



# Public Health (Scotland) Act 1897

## 1897 CHAPTER 38

### PART VI

#### SEWERS, DRAINS, AND WATER SUPPLY.

##### *Sewers and Drains.*

#### **101 Sewers to be vested in local authority, &c.**

All sewers existing within a district and not being private property, or not being and continuing Under the management of persons appointed by the Crown or by or in pursuance of any Act of Parliament or provisional order, together with all manways, lampholes, ventilating shafts, cesspools, surface gratings and their connections, sluices, and all appliances pertaining thereto, shall be vested in the local authority : Provided always, that nothing in this Act contained shall affect the rights of any person or persons to the property or management of any sewers in virtue of any existing local or general police statute.

#### **102 Power to purchase sewers.**

The local authority may, in terms of sections one hundred and forty-four and one hundred and forty-five of this Act, acquire the rights and powers vested in any person to make sewers or to use any sewer, with or without the buildings and other things thereto pertaining. Provided that they shall make compensation for the rights so acquired, and shall also make compensation to the proprietors and occupiers of any lands and heritages which may be damaged by reason of the exercise of the powers hereby conferred, in terms of this Act.

#### **103 Power to make sewers. Sewers to be cleansed.**

The local authority shall have power to construct within their district, and also when necessary for the purpose of outfall or distribution or disposal or treatment of sewage, without their district, such sewers as they may think necessary for keeping their district

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properly cleansed and drained, and may carry such sewers through, across, or under any public or other road, or any street or place, or under any cellar or vault which may be under the foot pavement or carriageway of any street or road, and after reasonable notice in writing (if upon the report of a surveyor it should appear to be necessary), into, through, or under any lands whatsoever, and from time to time to enlarge, lessen, alter, arch over or otherwise; improve, or to close up or destroy, all sewers vested in them, provided no nuisance is created by such operations ; and if any person is thereby deprived of the lawful use of any sewer, the local authority shall provide another sufficiently effectual for his use. The local authority shall cause their sewers to be so constructed, maintained, kept, and cleansed as not to be a nuisance, and for the purpose of cleansing and emptying them may construct and place, either above or under ground, such reservoirs, sluices, engines, or other works as may be necessary, and may, subject to the provisions of the Rivers Pollution Prevention Acts, cause such sewers to communicate with and be emptied into such places as may be fit and necessary either within their district, or, if necessary for the purpose of outfall or distribution or disposal or treatment of sewage, without their district, and to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsoever, but so as not to create a nuisance.

**104 Notice to be given before commencing sewage works without district.**

A local authority shall, three months at least before commencing under the provisions of this Act the construction of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more newspapers circulating in the district, or by the posting of handbills throughout the district where the work is to be made. Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes and the public roads and streets and other lands (if any) through, across, under, or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, tenants or reputed tenants, and occupiers of the said lands, and on the local authority and county council where such district is situate.

**105 In case of objection, work not to be commenced without sanction of Board.**

If any such owner, tenant, or occupier, or any such local authority or county council, or any other owner, tenant, or occupier who would be affected by the intended work, objects to such work and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the Board after such inquiry as herein-after mentioned, unless such objection is withdrawn.

**106 Inspector to hold inquiry and report to Board.**

The Board may, on application of the local authority desirous of constructing said work, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector the Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

### **107 Protection for railways, canals, &c.**

Where any sewer shall pass under or across, or in any way affect any railway or canal, or any bridge, tunnel, or other work in connection therewith, the following provisions for the protection of such railway or canal, or bridge, tunnel, or other-work, shall apply and have effect:—

- (1) The whole works connected with such sewer, so far as affecting any railway or canal, or bridge, tunnel, or other work, shall be executed and thereafter maintained under the superintendence and to the reasonable satisfaction of the engineer of the railway or canal company, and according to plans and specifications to be previously submitted to such engineer and approved by him in writing. Provided that if such engineer shall not have expressed his approval or disapproval of such plans and specifications within fourteen days after the same shall have been submitted to him, he shall be deemed to have approved thereof ;
- (2) Such works, and any alteration which it may at any time be necessary to make in such works, may be executed either by the local authority or by the railway or canal company at the option of the engineer of the railway or canal company ;
- (3) In the event of the local authority and the engineer of the railway or canal company differing in opinion in regard to any works affecting the railway, or canal, or bridge, tunnel, or other work, or as to the mode of carrying out such works, or otherwise in relation thereto, such difference shall, on the application of the local authority, or of the railway or canal company, be referred to an engineer to be appointed by the sheriff, and shall be decided by the sheriff upon the report of such engineer, and such decision shall be final.

### **108 Powers of utilizing sewage.**

The local authority may from time to time, for the purpose of utilizing sewage, agree with any person as to the supply of such sewage or the distribution or disposal or treatment thereof over land, and as to the works to be made for the purpose of such supply or distribution or disposal, or treatment, and as to the parties to execute the same and to bear the costs thereof, and as to the sums of money, if any, to be paid for that supply; provided that no contract shall be made for the supply of sewage for a period exceeding five years, unless with the authority of the Board, and not for any period exceeding twenty-five years ; and the local authority may, in terms of the provisions of sections one hundred and forty-four and one hundred and forty-five of this Act, contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, distributing, or disposing of or treating sewage.

### **109 Power of entry.**

In case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, making or repairing, altering or enlarging sewers or drains, or other purposes ancillary to the powers herein given as to sewers and drains, and the owner or occupier of premises refuses or withholds access and leave to perform the said operations, the local authority may, after written notice to such owner and occupier, apply to the sheriff, who, if no sufficient cause be shown to the contrary, shall grant warrant to the local authority, their officers and

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others thereby authorised, to enter and do all or any of the works or operations foresaid at all reasonable times in the daytime.

**110 Power to drain into sewers of local authority.**

Any owner or occupier of premises within the district of a local authority liable for the public health general assessment or special sewer assessment shall be entitled to cause his drains to empty into the sewers of such local authority on condition of his giving twenty days previous notice of his intention so to do to the local authority, and of complying with their regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications. Provided always that the sewage so emptied or discharged into the sewers is not of a nature to cause damage to the structure of the sewer or, by admixture with other sewage therein, to cause a nuisance.

**111 Use of sewers by persons beyond district.**

Any owner or occupier of premises beyond the limits of the district of a local authority or within said limits who is not liable for public health general assessment or special sewer assessment may cause any sewer or drain from such premises to communicate with any sewer of the local authority; provided always, that such sewer of the local authority and any works connected therewith are of sufficient capacity and otherwise suitable for receiving such additional drainage ; and that upon such terms and conditions as may be agreed upon between such owner or occupier and such local authority, and any dispute which may arise under this section shall be determined summarily by the sheriff. Provided always that the additional sewage so to be emptied or discharged into the sewers is not of a nature to cause damage to the structure of the sewer or, by admixture with other sewage therein, to cause a nuisance.

**112 Penalty for making unauthorised drains.**

Every person, not being authorised by the local authority, who shall make any drain into any sewer vested in the local authority shall be liable in a penalty not exceeding five pounds; and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them.

**113 Estimates for work.**

Before entering into any contract for executing any such work as herein-before or after mentioned, falling under this part of this Act, or connected with sewage or drainage, if the expense thereof may exceed thirty pounds, the local authority shall procure from a surveyor an estimate of the probable expense of constructing the same in a substantial manner, and of the yearly expense of maintaining the same in repair ; and such surveyor shall accompany such estimate with a report as to the most advantageous mode of constructing such work, whether under a contract for constructing the same merely, or a contract for constructing the same and maintaining it in repair during a given term of years.

**114 Not to build over sewers, &c.**

Unless with consent of the local authority, no building shall be erected over any sewer belonging to the local authority, and no vault, arch, or cellar, or subway, or other structure shall be made, and no pipes of any kind shall be laid so as to interfere with any such sewer.

**115 Sewers to be trapped.**

All sewers and drains, whether public or private, shall be sufficiently trapped and ventilated by the persons to whom they severally belong to the satisfaction of the local authority.

**116 Distilleries, &c. to deposit refuse.**

The owners or occupiers of distilleries, manufactories, and other works shall be compelled, where possible, to dig, make, and construct pools or reservoirs within their own ground, or as near their works as possible, for receiving and depositing the refuse of such works so far as offensive or injurious or dangerous to the health of those living in the vicinity thereof, or to use the best practicable means for rendering the same inoffensive or innoxious before discharging it into any river, stream, ditch, sewer, or other channel.

**117 Prohibition against interrupting free flow of sewage.**

- (1) It shall not be lawful for any person to throw or suffer to be thrown or to pass into any sewer of a local authority, or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain maybe injured.
- (2) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.

**118 Placing carcases in running water, &c.**

It shall not be lawful for any person to throw, or suffer to be thrown into any running water, spring, well, lake, pool, reservoir, drain, or ditch, the carcase of any animal or part thereof, and any person offending against this section shall be liable to a penalty not exceeding ten pounds.

**119 Drain discharging below low-water mark.**

If the local authority shall consider it necessary for public health that any drain should discharge itself below low-water mark, they shall be entitled, with the consent of the Board of Trade and of the Commissioners of Woods and Forests (without prejudice to any question as to the right to the foreshores), to construct the requisite works for that purpose.

**120 As to drainage of houses.**

If a house, distillery, manufactory, or other work, within the district of a local authority, is without a drain, or without such drain as is sufficient for effectual drainage, the local

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authority may, by notice, require the owner of such house, distillery, manufactory, or work, within a reasonable time therein specified, to make a sufficient drain emptying into any sewer which the local authority are entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred yards from the site of the said premises of such owner; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place, not being under any house, as the local authority may direct; and if the person on "whom such notice is served fails to comply with the same, the local authority may, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by them in so doing may be recovered from such owner in a summary

Provided that where in the opinion of the local authority greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such sewer and require the owners of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or in case of dispute the matter shall be determined summarily by the sheriff.

#### **121 Local authorities may combine as to sewerage.**

Two or more local authorities may, with the sanction of the Board, combine together for the purpose of executing, or acquiring an interest in or maintaining any works by this Act or any other Act authorised in regard to sewerage or drainage that, may be for the benefit of their respective districts; and all moneys which they may agree to: contribute for the execution or acquisition or maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution, acquisition, or maintenance of works within their district.

#### **122 Special drainage districts.**

(1) Upon requisition to that effect made in writing by a parish council or by not fewer than ten ratepayers within the district of a local authority not being the local authority of a burgh, the local authority shall be bound to meet, after twenty-one days notice, or, if the local authority itself so resolve, it may meet after twenty-one days notice, and shall, whether sewers or drains have been already constructed or not, consider the propriety of—

- (a) forming part of their district into a special drainage district; or
- (b) enlarging or limiting the boundaries of a special drainage district; or
- (c) combining a special drainage district with another special drainage district; or
- (d) enlarging or limiting the boundaries of both or either of such special drainage districts and combining the same or parts thereof; or
- (e) determining that any special drainage district shall cease to exist as a special drainage district, or that any such combination shall cease;

and the resolution of the local authority shall determine all questions regarding the payment of any debt which may affect any district or special drainage district, and the right to impose and the obligation to pay any assessment affected by such determination, and shall fix the date at which such determination shall take effect; and such resolution shall be published in one or more newspapers circulating in the district, or by the posting of handbills throughout the district, and a copy of said resolution shall be forthwith transmitted to the Board, and, where the local authority is a district

committee, to the county council; and the production of such newspaper or handbill, or a certificate under the hand of the clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within twenty-one days after the date of the first publication of such resolution it shall be competent for any person interested to appeal against the resolution, whatever its terms may be, to the sheriff, and the sheriff, not being a sheriff substitute resident within the district, may either approve or disapprove of such resolution, and if he disapproves thereof he may either find that no special drainage district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special drainage district should be formed and may define the limits thereof, or may find that such special drainage district or part thereof shall be combined as prayed, or that such combination shall cease, or that such special drainage district or districts shall, as such, cease to exist; and the decision of the sheriff shall be binding, and shall be final, except where it is pronounced by a sheriff substitute, in which case it may be appealed to the sheriff.

- (2) The order of the sheriff shall determine all questions regarding the payment of any debt which may affect any district or special drainage district, and the right to impose, and the obligation to pay, any assessment affected by his determination, and shall fix the date at which such determination shall take effect, and a copy of any order pronounced by the sheriff shall be forthwith published in one or more newspapers circulating in the district, or by the posting of handbills throughout the district, and transmitted to the Board and to the county council.
- (3) Where a district committee is the local authority, notwithstanding the provisions of section seventeen, sub-section two, sub-head (c) of the Local Government (Scotland) Act, 1889, it shall not be competent to appeal to the county council against any resolution of the district committee under this section.
- (4) Where a special drainage district has been formed, or may hereafter be formed under the provisions of this Act, the district committee of the district in which such special drainage district is or may be situated, or the county council where a county is not divided into districts, shall in their discretion have power to provide for the drainage of the highways and footpaths under their management and control within such special drainage district, or to pay or contribute out of the assessments raised under the Roads and Bridges (Scotland) Act, 1878, a proportion of the cost of providing and maintaining sewers sufficient for the drainage of such highways and footpaths.
- (5) Nothing contained in this Act shall prejudice the provisions of sub-sections one and two of section eighty-one of the Local Government (Scotland) Act, 1889, as amended by section forty-four of the Local Government (Scotland) Act, 1894.

### **123 Works of distribution of sewage to be deemed a land improvement.**

The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an improvement of land authorised by the Improvement of Land Act, 1864, and the provisions of that Act shall apply accordingly.