
STATUTORY INSTRUMENTS

2005 No. 3172

**The Water Services etc. (Scotland) Act 2005
(Consequential Provisions and Modifications) Order 2005**

References: powers of investigation

5.—(1) The following sections of Part 3 of the Enterprise Act 2002⁽¹⁾ shall apply, with the modifications referred to in paragraphs (2) to (4), for the purposes of references under article 3 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties);
- (h) section 116 (statement of policy);
- (i) section 117 (false or misleading information)⁽²⁾; and
- (j) section 125 (offences by bodies corporate).

(2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—

- (a) subsection (2) were omitted;
- (b) in subsection (7), for the words “statutory maximum” there were substituted “amount specified as level 5 on the standard scale”; and
- (c) in subsection (9), the words from “or section” to “section 65(3)” were omitted.

(3) Section 111 shall, in its application by virtue of paragraph (1), have effect as if—

- (a) for subsection (4) there were substituted—
 - “(4) No penalty imposed under section 110(1) shall—
 - (a) in the case of a fixed amount, exceed £20,000;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed £5,000; and
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed—
 - (i) in respect of a fixed amount, £20,000; and
 - (ii) in respect of an amount calculated by reference to a daily rate, £5,000.”;
- (b) in subsection (5)(b)(ii)—

⁽¹⁾ 2002 c. 40. There have been amendments to Part 3 which are not relevant to this Order.

⁽²⁾ Section 117 has been amended by the Communications Act 2003 (c. 21) (“the 2003 Act”), section 389 and Schedule 16, paragraph 20.

- (i) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
 - (ii) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
 - (iii) the words “by this Part” were omitted; and
- (c) for subsection (6) there were substituted–
- “(6) No penalty imposed under section 110(3) shall exceed £20,000.”.
- (4) Section 117 shall, in its application by virtue of paragraph (1), have effect as if–
- (a) in each of subsections (1)(a) and (2)–
 - (i) the words “the OFT, OFCOM,” and “or the Secretary of State” were omitted;
 - (ii) for “their” there were substituted “its”; and
 - (iii) for “this Part” there were substituted “the Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005”; and
 - (b) in subsection (3), for the words “statutory maximum” there were substituted “amount specified as level 5 on the standard scale”.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 and 125 of that Act shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.