of natural beauty; and
 - (d) to have regard to the desirability of protecting and conserving—
 - (i) buildings;
 - (ii) sites; and
 - (iii) objects,
 of archaeological, architectural or historic interest and of maintaining the availability to the public of any facility for visiting or inspecting any such building, site or object.

Commencement Information

- II** S. 65 wholly in force at 1.4.1996; s. 65 not in force at Royal Assent see s. 184(2); s. 65(2) in force at 17.7.1995 by S.I. 1995/1898, art. 2(a), **Sch.**; s. 65(1) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), **Sch.**

66 Codes of practice for new water and sewerage authorities.

- (1) A new water and sewerage authority shall draft a code of practice which shall make provision—

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- (a) as to their standards of performance in providing services to their customers;
 - (b) for procedures for dealing with complaints by their customers or their potential or former customers;
 - (c) as respects the circumstances in which they will pay compensation if or in so far as those standards are not attained; and
 - (d) as respects such matters as are incidental to the provision made under paragraphs (a) to (c) above;
- and the code may include such supplemental provisions as appear to the authority to be appropriate.
- (2) A code drafted by an authority under subsection (1) above shall be sent by them to the Customers Council no later than the date on which they first, under subsection (4)(a) of section 76 of this Act, send a draft charges scheme to the Council; and subsections (4) to (6) of the said section 76 shall apply as respects any such draft code of practice as they apply to any such draft charges scheme.
- (3) The authority shall endeavour to comply with their code of practice as for the time being approved by virtue of this section; but contravention of that code shall not of itself give rise to any criminal or civil liability.
- (4) Subject to subsection (1) above, the authority may from time to time—
- (a) vary; or
 - (b) revoke and replace,
- their code of practice as so approved; and the varied or new code shall be sent forthwith by them in draft to the Customers Council.
- (5) Subsections (4) to (6) of section 76 of this Act shall apply as respects a draft sent under subsection (4) above as they apply, by virtue of subsection (2) above, to a draft sent under the said subsection (2).
- (6) The authority shall take such steps as appear to them appropriate to inform customers and potential or former customers of the contents for the time being of their code approved by virtue of this section.

Protection of customers' interests etc.

67 Scottish Water and Sewerage Customers Council.

- (1) There shall be established a body to be known as the Scottish Water and Sewerage Customers Council (in this Part of this Act referred to as “the Customers Council”) for the purpose of representing the interests of customers and potential or former customers of the new water and sewerage authorities.
- (2) Schedule 9 to this Act shall have effect with respect to the constitution and proceedings of, and other matters relating to, the Customers Council.

[^{F1} The Water Industry Commissioner for Scotland]

Textual Amendments

F1 S. 67A and crossheading inserted (1.11.1999) by 1999 c. 9, s. 12(1); S.S.I. 1999/133, art. 2(a)

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VALID FROM 01/11/1999

[^{F2}67A Water Industry Commissioner for Scotland and Consultative Committees.

- (1) There shall be a Water Industry Commissioner for Scotland (in this Part of this Act referred to as “the Commissioner”), who shall have the general function of promoting the interests of customers of the new water and sewerage authorities.
- (2) In respect of each new water and sewerage authority there shall be a Water Industry Consultative Committee, which shall have the general function of advising the Commissioner on the promotion of the interests of customers of that authority.
- (3) In exercising his functions in relation to an authority the Commissioner shall have regard to any advice given to him by the Consultative Committee in respect of that authority.
- (4) The Secretary of State may, after consulting the Commissioner, give him directions of a general or specific character as to the exercise of his functions; and the Commissioner shall comply with those directions.
- (5) Schedule 9A to this Act (which makes further provision about the Commissioner and Water Industry Consultative Committees) shall have effect.]

Textual Amendments

F2 S. 67A inserted (1.11.1999) by 1999 c. 9, s. 12(1); S.S.I. 1999/133, art. 2(a)

68 Functions of Customers Council.

- (1) For the purpose mentioned in section 67(1) of this Act, the Customers Council shall—
 - (a) keep under review all matters appearing to it to affect the interests of customers or potential or former customers of the new water and sewerage authorities;
 - (b) consult each authority about such of those matters as appear to affect the interests of the customers or potential or former customers of that authority; and
 - (c) make such representations as it considers appropriate to those authorities, or as the case may be to that authority, about any such matter.
- (2) The Customers Council shall investigate any complaint made to it by a customer or potential or former customer of a new water and sewerage authority, as respects a function of that authority (whether as water authority or as sewerage authority), unless it appears to the Council that the complaint is vexatious or frivolous.
- (3) Without prejudice to subsection (1)(c) above, where the Customers Council considers it appropriate to do so in connection with a complaint investigated by it under subsection (2) above, it shall make representations on behalf of the complainer to the authority in question about any matter—
 - (a) to which the complaint relates; or
 - (b) which appears to the Council to be relevant to the subject matter of the complaint.

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- (4) The Customers Council shall advise the Secretary of State on any matter which appears to the Council, or to him, to relate to—
- (a) the standard of service provided by a new water and sewerage authority to their customers; or
 - (b) the manner in which any such authority conduct their relations with their customers or potential or former customers.
- (5) The Customers Council shall have power to do anything which is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions under this Act; and without prejudice to that generality, or to section 70(2) of this Act, may make such arrangements as it thinks fit to inform customers and potential or former customers of the new water and sewerage authorities about matters affecting, or likely to affect, their interests.

Commencement Information

- I2** S. 68 wholly in force at 1.4.1996; s. 68 not in force at Royal Assent see s. 184(2); s. 68(1)(4)(5) in force at 30.10.1995 by S.I. 1995/2866, art. 2(b); s. 68(2)(3) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), Sch. 1

69 Power of Customers Council to require information.

A new water and sewerage authority shall, on being requested to do so by the [F³Commissioner], supply the [F³Commissioner] with such information held by them as [F³he] may reasonably seek in the exercise of [F³his] functions under this Act; but where the authority and the [F³Commissioner] cannot agree as to whether the information is sought reasonably, either of them may refer the matter to the Secretary of State, whose determination in that regard shall be final.

Textual Amendments

- F3** Words in s. 69 substituted (1.11.1999) by 1999 c. 9, s. 15(1), Sch. 3 Pt. II para. 11; S.S.I. 1999/133, art. 2(b)(e)

69 Power of Customers Council to require information. **S**

A new water and sewerage authority shall, on being requested to do so by the Customers Council, supply the Council with such information held by them as it may reasonably seek in the exercise of its functions under this Act; but where the authority and the Council cannot agree as to whether the information is sought reasonably, either of them may refer the matter to the Secretary of State, whose determination in that regard shall be final.

70 Annual reports by, and information from, Customers Council.

- (1) Without prejudice to subsection (3) below, the Customers Council shall, as soon as practicable after the end of each financial year, make to the Secretary of State a report on its activities during that financial year; but no such report shall be required in respect of any financial year ending before 31st March 1997.

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- (2) The Customers Council shall arrange for the report to be published in such manner as it considers appropriate.
- (3) The Customers Council shall furnish the Secretary of State with such information regarding the exercise, or proposed exercise, of its functions under this Act as he may from time to time require.

71 Funding of Customers Council.

- (1) The Secretary of State may, ^{F4}. . . defray or contribute towards the expenses of the Customers Council.
- (2) Any sums required by the Secretary of State for the purposes of subsection (1) above shall be paid out of money provided by Parliament.
- (3) A new water and sewerage authority shall contribute towards the expenses of the Customers Council by making payments of such amounts, and at such times, to the Council as the Secretary of State may direct.

Textual Amendments

- F4** Words in s. 71(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 116(1)(2), Pt. IV; S.I. 1998/3178, art. 3

72 References to Monopolies and Mergers Commission.

In section 11(3) of the ^{M1}Competition Act 1980 (entities as respects which references may be made to the Monopolies and Mergers Commission), after paragraph (c) there shall be inserted the following paragraph—

“(cc) the new water and sewerage authorities, within the meaning of the Local Government etc. (Scotland) Act 1994;”.

Marginal Citations

- M1** 1980 c. 21.

Environmental protection

73 Duty of new authorities as respects Natural Heritage Area or area of special interest.

- (1) Where an area of land (“the relevant land”)—
 - (a) has been designated under section 6(2) of the ^{M2}Natural Heritage (Scotland) Act 1991 (“the 1991 Act”) as a Natural Heritage Area; or
 - (b) is, in the opinion of Scottish Natural Heritage (“the environmental authority”), of special interest by reason of its flora, fauna or geological or physiographical features,

and the environmental authority consider that it may at any time be affected by schemes, works, operations or activities of a new water and sewerage authority (“the relevant authority”), the environmental authority shall by written notice advise the

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relevant authority that they so consider; but they shall forthwith notify the relevant authority of any cancellation or variation, under section 6(7) of the 1991 Act, of the designation or if they cease to be of the opinion mentioned in paragraph (b) above.

(2) Where the relevant authority intend to carry out any scheme, work, operation or activity which appears to them likely to, as the case may be—

(a) prejudice significantly the value of the relevant land, or any part of it, as a Natural Heritage Area (the designation mentioned in subsection (1)(a) above not having been cancelled or so varied as no longer to apply to the part in question); or

(b) destroy or damage any of the flora, fauna or features, by reference to which the environmental authority formulated their opinion under subsection (1)(b) above as respects the special interest of the relevant land (notification of their ceasing to be of that opinion not having been given),

the relevant authority shall consult with the environmental authority before commencing the scheme, work, operation or activity.

(3) Subsection (2) above shall not apply in relation to anything done by the relevant authority in an emergency if particulars of what is done and of the emergency are notified by them to the environmental authority as soon as is practicable after the thing is done.

(4) Any expression not defined in this Act but used both in this section and in the 1991 Act, shall be construed in accordance with that Act.

Marginal Citations

M2 1991 c. 28.

Charges

74 Charges for services provided.

(1) Subject to the provisions of this Part of this Act and of sections 9A and 47 of the 1980 Act (no charge for water in certain cases), the powers of a new water and sewerage authority shall include power—

(a) to fix charges for any services provided in the course of carrying out their functions; and

(b) to demand and recover charges fixed under this section from any person to whom they provide services.

(2) The powers conferred by subsection (1) above shall be exercisable—

(a) by or in accordance with a charges scheme under section 76 of this Act; or

(b) by or in accordance with an agreement with the person to be charged.

(3) Subject to the provisions of this Part of this Act, a new water and sewerage authority may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to them to be appropriate.

(4) Nothing in this Part of this Act shall entitle a new water and sewerage authority to fix, demand or recover a charge for—

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- (a) under subsection (2) of section 6 of the 1980 Act (duty to provide water supply), taking pipes; or
 - (b) under subsection (2)(a) of section 1 of the 1968 Act (duty to provide sewerage), taking public sewers,
- to the point or points mentioned in the subsection in question.
- (5) A new water and sewerage authority exercising their powers under subsection (1) above by entering into such agreements as are mentioned in subsection (2)(b) above shall endeavour to ensure that no undue preference is shown, and that there is no undue discrimination, in determining the conditions of those agreements.
- (6) Nothing in subsections (1) to (3) above or in any charges scheme under section 76 of this Act shall affect any power of a new water and sewerage authority to fix charges under any power conferred otherwise than under or by virtue of this Part of this Act.

75 Maximum charges for services provided with help of new authority.

- (1) The Secretary of State may from time to time by order fix maximum charges which a person who is not a new water and sewerage authority may recover from another such person in respect of the supply of water to, the provision of sewerage to, or the disposal of sewage for that other person with the help of services provided by any such authority.
- (2) For the purposes of this section, water is supplied to, sewerage provided to, or sewage disposed of for a person with the help of services provided by an authority if—
- (a) a facility for that person to have access to a supply of water provided by the authority, as water authority, in pipes, or to make use of sewerage which is, or facilities for the disposal of sewage which are, provided by the authority as sewerage authority, is made available to that person otherwise than by the authority;
 - (b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by the authority as water authority; or
 - (c) that person is provided with sewerage, or with facilities for the disposal of sewage, by a person who, for the purposes of providing the sewerage or facilities, makes use of sewerage or of such facilities provided, directly or indirectly, by the authority as sewerage authority.
- (3) An order under this section may make different provision in relation to different persons, circumstances or localities and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.
- (4) Where a person pays a charge in respect of anything to which an order under this section relates and the amount paid exceeds the maximum charge fixed by the order, the amount of the excess shall be recoverable by that person from the person to whom he paid the charge.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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[^{F5}75A Commissioner’s advice on charges.

- (1) The Commissioner shall, when required by the Secretary of State, advise him on the matters to be taken into, or left out of, account by the new water and sewerage authorities in fixing charges in charges schemes (within the meaning of section 76(1) of this Act).
- (2) The advice—
 - (a) shall, as the Secretary of State requires, relate to authorities generally or to a particular authority,
 - (b) shall apply in relation to charges schemes made during such period as the Secretary of State may specify (in this section referred to as “the period of the advice”).
- (3) In preparing his advice the Commissioner shall have regard to—
 - (a) the economy, efficiency and effectiveness with which authorities are using their resources in exercising their functions,
 - (b) the likely cost to each authority, for the period of the advice, of exercising the functions mentioned in subsection (4) below,
 - (c) the likely borrowing capacity of each authority for the period of the advice,
 - (d) any guidance issued to authorities by the Secretary of State, and
 - (e) any directions issued under section 116 or 117 of this Act.
- (4) The functions referred to in subsection (3)(b) above are—
 - (a) complying with any duty to which an authority are subject by virtue of any enactment,
 - (b) complying with any such duty to which they will, or are likely to, become subject during the period of the advice, and
 - (c) providing services to their customers at the same standard, and protection of the environment at the same level, as those at the time when the advice is given, or at such other standard or level as the Secretary of State may specify.
- (5) The Secretary of State shall, within three months of receiving from the Commissioner advice under subsection (1) above—
 - (a) accept the advice, with or without modifications, or
 - (b) reject the advice and substitute his own advice for it.
- (6) Where the Secretary of State accepts the Commissioner’s advice with modifications or rejects it, he shall give reasons for doing so.
- (7) The Commissioner shall arrange for the publication, in such manner as he considers appropriate, of advice as accepted, modified or substituted under subsection (5) above, together with any reasons given under subsection (6) above.]

Textual Amendments

F5 S. 75A inserted (1.11.1999) by 1999 c. 9, s. 13; S.S.I. 1999/133, art. 2(a)

Status: Point in time view as at 01/07/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

76 Charges schemes.

- (1) A new water and sewerage authority may, in accordance with this section, make a scheme (in this Part of this Act referred to as a “charges scheme”) which (either or both)—
 - (a) fixes the charges to be paid for any relevant services provided by them;
 - (b) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.
- (2) Services are relevant for the purposes of subsection (1)(a) above if they are provided by the authority in the course of carrying out their functions and are not services as respects which conditions as to payment may be imposed under section 29(3)(j) of the 1968 Act (conditions relating to the reception, treatment and disposal of trade effluent).
- (3) A charges scheme may—
 - (a) make different provision for different cases, or classes of case, including different provision in relation to different circumstances or localities;
 - (b) contain supplemental, consequential and transitional provisions for the purposes of the scheme;
 - (c) revoke or amend a previous charges scheme.
- (4) A charges scheme shall not come into force before—
 - (a) it has been sent in draft to, and approved by, the Customers Council, such approval being to the scheme having effect either—
 - (i) without modifications; or
 - (ii) with such modifications as, after consulting with and obtaining the agreement of the authority, the Council thinks fit to make; or
 - (b) where the Council is not prepared to give approval under paragraph (a) above, or cannot obtain the agreement of the authority to some or all of the modifications which it would make under sub-paragraph (ii) of that paragraph, the draft (with any modifications to it which may have been agreed between the Council and the authority) has been sent by the Council to, and approved by, the Secretary of State, such approval being to the scheme having effect either—
 - (i) without modifications (or further modifications); or
 - (ii) with such modifications as, after consulting with the Council and the authority, he thinks fit to make,
 and the scheme shall have effect accordingly.
- (5) Where three months have elapsed since the Customers Council has received a charges scheme in draft by virtue of paragraph (a) of subsection (4) above and the Council has neither given approval under that paragraph nor sent the draft to the Secretary of State under paragraph (b) of that subsection, the new water and sewerage authority which made the scheme may require the Council so to send it to him.
- (6) Where, under—
 - (a) paragraph (a) of subsection (4) above, the Customers Council gives approval to a charges scheme it shall send a copy of the scheme as so approved to the Secretary of State;
 - (b) paragraph (b) of that subsection, the Secretary of State gives approval to such a scheme he shall send a copy of the scheme as so approved to the Council.

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- (7) A new water and sewerage authority in making a charges scheme, and the Customers Council and the Secretary of State in considering whether to give approval to such a scheme, shall endeavour to ensure that no undue preference is shown, and that there is no undue discrimination, in the fixing of charges.
- (8) Nothing in any charges scheme shall affect any power of a new water and sewerage authority to enter into such an agreement with any person in any particular case as determines the charges to be made for the services provided to that person by them.

77 Publication of summary of charges scheme.

A new water and sewerage authority shall, on a charges scheme made by them being approved under section 76(4) of this Act—

- (a) provide, at such offices of the authority, and at such other places, as the authority think fit, reasonable facilities—
 - (i) for inspection of the scheme by any person; and
 - (ii) for any person to take a copy of the scheme, or of an extract of it, on his paying such reasonable amount as the authority may determine; and
- (b) advertise those facilities, and publish such summary of the scheme as appears to them to be appropriate, in at least one newspaper circulating in their water and sewerage areas.

78 Liability of occupiers etc. for charges.

- (1) Subject to the following provisions of this section and except in so far as provision to the contrary is made by any agreement to which a new water and sewerage authority are a party—
 - (a) supplies of water provided by them shall be treated for the purposes of this Part of this Act as services provided to the occupier for the time being of any premises supplied; and
 - (b) the provision of sewerage, and the disposal of sewage, provided by them shall be treated for such purposes as provision to, or as disposal for, the occupier for the time being of any premises which—
 - (i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the authority as is provided for foul water or surface water or both; or
 - (ii) are premises the occupier of which has, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting;and such supply of water, provision of sewerage or disposal of sewage are referred to in subsection (2) below as “relevant services”.
- (2) Subject to subsection (3) below, charges which, under the preceding provisions of this Part of this Act, are fixed in relation to any premises by reference to volume may be imposed so that a person remains liable, in relation to those premises, to pay charges for relevant services provided by a new water and sewerage authority after the person has ceased to be occupier of the premises.
- (3) A person shall not be liable by virtue of subsection (2) above for any charges fixed in relation to any premises by a new water and sewerage authority except where—

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- (a) he fails to inform the authority of the ending of his occupation of the premises at least two working days before he ceases to occupy them; and
 - (b) the charges are in respect of a period ending no later than with the first relevant day.
- (4) In paragraph (b) of subsection (3) above, “the first relevant day” means whichever of the following first occurs after the person ceases to occupy the premises—
- (a) where the person informs the authority of the ending of his occupation (but not timeously), the twenty-eighth day after informing the authority;
 - (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
 - (c) any day on which any other person informs the authority that he has become the new occupier of the premises.
- (5) In subsection (3)(a) above, reference to two working days is to a period of forty-eight hours calculated after disregarding any time falling on—
- (a) a Saturday or Sunday;
 - (b) Christmas Day or Good Friday; or
 - (c) a day which is a bank holiday in Scotland under the ^{M3}Banking and Financial Dealings Act 1971.
- (6) In the application of this section to services which are the subject of a determination under section 79(1)(a) of this Act, references in subsection (1) above to the occupier of premises shall be construed as references to the person liable under or by virtue of sections 75 to 77 of the ^{M4}Local Government Finance Act 1992 to pay council tax in respect of the premises (“council tax” being construed in accordance with section 70(1) of that Act).

Marginal Citations

M3 1971 c. 80.

M4 1992 c. 14.

79 Collection of charges by local authority.

- (1) The Secretary of State may by order determine—
- (a) that as respects services provided, within a financial year specified in the order, by a new water and sewerage authority (in this section referred to as the “providing authority”) to dwellings within the area of a local authority (in this section and in Schedule 10 to this Act referred to as the “collecting authority”), or within such part of that area as may be so specified, the collecting authority and not the providing authority shall demand and recover charges (other than charges in respect of a supply of water taken by meter) payable for those services under a charges scheme ; and
 - (b) that the collecting authority shall, at such intervals as may be so specified, make such payments to the providing authority (to whom no other amount shall be payable under the charges scheme for the services provided) as may be so specified or as may be determined in accordance with the provisions of the order.

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Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

- (2) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under subsection (1) above may include provision as to—
 - (a) forms and procedures which the collecting authority shall adopt in demanding payment;
 - (b) circumstances in which a customer of the providing authority who is aggrieved by a decision or calculation of the collecting authority may appeal—
 - (i) except in a case specified by virtue of sub-paragraph (ii) below, to a valuation appeal committee (constituted under section 29 of this Act); or
 - (ii) in a case which the order may specify, to a body constituted under the order (or under a previous such order) to consider appeals as respects any such case;
 - (c) procedures to be followed in any appeal by virtue of paragraph (b) above;
 - (d) the provision, for the purposes of this section, of information by the providing authority to the collecting authority; or
 - (e) the keeping by the collecting authority of accounts and records as respects their functions by virtue of this section and the exhibition of, or of copies of, such accounts and records to the providing authority.
- (4) Schedule 10 to this Act shall apply as respects the recovery by diligence of charges payable to a collecting authority by virtue of the foregoing provisions of this section.
- (5) In subsection (1)(a) above, “dwelling” has the same meaning as in Part II of the ^{M5}Local Government Finance Act 1992.

Commencement Information

I3 S. 79 wholly in force at 1.4.1996; s. 79 not in force at Royal Assent see s. 184(2); s. 79(1)-(3)(5) in force at 17.7.1995 by S.I. 1995/1898, art. 2(a), Sch.; s. 79(4) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), Sch. 1

Marginal Citations

M5 1992 c. 14.

80 Power to demand and recover charges not to affect duty to maintain domestic water supply etc.

Subsections (1)(b) of section 74 and (1), (3) and (4) of section 79 of this Act are without prejudice to the duties of a new water and sewerage authority under section 6 of the 1980 Act (which include the duty to maintain a supply of wholesome water provided to meet a requirement for domestic purposes) or to the entitlements of any person under section 12 or 13 of the 1968 Act (which include the entitlement of an occupier of premises to drain into public sewers to which the drains or private sewers of the owner of the premises are connected).

81 Reduced charges.

- (1) The Secretary of State may make regulations as regards any case where—

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- (a) a person is, under a charges scheme, liable to pay an amount to a new water and sewerage authority or to a local authority; and
 - (b) conditions prescribed in the regulations are fulfilled.
- (2) The regulations may provide that the amount the person is liable to pay shall be an amount which—
- (a) is less than the amount it would be but for the regulations; and
 - (b) is determined in accordance with rules prescribed in the regulations.
- (3) The conditions mentioned in subsection (1)(b) above, and the rules referred to in subsection (2)(b) above, may be prescribed by reference to such factors as the Secretary of State thinks fit.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

82 Arrears of charges: restrictions on voting.

- (1) This section applies at any time to a member of a local authority, or a member of a committee of a local authority or of a joint committee of two or more local authorities (including in either case a sub-committee), if at that time a charge payable by virtue of section 79(1) of this Act has become payable by him and has remained unpaid for at least two months.
- (2) Subject to subsection (4) below, if a member to whom this section applies is present at a meeting of the authority or committee at which any matter concerning how the authority are to exercise such functions as they have by virtue of section 79 of this Act is a subject of consideration, he shall, at the meeting and as soon as practicable after its commencement, disclose the fact that this section applies to him and shall not vote on any question with respect to the matter.
- (3) If a person fails to comply with subsection (2) above, he shall be guilty of an offence, and shall for each such offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale, unless he proves that he did not know—
- (a) that this section applied to him at the time of the meeting; or
 - (b) that the matter in question was a subject of consideration at the meeting.
- (4) Subsections (1) to (3) of section 41 of the 1973 Act (removal or exclusion of disability) shall apply in relation to, and to any disability imposed by, this section as they apply in relation to, and to any disability imposed by, section 38 of that Act (provisions as to disability of members of authorities from voting).
- (5) In subsection (1) above “joint committee” has the meaning given by section 235(1) of the 1973 Act.

Finances of new authorities

83 Duties and powers relating to finance.

- (1) It shall be the duty of a new water and sewerage authority so to discharge their functions as to secure that, taking one year with another, their revenue is not less than sufficient to meet their total outgoings.

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- (2) The Secretary of State may, ^{F6} . . . by order direct that a new water and sewerage authority shall discharge their functions, during any period specified in the direction, with a view to securing that they achieve in respect of that period a rate of return on the value of their net assets (as for the time being defined for the purposes of this section by the Secretary of State) which is not less than such rate as the Secretary of State specifies in the direction as the rate of return which he considers it is reasonable for the authority in question to achieve; but a statutory instrument containing any order made under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) After consultation with a new water and sewerage authority, the Secretary of State may, ^{F6} . . . determine that the authority shall (in addition to or in place of a duty imposed by virtue of subsection (2) above but without prejudice to the duty imposed by subsection (1) above) be subject to a specified duty of a financial nature; and different determinations may be so made in relation to different authorities and to different functions and activities of an authority.
- (4) Where a duty specified in a determination under subsection (3) above is in place of a duty imposed by virtue of subsection (2) above, the determination shall be by order.
- (5) A determination under subsection (3) above may—
 - (a) relate to a period beginning before the date on which it is made;
 - (b) contain incidental or supplemental provisions;
 - (c) be varied (by order where the determination was by order) by a subsequent determination under that subsection.
- (6) An order made by virtue of subsection (4) above shall not be made unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.
- (7) It shall be the duty of a new water and sewerage authority to secure that their charges make a proper contribution to their duties, as respect financial matters, under this Part of this Act, taking into account—
 - (a) the authority's present circumstances and future prospects; and
 - (b) any duty imposed on them by virtue of subsection (2) or (3) above.

Textual Amendments

F6 Words in s. 83(2)(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 116(3), Pt. IV; S.I. 1998/3178, art. 3

84 Financing and borrowing.

- (1) The Secretary of State may—
 - (a) out of money provided by Parliament and subject to such conditions as he thinks fit to impose, make payment under this paragraph (except for the purpose mentioned in paragraph (b) below), by way of grant to a new water and sewerage authority—
 - (i) in respect of the exercise of their functions; and
 - (ii) in respect of their administrative expenses;

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- (b) out of money so provided, make payment under this paragraph by way of grant to such an authority for the purpose of meeting, or alleviating, any loss they may sustain—
- (i) by reason of their complying with a direction given under section 117 of this Act; or
 - (ii) by virtue of regulations made under section 81 of this Act,
- of such sums as he may, ^{F7} . . . determine.
- (2) Subject to subsection (7) below, for the purpose of the exercise of any of their functions, a new water and sewerage authority—
- (a) may, subject to such conditions as, ^{F7} . . . the Secretary of State thinks fit to impose, borrow from him, and he may lend to them, sums of such amounts as he may, ^{F8} . . . determine; and
 - (b) may, with the consent of the Secretary of State ^{F9} . . ., borrow money, whether in sterling or otherwise, from any other person or body, whether in the United Kingdom or elsewhere.
- (3) Where a body (whether the Board or a local authority) whose property, rights and liabilities are to be transferred to a new water and sewerage authority under a transfer scheme, is liable to repay an amount borrowed, sums lent to the new water and sewerage authority under paragraph (a) of subsection (2) above may, without prejudice to the generality of that paragraph, include sums to be paid by them to the body for the purpose of enabling the body, before the transfer date, to make such repayment; and a body who receive an amount from a new water and sewerage authority by virtue of this subsection shall, in accordance with any direction to them under this subsection by the Secretary of State, use the amount for that purpose.
- (4) Any loans made in pursuance of subsection (2)(a) above shall be repaid to the Secretary of State at such times and by such methods, and interest on the loans shall be paid to him at such times and at such rates, as he may from time to time, ^{F7} . . . direct.
- (5) The Treasury may issue, out of the National Loans Fund, to the Secretary of State such sums as are necessary to enable him to make loans in pursuance of subsection (2)(a) above; and any sums received by him in pursuance of subsection (4) above shall be paid into that fund.
- (6) It shall be the duty of the Secretary of State, as respects each financial year—
- (a) to prepare, ^{F10} . . . an account of sums issued to the Secretary of State in pursuance of subsection (5) above, of any sums required to be paid into the National Loans Fund in pursuance of that subsection and of the disposal by him of the respective sums; and
 - (b) to send a copy of the account to the Comptroller and Auditor General not later than the end of the month of November next following that financial year;
- and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it, and of his report on it, before each House of Parliament.
- (7) The aggregate amount outstanding, otherwise than by way of interest, in respect of—
- (a) all lending to the new water and sewerage authorities under subsection (2) above; and
 - (b) all amounts borrowed which those authorities are liable to repay by virtue of section 91(1) of this Act,

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shall not exceed £3,000 million, or such greater sum not exceeding £4,500 million as the Secretary of State may, ^{F7} . . . by order specify.

- (8) An order made under subsection (7) above shall not be made unless a draft of the order has been laid before, and approved by resolution of, the Commons House of Parliament.

Textual Amendments

- F7** Words in s. 84(1)(b)(2)(a)(4)(7) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 116(4)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F8** Words in s. 84(2)(a) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 116(7)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F9** Words in s. 84(2)(b) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 116(5)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F10** Words in s. 84(6)(a) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 116(6)**, Pt. IV; S.I. 1998/3178, **art. 3**

85 Guarantees.

- (1) The Secretary of State may, ^{F11} . . . guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which a new water and sewerage authority borrow from a person other than the Secretary of State.
- (2) Immediately after a guarantee is given under this section, the Secretary of State shall lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling a guarantee so given, he shall lay before each House of Parliament a statement relating to that sum, as soon as possible after the end of each financial year, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (3) Any sums required by the Secretary of State for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.
- (4) If any sums are issued by the Secretary of State in fulfilment of a guarantee given by him under this section the authority in question shall make to him, at such times and in such manner as, ^{F11} . . . he may from time to time direct, payments of such amounts as, ^{F12} . . . he may so direct in or towards repayment of the sums so issued and payments of interest, at such rate as, ^{F12} . . . he may so direct, on the amount outstanding for the time being in respect of sums so issued.

Textual Amendments

- F11** Words in s. 85(1)(4) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 116(4)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F12** Words in s. 85(4) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 116(7)**, Pt. IV; S.I. 1998/3178, **art. 3**

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86 Directions as to payment and investment.

The Secretary of State may from time to time, after consultation with a new water and sewerage authority, direct them—

- (a) to pay to him, on a date specified in the direction, such sum as may be so specified, being a sum not required; or
- (b) to invest, in such manner as may be so specified, such sum as may be so specified, being a sum not immediately required,

for the exercise of their functions nor apart from this section payable under or by virtue of any provision of this Act.

87 Accounts.

- (1) It shall be the duty of a new water and sewerage authority—
 - (a) to keep proper accounts and proper records in relation to the accounts; and
 - (b) to prepare in respect of each financial year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the authority in question.
- (2) Every statement of accounts prepared by an authority in accordance with this section shall comply with any requirement which the Secretary of State has, ^{F13} . . . notified in writing to the authority and which relates to—
 - (a) the information to be contained in the statement;
 - (b) the manner in which that information is to be presented; or
 - (c) the methods and principles according to which the statement is to be prepared.
- (3) In this Part of this Act “financial year” means any period of twelve months ending with, and including, the last day of March.

Textual Amendments

F13 Words in s. 87(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 116(4), Pt. IV; S.I. 1998/3178, art. 3

88 Audit of accounts.

- (1) The accounts of a new water and sewerage authority shall be audited by auditors appointed for each financial year by the Secretary of State.
- (2) A person shall not be eligible for appointment for the purposes of subsection (1) above unless he is eligible for appointment as a company auditor under section 25 of the ^{M6}Companies Act 1989.
- (3) A copy of any accounts of an authority which are audited under subsection (1) above and of the report made on those accounts by the auditors shall be sent to the Secretary of State as soon as reasonably practicable after the report is received by the authority; and the Secretary of State shall lay a copy of any accounts or report sent to him under this subsection before Parliament.
- (4) In this section “accounts”, in relation to an authority, includes any statement under section 87 of this Act.

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Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

Marginal Citations

M6 1989 c. 40.

Subsidiary powers of new authorities

89 Subsidiary powers of new authorities.

- (1) A new water and sewerage authority may—
 - (a) commission or support (whether by financial means or otherwise) research which in their opinion is relevant to, or directly related to, any of their functions; or
 - (b) themselves initiate and carry out research which in their opinion is directly related to any of their functions.
- (2) With the consent of the Secretary of State, a new water and sewerage authority—
 - (a) may form or promote, or join with any other person in forming or promoting, a company (within the meaning of the ^{M6}Companies Act 1985);
 - (b) may (whether in Scotland or elsewhere) provide advice and assistance to any person as respects any matter in which they have skill and experience.
- (3) Without prejudice to any powers exercisable apart from this subsection but subject to the provisions of this Act and of the 1968 and 1980 Acts, a new water and sewerage authority shall have power to do anything (whether in Scotland or elsewhere) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

Marginal Citations

M7 1985 c. 6.

Dissolution of Central Scotland Water Development Board

90 Dissolution of Central Scotland Water Development Board.

- (1) The Central Scotland Water Development Board shall be dissolved on 1st April 1996.
- (2) Notwithstanding the repeal by this Act of paragraph (c) of section 106(1) of the 1973 Act (application of certain provisions of that Act to bodies other than local authorities etc.), the provisions applied by virtue of that paragraph to the Board shall, as respects the financial year ending on 31st March 1996, continue to apply after that date in relation to the Board; but anything which shall or may be done or enjoyed, or any access, inspection or copying which shall or may be allowed, under or by virtue of any of those provisions or of section 118 of that Act (financial returns) by, or by an officer of, the Board shall, or as the case may be may, after that date, be done, enjoyed or allowed by, or by an officer of, the East of Scotland Water Authority in place of the Board or of an officer of the Board.

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Transfer of property, rights and liabilities to new authorities

91 Transfer of property, rights and liabilities to new authorities.

- (1) Subject to subsections (8) and (9) below, and to section 95 of this Act, on 1st April 1996 (in this Part of this Act referred to as “the transfer date”) all property, rights and liabilities to which—
- (a) the Central Scotland Water Development Board (in this Part of this Act referred to as “the Board”) are entitled or subject immediately before that date; and
 - (b) the regional and islands councils, in the exercise of their functions under any enactment in relation to water supply, to the provision of sewerage and to their dealing with the contents of sewers, are so entitled or subject (in this section referred to as their “relevant” property, rights and liabilities),
- shall, by virtue of this subsection, transfer to and vest in the new water and sewerage authorities and be allocated as between those authorities in accordance with such schemes as are mentioned in subsection (2) below.
- (2) Subject to subsections (5) and (7) below, on or before such date as the Secretary of State may direct (in this section referred to as the “scheme submission date”), the Board and each of the regional and islands councils shall make and submit to him a scheme for the transfer under subsection (1) above of—
- (a) the Board’s; or
 - (b) as the case may be, the council’s relevant,
- property, rights and liabilities (any such scheme so made, or made by the Secretary of State under subsection (8) below, being in the following provisions of this Part of this Act referred to as a “transfer scheme”).
- (3) The transfer scheme submitted by the Board shall, subject to section 95 of this Act, provide for all their property, rights and liabilities to be transferred to, and apportioned between, the new water and sewerage authorities in accordance with such guidance as may be given to the Board by the Secretary of State under this subsection.
- (4) The transfer scheme submitted by a regional or islands council shall, subject to subsection (5) below and to section 95 of this Act, provide in the case of—
- (a) Lothian, Borders, Fife or Central Region, for all their relevant property, rights and liabilities to be transferred to the East of Scotland Water Authority;
 - (b) Strathclyde or Dumfries and Galloway Region, for all their relevant property, rights and liabilities to be transferred to the West of Scotland Water Authority;
 - (c) Highland or Grampian Region or an Islands Area, for all their relevant property, rights and liabilities to be transferred to the North of Scotland Water Authority; and
 - (d) Tayside Region—
 - (i) for all their relevant property, rights and liabilities except such as they are entitled or subject to in the exercise of functions in relation to the provision of sewerage, or dealing with the contents of sewers, in the first added area (within the meaning of Schedule 8 to this Act), to be transferred to the North of Scotland Water Authority; and
 - (ii) for the property, rights and liabilities excepted by sub-paragraph (i) above to be transferred to the East of Scotland Water Authority.

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Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

- (5) In preparing a transfer scheme for the purposes of subsection (1) above a council shall take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme (and in particular, but without prejudice to that generality, as to the description of relevant property, rights and liabilities it is in his view appropriate to transfer to the new water and sewerage authority or authorities in question).
- (6) The Secretary of State, after such consultation with the Board or, as the case may be, with the council which prepared the transfer scheme, as he thinks fit, may—
- (a) approve the scheme, either with or without modifications; or
 - (b) refuse to approve it,
- and a transfer scheme approved under this subsection shall come into force on the transfer date.
- (7) Before the scheme submission date the Secretary of State may give notice to the Board, or as the case may be to a council, that on the basis of such information as has (or has not) been submitted to him by the body in question, he considers it unlikely that the body will be in a position, by that date, to submit a transfer scheme to him in conformity with subsections (2) to (4), or as the case may be (5), above; and a body to which such notice is given need not comply (and shall take no further steps to comply) with subsection (2) above.
- (8) If—
- (a) the Secretary of State has given notice to the Board or to a council under subsection (7) above;
 - (b) the Board or council do not submit a transfer scheme under subsection (2) above; or
 - (c) the Board or council submit a transfer scheme which (either or both)—
 - (i) has not been prepared in accordance with the provisions of this Part of this Act; or
 - (ii) could not reasonably be approved by the Secretary of State even after the exercise by him, as extensively as he considers appropriate, of his powers of modification under subsection (6)(a) above,
- he may, in respect of the property, rights and liabilities of the Board or as the case may be of the relevant property, rights and liabilities of the council in question, himself make a transfer scheme to take effect on the transfer date.
- (9) There shall not transfer or vest by virtue of subsection (1) above—
- (a) any right as respects—
 - (i) a charge or rate mentioned in sub-paragraphs (a) to (c) of paragraph 1 of Schedule 11 to the ^{M8}Local Government Finance Act 1992 (charges or rate out of which expenditure incurred by local authority in meeting requisition under Part IV or VIII of the 1980 Act, or in the exercise of functions in relation to water supply, to be met);
 - (ii) a community charge or community water charge (within the meaning of the ^{M9}Abolition of Domestic Rates Etc. (Scotland) Act 1987) or council tax (within the meaning of Part II of the said Act of 1992); or
 - (iii) a non-domestic sewerage rate (whether levied under paragraph 19 of Schedule 5 to the said Act of 1987 or under paragraph 20 of the said Schedule 11); or
 - (b) any right or liability arising under a contract of employment.

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- (10) Where the Secretary of State makes a transfer scheme under subsection (8) above, he may recover his reasonable expenses in so doing, or such proportion of those expenses as he thinks fit—
- (a) before the transfer date, from the Board or as the case may be from the council in question; or
 - (b) on or after the transfer date, from the authority to which property, rights and liabilities of the council have transferred by virtue of paragraph (a), (b), (c) or as the case may be (d)(i) of subsection (4) above or, in the case of the Board, from the authority mentioned in the said paragraph (a),
- by such means as appear to him to be appropriate; and without prejudice to the generality of this subsection those means may include, as respects a council, setting off the expenses payable by them against revenue support grant or non-domestic rate income payable by him to them under paragraph 3 of Schedule 12 to the ^{M10}Local Government Finance Act 1992.

Marginal Citations

M8 1992 c. 14.

M9 1987 c. 47.

M10 1992 c. 14.

92 Transfer schemes: general.

- (1) A transfer scheme may—
- (a) define the property, rights and liabilities to be transferred to the transferee—
 - (i) by specifying the property, rights and liabilities in question;
 - (ii) by specifying all the property, rights and liabilities referable to a particular part of the transferor’s functions; or
 - (iii) partly in the one way and partly in the other;
 - (b) provide that any rights or liabilities specified, or described, in the scheme shall be enforceable by or against either the transferor’s successor or the transferee or by or against both the successor and the transferee;
 - (c) impose on the successor or the transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, as the case may be, the transferee or the successor or such other person as may be specified in the scheme;
 - (d) make appropriate supplemental, incidental, consequential or transitional provision.
- (2) An obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above shall be enforceable by civil proceedings by the successor or the transferee or the other person for an interdict or for any other appropriate remedy.
- (3) A transaction of any description which is effected in pursuance of any such provision as is mentioned in subsection (2) above—
- (a) shall have effect subject to any enactment which provides for transactions of that description to be registered in a statutory register; and

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- (b) subject to paragraph (a) above, shall be binding on all other persons notwithstanding the transaction would, apart from this subsection, have required the consent or concurrence of any other person.
- (4) A right of pre-emption, right of irritancy or similar right affecting land (including, without prejudice to the generality of the expression “similar right”, any right under a clause providing for return or reversion in specified circumstances) shall not operate or become exercisable as a result of any transfer of land—
- (a) by virtue of a transfer scheme;
 - (b) by or under an agreement or instrument made or executed pursuant to any provision of Schedule 11 to this Act or pursuant to any directions given, or requirement imposed, under that Schedule; or
 - (c) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above;
- and, without prejudice to paragraph 8 of that Schedule, any such right shall accordingly have effect in the case of any such transfer as if the transferee in relation to that transfer were the same person in law as the transferor and as if no transfer of the land had taken place.
- (5) Subsection (4) above shall have effect in relation to—
- (a) the grant or creation of an estate or interest in, or right over, land; or
 - (b) the doing of any other thing in relation to land,
- as it has effect in relation to a transfer of land; and any reference in that subsection or in the following provisions of this section to the transferor or the transferee shall be construed accordingly.
- (6) In any case where any such right as is mentioned in subsection (4) above would, apart from that subsection, have operated in favour of, or become exercisable by, a person, but the circumstances are such that, in consequence of the operation of that subsection, the right cannot subsequently operate in favour of that person or, as the case may be, become exercisable by him, such compensation as may be just shall be paid to him by the transferor, the transferor’s successor or the transferee (or, in so far as the particular application of these provisions admits, by any two or by all of them) in respect of the extinguishment of the right.
- (7) Any dispute as to whether any, and (if so) how much, compensation is payable under subsection (6) above, or as to the person to whom or authority by whom it shall be paid, shall be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.
- (8) Subject to subsection (10) below, if it appears to the regional council, or as the case may be to the islands council or the Board, that a person is, or may be, entitled to compensation under subsection (6) above—
- (a) they shall by written notice inform the person that he is, or may be, so entitled and shall invite him to make such representations as he wishes to them within fourteen days after the date of issue of the notice; or
 - (b) where they do not know (either or both)—
 - (i) the name of the person concerned;
 - (ii) his address,they shall publish, in such manner as they consider appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is, or may be, entitled to compensation in respect of the interest

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to make such representations as he wishes to them by a date which they shall specify in the notice, being a date not less than twenty-eight days after the date of publication.

- (9) Any reference in this Part of this Act to a transferor's successor is inapplicable where the transferor is the Board and is otherwise to be construed as a reference to the council for any local government area named in column 1 of Schedule 1 to this Act which is wholly or partly conterminous with the area of the transferor.
- (10) Where the last of the fourteen days after the date of issue of a notice under paragraph (a) of subsection (8) above falls on or after the transfer date, or the date specified in a notice published under paragraph (b) of that subsection so falls, and the representations are invited by—
- (a) a transferor other than the Board, the notice shall direct that any such representations be made to the transferor or, on or after that date, to the transferor's successor;
 - (b) the Board, the notice shall direct that any such representations be made to the Board or, on or after that date, to a specified transferee of the Board (the transferee in question being that which appears to the Board to be the most appropriate in the circumstances).

93 Preparations for transfer of functions etc. to new authorities.

- (1) Subject to the provisions of this Act, a regional or islands council or the Board may do anything which is calculated to facilitate, or is conducive or incidental to, the prospective transfer—
- (a) of their property, rights and liabilities which is provided for in section 91(1) of this Act; or
 - (b) of their rights and liabilities under contracts of employment which is provided for by virtue of section 97 of this Act.
- (2) All the regional or islands councils whose areas fall, wholly or partly, within either or both of the areas mentioned in—
- (a) paragraph (a) of subsection (1) of section 62 of this Act may jointly establish, or be required by the Secretary of State jointly to establish, a committee to consider any matter which it is expedient should be considered before 1st April 1996 in order to ensure the effective operation of the East of Scotland Water Authority thereafter;
 - (b) paragraph (b), or as the case may be paragraph (c), of that subsection, may so establish or be required by the Secretary of State so to establish, a committee to consider as respects, respectively, the West of Scotland Water Authority or the North of Scotland Water Authority any such matter as a committee established under paragraph (a) above is to consider as respects the East of Scotland Water Authority
- (3) A committee established under subsection (2) above shall consist of such number (and respective numbers) of representatives of the councils by whom it is established as may be agreed between the councils or, in default of agreement, as may be determined by the Secretary of State.
- (4) Any expenses incurred by a committee established under subsection (2) above shall be defrayed by the councils by whom the committee was established in such proportions

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respectively as may be agreed between them or, in default of agreement, as may be determined by the Secretary of State.

94 Power to require provision of information and assistance as respects transfer schemes.

- (1) The Secretary of State may direct the Board or any regional or islands council to furnish him, within such period as he may specify (being a period of not less than twenty-one days from the giving of the direction), with such information and assistance as he may require for the purposes of, or in connection with, his functions under section 91 of this Act.
- (2) Without prejudice to the generality of subsection (1) above, the assistance mentioned in that subsection includes allowing a person who is authorised for the purposes of this section by the Secretary of State (and who need not be an officer of the Secretary of State) access to land or premises of the Board, or as the case may be of the council, at such reasonable times as that person may request.
- (3) For the purposes of subsection (2) above—
 - (a) the period of not less than twenty-one days mentioned in subsection (1) above shall be the period by the end of which access must be allowed if requested in accordance with subsection (2); and
 - (b) a consecutive following period shall be specified in the direction under subsection (1) above, during which requests by the person for access (which may include access at the reasonable times for the whole or any part of so much of that period as for the time being remains) shall continue to be allowed.

95 Supplementary provision as to transfer schemes.

Schedule 11 to this Act shall apply to transfers under this Part of this Act.

96 Transfer schemes: exemption from stamp duty and stamp duty reserve tax.

- (1) Stamp duty shall not be chargeable on a transfer scheme or, subject to subsection (2) below, on any instrument which is certified to the Commissioners of Inland Revenue by the Secretary of State as having been made in pursuance of such a scheme.
- (2) No instrument which is certified as mentioned in subsection (1) above shall be taken to be duly stamped unless—
 - (a) it is stamped with the duty to which it would but for that subsection be liable; or
 - (b) it has, in accordance with section 12 of the ^{M11}Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (3) Stamp duty shall not be chargeable on any instrument which is made for the purposes of Schedule 11 to this Act.
- (4) No agreement made for the purposes of, or for purposes connected with, a transfer scheme shall give rise to a charge to stamp duty reserve tax; and no agreement which is made in pursuance of the said Schedule 11 shall give rise to such a charge.

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Marginal Citations

M11 1891 c. 39.

Transfer etc. of staff

97 Staff: application of Chapter 2 of Part I etc.

- (1) In consequence of, or in connection with, the transfer and vesting effected by virtue of section 91(1) of this Act, the Secretary of State may by order under section 8(1) of this Act make provision in relation to the transfer of staff from the Board and from the regional and islands councils to the new water and sewerage authorities; and, subject to subsection (2) below, sections 8 and 9 of this Act shall apply as respects any such transfer as those sections apply to the transfer of staff from an existing local authority (however defined in those sections) to a new authority (however so defined).
- (2) Subsections (3) and (4) of section 8 of this Act shall apply as respects such employees of the Board or of an islands council as are transferred to a new water and sewerage authority as those subsections apply as respects employees of a regional council who are so transferred (subsection (6) of that section applying to an order made by virtue of this subsection as that subsection applies to an order made by virtue of subsection (1) above).
- (3) Section 10 of this Act shall apply as respects persons ceasing to be employed by the Board or by an islands council and being employed by a new water and sewerage authority as that section applies as respects persons ceasing to be employed by an existing local authority (as defined in that section) and being employed by another person (whether or not a new water and sewerage authority).
- (4) The advisory body designated, or as the case may be established, under section 11 of this Act shall carry out such functions in relation to the employees of the Board and, in so far as wholly or mainly employed in the exercise of such functions as are mentioned in section 91(1)(b) of this Act, of the islands authorities as the advisory body have, under section 11, in relation to employees of existing local authorities (as defined in subsection (10) of section 11); and, subject to subsection (5) below, subsections (3) to (8) and (11) of section 11 shall apply accordingly.
- (5) As applied by subsection (4) above—
 - (a) subsections (3) to (6) of section 11 of this Act shall be construed as if references to an authority (unqualified by the word “local”) were references to the Board or to an islands council; and
 - (b) subsection (7) of that section shall be construed as if—
 - (i) the reference to an authority not having ceased to exist were a reference to the Board not having ceased to exist or to an islands authority not having ceased to have such functions as are mentioned in section 91(1)(b) of this Act; and
 - (ii) the references to “an existing authority”, “the authority” and “the local authority concerned” shall be construed as references to the Board or to an islands council.
- (6) The staff commission established under section 12 of this Act shall carry out such functions in relation to the employees of the Board and, in so far as wholly or mainly

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employed in the exercise of such functions as are mentioned in section 91(1)(b) of this Act, of the islands authorities as the commission have, under or by virtue of section 12, in relation to staff transferred from an existing local authority (as defined in subsection (8) of section 12) to a new authority (as so defined).

- (7) This subsection applies to any person who, at any time after the passing of this Act, is in the service—
- (a) of the Board or, in so far as wholly or mainly employed in the exercise of such functions as are mentioned in section 91(1)(b) of this Act, of an islands council; or
 - (b) of a new water and sewerage authority,
- and who suffers loss of employment or diminution of emoluments which is attributable to any provision made by, under or by virtue of this Part, or Part V, of this Act.
- (8) Subsections (2) to (6) of section 13 of this Act shall apply as respects a person to whom subsection (7) above applies as they apply as respects a person to whom that section applies.

Commencement Information

- I4** [S. 97](#) wholly in force at 4.1.1995; [s. 97](#) not in force at Royal Assent see [s. 184\(2\)](#); [s. 97\(6\)](#) in force at 8.11.1994 and in force at 4.1.1995 insofar as not already in force by [S.I. 1994/2850](#), [arts. 2, 3\(a\)](#), [Schs. 1, 2](#)

Land transactions

98 Acquisition of land by agreement.

- (1) A new water and sewerage authority may under this subsection, for the purposes of any of their functions under this or any other enactment or for the purpose of there being provided, by some person other than themselves—
- (a) a supply of water to the public; or
 - (b) a system, to which the public shall have access, of drains, sewers or sewage treatment works,
- acquire by agreement any land (other than water rights) whether situated inside or outside their water area or sewerage area.
- (2) In relation to any acquisition of land under subsection (1) above, the Lands Clauses Acts (except in so far as they relate to acquisition other than by agreement and to access to the special Act and except sections 120 to 125 of the ^{M12}Lands Clauses Consolidation (Scotland) Act 1845), and—
- (a) in a case where the acquisition is in relation to the authority's functions as sewerage authority or for the purpose of the provision of a system such as is mentioned in paragraph (b) of that subsection, sections 6 and 70 to 78 of the ^{M13}Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the ^{M14}Mines (Working Facilities and Support) Act 1923); and
 - (b) in any other case, the said section 6 and Part IV of Schedule 4 to the 1980 Act, are hereby incorporated with this section; and, in construing those Acts for the purposes of that subsection, this section shall be deemed to be the special Act and the

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authority shall be deemed to be the promoters of the undertaking or company as the case may require.

Marginal Citations

M12 1845 c. 19.

M13 1845 c. 33.

M14 1923 c. 20.

99 Compulsory acquisition of land.

- (1) Without prejudice to the provisions of any order under section 17 of the 1980 Act (acquisition of water rights) and subject to section 18 of that Act (authorisation of compulsory acquisition of land necessary for purposes of order under section 17), a new water and sewerage authority may, for any of the purposes mentioned in subsection (1) of section 98 of this Act, be authorised by the Secretary of State to purchase compulsorily under this subsection such land as may, under that subsection, be acquired by them by agreement.
- (2) A new water and sewerage authority are a statutory undertaker for the purposes of subsection (1)(b) of section 120 of the ^{M15}Local Government, Planning and Land Act 1980 (persons to whose compulsory acquisition of an interest in land the ^{M16}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 in certain circumstances applies) not only (by virtue of the definition of “statutory undertaker” in subsection (3)(a) of that section) in respect of their functions as water authority but also in respect of their functions as sewerage authority.
- (3) A new water and sewerage authority may be authorised by the Secretary of State to purchase compulsorily, or may acquire by agreement, land for giving in exchange for such land as is mentioned in section 1(2)(b) of the said Act of 1947.

Marginal Citations

M15 1980 c. 65.

M16 1947 c. 42.

100 Disposal of land.

- (1) Subject to subsection (2) below, a new water and sewerage authority may dispose of land held by them in any manner, to whomsoever and for whatever purpose they wish.
- (2) Except with the consent of the Secretary of State, a new water and sewerage authority shall not dispose of land under subsection (1) above for a consideration less than the best that could reasonably be expected to be obtained on the open market.

Amendment of Sewerage (Scotland) Act 1968

101 Authorisation of construction of certain private sewers etc.

The following section shall be inserted after section 3 of the 1968 Act—

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“3A Authorisation of construction of certain private sewers etc.

(1) Without prejudice to their powers under section 3 of this Act (including any power to authorise the construction, on their behalf, of a public sewer), a sewerage authority may authorise a person to construct, within their area but whether or not connecting with their sewers or sewage treatment works, a sewer—

- (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 he is owner, lessee or occupier,

but where authorisation is so given, subsection (2) of section 3 of this Act shall apply in respect of the person and the construction proposed as that subsection applies in respect of a sewerage authority and works proposed by them under subsection (1) of that section.

(2) The sewerage authority—

- (a) in giving authorisation to a person under subsection (1) above; or
- (b) as respects any sewer (not being a sewer constructed by or on behalf of the authority) whose construction by a person does not require such authorisation,

may, in a case where the proposed sewer will connect with their sewers or sewage treatment works, determine (and by written notice advise the person) that all, or a part which they shall specify in the notice, of the sewer constructed shall not vest in them through the operation of section 16(1)(c) of this Act and shall instead vest in him; but notwithstanding the determination the sewerage authority may, on such terms and conditions as they think fit, then or at some later time enter into an agreement under which the sewer, or as the case may be the part, shall vest in them.”.

102 Emptying of septic tanks.

For section 10 of the 1968 Act (whereby local authorities are under a duty to empty septic tanks only where they have passed a resolution electing to do so) there shall be substituted—

“10 Emptying of septic tanks.

(1) It shall be the duty of a sewerage authority to empty a septic tank serving premises in their area on their being requested to do so by the owner or occupier of the premises; but that duty is subject to subsection (2) below and as respects any particular septic tank—

- (a) to its being reasonably practicable to empty the tank; and
- (b) to all proper charges for their doing so being timeously paid.

(2) The duty does not extend to septic tanks which receive trade effluent; but the authority may, at the request of an owner or occupier of premises served by any such septic tank, agree to empty it on such conditions as to payment or otherwise as they think fit.

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- (3) If any question arises under this section as to whether emptying is reasonably practicable or as to whether a septic tank receives trade effluent, it shall be determined summarily by the sheriff, whose decision in the matter shall be final.
- (4) For the purposes of subsection (1) above, a charge is proper if fixed in accordance with, and timeously paid if paid in accordance with, a charges scheme (within the meaning of Part II of the Local Government etc. (Scotland) Act 1994).”.

103 Register as respects trade effluents.

The following sections shall be inserted after section 37 of the 1968 Act—

“37A Register for purposes of Part II.

- (1) A sewerage authority shall maintain a register for the purposes of this Part of this Act.
- (2) The authority shall enter in the register—
 - (a) such particulars as may be prescribed—
 - (i) of any consent, affecting their area and for the time being extant, given (whether before or after the coming into force of this section) under this Part of this Act; and
 - (ii) of any agreement, affecting their area and for the time being extant, entered into (whether before or after the coming into force of this section) under section 37 of this Act; and
 - (b) such particulars of other matters relative to their functions under this Part of this Act as may be prescribed.
- (3) It shall be the duty of a sewerage authority—
 - (a) to secure that the register maintained by them in pursuance of subsection (1) above is, after such date as may be prescribed, open to inspection by the public free of charge at all reasonable hours; and
 - (b) to afford members of the public reasonable facilities for obtaining from them, on payment of reasonable charges, copies of entries in the register.
- (4) In subsections (2) and (3) above, “prescribed” means prescribed by the Secretary of State by regulations made under this subsection by statutory instrument.
- (5) An instrument containing regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

37B Exclusion from register of information affecting national security.

- (1) No information shall be included in a register maintained under section 37A of this Act if and so long as, in the opinion of the Secretary of State, the inclusion in the register of that information, or of information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purposes of subsection (1) above, give to a sewerage authority directions—

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- (a) specifying information, or descriptions of information, to be excluded from the register; or
- (b) specifying descriptions of information to be referred to him for his determination;

and no information referred to him in pursuance of paragraph (b) above shall be included in the register until he determines that it should be so included.

- (3) The sewerage authority shall notify the Secretary of State of any information they exclude from the register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which (but for this section) might be included in the register but which he believes may be information whose inclusion would be contrary to the interests of national security, by notice so inform the Secretary of State, specifying the information and indicating its apparent nature; and if the person does so—
 - (a) he shall advise the sewerage authority that he has given such notice; and
 - (b) no information in respect of which such advice has been given shall be included in the register until the Secretary of State has determined that it should be so included.”.

104 Disapplication of restrictions on disclosure of information.

In section 50 of the 1968 Act (which imposes restrictions on the disclosure of information obtained under or by virtue of that Act)—

- (a) in subsection (2), after paragraph (a) there shall be inserted—
 - “(aa) in prescribed circumstances or for prescribed purposes; or”; and

- (b) after subsection (3) there shall be added—

“(4) In paragraph (aa) of subsection (2) above, “prescribed” means prescribed by the Secretary of State by regulations made under this subsection by statutory instrument.

(5) An instrument containing regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Subsections (1) and (2) above are subject to regulation 3(7) of the Environmental Information Regulations 1992 (which disapplies restrictions on disclosure if in pursuance of the ^{M17}regulations).”.

Marginal Citations
M17 S.I. 1992/3240.

Status: Point in time view as at 01/07/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

Further amendment of Water (Scotland) Act 1980

105 Restriction on references to Secretary of State of questions regarding water supply.

In section 9(4) of the 1980 Act (which provides that questions as to the terms and conditions on which water is supplied etc. are to be referred to the Secretary of State in the absence of agreement), after the word “supplied” there shall be inserted “ (not being a question as respects charges for the water which is to be supplied) ”.

106 Removal of restriction on supply of water to premises outwith water authority’s limits of supply.

For section 12 of the 1980 Act (which provides for a water authority giving a supply of water to premises situated outwith their limits of supply if the water authority within whose limits the premises are situated consents) there shall be substituted—

“12 Supply of water to premises outwith limits of supply.

Where premises are situated outwith the limits of supply of a water authority, the authority may, after informing the water authority within whose limits of supply the premises are situated, give a supply of water to the premises.”.

107 Supply of water for use outwith Scotland.

The following section shall be inserted after section 13 of the 1980 Act—

“13A Supply of water for use outwith Scotland.

- (1) A water authority may, if for the time being they are satisfied that such supplies of water as are available to them are likely to be more than sufficient to enable them to fulfil their duties as respects the supply of water to premises in Scotland, enter into an agreement with any other person to give him, on such terms and conditions as they think fit and whether or not in bulk, a supply of water for use outwith Scotland.
- (2) For the purposes of laying any pipes or installing any apparatus connected therewith, being pipes or apparatus required for giving a supply of water in pursuance of an agreement entered into under subsection (1) above, a water authority may exercise, either within or outwith their limits of supply, the like powers with respect to laying mains or breaking open roads as are exercisable by them under this Act for the purposes of laying mains, but subject to the like conditions and obligations.”.

108 Further provision as regards removal of restrictions on supply of water outwith limits of supply.

For section 21 of the 1980 Act (which provides powers for the purposes of a water authority providing the whole or part of their limits of supply with a supply of water) there shall be substituted—

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Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

“21 Power to carry out works.

Without prejudice to any other powers which they may have, a water authority may, for the purposes of providing a supply of water under this Act and subject to its provisions—

- (a) construct, alter, acquire by purchase, lease or otherwise, or renew or maintain, waterworks;
- (b) so acquire any undertaking belonging to persons, other than a water authority, who are supplying or are authorised to supply water;
- (c) so acquire premises to be used for the purposes of the authority and maintain such premises;
- (d) contract with any person for a supply by him of water in bulk or otherwise; or
- (e) erect and maintain a house for the use of a person employed by them for the purposes of their undertaking.”.

109 Right of objection to proposed laying of mains.

In section 23 of the 1980 Act (power to lay mains), after subsection (1) there shall be inserted—

“(1A) If within two months after the service of a notice under subsection (1)(b) above the owner or occupier objects to the water authority about the proposed works (and that objection is not withdrawn), the authority shall not proceed to lay the main but shall refer the matter by summary application to the sheriff, who may—

- (a) grant consent to the proposed works, either unconditionally or subject to such terms and conditions as he thinks just; or
- (b) withhold his consent;

and the decision of the sheriff on the matter shall be final.”.

110 Vesting of certain supply pipes.

In section 24 of the 1980 Act (which makes provision as regards communication and supply pipes)—

- (a) in subsection (4)—
 - (i) after the word “road” there shall be inserted “ and is not, by virtue of any of subsections (5) to (8) below, vested in them ”; and
 - (ii) at the end there shall be added “ and to the terms and conditions of any such agreement as is mentioned in subsection (8) below ”; and
- (b) after subsection (4) there shall be added—

“(5) Where the laying of a supply pipe is completed after such day as the Secretary of State may under this subsection by order appoint, so much of that pipe as may lie between a communication pipe with which it connects and the curtilage of the premises supplied shall, on such completion, vest in the water authority in whom is vested the communication pipe as shall any apparatus used wholly or mainly in connection with that supply pipe; and a supply pipe in so far as so lying is, together with any apparatus so used in connection with it,

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Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

referred to in the following provisions of this section as a “relevant supply pipe”.

(6) Subject to subsection (7) below, on such day as the Secretary of State may by order appoint, a relevant supply pipe which is not then vested in any water authority (and whose laying is complete) shall vest in the water authority in whom the communication pipe is vested.

(7) Subsection (6) above shall have no effect in relation to any relevant supply pipe in respect of which notice is both given and not withdrawn, within the period of three months before the day appointed under that subsection—

(a) to the water authority in question by the person (or as the case may be any one of the persons) in whom the pipe is, or will immediately before that day be, vested stating that he does not wish the pipe to vest in the water authority under that subsection; or

(b) to such person (or as the case may be persons) by the water authority stating that the pipe is inappropriate for the purpose of supplying water to the premises, whether by reason of its state of repair or otherwise,

but at any time after the appointed day the person, or as the case may be persons, in whom the pipe is vested may by notice specify a day on which he desires (or they desire) that the pipe shall vest in the authority and if the pipe is on that specified day appropriate for the purpose of supplying water to the premises it shall vest accordingly.

(8) If a relevant supply pipe does not vest in a water authority by virtue of subsection (6) or (7) above, the pipe may nevertheless vest by agreement in the authority—

(a) on such terms and conditions; and

(b) as from such day after the appointed day,

as the person (or persons) and the water authority consider appropriate.

(9) The water authority shall, at their own expense, carry out any necessary work of maintenance, repair or renewal of relevant supply pipes vested in them by virtue of any of subsections (5) to (7) above; but this subsection is without prejudice to the terms and conditions of any such agreement as is mentioned in subsection (8) above.

(10) Any dispute arising under subsection (7) above as to whether—

(a) a notice under paragraph (b) of that subsection should be withdrawn as unjustified;

(b) apparatus is used wholly or mainly in connection with a supply pipe; or

(c) on a specified day a relevant supply pipe is appropriate for the purpose of supplying water to the premises,

shall be referred by the person or persons in whom the pipe is vested to the Secretary of State, who may determine the dispute himself or, if he thinks fit, refer it for determination by arbitration.”

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Changes to legislation: There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II. (See end of Document for details)

111 Duty of water authority to keep map showing water mains etc.

The following section shall be inserted after section 24 of the 1980 Act—

“24A Keeping of map showing water mains, etc.

- (1) A water authority shall keep deposited at their principal office a map showing and distinguishing so far as is reasonably practicable all water mains, communication pipes and supply pipes which are vested in them by virtue of this Act or of Part II of the Local Government etc. (Scotland) Act 1994; and the authority shall provide reasonable facilities at that office for inspection of the map by any person and shall permit a copy of the map, or of an extract of it, to be taken by a person on his paying such reasonable amount as the authority may determine.
- (2) A water authority shall keep deposited at such of their offices, other than their principal office, as they consider appropriate, a copy relevant to the office in question of part of the map mentioned in subsection (1) above; and the authority shall provide the like facilities and permission in relation to the copy part, at the office at which that copy is deposited, as, under subsection (1) above, they do in relation to the map mentioned in that subsection at their principal office.
- (3) For the purposes of subsection (2) above, a copy is relevant to an office if it is of such part of the map mentioned in subsection (1) above as appears to the water authority to be appropriate having regard to the geographical location of that office.”.

112 Simplification of provisions as respects opting for water supply by meter.

For section 41A of the 1980 Act (which makes provision as respects the supply of water by meter) there shall be substituted—

“41A Supply of water by meter.

The occupier of premises to which water is supplied shall have the option, provided that he has (if he is not himself the owner of the premises) the consent of the owner, of taking the supply by meter; but the exercise of that option shall be conditional upon—

- (a) the payment by the occupier of any reasonable charges made by the authority under section 35 of this Act; and
 - (b) the acceptance by him of such reasonable terms and conditions as may be published by the water authority under section 55(1) of this Act,
- and any question as to whether any such charges or terms and conditions are reasonable shall, in default of agreement, be referred to the Secretary of State who may determine it himself or, if he thinks fit, refer it to arbitration.”.

113 Actings of Secretary of State on default of water authority.

In section 76E(4) of the 1980 Act (which provides for enforcement, by default order, of requirements as to quality of water unless the Secretary of State is satisfied that failures complained of were of a trivial nature or that certain undertakings given are being complied with), in paragraph (a)—

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- (a) the words after “of”, where it first occurs, shall be sub-paragraph (i) of the paragraph; and
- (b) after that sub-paragraph there shall be added—
 - “; or
 - (ii) are not continuing and are unlikely to recur;”.

114 Publication and provision of information as respects quality of private supplies of water.

In section 76F of the 1980 Act (general functions of local authorities in relation to water quality), after subsection (6) there shall be added—

- “(7) The Secretary of State may by regulations require a local authority—
- (a) to publish information about the quality of private supplies of water for domestic or food production purposes to any premises in their area; and
 - (b) to provide information to prescribed persons about the quality of water so supplied.
- (8) Regulations under subsection (7) above—
- (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
 - (b) may require the provision of information by a local authority to any person to be free of charge or may authorise it to be subject to the payment by that person to the authority of a prescribed charge; and
 - (c) may impose such other conditions on the provision of information by a local authority to any person as may be prescribed.”.

115 Regulations as to certain procedures.

In section 101 of the 1980 Act (provisions as to regulations), after subsection (1A) there shall be added—

- “(1B) The Secretary of State may by regulations make provision as to—
- (a) the manner in which and the time within which a question or dispute may be referred (other than by him for determination by arbitration), or a request may be made, in pursuance of section 6(3), 9(4) or 24(10) of this Act and as to the procedure for dealing with any such reference or request; and
 - (b) the manner in which, subject to sections 76G and 76H of this Act, written representation or objection may be made, submitted or withdrawn under subsection (2) of the said section 76H.”.

Miscellaneous provisions as respects new authorities

116 Power of Secretary of State to give directions to new authorities.

- (1) Subject to subsection (2) below, the Secretary of State may under this subsection give a new water and sewerage authority directions of a general or specific character (but not such directions as may be given under section 117 of this Act) as to the exercise

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of the authority's functions; and it shall be the duty of the authority to comply with those directions.

- (2) Before giving an authority directions under subsection (1) above, the Secretary of State shall consult the authority.

117 Directions in the interests of national security.

- (1) The Secretary of State may, after consultation with a new water and sewerage authority, give the authority such directions of a general character as appear to him requisite or expedient—
- (a) in the interests of national security; or
 - (b) for the purpose of mitigating the effects of any civil emergency which may occur.
- (2) If it appears to the Secretary of State to be requisite or expedient to do so in the national interest or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with a new water and sewerage authority, give the authority a direction requiring that they do, or as the case may be do not do, a particular thing specified in the direction.
- (3) A new water and sewerage authority, notwithstanding any other duty imposed on them by, under or by virtue of this or any other Act, shall comply with any direction given to them under this section by the Secretary of State.
- (4) The Secretary of State shall lay before each House of Parliament a copy of a direction given ^{F14} by him] under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.

^{F15}(4A) The Scottish Ministers shall lay before the Scottish Parliament a copy of—

- (a) any direction given by them under this section (by virtue of provision made under section 63 of the Scotland Act 1998); and
- (b) any direction given by the Secretary of State under this section,

unless the Secretary of State is of the opinion that disclosure of the direction is against the interests of national security.]

- (5) A person shall not disclose, or be required on any basis whatsoever to disclose, anything done by virtue of this section if the Secretary of State is of the opinion that disclosure of the thing would be against the interests of national security and has notified him of that opinion.
- (6) A person who, in contravention of subsection (5) above, discloses anything shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) In subsections (1) and (2) above, “civil emergency” means a natural disaster or other emergency which in the opinion of the Secretary of State is, or may be, likely—
- (a) so to disrupt water supplies, the provision of sewerage or disposal of sewage in; or
 - (b) to involve such destruction of, or damage to, life or property in, any area as seriously and adversely to affect all the inhabitants of the area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.

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Textual Amendments

- F14** Words in s. 117(4) inserted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 15(2)** (with art. 7); S.I. 1998/3178, **art. 3**
- F15** S. 117(4A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch 5 para. 15(3)** (with art. 7); S.I. 1998/3178, **art. 3**

Modifications etc. (not altering text)

- C2** S. 117(1)(2)(5): certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by S.I. 1999/1750, arts. 1, 3, **Sch. 2** (with art. 7); S.I. 1998/3178, **art. 3**

118 Provision of information, etc.

- (1) A new water and sewerage authority shall provide the Secretary of State with such information relating to the exercise (and proposed exercise) of their functions as he may from time to time require, and for that purpose shall—
 - (a) permit any person authorised to do so by the Secretary of State to inspect and make copies of their accounts, books, documents or papers; and
 - (b) provide that person with such explanations in relation to the things inspected as the person may reasonably require.
- (2) As respects, and as soon as possible after the end of, each financial year, a new water and sewerage authority shall make to the Secretary of State a report on the exercise of their powers, and the performance of their functions.
- (3) The Secretary of State shall lay before each House of Parliament a copy of each report received by him under subsection (2) above.

Commencement Information

- I5** S. 118 wholly in force at 1.4.1996; s. 118 not in force at Royal Assent see s. 184(2); s. 118(1) in force at 17.7.1995 by S.I. 1995/1898, art. 2(a), **Sch.**; s. 118(2)(3) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), **Sch. 1**

119 Records held by new authorities.

- (1) Subject to subsection (3) below—
 - (a) this section applies to all records (in whatever form or medium)—
 - (i) transferred to and vested in a new water and sewerage authority by virtue of section 91(1) of this Act;
 - (ii) created or acquired by them in the exercise of any of their functions; or
 - (iii) otherwise in their keeping;
 - (b) the authority shall ensure that the records, other than such as are mentioned in paragraph (c) below, are preserved and managed in accordance with such arrangements as the authority, after consulting the Keeper of the Records of Scotland, shall put into effect;
 - (c) records which, in the opinion of the authority, are not worthy of preservation may be disposed of by them;

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- (d) the authority may from time to time revise the arrangements mentioned in paragraph (b) above but before making any material change to those arrangements shall consult the Keeper; and
 - (e) the authority—
 - (i) shall secure that the Keeper has at all reasonable hours, unrestricted access to the records preserved by them;
 - (ii) may afford members of the public, free of charge or on payment of reasonable charges, facilities for inspecting, and for obtaining copies or extracts from, those records.
- (2) Nothing in subsection (1)(e)(ii) above permits infringement of copyright or contravention of conditions subject to which records are in the keeping of the authority.
- (3) In so far as any provision of, or inserted or amended by, this Part of this Act, being a provision which relates to records of a specific kind, is (but for this subsection) inconsistent with subsection (1) above, that subsection is subject to the provision in question.

120 Duty of new authorities to collaborate.

- (1) The new water and sewerage authorities shall, in matters of common interest which relate to the performance of their functions, consult together and collaborate with each other.
- (2) Where a new water and sewerage authority propose to investigate a potential new source of water supply they shall, as soon as is practicable, give to any other such authority likely to be interested, notice of the proposal so that such consultation as is required in relation to the proposal by subsection (1) above may then begin.

Commencement Information

- I6** S. 120 wholly in force at 1.4.1996; s. 120 not in force at Royal Assent see s. 184(2); s. 120(1) in force at 17.7.1995 by S.I. 1995/1898, art. 2(a), Sch.; s. 120(2) in force at 1.4.1996 by S.I. 1996/323, art. 4(1)(a), Sch. 1

121 Power of new authorities to promote or oppose private legislation.

- (1) A new water and sewerage authority may, where they are satisfied that it is expedient to do so—
 - (a) with the consent of the Secretary of State, petition for the issue of a provisional order under the ^{M18}Private Legislation Procedure (Scotland) Act 1936; or
 - (b) oppose any private legislation in Parliament.
- (2) The consent mentioned in paragraph (a) of subsection (1) above shall be withheld if the Secretary of State considers that the powers sought by the order petitioned for could be obtained by means of an order under the 1980 Act or, as the case may be, under the 1968 Act.
- (3) An application for the consent so mentioned shall be accompanied by a concise summary of the purposes of the order petitioned for.
- (4) In paragraph (b) of subsection (1) above, “private legislation in Parliament” includes—

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- (a) a provisional order and a Confirmation Bill relating to such an order; and
- (b) any local or personal Bill.

Marginal Citations

M18 1936 c. 52.

122 Supply of goods and services to new authorities by local authorities.

The powers conferred by section 1 of the ^{M19}Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to public bodies) shall be exercisable by a local authority as if the new water and sewerage authorities were public bodies within the meaning of that section.

Marginal Citations

M19 1970 c. 39.

123 Power to require local authorities and assessors to supply information to new authorities.

- (1) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, require a local authority or an assessor to furnish relevant information (whether in documentary form or in such other form as he may specify) to a new water and sewerage authority.
- (2) For the purposes of subsection (1) above, information is relevant if, being information held—
 - (a) by the local authority in connection with their—
 - (i) setting, levying or collecting council tax or council water charges (within the meaning of Part II of the ^{M20}Local Government Finance Act 1992) or the non-domestic water rate or non-domestic sewerage rate (as defined in paragraphs (c) and (d) of section 99(2) of that Act before the repeal of those paragraphs by this Act); or
 - (ii) levying or collecting the non-domestic rate (as for the time being defined in section 37(1) of the 1975 Act); or
 - (b) as the case may be, by the assessor in connection with his functions under any enactment,

its possession by the new water and sewerage authority would, in the opinion of the Secretary of State, be likely to assist that authority to make a charges scheme or to collect, or arrange to have collected, such charges as may be fixed by a charges scheme made by them.
- (3) In the application of subsections (1) and (2) above to any requirement to furnish information imposed—
 - (a) before 1st April 1996, “local authority” means a regional or islands council and “assessor” an assessor appointed under section 116(2) or (5) of the 1973 Act; and
 - (b) on or after that date—

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- (i) “local authority” means a council constituted under section 2 of this Act or a residuary body; and
 - (ii) “assessor” shall be construed in accordance with section 27 of this Act.
- (4) Without prejudice to the generality of subsections (1) and (2) above, in those subsections “information” includes a copy of the whole, or of any part of, a valuation roll or valuation list.

Marginal Citations

M20 1992 c. 14.

Other miscellaneous provisions

124 Cancellation of obligation to contribute towards certain expenses incurred as respects sewerage, or disposal of sewage, in rural localities.

Any contribution which the Secretary of State undertook, before 1st April 1986, to make towards such expenses as are mentioned in section 1(1)(b) of the ^{M21}Rural Water Supplies and Sewerage Act 1944 (expenses incurred by a local authority in making adequate provision for the sewerage, or the disposal of the sewage, of a rural locality), and which, though payable on or after that date has not been paid, shall cease to be exigible.

Marginal Citations

M21 1944 c. 26.

General

125 Interpretation of Part II.

In this Part of this Act—

- “the Board” means the Central Scotland Water Development Board;
- “charges scheme” has the meaning given by section 76(1);
- “the Customers Council” means the Scottish Water and Sewerage Customers Council (provision for the establishment of which is made by section 67(1));
- “financial year” has the meaning given by section 87(3);
- “local authority” means, subject to section 123(3), a council constituted under section 2;
- “the new water and sewerage authorities” has the meaning given by section 62(2);
- “the 1968 Act” means the ^{M22}Sewerage (Scotland) Act 1968;
- “the 1980 Act” means the ^{M23}Water (Scotland) Act 1980;
- “successor” shall be construed in accordance with section 92(9);
- “transfer date” has the meaning given by subsection (1) of section 91 and
- “transfer scheme” the meaning given by subsection (2) of that section.

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Marginal Citations

M22 1968 c. 47.

M23 1980 c. 45.

[^{F16}125A] Application of Part II to Crown.

- (1) Subject to the provisions of this section, this Part of this Act shall bind the Crown.
- (2) No contravention by the Crown of any provision made by or under this Part of this Act shall make the Crown criminally liable; but the Court of Session may, on the application of a new water and sewerage authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, any provision made by or under this Part of this Act shall apply to persons in the public service of the Crown as it applies to other persons.
- (4) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity.
- (5) Subject to subsection (4) above, the powers conferred by section 99 above shall be exercisable in relation to land in which there is a Crown interest only with the consent of the appropriate authority.
- (6) In this section—
 - “the appropriate authority” has the same meaning as it has in [^{F17}section 242(2) of the Town and Country Planning (Scotland) Act 1997];
 - “Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
 - “Crown premises” means premises held by or on behalf of the Crown.
- (7) The provisions of [^{F17}subsection (3) of section 242 of the Town and Country Planning (Scotland) Act 1997] (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.

Textual Amendments

F16 S. 125A inserted (*prosp.*) by 1995 c. 25, ss. 116, 125(3), **Sch. 21 Pt. II para. 6** (with ss. 7(6), 115, 117)

F17 Words in s. 125A(6)(7) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 58** (with s. 5, Sch. 3)

126 Orders under Part II.

Any power to make an order under this Part of this Act is exercisable by statutory instrument.

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Local Government etc. (Scotland) Act 1994, Part II.