
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 361

WATER SUPPLY

The Scottish Water (Tomich Boreholes) Water Order 2006

Made - - - - *16th June 2006*

Coming into force - - *21st June 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 17(1), 29(1) and 107(1)(b) of the Water (Scotland) Act 1980(1) and of all other powers enabling them in that behalf, on the application of Scottish Water, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Scottish Water (Tomich Boreholes) Water Order 2006 and shall come into force on 21st June 2006.

Interpretation

2. In this Order—

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

“approved” means approved by the Scottish Ministers;

“day” means a period of 24 hours reckoned from midnight;

“deposited plan” means the plan, prepared in triplicate, docketed and signed as relative to this Order and marked “The Scottish Water (Tomich Boreholes) Water Order 2006”, one copy of which is deposited in the office of the Scottish Executive, Victoria Quay, Edinburgh, EH6 6QQ one copy in the head office of Scottish Water at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, Fife, KY11 8GG, and one copy in the Scottish Water Inverness Area Office, 31 Henderson Drive, Longman North, Inverness, IV1 1TK;

(1) 1980 c. 45. Section 17(1) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180(1) and (2), Schedule 13, paragraph 119(10)(a) and Schedule 14; the Water Industry (Scotland) Act 2002 (asp 3) Schedule 6, paragraph 14(1) and (2); and by paragraph 4 of Part IV of the Schedule to the Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181). By virtue of paragraph 6(a) of Part III of the Schedule to S.S.I. 2006/181, section 17(1) continues to have effect, on and after 1st April 2006, as it had effect immediately before that date, in relation to any application for an order to approve an agreement to acquire rights to take water from any stream or other source which has been submitted by Scottish Water under section 17(1) of the Act on or before 31st March 2006. Section 29(1) was amended by the Water Industry (Scotland) Act 2002, Schedule 6, paragraph 23(a). Section 107(1)(b) was amended by the Local Government etc. (Scotland) Act 1994, section 180(1) and (2), Schedule 13, paragraph 119(52)(a) and Schedule 14 and by the Water Industry (Scotland) Act 2002, Schedule 6, paragraph 61(a). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

“gauge” includes a gauge, weir or other apparatus for measuring the flow of water;
“intake” includes any work by which water is taken by Scottish Water for the purpose of the undertaking;
“Scottish Water” means the body corporate established by section 20(1) of the Water Industry (Scotland) Act 2002(2);
“undertaking” means the water undertaking for the time being of Scottish Water; and
“works” means the works described in Schedule 1 to this Order and shown on the deposited plan.

Incorporation and application of provisions of Schedule 4 to the Act

3. The provisions of paragraphs 2, 10(3) and 10(4) of Schedule 4 to the Act(3), modified and adapted to read as set out in Schedule 2 to this Order, shall apply to the undertaking insofar as affected by the provisions of this Order, and the terms used in the provisions of those paragraphs, as so modified and adapted, which are defined in this Order, shall have the same meaning as in this Order.

Water rights

4. Subject to the provisions of this Order, Scottish Water may, for the purposes of the undertaking, take water from Tomich Borehole No. 1 (Works No. 1) and Tomich Borehole No. 2 (Works No. 3) (“the Tomich Boreholes”), in the area of the Highland Council.

5.—(1) During the construction of the works, Scottish Water may take from the Tomich Boreholes such water as it may require for such construction.

(2) After completion of the works, Scottish Water may, in any day, take from the Tomich Boreholes a quantity of water not greater than 240 cubic metres, as measured and recorded by an approved gauge (Works No. 2).

6. If the power to take water conferred by this Order has not been exercised by 31st December 2007 the said power shall cease.

Revocation

7. The County of Inverness (River Cannich and Allt Coillte) Water Order 1966(4) and the Inverness-shire Water Board (Allt Currachan and Loch na Beinne Moire) Water Order 1971(5) are revoked with effect from 31st December 2007.

Victoria Quay,
Edinburgh
16th June 2006

R IRVINE
A member of the staff of the Scottish Ministers

(2) 2002 (asp 3), as amended by the [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#).
(3) Paragraph 2 of Schedule 4 was amended by the [Roads \(Scotland\) Act 1984 \(c. 54\)](#), Schedule 9, paragraph 81(15)(a); paragraph 10(3) of Schedule 4 was amended by the [Criminal Justice Act 1982 \(c. 48\)](#), Schedule 15, paragraph 27 and by the [Criminal Procedure \(Consequential Provisions\) \(Scotland\) Act 1995 \(c. 40\)](#), Schedule 2.
(4) S.I.1966/477.
(5) S.I. 1971/2174.

SCHEDULE 1

Article 2

The works referred to in this Order and shown on the deposited plan are—

Works No. 1:

Construction of a borehole (No. 1) located at Ordnance Survey National Grid Reference NH 3105 2823.

Works No. 2:

Installation of a meter chamber, housing a flow meter (approved gauge), located at Ordnance Survey National Grid Reference NH 3108 2820.

Works No. 3:

Construction of a borehole (No. 2) located at Ordnance Survey National Grid Reference NH 3105 2824.

SCHEDULE 2

Article 3

The modifications and adaptations of Schedule 4 to the Act referred to in this Order are—

1. For paragraph 2 of Schedule 4 substitute—

“In the construction of the works described in Schedule 1 to the Scottish Water (Tomich Boreholes) Water Order 2006, Scottish Water may deviate laterally to any extent not exceeding the limits of deviation shown on the deposited plan and it may deviate vertically from the levels shown on the deposited plan to any extent:

Provided that—

- (a) no control building shall be constructed at a greater height above the general surface of the ground than that shown on the deposited plan and 2 metres in addition thereto; and
- (b) except for the purposes of crossing a stream, canal, dyke, watercourse or railway, or of crossing any lands where the consent of all persons interested in those lands has been obtained, no pipe or other conduit or aqueduct shall be raised above the surface of the ground otherwise than in accordance with the deposited plan.”.

2. For paragraph 10(3) of Schedule 4 substitute—

“If Scottish Water—

- (a) fails to construct or maintain in good order any such gauge as is mentioned in the Scottish Water (Tomich Boreholes) Water Order 2006, or refuses to allow any person interested to inspect and examine any such gauge or any records made thereby or kept by it in connection therewith or to take copies of any such records; or
- (b) takes any water contrary to the provisions of the Scottish Water (Tomich Boreholes) Water Order 2006,

it shall, without prejudice to its civil liability, if any, to a person aggrieved, be liable, in the case of an offence under paragraph (a) of this sub-paragraph, on summary conviction to a fine not exceeding level 3 on the standard scale, and, in the case of an offence under paragraph (b) of this sub-paragraph—

- (i) on summary conviction, to a fine not exceeding the statutory maximum; and
- (ii) on conviction on indictment, to a fine.”.

3. In paragraph 10(4) of Schedule 4, for the definition of “gauge”, substitute—

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

““gauge” includes a gauge, weir or other apparatus for measuring the flow of water and the flow meter to be installed as part of Works No. 2 specified in Schedule 1 to the Scottish Water (Tomich Boreholes) Water Order 2006.”.