

*Status: Point in time view as at 20/12/2000.*

*Changes to legislation: Electricity Act 1989, SCHEDULE 5 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

Section 10(5).

#### WATER RIGHTS FOR HYDRO-ELECTRIC GENERATING STATIONS IN SCOTLAND

##### Modifications etc. (not altering text)

**C1** Sch. 5: transfer of functions (S.) (1.7.1999) by [S.I. 1999/1750](#), [arts. 1, 2](#), [Sch. 1](#) (with [art. 7](#))

- 1 In Scotland, a person who holds a licence under section 6(1)(a) of this Act may be authorised by the Secretary of State to abstract and divert from any watercourse or loch and to use such water as may be necessary for the purposes of constructing or extending a generation station wholly or mainly driven by water and of operating that generating station after such construction or extension ; but he shall do as little damage as possible in the exercise of the powers conferred by the authorisation and shall make compensation for any damage done in the exercise of those powers.
- 2 Authorisation under paragraph 1 above shall be by order and shall provide for the compulsory acquisition by the person of such rights, as regards the abstraction, diversion and use, as may be specified in the order ; and the order may contain such incidental , consequential and supplementary provisions as the Secretary of State thinks necessary or expedient.
- 3 Where the abstraction, diversion, and use will, in the opinion of the Secretary of State—
  - (a) substantially reduce the flow of water in any watercourse, he shall in the order prescribe the extent to which and the circumstances in which water may be taken ;
  - (b) substantially reduce the level of water in any loch, he shall in the order either—
    - (i) prescribe the extent to which and the circumstances in which water may be taken ; or
    - (ii) prescribe the quantity of compensation water to be provided by the person ;
  - (c) impound any watercourse, he shall in the order prescribe the quantity of compensation order to be provided by the person.
- 4 In this Schedule “compensation water” means a flow of water, on such conditions and by such means as the Secretary of State may specify in the order, for the benefit of riparian owners and other owners of land or salmon fishings affected by the compulsory acquisition.
- 5 In deciding whether to make the order or in prescribing the quantity of any compensation water to be provided under the order, the Secretary of State shall have regard to all the circumstances of the particular case, including—
  - (a) the interest of public health ;

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- (b) the character of the watercourse or loch, and the flow, or as the case may be the level, of water in it ;
- (c) the extent to which the watercourse or loch is, or may in future be, used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply, agriculture, transport and navigation ; and
- (d) the effect on land drainage or on any canal or inland navigation of any alteration in the flow of water in the watercourse or level of water in the loch,

and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or salmon fishings.

- 6 Any question of disputed compensation under paragraph 1 above shall be referred to and determined by the Lands Tribunal for Scotland ; and sections 9 and 11 of the <sup>M1</sup>Land Compensation (Scotland) Act 1963 shall apply to any such determination.

**Marginal Citations**

**M1** 1963 c. 51.

- 7 An applicant for authorisation under paragraph 1 above shall submit to the Secretary of State a draft of the order which he desires the Secretary of State to make and shall publish once at least in each of two successive weeks in one or more local newspapers circulating in the area affected by the proposed order a notice—
- (a) stating the general effect of the proposed order ;
  - (b) specifying a place, in or near the said area, where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice ; and
  - (c) stating that within the said period any person may by notice to the Secretary of State object to the application.
- 8 Not later than the date on which the said notice is first published, the applicant shall serve a copy thereof—
- (a) along with a copy of the draft order, on—
    - (i) the water authority ;
    - (ii) the regional and district councils or the islands council ; and
    - (iii) the water development board,
 for every area affected by the proposed order ;
  - (b) on the district salmon fishery board of any salmon fishery district from which water is taken, or into which water is to be discharged, under the rights acquired, on any navigation authority exercising functions in relation to any watercourse or loch from or into which water is to be so taken or discharged, on any public undertakers known by the applicant to be authorised by any enactment to take or use water from any such watercourse or loch and on the [<sup>F1</sup>Scottish Environment Protection Agency].
- 9 The applicant shall also publish in the Edinburgh Gazette a notice stating that he is about to apply for authorisation under paragraph 1 above, naming the water authority [<sup>F2</sup>and the water development board] affected by the proposed order, specifying a place where a copy of the draft order and of any relevant map or plan

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may be inspected, and giving the name and date of issue of a local newspaper in which the notice explaining the effect of the order applied for will be found.

#### Textual Amendments

**F2** Words in Sch. 5 para. 9 repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 160(3), Sch. 14; S.I. 1996/323, art. 4(1)(b)(c)(d), Sch. 2

- 10 The applicant shall, at the request of any person interested, furnish to him a copy of the draft order upon payment of a reasonable charge.
- 11 The Secretary of State may make an order in the terms of the draft submitted to him or in those terms as modified in such manner as he thinks fit ; but, where he proposes to make any modification and considers that persons other than the applicant to give and publish additional notices in such manner as the Secretary of State thinks best adapted for informing all persons so affected of the modification proposed.
- 12 If before the expiration of the 28 days referred to in paragraph 7 above or of 25 days from the publication of the said notice in the Edinburgh Gazette, or before expiration of any period specified in notices give under the last foregoing paragraph, an objection is received by the Secretary of State from any authority or board or undertakers on whom a notice is required to be served under paragraph 8 above, or from any other person appearing to him to be affected by the application, or, as the case may be, by the proposed modification, and the objection is not withdrawn, the Secretary of State, before making any order on the application, shall cause a local inquiry to be held.
- 13 The expenses incurred by the Secretary of State in connection with the making, notification and confirmation of any order giving authorisation under paragraph 1 above shall be paid by the applicant ; and the Secretary of State may, in a case where there are two or more applicants, apportion such expenses between them.
- 14 In paragraphs 7 and 8 above the expression “area affected by the proposed order” means the limits of supply of any water authority [<sup>F3</sup>, or the area of any water development board], so affected.

#### Textual Amendments

**F3** Words in Sch. 5 para. 14 repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 160(4), Sch. 14; S.I. 1996/323, art. 4(1)(b)(c)(d), Sch. 2

- 15 In paragraphs 1 to 8 above “watercourse” includes all rivers, streams and passages through which water flows.

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