

# Water Resources (Scotland) Act 2013

2013 asp 5

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Water Resources (Scotland) Act 2013

## 2013 asp 5

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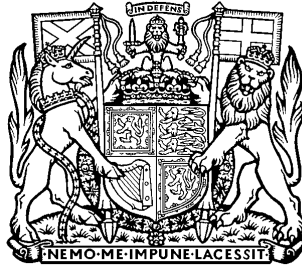
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# Water Resources (Scotland) Act 2013

## 2013 asp 5

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 27th February 2013 and received Royal Assent on 9th April 2013**

An Act of the Scottish Parliament to make provision for the development of Scotland's water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water's functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewerage works; to enable the making of water shortage orders; and for connected purposes.

### **PART 1**

#### DEVELOPMENT OF WATER RESOURCES

#### **1 Duty of the Scottish Ministers**

- (1) The Scottish Ministers must—
  - (a) take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland's water resources,
  - (b) do so in ways designed to promote the sustainable use of the resources.
- (2) In fulfilling the duty under subsection (1), the Scottish Ministers are to act so far as is consistent with the proper exercise of their—
  - (a) functions under the 2003 Act and the 2009 Act,
  - (b) other functions (whether or not relating to water resources or environmental matters).
- (3) In subsection (1), the reference to the value of water resources—
  - (a) means the value of the resources on any basis (including their monetary or non-monetary worth),

- (b) extends to the economic, social, environmental or other benefit deriving from the use of the resources (or any activities in relation to them).
- (4) In this section—
  - “the 2009 Act” means the Climate Change (Scotland) Act 2009,
  - “water resources” means wetland, inland water and transitional water as defined by section 3 of the 2003 Act.

## **2 Involvement of public bodies**

- (1) For the purpose of securing its participation in development of the kind mentioned in section 1(1), the Scottish Ministers may give a designated body directions as to the exercise of its functions.
- (2) Directions under subsection (1) may be—
  - (a) of a general or specific character,
  - (b) for collective or individual application.
- (3) Before giving directions under subsection (1), the Scottish Ministers are to consult each body to which they would apply.
- (4) A body must comply with directions under subsection (1) applying to it.
- (5) Directions under subsection (1) may vary or revoke earlier such directions.
- (6) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to a designated body.

## **3 Designation of bodies**

- (1) In section 2, the references to a designated body are to any of the following—
  - (a) Scottish Water,
  - (b) the Scottish Environment Protection Agency,
  - (c) Scottish Natural Heritage,
  - (d) Scottish Enterprise,
  - (e) Highlands and Islands Enterprise.
- (2) The Scottish Ministers may by regulations modify the list in subsection (1) by—
  - (a) adding a public body,
  - (b) updating or removing an entry.
- (3) Before making regulations under subsection (2), the Scottish Ministers are to consult each body to which the modification would relate.
- (4) Regulations under subsection (2) are subject to the negative procedure.

## **4 Reports on steps taken**

- (1) The Scottish Ministers—



- (a) for each successive period of 12 months within the 3 years beginning with the date on which section 1(1) comes into force, must prepare an annual report on how (and the extent to which) they have fulfilled the duty under that section during the relevant period,
  - (b) from time to time as they consider appropriate, may prepare a further report on how (and the extent to which) they have fulfilled the duty under section 1(1) during any subsequent period of at least 3 years.
- (2) A report may include such additional information as the Scottish Ministers consider appropriate.
  - (3) A report is to be laid before the Scottish Parliament as soon as reasonably practicable after the end of the period to which the report relates.

## **PART 2**

### **CONTROL OF WATER ABSTRACTION**

#### *Introduction*

#### **5 Qualifying abstraction**

- (1) In this Part, “qualifying abstraction” means abstraction of water by any person—
  - (a) from a particular body of inland water within Scotland, and
  - (b) at a rate above the relevant threshold.
- (2) In this Part, “abstraction” in relation to a body of inland water has the same meaning as in section 20(3)(b) of the 2003 Act in relation to a body of water of the sort to which that section relates (see section 20(6) of that Act).
- (3) In this Part, “inland water” is as defined by section 3 of the 2003 Act.

#### **6 Prohibition arising**

- (1) A qualifying abstraction is prohibited if it is not—
  - (a) approved as described in subsection (2), or
  - (b) exempt by virtue of section 7.
- (2) It is approved if—
  - (a) it has been approved by the Scottish Ministers under this Part, and
  - (b) their approval has not ceased to have effect by reason of—
    - (i) the expiry of any period specified under section 12(1)(a) (including where extended), or
    - (ii) the imposition of a suspension or revocation under section 15(1)(a) to (c).

#### **7 Exemption from approval**

- (1) A qualifying abstraction is exempt if, on the day on which this subsection comes into force, it is subject to an authorisation under the Controlled Activities Regulations.
- (2) The exemption under subsection (1) comes to an end if the authorisation subsequently—

- (a) is varied so as to relate to a greater rate of abstraction than that to which it relates on the day mentioned in that subsection, or
  - (b) ceases to have effect for any reason, except temporarily.
- (3) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of the exercise by Scottish Water of its core functions in relation to premises in Scotland.
- (4) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of—
  - (a) generating electricity by hydro-power,
  - (b) irrigating agricultural or horticultural land,
  - (c) operating a fish farm, or
  - (d) maintaining a quarry or a coal or other mine.
- (5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.
- (6) The Scottish Ministers may by regulations—
  - (a) modify any of the exemptions under this section,
  - (b) specify further circumstances in which a qualifying abstraction is exempt from their approval under this Part.

## **8 The relevant threshold**

- (1) In this Part, “the relevant threshold” means—
  - (a) the rate of 10 megalitres of water per day, or
  - (b) such other rate as the Scottish Ministers may by regulations prescribe.
- (2) The Scottish Ministers may by regulations prescribe a method of calculation for the purpose of subsection (1).
- (3) Regulations under subsection (2) may (in particular) include provision for all or some of an amount of water abstracted to be left out of account in specified circumstances.

## **9 Consultation on changes**

Before making regulations under section 7(6) or 8(1)(b) or (2), the Scottish Ministers must consult—

- (a) Scottish Water,
- (b) SEPA,
- (c) Scottish Natural Heritage,
- (d) such other persons as they consider appropriate.

### *Role of Ministers*

## **10 Application for approval**

- (1) Any person may apply to the Scottish Ministers for their approval of a qualifying abstraction.

- (2) The Scottish Ministers must by regulations make provision about the procedure in relation to an application under subsection (1).
- (3) In particular, the regulations may—
  - (a) specify the form in which it is to be made,
  - (b) fix a reasonable fee for making it,
  - (c) describe the information that is to accompany it,
  - (d) require the applicant to give public notice of it,
  - (e) allow interested persons to make representations about it.

## **11 Factors as to approval**

- (1) In deciding whether to approve a qualifying abstraction, the Scottish Ministers must have regard to—
  - (a) the applicant's financial position,
  - (b) the proposed use of the water to be abstracted,
  - (c) any—
    - (i) economic, social or other benefit that may arise in Scotland (or an area within it) in consequence of the abstraction,
    - (ii) adverse impact of any kind that may arise in Scotland (or an area within it) in consequence of the abstraction,
  - (d) any relevant advice given under section 14(3) or (4),
  - (e) such additional factors as they consider to be relevant.
- (2) If the Scottish Ministers do not approve a qualifying abstraction, they must give the applicant their reasons.

## **12 Conditions of approval**

- (1) If the Scottish Ministers approve a qualifying abstraction, they may—
  - (a) specify the period for which their approval has effect,
  - (b) attach conditions to their approval.
- (2) Conditions under subsection (1)(b) may—
  - (a) impose restrictions on—
    - (i) the rate at which water may be abstracted (above the relevant threshold),
    - (ii) the purposes for which the water may be used,
  - (b) require that particular steps be taken in relation to the abstraction or any associated operations,
  - (c) relate to compensation for any adverse impact of a specific kind caused by the abstraction,
  - (d) concern such other matters as the Scottish Ministers consider to be relevant.
- (3) It is the holder who is subject to any conditions attached under subsection (1)(b).

- (4) Except with the Scottish Ministers' prior consent, their approval of a qualifying abstraction is not transferable by the holder to another person.
- (5) After consulting the holder, the Scottish Ministers may—
  - (a) under subsection (1)(a), extend any period specified under that subsection,
  - (b) under subsection (1)(b)—
    - (i) vary or remove any conditions attached to their approval, or
    - (ii) attach new conditions to their approval.

### **13 Additional requirements**

- (1) The holder must—
  - (a) at such times and in such form as they may require, give the Scottish Ministers a report on the holder's activities in carrying out (or in relation to) the abstraction or any associated operations, and
  - (b) pay the Scottish Ministers such reasonable fee as they may by regulations fix in accordance with subsection (2)(a) (and do so as required by virtue of subsection (2)(b)).
- (2) Regulations under subsection (1)(b)—
  - (a) must relate to costs attributable to the exercise of the Scottish Ministers' administrative functions under this Part,
  - (b) may require payment of the fee annually or otherwise.
- (3) In the application of subsection (2)(a), no account is to be taken of costs to which a fee fixed by virtue of section 10(3)(b) relates.

### **14 Advice from other bodies**

- (1) Subsections (3) and (4) apply where the Scottish Ministers are considering—
  - (a) an application under section 10(1),
  - (b) what period (if any) should be specified under section 12(1)(a), or
  - (c) what conditions (if any) should be attached under section 12(1)(b).
- (2) Subsection (3) does not apply if Scottish Water is the applicant.
- (3) Scottish Water must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the exercise of its core functions in relation to premises in Scotland.
- (4) SEPA must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the environment in Scotland.
- (5) In subsection (3), the reference to Scottish Water's core functions is to be construed in accordance with section 70(2) of the 2002 Act.
- (6) In subsections (3) and (4), the references to impact are to impact that may arise if the qualifying abstraction in question were to be carried out.

## **15 Suspension and revocation**

- (1) The Scottish Ministers may suspend or revoke their approval of a qualifying abstraction—
  - (a) if the holder requests that they do so,
  - (b) if the holder—
    - (i) breaches any conditions attached under section 12(1)(b), or
    - (ii) fails to comply with section 13(1), or
  - (c) in such other circumstances as they may by regulations prescribe.
- (2) Before imposing a suspension or revocation under subsection (1)(b) or (c), the Scottish Ministers must—
  - (a) with reasons, inform the holder of their intention to do so,
  - (b) allow the holder to make representations.

### *Appeal, monitoring and offence*

## **16 Appeal against decision**

- (1) For the purpose of subsections (2) to (4), a relevant decision is one—
  - (a) following an application under section 10(1), not to approve a qualifying abstraction,
  - (b) to specify a period under section 12(1)(a),
  - (c) to attach any conditions under section 12(1)(b), or
  - (d) to impose a suspension or revocation under section 15(1)(b) or (c).
- (2) The applicant or (as the case may be) holder may appeal to the sheriff against a relevant decision, if aggrieved—
  - (a) in the case to which subsection (1)(a) or (d) relates, by the making of the relevant decision,
  - (b) in the case to which subsection (1)(b) relates, by the shortness of the period so specified,
  - (c) in the case to which subsection (1)(c) relates, by the nature or terms of the conditions so attached.
- (3) An appeal under subsection (2) must be made—
  - (a) by way of summary application,
  - (b) within the period of 21 days beginning with the day on which the relevant decision is duly intimated.
- (4) In the appeal, the sheriff may uphold, vary or quash the relevant decision.

## **17 Monitoring and records**

- (1) The Scottish Ministers may by regulations make provision about the monitoring of—
  - (a) an abstraction of water from a body of inland water that is, or is suspected of being, a qualifying abstraction,

- (b) any activities appearing to relate to such an abstraction of water or any associated operations.
- (2) The Scottish Ministers may by regulations make provision about—
  - (a) the keeping of records in connection with this Part, or
  - (b) the extent to which such records are to be made available to them, SEPA or other interested persons.
- (3) Regulations under subsection (1) or (2) may confer functions on the Scottish Ministers, SEPA or other specified persons.
- (4) Regulations under subsection (1) or (2) may include provision—
  - (a) allowing entry onto premises under a warrant or otherwise,
  - (b) about the steps that may be taken at premises so entered,
  - (c) for summary offences and penalties as respects—
    - (i) failure to comply with requirements imposed by the regulations, or
    - (ii) obstruction of persons exercising functions conferred by the regulations.

## **18 Abstraction-related offence**

- (1) A person commits an offence if the person wilfully or recklessly—
  - (a) contravenes the prohibition constituted by section 6(1), or
  - (b) breaches any conditions to which the person is subject by virtue of section 12(2)(a).
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

## **19 Corporate offending**

- (1) Subsection (2) applies where—
  - (a) an offence under section 18(1) is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.
- (2) The responsible official (as well as the organisation) commits the offence.
- (3) “Relevant organisation” means—
  - (a) company,
  - (b) limited liability partnership,
  - (c) ordinary partnership,
  - (d) other body or association.
- (4) “Responsible official” means—
  - (a) in the case of a company, director, secretary, manager or similar officer,
  - (b) in the case of a limited liability partnership, member,

- (c) in the case of an ordinary partnership, partner,
  - (d) in the case of another body or association, person who is concerned in the management or control of its affairs,
- but in each case also includes person purporting to act in such a capacity.

*Regulations etc.*

**20 Procedure for regulations**

- (1) Regulations under section 7(6), 8(1)(b) or (2), 15(1)(c) or 17(1) or (2) are subject to the affirmative procedure.
- (2) Other regulations under this Part are subject to the negative procedure.
- (3) Regulations under this Part may make different provision for different purposes.

**21 Controlled Activities Regulations**

- (1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.
- (2) An authorisation under the Controlled Activities Regulations is subject to approval of a qualifying abstraction by the Scottish Ministers under this Part, so far as relevant in relation to the activities to which the authorisation relates (except where the authorisation exempts the abstraction under section 7(1)).
- (3) In this Part—
  - (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
  - (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations.
- (4) The Scottish Ministers may by regulations modify—
  - (a) subsections (1) to (3),
  - (b) section 7(1).
- (5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—
  - (a) the Controlled Activities Regulations, or
  - (b) any subsequent regulations made under section 20 of the 2003 Act.

**22 Other definitions for Part**

In this Part—

- “holder” means person in whose favour the Scottish Ministers’ approval under this Part has effect for the time being,
- “premises” includes any land, building or other place,
- “SEPA” means the Scottish Environment Protection Agency.

**PART 3**

## SCOTTISH WATER’S FUNCTIONS

*Exercise of functions***23 Value of water resources**

In section 25 (Scottish Water’s general powers) of the 2002 Act, after subsection (1) there is inserted—

“(1A) Subsection (1) extends to allowing Scottish Water to engage in any activity that it considers will assist in the development of the value of Scotland’s water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2013).”.

**24 Development of assets**

After section 50 of the 2002 Act there is inserted—

**“50A Development of assets**

- (1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its functions, Scottish Water must take reasonable steps to develop the commercial value of its assets and expertise.
- (2) In complying with subsection (1), Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.
- (3) In this section, “assets” means property, rights and other assets (whether tangible or intangible).”.

**25 Supporting renewable energy**

After section 51 of the 2002 Act there is inserted—

**“51A Supporting renewable energy**

- (1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its functions, Scottish Water must take reasonable steps to promote the use of its assets for the generation of renewable energy.
- (2) In complying with subsection (1), Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.
- (3) In this section, “assets” means property, rights and other assets (whether tangible or intangible).”.

**26 Meaning of core functions**

In section 70 (interpretation) of the 2002 Act, for subsection (2) there is substituted—

- “(2) In this Act, the references to core functions in relation to Scottish Water are to its functions under or by virtue of—
- (a) the 1968 Act and the 1980 Act,
  - (b) any other enactment (including this Act) so far as relating to the provision of water or sewerage services in Scotland.”.



*Financing and borrowing*

**27 Subsidiaries of Scottish Water**

- (1) After section 42 of the 2002 Act there is inserted—

**“42A Financing and borrowing: subsidiaries**

- (1) The Scottish Ministers may pay to a subsidiary of Scottish Water grants of such amounts as they may determine.
- (2) A subsidiary of Scottish Water may borrow—
  - (a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,
  - (b) money from any other person, whether—
    - (i) in sterling or otherwise,
    - (ii) the person is in the United Kingdom or elsewhere.
- (3) A grant or loan in pursuance of subsection (1) or (as the case may be) (2)(a) may be made subject to such conditions as the Scottish Ministers think fit.
- (4) A loan made in pursuance of subsection (2)(a) is to be repaid to the Scottish Ministers at such times and by such methods (and interest on the loan is to be paid to them at such times and at such rates) as they may from time to time direct.
- (5) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).
- (6) This section does not apply where the subsidiary is an undertaking established under section 13(1) of the Water Services etc. (Scotland) Act 2005.
- (7) In this section and section 42B(1), “subsidiary” is as defined in section 1159 of the Companies Act 2006.

**42B Borrowing: Budget Acts**

- (1) In any financial year, the net amount of sums borrowed by Scottish Water and any subsidiary of Scottish Water in pursuance of sections 42 and 42A (taken together) must not exceed the amount specified for that year for the purposes of this section in a Budget Act.
- (2) In subsection (1), “net amount” means amount of sums borrowed in the financial year less—
  - (a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and
  - (b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.”.
- (2) In section 42 (financing and borrowing) of the 2002 Act, subsections (4) and (5) are repealed.
- (3) The title of section 42 of the 2002 Act becomes “Financing and borrowing: Scottish Water”.

## **28 Water and sewerage undertaking**

- (1) Section 14 (financing, borrowing and guarantees) of the 2005 Act is amended as follows.
- (2) For subsection (2) there is substituted—
  - “(2) In such circumstances as the Scottish Ministers may by order specify, the undertaking may borrow—
    - (a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,
    - (b) money from any other person, whether—
      - (i) in sterling or otherwise,
      - (ii) the person is in the United Kingdom or elsewhere.
  - (2A) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).”.
- (3) In subsection (3), for the words “(2)(a)” there is substituted “(2)”.
- (4) In subsection (6), after the word “subsection” there is inserted “(2)(b) or”.

### *Other matters*

## **29 Errors in metering**

In section 54 (register of meter to be evidence) of the 1980 Act—

- (a) in subsection (3), for the words “five per cent” there is substituted “the relevant percentage”,
- (b) after subsection (3) there is inserted—
  - “(4) In subsection (3), “the relevant percentage” means—
    - (a) in the case of a high flow rate, 2.5%,
    - (b) in the case of a low flow rate, 6%.
  - (5) The Scottish Ministers, by regulations—
    - (a) must define “high flow rate” and “low flow rate” for the purpose of subsection (4),
    - (b) may amend a percentage figure appearing in subsection (4).”.

## **PART 4**

### RAW WATER QUALITY

## **30 Steps for sake of quality**

- (1) In section 38 (entry of premises) of the 1980 Act, after subsection (8) there is inserted—
  - “(9) This section does not apply in relation to the purposes mentioned in section 76M(1).”.
- (2) After Part VIA of the 1980 Act there is inserted—

**“PART VIB**

**RAW WATER QUALITY**

**76M Power to enter**

- (1) Scottish Water may—
  - (a) enter any premises for the purposes of—
    - (i) assessing or monitoring the quality of any raw water, or
    - (ii) investigating or isolating anything that appears to be affecting, or may affect, the quality of any raw water,
  - (b) take any steps at the premises which are reasonably required for those purposes.
- (2) Subsection (1)—
  - (a) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes,
  - (b) does not authorise entry into a house.
- (3) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.
- (4) In subsection (1), the reference to affecting the quality of the water is to affecting its quality adversely (directly or indirectly).
- (5) In this section, “raw water”—
  - (a) means water contained in any bodies of water—
    - (i) identified by an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003, or
    - (ii) specified by an order made under section 76R(1),
  - (b) also includes water that flows or drains into any bodies of water so identified or specified (or is capable of doing so).
- (6) But excluded from the definition given by subsection (5) is any water that is used or available as or for a private water supply within such meaning as the Scottish Ministers may by order prescribe for the purpose of this subsection.

**76N Entry warrants**

- (1) Scottish Water may apply to the sheriff for a warrant authorising it to—
  - (a) enter particular premises for the purposes mentioned in section 76M(1),
  - (b) take any steps at the premises which are reasonably required for those purposes.
- (2) The sheriff may grant the warrant sought if satisfied—
  - (a) that there are reasonable grounds for entering the premises for those purposes, and
  - (b) that—
    - (i) the first and second conditions are met, or
    - (ii) the third condition is met.

- (3) The first condition is that—
  - (a) admission to the premises has been refused,
  - (b) the taking of steps at the premises has been obstructed, or
  - (c) such refusal or obstruction may reasonably be expected.
- (4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.
- (5) The third condition is that the premises are unoccupied.
- (6) A warrant under subsection (1)—
  - (a) remains valid until the purposes mentioned in section 76M(1) are fulfilled,
  - (b) allows the use of reasonable force (if required),
  - (c) does not authorise entry into a house.
- (7) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

#### **76O Approved persons**

- (1) Subsection (2) applies to the authority conferred on Scottish Water by—
  - (a) section 76M(1), or
  - (b) a warrant under section 76N(1).
- (2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in section 76M(1).

#### **76P Taking steps**

- (1) Subsections (2) to (6) apply in relation to the exercise of the authority mentioned in section 76O(1)(a) or (b).
- (2) An approved person must, if required by the occupier of the premises—
  - (a) produce evidence of the approved person's identity (and approval), and
  - (b) explain the nature of the authority by (as the case may be)—
    - (i) reference to section 76M, or
    - (ii) showing a copy of the warrant.
- (3) An approved person may take onto the premises—
  - (a) other persons acting under the approved person's direction,
  - (b) such equipment as is necessary in connection with the steps that may be taken there.
- (4) The steps that may be taken by an approved person at the premises include—
  - (a) inspecting or measuring any water found there,
  - (b) carrying out tests on or taking samples from any soil, water or other substance found there,

- (c) installing or maintaining any measuring, testing or sampling equipment for use there.
- (5) An approved person may enter the premises only at a reasonable time.
- (6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.
- (7) In subsections (2) to (6), “approved person” means person approved as mentioned in section 76O(2).

**76Q Obstruction offence**

- (1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in section 76O(1)(b).
- (2) In subsection (1), “approved person” means person approved as mentioned in section 76O(2).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**76R Specifying bodies of water**

- (1) For the purpose of section 76M(5)(a)(ii), the Scottish Ministers may by order specify any bodies of water that are—
  - (a) used for the abstraction of water intended for human consumption, or
  - (b) intended to be used as mentioned in paragraph (a).
- (2) An order under subsection (1) may specify any bodies of water by reference to a map prepared in connection with the order (and laid along with it).
- (3) The Scottish Ministers must send to the Scottish Environment Protection Agency a copy of—
  - (a) an order made under subsection (1), and
  - (b) any map prepared in pursuance of subsection (2).

**76S Orders under this Part**

An order under section 76M(6) or 76R(1) is subject to the negative procedure.”.

**31 Agreements about activities**

- (1) In section 68 (agreements as to drainage) of the 1980 Act, in subsection (1), for the words “collecting, conveying, or preserving the purity of,” there is substituted “collecting or conveying”.
- (2) After section 68 of the 1980 Act there is inserted—

**“68A Agreements for water quality**

- (1) With respect to the matters mentioned in subsection (2), Scottish Water may enter into agreements with—
  - (a) the owners and occupiers of any land (in so far as their interest enables them to bind it), or

- (b) a local authority.
- (2) The matters are—
  - (a) the carrying out by a party to the agreement of such activities as Scottish Water considers necessary for the purpose of protecting or improving the quality of any raw water,
  - (b) the refraining by a party to the agreement from such activities as Scottish Water considers detrimental to the purpose of protecting or improving the quality of any raw water.
- (3) In subsection (2), the references to protecting or improving the quality of water include—
  - (a) preventing any deterioration in the quality of the water,
  - (b) reducing or eliminating the amount of any treatment that the water requires in order to be wholesome.
- (4) Section 68(2) applies to an agreement under this section as it applies to an agreement to which that section relates (if the agreement under this section is with the owners of the land).
- (5) In this section, “raw water” has the same meaning as in section 76M.”.

## PART 5

### NON-DOMESTIC SERVICES

#### 32 Deemed contracts

After section 20 of the 2005 Act there is inserted—

#### *“Contractual matters*

##### **20A Deemed contracts**

- (1) Subsection (4) applies as respects the circumstances specified in subsection (2) or (3).
- (2) The circumstances are that water is supplied to eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—
  - (a) a water services provider, and
  - (b) the occupier of the premises.
- (3) The circumstances are that sewerage is provided to, or sewage is disposed of from, eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—
  - (a) a sewerage services provider, and
  - (b) the occupier of the premises.
- (4) The relevant parties are deemed to have made arrangements with each other for the provision to the premises of the services to which subsection (2) or (as the case may be) (3) relates.
- (5) The terms and conditions set by a scheme made under section 20B are incorporated into the arrangements—

- (a) as if they were agreed by the relevant parties, and
  - (b) so far as they are relevant having regard to the purposes or areas to which they extend.
- (6) The arrangements are effective as from the later of—
- (a) the day on which the premises began to receive those services,
  - (b) the day on which the occupier acquired the premises,
  - (c) the day on which section 32 of the Water Resources (Scotland) Act 2013 came into force.
- (7) Sections 16 to 20 have effect in relation to the arrangements as if they were made ordinarily between the relevant parties.
- (8) In this section—
- (a) the references to the relevant parties are to—
    - (i) the water services or (as the case may be) sewerage services provider that is designated in accordance with a scheme made under section 20B, and
    - (ii) the occupier of the premises,
  - (b) the references to the occupier of premises are, if the premises are unoccupied, to be construed as references to the owner of the premises.

**20B Commission's scheme**

- (1) The Commission must make a scheme setting out the terms and conditions to be incorporated into any arrangements deemed by section 20A(4) to have been made.
- (2) A scheme under this section may—
- (a) specify the basis on which a particular water or sewerage services provider is to be designated in connection with section 20A(8)(a)(i),
  - (b) in respect of the services to which section 20A(2) or (as the case may be) (3) relates—
    - (i) fix the maximum charges that may be recovered by the water or sewerage services provider so designated,
    - (ii) allow the water or sewerage services provider so designated to set the particular charges that are to be recovered by it.
- (3) A scheme under this section may—
- (a) make different provision for different purposes or areas,
  - (b) for future application, revise an earlier such scheme.
- (4) Before making a scheme under this section, the Commission must consult—
- (a) every water or sewerage services provider,
  - (b) Scottish Water, and
  - (c) the National Consumer Council.

- (5) As soon as practicable after the Commission makes a scheme under this section, it must—
- (a) in a manner appropriate for bringing the scheme to the attention of persons likely to be affected by it, publish a notice stating its effect,
  - (b) send a copy of the scheme to—
    - (i) every water or sewerage services provider,
    - (ii) Scottish Water, and
    - (iii) any other person who requests it.”.

### **33 Notification of occupancy**

- (1) In section 34 (orders and regulations) of the 2005 Act, after subsection (2) there is inserted—

“(2A) Regulations under section 20C(4) or 20D(4) are subject to the negative procedure.”.

- (2) After section 20B of the 2005 Act there is inserted—

#### **“20C Notification of occupancy**

- (1) Subsection (2) applies to any premises—
- (a) to which water is supplied under section 16(2), or
  - (b) to which sewerage is provided, or from which sewage is disposed of, under section 16(5).
- (2) The owner of the premises must give the water or sewerage services provider the required information if there is a change in occupancy because they—
- (a) are occupied by a new occupier, or
  - (b) have fallen vacant.
- (3) In subsection (2), “required information” means—
- (a) address of the premises,
  - (b) identity of the new occupier or (as the case may be) fact that the premises have fallen vacant,
  - (c) day on which the change in occupancy occurred.
- (4) The Scottish Ministers may by regulations—
- (a) make rules for timing and procedure in connection with subsections (1) and (2),
  - (b) by addition, modify the list in subsection (3).

#### **20D Liability for charges**

- (1) Subsection (2) applies if, without reasonable excuse, an owner of any premises to which section 20C(1) relates fails to comply with section 20C(2) (except where the new occupier is the owner or the premises have fallen vacant).
- (2) The new occupier’s liability (if any) to the water or sewerage services provider for the relevant charges becomes shared jointly and severally with the owner.



- (3) In subsection (2), “relevant charges” means charges arising by virtue of any arrangements to which section 16(1) or (as the case may be) (4) relates.
- (4) The Scottish Ministers may by regulations make rules for—
  - (a) timing and procedure in connection with subsections (1) and (2),
  - (b) exempting an owner from liability under subsections (1) and (2) where, although information supplied by the owner is inaccurate or incomplete, the owner has taken prescribed steps to ensure its accuracy or completeness.”.

## PART 6

### SEWERAGE NETWORK

#### *Discharge into public sewer*

#### **34 Priority substances etc.**

- (1) In section 29 (decision on application for trade effluent consent) of the 1968 Act, after paragraph (o) of subsection (3) there is inserted—
  - “(p) the elimination from or diminution in any trade effluent of any priority substance or pollutant.”.

- (2) After section 29 there is inserted—

#### **“29A Priority substances etc.**

- (1) In section 29(3)(p)—
  - “pollutant” has the meaning given by regulation 2(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
  - “priority substance” means substance listed in Annex X of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (as amended from time to time).
- (2) The Scottish Ministers may by regulations modify the definitions in subsection (1).
- (3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of (as the case may be)—
  - (a) the Regulations or Directive mentioned in subsection (1), or
  - (b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003 or directive concerning the same subject-matter as that Directive.
- (4) Regulations under subsection (2) are subject to the negative procedure.”.

#### **35 Substances generally**

- (1) In section 46 (certain matter not to be passed into drains) of the 1968 Act—

- (a) in subsection (2), for the words “a fine not exceeding £40,000” there is substituted “imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both)”,
  - (b) after subsection (2) there is inserted—
    - “(3) This section does not apply in relation to the passing of fat, oil or grease from trade premises into a public sewer or a drain connecting with such a sewer.”.
- (2) After section 46 there is inserted—
- “46A Offence as to fat, oil or grease**
- (1) A person commits an offence if—
    - (a) the person passes, or permits to be passed, any relevant substance from trade premises into—
      - (i) a public sewer, or
      - (ii) a drain connecting with such a sewer, and
    - (b) the condition in subsection (2) is met.
  - (2) The condition is that the relevant substance (alone or in combination with any matter with which it comes, or may come, into contact)—
    - (a) interferes with, or is likely to interfere with, the free flow of the contents of the sewer, or
    - (b) adversely affects, or is likely so to affect, the treatment or disposal of the contents of the sewer.
  - (3) But no offence is committed under subsection (1) if the relevant substance is passed in accordance with the provisions of Part II of this Act.
  - (4) In subsections (1) to (3), “relevant substance” means fat, oil or grease.
  - (5) A person who commits an offence under subsection (1) is liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

**46B Damage caused by fat, oil or grease**

- (1) Subsection (5) applies if—
  - (a) an owner or occupier of trade premises passes, or permits to be passed, any relevant substance from the premises into—
    - (i) a public sewer, or
    - (ii) a drain connecting with such a sewer, and
  - (b) the condition in subsection (2) is met.
- (2) The condition is that, as a result—
  - (a) the sewer or drain is damaged or blocked, or
  - (b) the free flow of the contents of the sewer is otherwise interfered with.

- (3) But subsection (5) does not apply if the relevant substance is passed in accordance with the provisions of Part II of this Act.
- (4) In subsections (1) and (3), “relevant substance” means fat, oil or grease.
- (5) Scottish Water may recover, from the owner or (as the case may be) occupier, any expenses that it reasonably incurs in investigating or remedying the damage, blockage or interference.”.

### **36 Powers of entry**

In section 48 (powers of entry) of the 1968 Act, in subsection (1)—

- (a) in paragraph (f), at the beginning there is inserted “monitoring, inspecting, testing or”,
- (b) after paragraph (f) there is inserted—
  - “(g) installing or maintaining any monitoring, testing or sampling equipment for use on the premises,
  - (h) investigating the source of any matter or substance (other than sewage) which is passing from the premises into—
    - (i) public sewers, public SUD systems or public sewage treatment works; or
    - (ii) sewers, SUD systems or sewage treatment works not vested in Scottish Water but forming (or forming part of) any such system as is mentioned in the said section 46(1)(b)(ii).”.

#### *Private sewage works*

### **37 Common maintenance**

After Part II of the 1968 Act there is inserted—

#### **“PART IIA**

##### PRIVATE SEWAGE TREATMENT WORKS

#### **38A Application of Part**

- (1) This Part applies to any private sewage treatment works if the discharge of their contents is subject to an authorisation under the Controlled Activities Regulations.
- (2) In this Part, “private works” means private sewage treatment works to which this Part applies.

#### **38B Other rules**

- (1) This Part prevails over any rule of law or real burden—
  - (a) requiring the agreement, of any owner of common property, to the carrying out of maintenance of the property, or
  - (b) concerning the recovery, by any owner of common property from another owner of the property, of the cost of such maintenance,

so far as the rule or burden is applicable in connection with measures of the kind to which section 38C(2) relates.

- (2) In subsection (1), “real burden” is to be construed in accordance with the Title Conditions (Scotland) Act 2003.

### **38C Common maintenance**

- (1) Subsection (2) applies where two or more persons own any private works in common.
- (2) Any of the persons may take (or cause to be taken) any measures that the person considers necessary for ensuring that the works are properly maintained so that they comply with any applicable conditions under the Controlled Activities Regulations.
- (3) Subsection (2) is subject to section 38D.
- (4) In subsection (2), the reference to being properly maintained includes being emptied as required from time to time.

### **38D Notice and effect**

- (1) Before taking (or causing to be taken) any measures under section 38C(2), a person must serve on each of the other owners a notice—
  - (a) giving the person’s name and address,
  - (b) specifying the private works in question,
  - (c) in addition to describing the measures to be taken, stating—
    - (i) why the measures are to be taken,
    - (ii) when the measures are to be taken,
  - (d) containing—
    - (i) an estimate of the cost of the measures,
    - (ii) a note showing the proportion of that cost for which each owner would be liable (along with their names and addresses),
  - (e) directing the reader to this Part.
- (2) The measures described in the notice may be taken under section 38C(2) at any time after the end of the period of 28 days beginning with the day on which it is duly served (or, if it is so served on different days, the last of those days).
- (3) Unless the notice has expired, the measures may be so taken—
  - (a) with or without the agreement of any or all of the other owners,
  - (b) subject to any review or appeal under section 38E.
- (4) The notice expires—
  - (a) at the end of the period of 12 months beginning with the day on which it is duly served, or
  - (b) if it is extended in any review or appeal under section 38E, at the end of the period of extension.

- (5) A notice under subsection (1) may be served by two or more persons acting together.

**38E Review of notice**

- (1) A person on whom a notice is served under section 38D(1) may apply to the sheriff for a review of the notice, if aggrieved by the serving of the notice or its terms.
- (2) An application under subsection (1) must be made—
  - (a) by way of summary application,
  - (b) within the period of 28 days beginning with the day on which the notice is duly served.
- (3) In the application, the sheriff may—
  - (a) uphold, vary or quash the notice,
  - (b) make any further order necessary.
- (4) The sheriff's decision in the application may be appealed to the sheriff principal, but only on a point of law.
- (5) The sheriff principal's determination of the review is final.
- (6) An application under subsection (1) may be—
  - (a) made by two or more persons acting together,
  - (b) heard by the sheriff along with another such application relating to the same notice.

**38F Recovery of cost**

- (1) Where measures have been taken under section 38C(2)—
  - (a) each of the owners of the private works is liable for a proportion of the actual cost of taking them, and
  - (b) any of those owners is entitled to recover from any of the other owners the proportion of that cost for which the other owner is liable.
- (2) Subsection (1) is subject to subsections (3) to (8).
- (3) The proportion of the cost mentioned in subsection (1)(a) for which each owner is liable is the equivalent to the owner's pro indiviso share of the ownership of the private works.
- (4) Liability accrues to an owner under subsection (1)(a) only when there has been duly served—
  - (a) a notice under section 38D(1) relating to the measures, and
  - (b) a notice under subsection (5) relating to the measures.
- (5) Before exercising the entitlement to make recovery under subsection (1)(b), an owner must serve on each of the other owners a notice containing—
  - (a) a statement of the cost mentioned in subsection (1)(a),

- (b) a note confirming the proportion of that cost for which each owner is liable in accordance with subsection (3) (along with their names and addresses).
- (6) The entitlement of an owner to make recovery under subsection (1)(b) is not—
  - (a) established unless the owner has—
    - (i) incurred the cost mentioned in subsection (1)(a), and
    - (ii) duly served a notice under subsection (5),
  - (b) exercisable until after the end of the period of 30 days beginning with the day on which the notice under subsection (5) is duly served (or, if it is so served on different days, the last of those days).
- (7) A notice under subsection (5) is valid only if it is accompanied by an invoice or other clear evidence of the cost mentioned in subsection (1)(a).
- (8) Section 38E applies in relation to a notice under subsection (5) as it does in relation to one under section 38D(1), except that in relation to a notice under subsection (5) a review under section 38E is competent only if the actual cost of the measures grossly exceeds the estimate of the cost of them contained in the notice under section 38D(1).

### **38G Liability of owner**

- (1) Subsection (2) applies to a person who is liable under section 38F(1)(a).
- (2) The person does not stop being so liable merely because the person ceases to be an owner of the private works.
- (3) Subsection (4) applies to a person who is entitled to make recovery under section 38F(1)(b).
- (4) The person does not stop being so entitled merely because the person ceases to be an owner of the private works.

### **38H Controlled Activities Regulations**

- (1) In this Part—
  - (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
  - (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,
  - (c) a reference to any conditions under the Controlled Activities Regulations is to any conditions of an authorisation under those Regulations.
- (2) The Scottish Ministers may by regulations modify—
  - (a) subsection (1),
  - (b) sections 38A(1) and 38C(2).
- (3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

- (a) the Controlled Activities Regulations, or
  - (b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003.
- (4) Regulations under subsection (2) are subject to the negative procedure.”.

## PART 7

### WATER SHORTAGE ORDERS

#### *Main provisions*

#### **38 Proposal for order**

- (1) Scottish Water may propose to the Scottish Ministers that they make a water shortage order if it believes that there is—
- (a) a serious deficiency of water supplies in an area, or
  - (b) a threat of a serious deficiency of water supplies in an area.
- (2) A proposal must include—
- (a) a draft water shortage order,
  - (b) details of—
    - (i) the deficiency or threat as respects the water supplies,
    - (ii) the steps that Scottish Water has taken to abate the deficiency or threat,
    - (iii) the steps (other than steps in accordance with the draft order) that Scottish Water intends to take in order to abate the deficiency or threat,
    - (iv) how Scottish Water considers that the taking of those steps will abate the deficiency or threat,
    - (v) any prior communications about the proposal between Scottish Water and persons likely to be affected by the draft order,
  - (c) such other information as the Scottish Ministers may reasonably require.
- (3) A proposal must be accompanied by—
- (a) a map or plan showing the location of—
    - (i) any source from which Scottish Water proposes to abstract water,
    - (ii) any place to which Scottish Water proposes to discharge water,
    - (iii) any works which Scottish Water proposes to carry out,
    - (iv) any premises at which Scottish Water proposes to take any other steps in order to abate the deficiency or threat,
  - (b) a copy of any associated application made by Scottish Water under the Controlled Activities Regulations,
  - (c) such other documents as the Scottish Ministers may reasonably require.
- (4) The Scottish Ministers may instruct Scottish Water about the form in which a proposal is to be presented to them.

**39 Making of order**

- (1) The Scottish Ministers may make an ordinary water shortage order in relation to an area if the first and second conditions are met.
- (2) The Scottish Ministers may make an emergency water shortage order in relation to an area if the first, second and third conditions are met.
- (3) The first condition is that Scottish Water has made a proposal.
- (4) The second condition is that the Scottish Ministers are satisfied that the deficiency or threat in question exists.
- (5) The third condition is that the Scottish Ministers are satisfied that there is a risk to the health, or social or economic well-being, of people in the area.
- (6) The function of making a water shortage order is not exercisable by Scottish statutory instrument.

**40 Content of order**

- (1) A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate—
  - (a) a serious deficiency of water supplies in an area, or
  - (b) a threat of a serious deficiency of water supplies in an area.
- (2) In particular, a water shortage order may—
  - (a) permit Scottish Water to—
    - (i) abstract water from any source specified in the order,
    - (ii) discharge water to any place specified in the order,
    - (iii) carry out and maintain works on any premises specified in the order for any purpose specified in the order,
  - (b) impose conditions or restrictions on any abstraction or discharge of water so permitted,
  - (c) relax any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,
  - (d) restrict or prohibit the abstraction of water by any person from any source specified in the order,
  - (e) impose one or more water saving measures in relation to—
    - (i) persons of such descriptions as are specified in the order,
    - (ii) premises of such categories as are so specified,
    - (iii) other property of such types as are so specified,
    - (iv) such purposes or circumstances as are so specified.
- (3) A water shortage order may include—
  - (a) provision by way of exceptions or exemptions,
  - (b) different provision for different purposes in any respects.



- (4) An emergency water shortage order (but not an ordinary water shortage order) may permit Scottish Water to supply water by means other than through pipes.

**41 Abstraction and discharge**

- (1) Permission as mentioned in section 40(2)(a)(i) or (ii) allows Scottish Water to abstract or (as the case may be) discharge the water even if—
- (a) it is not otherwise entitled to do so,
  - (b) the abstraction or discharge would interfere with any right of any other person in the water.
- (2) A restriction or prohibition as mentioned in section 40(2)(d) restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

**42 Scheduled provision**

Schedule 1 makes further provision in relation to water shortage orders.

*Appeal and offence*

**43 Appeal against order**

- (1) A person who is aggrieved by a water shortage order may appeal to the sheriff against—
- (a) the making of the order,
  - (b) the terms of the order.
- (2) An appeal under subsection (1) must be made—
- (a) by way of summary application,
  - (b) within the period of 14 days beginning with the day on which notice of the order is published under paragraph 6 of schedule 1.
- (3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.
- (4) In the appeal, the sheriff may—
- (a) affirm the order,
  - (b) direct the Scottish Ministers to—
    - (i) amend the order in a specified manner,
    - (ii) revoke the order wholly or partly.
- (5) The sheriff's determination of the appeal is final, except on a point of law.

**44 Non-compliance offence**

- (1) A relevant person commits an offence if the person, without reasonable excuse, fails to comply with—
- (a) a water saving measure imposed by a water shortage order, or
  - (b) a restriction or prohibition on the abstraction of water imposed by such an order.

- (2) In subsection (1), “relevant person” means person who is, or ought to be, aware of the order.
- (3) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

#### **45 Corporate offending**

- (1) Subsection (2) applies where—
  - (a) an offence under section 44(1) is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.
- (2) The responsible official (as well as the organisation) commits the offence.
- (3) “Relevant organisation” means—
  - (a) company,
  - (b) limited liability partnership,
  - (c) ordinary partnership,
  - (d) other body or association.
- (4) “Responsible official” means—
  - (a) in the case of a company, director, secretary, manager or similar officer,
  - (b) in the case of a limited liability partnership, member,
  - (c) in the case of an ordinary partnership, partner,
  - (d) in the case of another body or association, person who is concerned in the management or control of its affairs,

but in each case also includes person purporting to act in such a capacity.

#### *Recommendations and directions*

#### **46 Recommendations issuable**

- (1) If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area, it must—
  - (a) publicise the threat in the area, and
  - (b) recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat.
- (2) Scottish Water must take such steps as it considers appropriate to bring its recommendation under subsection (1)(b) to the attention of people in the area.

#### **47 Directions on functions**

- (1) The Scottish Ministers may give Scottish Water directions as to the exercise of its functions under a water shortage order.

- (2) Scottish Water must comply with directions given to it under subsection (1).
- (3) Directions under subsection (1) may vary or revoke earlier such directions.
- (4) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to Scottish Water.

*Definitions etc.*

**48 Water saving measures**

In this Part, “water saving measures” means measures listed in schedule 2.

**49 Serious deficiencies**

The references in this Part to a serious deficiency of water supplies (whether actual or threatened) are to an insufficiency of water supplies available to Scottish Water to enable it to carry out its functions under Part II of the 1980 Act.

**50 Controlled Activities Regulations**

- (1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.
- (2) An authorisation under the Controlled Activities Regulations is subject to any restriction or prohibition as mentioned in section 40(2)(d), so far as relevant in relation to the activities to which the authorisation relates.
- (3) In this Part—
  - (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
  - (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,
  - (c) a reference to an application under the Controlled Activities Regulations is to an application in accordance with regulation 11 (including as applied by regulation 24) of those Regulations.
- (4) The Scottish Ministers may by regulations modify—
  - (a) subsections (1) to (3),
  - (b) section 38(3)(b),
  - (c) in schedule 1, paragraphs 2(5)(b)(iii), 3(2)(b)(iii) and 7(b)(ii).
- (5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—
  - (a) the Controlled Activities Regulations, or
  - (b) any subsequent regulations made under section 20 of the 2003 Act.
- (6) Regulations under subsection (4) are subject to the negative procedure.

**51 Other expressions in Part**

In this Part—

“emergency water shortage order” means one under section 39(2),

“ordinary water shortage order” means one under section 39(1),

“premises” includes any land, building or other place,

“proposal” means proposal under section 38(1) (relating to a water shortage order),

“water shortage order” means emergency water shortage order or ordinary water shortage order.

## **PART 8**

### **GENERAL PROVISIONS**

#### *Miscellaneous*

#### **52 Crown application**

- (1) No contravention by the Crown of any provision made by or under Part 2 or 7 makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing such a provision, declare unlawful any act or omission of the Crown which constitutes a contravention by the Crown of such a provision.
- (3) Despite subsection (1), any such provision applies to persons in the public service of the Crown as it applies to other persons.
- (4) Schedule 3 makes further provision about the application to the Crown of Parts 2 and 7.

#### **53 Repeal of enactments**

Schedule 4 makes minor and consequential repeals.

#### **54 Ancillary power**

- (1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
  - (b) otherwise, are subject to the negative procedure.

#### **55 Key definitions**

In this Act—

“the 1968 Act” means the Sewerage (Scotland) Act 1968,

“the 1980 Act” means the Water (Scotland) Act 1980,

“the 2002 Act” means the Water Industry (Scotland) Act 2002,

“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003,

“the 2005 Act” means the Water Services etc. (Scotland) Act 2005.

*Commencement and short title*

**56 Commencement**

- (1) Except section 53 (and schedule 4), this Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act (including that section (and schedule)) come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

**57 Short title**

The short title of this Act is the Water Resources (Scotland) Act 2013.

SCHEDULE 1  
(introduced by section 42)  
WATER SHORTAGE ORDERS

*Notice of proposal*

- 1 (1) Scottish Water must publish notice of a proposal—
- (a) in at least one newspaper circulating in the area to which the proposal relates,
  - (b) on its website, and
  - (c) in such other manner as it thinks fit.
- (2) A notice under sub-paragraph (1) must contain details of—
- (a) Scottish Water's reasons for making the proposal,
  - (b) the nature of the proposal, and the general effect that it would have (if implemented),
  - (c) any premises that Scottish Water would intend to enter in connection with the proposal (if implemented).
- (3) A notice under sub-paragraph (1) must also—
- (a) name a place where a copy of the proposal, and any map or plan which accompanies it, may be inspected free of charge at all reasonable hours,
  - (b) state that representations about the proposal may be made by any person —
    - (i) in writing to the Scottish Ministers,
    - (ii) within the period of 14 days beginning with the day on which the notice is published under this paragraph.

*Notifying owners etc.*

- 2 (1) Sub-paragraph (2) applies where—
- (a) a draft order would permit Scottish Water to—
    - (i) carry out and maintain works on any premises, or
    - (ii) take any other steps on any premises, and
  - (b) Scottish Water would not otherwise be entitled to do so.
- (2) Where this sub-paragraph applies, Scottish Water must (so far as reasonably practicable) give every owner, lessee and occupier of the premises—
- (a) a copy of the proposal containing the draft order,
  - (b) a notice—
    - (i) explaining the nature and general effect of the draft order,
    - (ii) specifying the premises and the way in which they would be affected by the draft order,
    - (iii) stating that representations about the proposal may be made by the person concerned in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to that person,

- (c) either—
  - (i) a map or plan showing the location of the premises, or
  - (ii) details of the place where such a map or plan may be inspected.
- (3) Scottish Water must make such a map or plan available for inspection at all reasonable times and free of charge.
- (4) Sub-paragraph (5) applies where a draft order would restrict or prohibit the abstraction of water by any person.
- (5) Where this sub-paragraph applies, Scottish Water must give the person—
  - (a) a copy of the proposal containing the draft order,
  - (b) a notice—
    - (i) explaining the nature and general effect of the draft order,
    - (ii) explaining the effect of the draft order in relation to the abstraction of water by the person,
    - (iii) explaining the effect of the draft order in relation to any associated authorisation under the Controlled Activities Regulations,
    - (iv) specifying the period for which the restriction or prohibition is likely to have effect,
    - (v) stating that representations about the proposal may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.
- (6) In this paragraph, reference to the effect of a draft order (including something permitted or otherwise done under it) is to the effect that a water shortage order would have if it were made in the same terms as the draft order.
- (7) In this paragraph and paragraphs 3 to 5, “draft order” means draft water shortage order included in a proposal.

*Additional notice*

- 3 (1) Sub-paragraph (2) applies where—
  - (a) the Scottish Ministers intend to make a water shortage order that would restrict or prohibit the abstraction of water by any person, and
  - (b) because the restriction or prohibition is not mentioned in the draft order, the person has not been given a notice under paragraph 2(5).
- (2) Where this sub-paragraph applies, the Scottish Ministers must give the person—
  - (a) a copy of the proposal containing the draft order,
  - (b) a notice—
    - (i) explaining the nature and general effect of the draft order,
    - (ii) explaining the effect that the restriction or prohibition would have on the abstraction of water by the person,
    - (iii) explaining the effect that the restriction or prohibition would have on any associated authorisation under the Controlled Activities Regulations,

- (iv) specifying the period for which the restriction or prohibition is likely to have effect,
- (v) stating that representations about the proposal, and the restriction or prohibition, may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.

*SEPA's advice*

- 4 (1) The Scottish Ministers must seek SEPA's advice in relation to—
- (a) any adverse impact on the water environment that may arise if a water shortage order were made in the same terms as the draft order,
  - (b) the need to restrict or prohibit the abstraction of water by any person, by reason of any such adverse impact.
- (2) SEPA must give the Scottish Ministers advice sought under sub-paragraph (1).
- (3) In this paragraph—
- “SEPA” means the Scottish Environment Protection Agency,
  - “water environment” is as defined by section 3 of the 2003 Act.

*Representations and decision*

- 5 (1) The Scottish Ministers must not decide whether to make a water shortage order until—
- (a) the period for making representations under paragraphs 1 to 3 has expired, and
  - (b) they have received advice under paragraph 4.
- (2) Before deciding whether to make a water shortage order, the Scottish Ministers must consider—
- (a) any representations timeously made,
  - (b) the advice so received.
- (3) The Scottish Ministers may decide to—
- (a) make a water shortage order in the same terms as the draft order,
  - (b) make such an order in such other terms as they consider appropriate,
  - (c) refuse to make such an order.
- (4) The Scottish Ministers must notify Scottish Water of their decision under sub-paragraph (3).

*Publication of order*

- 6 (1) Where the Scottish Ministers make a water shortage order, Scottish Water must publish notice of the order—
- (a) in at least one newspaper circulating in the area to which the order relates,
  - (b) on its website, and
  - (c) in such other manner as it thinks fit.



- (2) Where the Scottish Ministers make a water shortage order that imposes water saving measures, Scottish Water must—
  - (a) publish notice of the order—
    - (i) in at least one newspaper circulating in the area to which the order relates,
    - (ii) on its website, and
    - (iii) in such other manner as it thinks fit, and
  - (b) take such steps as it considers appropriate to bring the order to the attention of persons who are subject to the water saving measures.
- (3) A notice under sub-paragraph (2) must specify—
  - (a) the water saving measures that are imposed by the order,
  - (b) the persons in relation to whom the measures are imposed,
  - (c) the circumstances (if any) that are specified in the order in relation to the measures.
- (4) If sub-paragraph (2) applies, sub-paragraph (1) does not apply.

*Notice regarding abstraction*

- 7 Where the Scottish Ministers make a water shortage order that restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person—
- (a) a copy of the order,
  - (b) a notice—
    - (i) explaining the effect of the order in relation to the abstraction of water by the person,
    - (ii) explaining the effect of the order in relation to any associated authorisation under the Controlled Activities Regulations,
    - (iii) specifying the period for which the restriction or prohibition has effect.

*Effect of order*

- 8 (1) An ordinary water shortage order—
- (a) has effect from the day 3 days after the day on which notice of it is published under paragraph 6,
  - (b) ceases to have effect on the day falling 6 months after the day on which it first has effect.
- (2) An emergency water shortage order—
- (a) has effect from the day after the day on which notice of it is published under paragraph 6,
  - (b) ceases to have effect on the day falling 3 months after the day on which it first has effect.
- (3) The Scottish Ministers may extend the period for which a water shortage order has effect—
- (a) on the application of Scottish Water,

- (b) on more than one occasion.
- (4) The period for which a water shortage order has effect may be extended (in total) by a period of not more than two months from the day on which the order would otherwise cease to have effect under sub-paragraph (1)(b) or (as the case may be) (2)(b).

#### *Notice of extension*

- 9 (1) This paragraph applies where the Scottish Ministers extend the period for which a water shortage order has effect under paragraph 8(3).
- (2) Scottish Water must publish notice of the extension—
    - (a) in at least one newspaper circulating in the area to which the order relates,
    - (b) on its website, and
    - (c) in such other manner as it thinks fit.
  - (3) Where the order imposes water saving measures, Scottish Water must—
    - (a) publish notice of the extension—
      - (i) in at least one newspaper circulating in the area to which the order relates,
      - (ii) on its website, and
      - (iii) in such other manner as it thinks fit, and
    - (b) take such further steps as it considers appropriate to bring the extension to the attention of persons who are subject to the water saving measures.
  - (4) A notice under sub-paragraph (3) must specify—
    - (a) the water saving measures that are imposed by the order,
    - (b) the persons in relation to whom the measures are imposed,
    - (c) the circumstances (if any) that are specified in the order in relation to the measures.
  - (5) If sub-paragraph (3) applies, sub-paragraph (2) does not apply.
  - (6) Where the order restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person notice of the extension.

#### *Appeal against extension*

- 10 (1) A person who is aggrieved by the extension of the period for which a water shortage order has effect under paragraph 8(3) may appeal to the sheriff.
- (2) An appeal under sub-paragraph (1) must be made—
    - (a) by way of summary application,
    - (b) within the period of 14 days beginning with the day on which notice of the extension is published under paragraph 9.
  - (3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.
  - (4) In the appeal, the sheriff may—
    - (a) affirm or quash the extension,

- (b) direct the Scottish Ministers to amend the order in a specified manner.
- (5) The sheriff's determination of the appeal is final, except on a point of law.

*Review and revocation of order*

- 11 (1) The Scottish Ministers may review a water shortage order at any time.
- (2) Following such a review, the Scottish Ministers may revoke the order wholly or partly.
  - (3) Where the Scottish Ministers revoke the order (whether wholly or partly), Scottish Water must publish notice of that fact—
    - (a) in at least one newspaper circulating in the area to which the order relates,
    - (b) on its website, and
    - (c) in such other manner as it thinks fit.
  - (4) Where the revocation of the order (whether wholly or partly) removes a restriction or prohibition on the abstraction of water by any person, the Scottish Ministers must give the person notice of the revocation.

*Power to enter*

- 12 (1) Scottish Water may—
- (a) enter any premises for the purposes of—
    - (i) assessing whether there is a serious deficiency, or threat of a serious deficiency, of water supplies in an area,
    - (ii) carrying out its functions under a water shortage order,
    - (iii) carrying out its functions under Part 7,
    - (iv) determining whether a water saving measure, or restriction or prohibition on abstraction, imposed by a water shortage order is being complied with,
  - (b) take any steps at the premises that are reasonably required for those purposes.
- (2) Sub-paragraph (1) authorises entry only if the occupier of the premises has been given at least 24 hours' notice of the intended entry for those purposes.

*Entry warrants*

- 13 (1) Scottish Water may apply to the sheriff for a warrant authorising it to—
- (a) enter particular premises for the purposes mentioned in paragraph 12(1),
  - (b) take any steps at the premises which are reasonably required for those purposes.
- (2) The sheriff may grant the warrant sought if satisfied—
- (a) that there are reasonable grounds for entering the premises for those purposes, and
  - (b) that—
    - (i) the first and second conditions are met,
    - (ii) the third condition is met, or
    - (iii) the fourth condition is met.

- (3) The first condition is that—
  - (a) admission to the premises has been refused,
  - (b) the taking of steps at the premises has been obstructed, or
  - (c) such refusal or obstruction may reasonably be expected.
- (4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.
- (5) The third condition is that the premises are unoccupied.
- (6) The fourth condition is that the case is one of urgency.
- (7) A warrant under sub-paragraph (1)—
  - (a) allows the use of reasonable force (if required),
  - (b) remains valid until the purposes mentioned in paragraph 12(1) are fulfilled.

#### *Approved persons*

- 14 (1) Sub-paragraph (2) applies to the authority conferred on Scottish Water by—
  - (a) paragraph 12(1), or
  - (b) a warrant under paragraph 13(1).
- (2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in paragraph 12(1).

#### *Taking steps*

- 15 (1) Sub-paragraphs (2) to (6) apply in relation to the exercise of the authority mentioned in paragraph 14(1)(a) or (b).
- (2) An approved person must, if required by the occupier of the premises—
  - (a) produce evidence of the approved person's identity (and approval), and
  - (b) explain the nature of the authority by (as the case may be)—
    - (i) reference to paragraph 12, or
    - (ii) showing a copy of the warrant.
- (3) An approved person may take onto the premises—
  - (a) other persons acting under the approved person's direction,
  - (b) such equipment as is necessary in connection with the steps that may be taken there.
- (4) The steps that may be taken by an approved person on the premises include—
  - (a) carrying out any inspection or test, or taking any measurement, there,
  - (b) installing or maintaining any measuring, testing or sampling equipment for use there.
- (5) An approved person may enter the premises only at a reasonable time.
- (6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.

- (7) In sub-paragraphs (2) to (6), “approved person” means person approved as mentioned in paragraph 14(2).

*Obstruction offence*

- 16 (1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in paragraph 14(1)(b).
- (2) In sub-paragraph (1), “approved person” means person approved as mentioned in paragraph 14(2).
- (3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Compensation*

- 17 (1) Scottish Water must compensate any person who has sustained loss or damage in consequence of—
- (a) the abstraction or discharge of water by Scottish Water in accordance with a water shortage order,
  - (b) a restriction or prohibition on the abstraction of water imposed by such an order,
  - (c) the exercise by an approved person of the authority mentioned in paragraph 14(1)(a) or (b).
- (2) Sub-paragraph (1) does not apply to loss or damage that is attributable to—
- (a) the fault of the person who sustained it,
  - (b) the imposition of a water saving measure by a water shortage order,
  - (c) the relaxation by such an order of any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,
  - (d) the supply of water by Scottish Water by means other than through pipes, in accordance with an emergency water shortage order,
  - (e) a serious deficiency of water supplies that the provisions of a water shortage order are intended to abate.
- (3) A claim for compensation under this paragraph must be given to Scottish Water—
- (a) by notice in writing,
  - (b) within the period of 6 months beginning with the day on which the water shortage order to which the claim relates expires.
- (4) A notice under sub-paragraph (3) must state—
- (a) the grounds of the claim,
  - (b) the amount of compensation claimed.
- (5) Any question of disputed compensation under this paragraph is to be determined by the sheriff.
- (6) In sub-paragraph (1)(c), “approved person” means person approved as mentioned in paragraph 14(2).

*References to publication etc.*

- 18 (1) A relevant requirement is to be fulfilled without undue delay.
- (2) In sub-paragraph (1), “relevant requirement” means requirement—
- (a) to publish or give notice of something (or otherwise bring attention to it), and
  - (b) imposed on Scottish Water or the Scottish Ministers by paragraph 6, 7, 9 or 11.
- 19 (1) A reference in this Part to the day on which a notice is published under paragraph 1, 6 or 9 is to the earliest day when the notice has been so published in each manner mentioned in sub-paragraph (2).
- (2) That is, published by Scottish Water—
- (a) in at least one newspaper circulating in the relevant area, and
  - (b) on its website.
- (3) The operation of sub-paragraph (1) is not affected by additional publication of the notice in any manner at any time.

SCHEDULE 2  
*(introduced by section 48)*

WATER SAVING MEASURES

The following are water saving measures—

- (a) refraining from using a hosepipe or sprinkler to water a garden or plants,
- (b) refraining from using a hosepipe or pressure washer to clean—
  - (i) a private motor vehicle,
  - (ii) a private leisure boat,
  - (iii) a domestic path, patio or other artificial outdoor surface,
- (c) refraining from using a hosepipe to—
  - (i) draw water for domestic recreational use,
  - (ii) fill or maintain a domestic pond,
  - (iii) clean the exterior of domestic premises,
- (d) refraining from filling or maintaining—
  - (i) a swimming pool,
  - (ii) a paddling pool,
  - (iii) an ornamental fountain,
  - (iv) a non-domestic pond,
- (e) refraining from watering—
  - (i) outdoor plants on commercial premises,
  - (ii) a fairway on a golf course,
- (f) refraining from using water to clean—

- (i) a vehicle or boat (other than a private motor vehicle or private leisure boat),
- (ii) an aircraft or railway rolling stock,
- (iii) non-domestic premises,
- (iv) industrial plant,
- (g) refraining from operating—
  - (i) a mechanical vehicle washer,
  - (ii) a cistern in an unoccupied or closed non-domestic building,
- (h) refraining from using water to suppress dust at non-domestic premises,
- (i) such other measures as Scottish Water or (as the case may be) the Scottish Ministers consider to be necessary or expedient to abate a serious deficiency, or threat of a serious deficiency, of water supplies.

SCHEDULE 3  
*(introduced by section 52)*

CROWN LAND

- 1 A power of entry conferred by or under Part 2 or 7 is exercisable in relation to Crown land only with the consent of the appropriate authority.
- 2 (1) In paragraph 1, “Crown land” means land an interest in which—
  - (a) belongs to Her Majesty—
    - (i) in right of the Crown, or
    - (ii) in right of Her private estates,
  - (b) belongs to—
    - (i) an office-holder in the Scottish Administration, or
    - (ii) a Government Department, or
  - (c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department.
- (2) In paragraph 1, “appropriate authority” in relation to land—
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (b) in the case of other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or (as the case may be) Government Department having the management of the land,
  - (c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
  - (d) in the case of land—
    - (i) belonging to an office-holder in the Scottish Administration or to a Government Department, or

(ii) held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department,

means the relevant office-holder or (as the case may be) Government Department.

3 (1) In paragraph 2—

(a) “Government Department” means department of the Government of the United Kingdom,

(b) the references to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

(2) It is for the Scottish Ministers to determine any question that arises as to who in accordance with paragraph 2 is the appropriate authority in relation to any land (and their decision is final).

SCHEDULE 4  
*(introduced by section 53)*

REPEAL OF ENACTMENTS

1 (1) Section 69 of the 1980 Act is repealed.

(2) In the Natural Heritage (Scotland) Act 1991—

(a) Part III is repealed,

(b) section 24 is repealed,

(c) Schedules 7, 8 and 9 are repealed.

2 Section 26 of the 2003 Act is repealed.







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