



# Natural Heritage (Scotland) Act 1991

## 1991 CHAPTER 28

### PART I

#### SCOTTISH NATURAL HERITAGE

##### *Establishment of SNH*

#### **1 Scottish Natural Heritage**

- (1) There shall be established a body to be known as “Scottish Natural Heritage” (in this Part of this Act referred to as “SNH”) whose general aims and purposes shall be—
  - (a) to secure the conservation and enhancement of; and
  - (b) to foster understanding and facilitate the enjoyment of,the natural heritage of Scotland; and SNH shall have regard to the desirability of securing that anything done, whether by SNH or any other person, in relation to the natural heritage of Scotland is undertaken in a manner which is sustainable.
- (2) Schedule 1 to this Act shall have effect with respect to the constitution and proceedings of and other matters relating to Scottish Natural Heritage.
- (3) For the purposes of this Act, “the natural heritage of Scotland” includes the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity; and references to “natural heritage” shall be construed accordingly.

##### *Functions of SNH*

#### **2 General functions of Scottish Natural Heritage**

- (1) SNH shall have the following general functions—
  - (a) the provision of advice to the Secretary of State or any other minister on the development and implementation of policies for or affecting the natural heritage of Scotland;

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- (b) the provision of advice and the dissemination of knowledge to any persons (including the provision and promotion of publicity and information services) about the natural heritage (including its use and enjoyment) and any matters arising from the discharge of its functions;
  - (c) the commissioning or support (whether by financial means or otherwise) of research which in its opinion is relevant to any of its functions or, in the case of research which is directly related to its functions, if it considers it appropriate to do so initiating and carrying out such research itself;
  - (d) the power to accept any gift or contribution made to it for the purposes of any of its functions and, subject to the terms of such gift or contribution, it shall apply the gift or contribution to those purposes;
  - (e) the power to form or promote or join with any other person in forming or promoting companies (within the meaning of the Companies Act 1985);
  - (f) the power to form partnerships with other persons; and
  - (g) the power to do all such other things as are incidental or conducive to the discharge of its functions including (without prejudice to the generality of this paragraph) the power to make charges for any service undertaken by it and the power to acquire, hold and dispose of land or any interest in or right over land.
- (2) SNH may, and if so requested by the Secretary of State or any general, regional or district planning authority shall, advise the Secretary of State or, as the case may be, the authority in relation to any matter arising under the Town and Country Planning (Scotland) Act 1972 which affects the natural heritage of Scotland.

### **3 Duty to take account of certain matters**

- (1) Subject to subsection (2) below, it shall be the duty of SNH in exercising its functions to take such account as may be appropriate in the circumstances of—
- (a) actual or possible ecological and other environmental changes to the natural heritage of Scotland;
  - (b) the needs of agriculture, fisheries and forestry;
  - (c) the need for social and economic development in Scotland or any part of Scotland;
  - (d) the need to conserve sites and landscapes of archaeological or historical interest;
  - (e) the interests of owners and occupiers of land; and
  - (f) the interests of local communities.
- (2) Paragraphs (b) to (f) of subsection (1) above shall not apply as regards any function exercised by SNH in pursuance of any of paragraphs (b) to (e) of section 133(2) of the Environmental Protection Act 1990 (special functions to be exercised through the joint committee).

### **4 Nature conservation functions**

- (1) Except as regards the joint committee within the meaning of Part VII of the Environmental Protection Act 1990 and subject to the following provisions of this section, Part VII of that Act shall not extend to Scotland.

- (2) Sections 128(4), 128(5) (in so far as it relates to Schedule 7) and 132(3) of that Act shall continue to extend to Scotland and any reference in those sections to “the Councils” shall include a reference to SNH.
- (3) Section 131 of that Act, in so far as it relates to the joint committee mentioned in subsection (1) above, shall continue to extend to Scotland.
- (4) Section 133 of that Act shall continue to extend to Scotland and—
  - (a) the references to “the Councils” shall include a reference to SNH; and
  - (b) in subsection (3) after the words “section 132 above” there shall be inserted the words “or, as the case may be, the nature conservation functions of Scottish Natural Heritage”,and in discharging its nature conservation functions, SNH shall have regard to any advice given to it by the joint committee under the said subsection (3).
- (5) The amendments made by Schedule 9 to that Act to enactments extending to Scotland shall continue to extend to Scotland.
- (6) SNH shall have the functions previously discharged by the Nature Conservancy Council for Scotland under the enactments amended by Schedule 2 to this Act in accordance with those enactments as so amended.
- (7) SNH shall be responsible for the establishment, maintenance and management of nature reserves (within the meaning of section 15 of the National Parks and Access to the Countryside Act 1949) in Scotland.
- (8) Paragraph 12 of Schedule 11 to the said Act of 1990 shall continue to extend to Scotland; and references to a new council shall, as regards the exercise of functions in part of a nature reserve or area of scientific interest in Scotland, be construed as references to SNH.
- (9) In this section “nature conservation” means the conservation of flora, fauna or geological or physiographical features.
- (10) Subject to anything in this section and Schedules 2 and 10 to this Act, for any reference in any enactment (including an enactment contained in a local or private Act and any order, regulation or other instrument having effect by virtue of an Act) to the Nature Conservancy Council for Scotland there shall be substituted a reference to Scottish Natural Heritage.

## **5 Development projects or schemes**

- (1) SNH may prepare proposals with respect to any area for a development project or scheme which is designed to achieve the conservation or enhancement of or which fosters understanding or enjoyment of the natural heritage of Scotland.
- (2) Proposals prepared under subsection (1) above in relation to any area shall—
  - (a) in relation to that area involve the application of new or developed methods, concepts or techniques; and
  - (b) be designed to illustrate the appropriateness of such a project or scheme to that area or other areas of a similar nature or which present similar problems to that area.

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- (3) SNH may undertake, promote or coordinate, either by itself or in conjunction with any other authority or person, measures to implement the proposals mentioned in subsection (1) above.
- (4) Where SNH has prepared a proposal for a development project or scheme for any area which involves the compulsory acquisition of land under subsection (6)(a) below, a compulsory purchase order for that purpose shall be subject to special parliamentary procedure in any case where an objection has been duly made by the owner of the land and has not been withdrawn.
- (5) In subsection (4) above “owner” shall have the same meaning as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (6) For the purposes of its function under subsection (3) above, SNH may—
- (a) acquire land compulsorily;
  - (b) exercise any powers to carry out work or provide services or facilities conferred by the Countryside (Scotland) Act 1967 on local authorities or planning authorities;
  - (c) with the approval of the Secretary of State and the Treasury, acquire by agreement and carry on or set up and carry on, directly or through an agent, or themselves carry on as agent, any business or undertaking, and, subject to such approval, may dispose of any such business or undertaking.
- (7) The power conferred by paragraph (b) of subsection (6) above—
- (a) may be exercised by SNH either on or in connection with land belonging to it, or with the consent of all persons having an interest therein, on or in connection with other land; and
  - (b) shall be exercisable in relation to land not belonging to it on such terms as may be arranged by agreement with the persons having an interest in the land.
- (8) Where any person having such an interest in the land as enables him to bind the land enters into any such agreement as is mentioned in subsection (7) above, the agreement—
- (a) in a case where the land affected by the agreement is registered in the Land Register of Scotland, may be registered in that register;
  - (b) in any other case, may be recorded in the appropriate Division of the General Register of Sasines,
- and if so registered or recorded shall be enforceable at the instance of SNH against persons deriving title to the land from the person who entered into the agreement:
- Provided that any such agreement shall not be enforceable against a third party who has in good faith and for value acquired right (whether completed by infestment or not) to the land prior to the agreement being registered or recorded or against any person deriving title from such a third party.
- (9) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory acquisition of land under this section as if this section had been in force immediately before the commencement of that Act, and in relation to such acquisition of land, SNH shall be treated as if it were a local authority within the meaning of that Act.
- (10) No land may be compulsorily acquired under this section unless the acquisition is authorised by the Secretary of State.

- (11) Any power to acquire land under this section shall include power to acquire a servitude or other right in or over land by the creation of a new right.

## **6 Natural Heritage Areas**

- (1) Where it appears to SNH, after consultation with such persons as it thinks fit, that an area is of outstanding value to the natural heritage of Scotland, and that special protection measures are appropriate for it, it may recommend to the Secretary of State that the area be designated as a Natural Heritage Area.
- (2) Where the Secretary of State receives a recommendation under subsection (1) above he may designate the area by a direction under this subsection as a Natural Heritage Area.
- (3) Where the Secretary of State proposes to make a direction under subsection (2) above he shall publish notice of the proposal in the Edinburgh Gazette and in at least one newspaper circulating in an area which includes the proposed area.
- (4) Before making a direction under subsection (2) above, the Secretary of State shall consider any representations received by him about the proposal within three months of the date which is the later of the dates on which the publication under subsection (3) above of notice relating to the proposal occurs.
- (5) Where the Secretary of State makes a direction under subsection (2) above he shall publish notice of the designation in the Edinburgh Gazette and in at least one newspaper circulating in an area which includes the Area.
- (6) Where it appears to SNH, after consultation with such persons as it thinks fit, that it is no longer appropriate that an area which has been designated as a Natural Heritage Area or any part of it should continue to be so designated it may recommend to the Secretary of State that the designation be cancelled or, as the case may be, varied.
- (7) Where the Secretary of State receives a recommendation under subsection (6) above he may, by a direction under this subsection, cancel or, as the case may be, vary the designation of the Natural Heritage Area; and subsections (3) to (5) above shall apply to a direction proposed to be made under this subsection as they apply to a direction proposed to be made under subsection (2) above, and for the purposes of such application the reference in subsection (3) to the proposed area shall be construed as a reference to the Area.
- (8) Section 262C of the Town and Country Planning (Scotland) Act 1972 (National Scenic Areas) shall be amended as follows—
- (a) in subsection (3) for the words “National Scenic Area” there shall be substituted the words “Natural Heritage Area under section 6 of the Natural Heritage (Scotland) Act 1991”; and
  - (b) in subsection (4) for the words “National Scenic Area” there shall be substituted the words “Natural Heritage Area”.
- (9) Notwithstanding the repeal by section 27 of and Schedule 11 to this Act of subsections (1) and (2) of the said section 262C or the amendment by this section of subsections (3) and (4) of that section, any area which, at the date of such repeal, was designated as a National Scenic Area shall continue to be so designated and, until such designation is cancelled by a direction under the said section 262C, the provisions of that section

shall continue to have effect in relation to the area as if they had not been repealed or, as the case may be, amended.

## 7 Powers of entry

- (1) For the purpose of surveying land in connection with—
- (a) the exercise or the proposed exercise of any of the functions of SNH under this Act or any other enactment in relation to land;
  - (b) the making of an access order by SNH under Part II of the Countryside (Scotland) Act 1967; or
  - (c) the acquisition under this Act or any other enactment of land or of any interest in land whether by agreement or compulsorily,
- any person duly authorised in writing by SNH may, at any reasonable time, enter upon the land.
- (2) For the purpose of surveying land, or of estimating its value, in connection with any claim for compensation payable by SNH by virtue of—
- (a) Part II of the Countryside (Scotland) Act 1967; or
  - (b) this Part of this Act,
- in respect of that or any other land, any person being an officer of the Valuation Office of the Inland Revenue Department or a person duly authorised in writing by SNH may, at any reasonable time, enter upon the land.
- (3) A person authorised under this section to enter upon any land shall, if so required by the occupier or anyone acting on his behalf, produce evidence of his authority, and shall not demand admission as of right to any land which is occupied unless at least fourteen days' notice in writing of the intended entry has been given to the occupier and, where practicable, to the owner.
- (4) The power conferred on SNH in connection with the exercise of its functions under section 5 of this Act shall be construed as including power to search and bore for the purpose of ascertaining the nature of the soil or subsoil or the presence of minerals.
- (5) No works authorised by subsection (4) above shall be carried out unless notice of the intention to do so has been included in a notice under subsection (3) above, and if the land in question is held by any statutory undertaker and such undertaker objects to the proposed works on the ground that carrying out such works would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the appropriate Minister (within the meaning of section 213(1) of the Town and Country Planning (Scotland) Act 1972).
- (6) Subject to subsection (7) below, if the sheriff is satisfied that there is a reasonable ground for entry upon any land which a person is entitled to enter in pursuance of this section and—
- (a) that admission to that land has been refused;
  - (b) that such refusal is apprehended; or
  - (c) that the land is unoccupied or the occupier is temporarily absent,
- then the sheriff may grant a warrant authorising that person to enter the land, if necessary using such force as is reasonable in all the circumstances, and a warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.

- (7) Without prejudice to subsection (3) above, in any case to which paragraph (a) or (b) of subsection (6) above applies the sheriff shall not grant a warrant unless he is satisfied that a notice of the intended entry has been served on the occupier of the land and, where practicable, on the owner not less than fourteen days before the demand for entry was made.
- (8) A person entering upon any land by virtue of this section may take with him such other persons and such equipment as may be necessary, and on leaving any land upon which he has so entered, being either unoccupied land, or land from which the occupier is temporarily absent, shall leave it as effectively secured against unauthorised entry as he found it.
- (9) A person who wilfully obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) It shall be the duty of SNH to compensate any person who has sustained damage by reason of—
- (a) the exercise by a person authorised by SNH of any powers conferred on him by virtue of this section; or
  - (b) the failure of a person so authorised to perform the duty imposed on him by subsection (8) above,
- except where the damage is attributable to the fault of the person who sustained it; and any dispute as to a person's entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.
- (11) SNH shall not authorise any person to exercise a power to enter land under section 108 of the National Parks and Access to the Countryside Act 1949; but nothing in this subsection shall affect the validity of anything done in pursuance of an authorisation granted before the date of coming into force of this section by the Nature Conservancy Council for Scotland.

### *Grants and loans*

## **8 Government grants to Scottish Natural Heritage**

- (1) The Secretary of State may, with the approval of the Treasury, make to SNH grants of such amounts as he thinks fit.
- (2) A grant under this section may be made subject to such conditions (including, in particular, conditions as to the use of the money for the purposes of the Joint Nature Conservation Committee established in pursuance of section 128(4) of the Environmental Protection Act 1990) as the Secretary of State may, with the approval of the Treasury, determine.

## **9 Grants and loans**

- (1) SNH may, with the consent of or in accordance with a general authorisation given by the Secretary of State, give financial assistance by way of grant or loan (or partly in one way and partly in the other) to any person, including a public body, in respect of expenditure incurred or to be incurred by him in doing anything which, in the opinion

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of SNH, is conducive to the attainment of its general aims and purposes as mentioned in section 1(1) of this Act.

- (2) No consent or general authorisation shall be given by the Secretary of State under subsection (1) above without the approval of the Treasury.
- (3) On making a grant or loan SNH may impose such conditions as it thinks fit, including (in the case of a grant) conditions for repayment in specified circumstances.
- (4) SNH shall exercise its powers under subsection (3) above so as to ensure that any person receiving a grant or loan under this section in respect of premises to which the public are to be admitted (on payment or otherwise) shall, in the means of access both to and within the premises, and in the parking facilities and sanitary conveniences to be available (if any), make provision, so far as it is in the circumstances both practicable and reasonable, for the needs of members of the public visiting the premises who are disabled.

#### *Miscellaneous*

### **10 Reports, accounts etc**

- (1) SNH shall—
  - (a) furnish the Secretary of State with such returns, accounts and other information with respect to its property and activities or proposed activities as he may, from time to time, require;
  - (b) afford to the Secretary of State facilities for the verification of information so furnished; and
  - (c) for the purpose of such verification, permit any person authorised in that behalf by the Secretary of State to inspect and make copies of the accounts, books, documents or papers of SNH and to give that person such explanation of anything he is entitled to inspect as he may reasonably require.
- (2) SNH shall—
  - (a) as soon as possible after the 31st March following the date upon which section 1 of this Act comes into force make to the Secretary of State a report on the exercise and performance of its functions to that date; and
  - (b) make a similar report to him as to each period of twelve months thereafter as soon as possible after the end of such period,

and a copy of every such report shall be laid before each House of Parliament by the Secretary of State:

Provided that if the date upon which the said section 1 comes into force falls on a day after 30th September and before 31st March, the first report of SNH under this section shall be for the period ending with the next succeeding 31st March.

- (3) SNH shall keep proper accounts and other records, and shall prepare for each financial year a statement of account in such form as the Secretary of State with the approval of the Treasury may direct and shall submit those statements of account to the Secretary of State at such time as he may with the approval of the Treasury direct.
- (4) The Secretary of State shall, on or before the 30th November in any year, transmit to the Comptroller and Auditor General the statement of account of SNH for the financial year last ended.



- (5) The Comptroller and Auditor General shall examine and certify the statements of account transmitted to him under subsection (4) above, and shall lay copies of them together with his report thereon before each House of Parliament.
- (6) In this section “financial year” means the period beginning with the date upon which section 1 of this Act comes into force and ending with the 31st March following that date and each period of twelve months thereafter:

Provided that if the date upon which the said section 1 comes into force falls on a day after 30th September and before 31st March, the first financial year of SNH shall end with the next succeeding 31st March.

## **11 Directions by Secretary of State**

- (1) Subject to subsection (3) below, the Secretary of State may give SNH directions of a general or specific character with regard to the discharge of its functions; and it shall be the duty of SNH to comply with any such directions.
- (2) A direction given under this section may be varied or revoked by a subsequent direction so given.
- (3) The Secretary of State shall not give directions under this section in respect of functions conferred on SNH by virtue of section 4(6) of this Act.

## **12 Advisory Committee on SSSIs**

- (1) The Secretary of State shall appoint a committee (in this section referred to as “the Committee”) which shall have the function of giving advice to SNH on such matters concerning areas of special scientific interest as are specified in this section.
- (2) The chairman and members of the Committee shall be appointed by the Secretary of State from among persons who are not members of SNH or of any committee appointed by it having scientific qualifications and experience in relation to flora or fauna or the geological or physiographical features of land.
- (3) The chairman and members of the Committee shall be appointed upon such terms and for such periods as the Secretary of State may determine and they shall be paid by SNH such remuneration and allowances as the Secretary of State may, with the consent of the Treasury, determine.
- (4) The Secretary of State may, from time to time, give directions to the Committee as to its procedure.
- (5) Where SNH has given notification to the owner or occupier of any land under subsection (1) of section 28 of the Wildlife and Countryside Act 1981 (areas of special scientific interest) that the land is or forms part of an area of special interest and has received from the owner or occupier of the land, within the time specified in subsection (2) of that section, representations or objections relating to any reason specified in the notification in pursuance of subsection (4)(a) of that section and the owner or occupier does not agree to withdraw such representations or objections, it shall refer the matter to the Committee.
- (6) Where, as regards any land in respect of which a notification has been given under subsection (1) of the said section 28 before the commencement of this section, SNH receives representations from the owner or occupier of the land that any reason

specified in the notification in pursuance of the said subsection (4)(a) has ceased to be valid and, within six months of such representations having been made, they have not been withdrawn—

- (a) in the case of a notification given since the commencement of section 2 of the Wildlife and Countryside (Amendment) Act 1985 or in the case of a notice of proposed notification given before such commencement, where objections or representations were duly made in pursuance of subsection (2) of the said section 28 at the time the notification or, as the case may be, notice was given; and
- (b) in any other case, where not less than 10 years have elapsed since the date the notification or, as the case may be, notice was given,

it shall refer the matter to the Committee.

- (7) SNH shall not confirm a notification to which subsection (5) above applies or come to a decision on representations to which subsection (6) above applies without having received and considered the advice of the Committee on the matter; and in any case where a matter has been referred to the Committee SNH shall send a copy of the Committee's advice to any owner or occupier who has made objections or representations at the time when it notifies the owner or occupier of the confirmation of a notification or, as the case may be, its decision on the matter.
- (8) Where representations are made to SNH in respect of a notification relating to any land in circumstances other than those mentioned in subsection (5) or (6) above, SNH shall refer the representations to the Committee where not less than 10 years have elapsed from whichever is the later of the date of the notification or the date of any earlier representations made in respect of the notification.

### **13 Access to open country**

Part II of the Countryside (Scotland) Act 1967 shall be amended in accordance with Schedule 3 to this Act to enable SNH to enter into access agreements or to make access orders under that Part of that Act.

### **14 Dissolution of bodies**

- (1) On a date to be appointed by the Secretary of State—
  - (a) the Nature Conservancy Council for Scotland; and
  - (b) the Countryside Commission for Scotland,
 shall each be dissolved.
- (2) On the date appointed for the purposes of subsection (1) above, all heritable or moveable property wherever situated held by each of the Nature Conservancy Council for Scotland and the Countryside Commission for Scotland immediately before that date shall be transferred to and vest in SNH and all rights, liabilities and obligations of both the Nature Conservancy Council for Scotland and the Countryside Commission for Scotland to which either of them were entitled or subject immediately before that date shall, on that date, be transferred to SNH.
- (3) In the Countryside (Scotland) Act 1967 for the words “the Commission” where they occur there shall be substituted the words “Scottish Natural Heritage”.
- (4) Subject to anything in this section and Schedule 10 to this Act, for any reference in any enactment (including an enactment contained in a local or private Act and any order,

regulation or other instrument having effect by virtue of an Act) to the Countryside Commission for Scotland there shall be substituted a reference to Scottish Natural Heritage.

- (5) Schedule 4 to this Act shall have effect for the purpose of making transitional provisions and savings in consequence of the dissolution of the Nature Conservancy Council for Scotland and the Countryside Commission for Scotland under subsection (1) above.

## PART II

### IRRIGATION

#### 15 Power to control abstraction of water for irrigation

- (1) The Secretary of State may, subject to the provisions of this section, make an order (referred to in this Part of this Act as a “control order”) to control the abstraction of water for irrigation.
- (2) The Secretary of State may make a control order only on the application of a river purification authority, acting in pursuance of their duties under section 17(1) of the Rivers (Prevention of Pollution) (Scotland) Act 1951 or under a requirement made by the Secretary of State under subsection (3) below.
- (3) In the performance of his duties under section 1 of the Water (Scotland) Act 1980 or section 1(1) of the said Act of 1951 with regard to the conservation of water and to the cleanliness of rivers, the Secretary of State may require a river purification authority to apply for a control order if he considers that there is a *prima facie* case for making such an order and a river purification authority of whom such a requirement is made shall make such an application.
- (4) A control order shall apply to all inland waters or ground waters within an area specified in the order (referred to in this Part of this Act as the “control area”).
- (5) A control area shall not extend beyond the area of the river purification authority on whose application the order has been made and it shall comprise an area or areas within, or the whole of, the authority’s area as shown in a map or plan contained in the order.
- (6) A control order shall relate to the abstraction of water for the purpose of irrigation—
- (a) in any form; and
  - (b) for the benefit of any agricultural or horticultural activity which, in itself, is carried out on a commercial basis.
- (7) Schedule 5 shall have effect with regard to applications for, and the making, coming into operation and the validity of control orders.
- (8) The power to make a control order shall be exercisable by statutory instrument.
- (9) In this Part—
- “closing date” means the date specified in a control order by which an application for a licence under section 17 of this Act should be made;
- “control area” means the area, specified in the order, to which a control order applies;

“control order” means an order made under subsection (1) above;  
 “inland waters” and “ground waters” have the meanings given in paragraphs (c) and (d) respectively of section 30A(1) of the Control of Pollution Act 1974.

## 16 Offence of unlicensed abstraction of water for irrigation

- (1) A person who, for the purpose of irrigation, abstracts water from inland or ground waters in an area to which a control order applies, or causes or permits any other person to abstract such water for that purpose, shall, subject to subsection (4) below, be guilty of an offence under this section.
- (2) Where a licence has been granted under section 17 of this Act and the operation of the licence has been limited or suspended under section 18(1) of this Act, any person who abstracts water in contravention of such limitation or suspension or causes or permits any other person to so abstract water shall be guilty of an offence under this section.
- (3) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a period not exceeding 3 months; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years.
- (4) A person shall not be guilty of an offence under subsection (1) above if he abstracts such water—
  - (a) under and in accordance with a valid licence under this Part of this Act;
  - (b) during a period in which restrictions on the abstraction of that water have been lifted by virtue of a declaration made under section 18(3) of this Act; or
  - (c) where restrictions on the abstraction of water or the operation of a licence have been temporarily relaxed by virtue of such a declaration, to the extent that the abstraction is within the scope of that relaxation.

## 17 Licences

- (1) A river purification authority may grant a licence for the abstraction of water from inland or ground waters in an area to which a control order applies in favour of and on an application by a person who is, or will be when the licence comes into force, the occupier of land within a control area.
- (2) A licence under this section shall remain in force during the period of the calendar year following the year in which the licence is granted; and a control order shall specify the date (referred to in this Part of this Act as the “closing date”) by which applications for such a licence should be made.
- (3) A river purification authority, having regard to their duties under this or any other enactment, and after consideration of an application and any objection against it duly made—
  - (a) may grant a licence either unconditionally or subject to such reasonable conditions as they may impose, which, without prejudice to that generality, may include conditions as to—
    - (i) the means of abstraction;
    - (ii) the point of abstraction;

- (iii) the amount of water to be abstracted during any period; and
    - (iv) the periods during which water may be abstracted; or
  - (b) may refuse to grant a licence and, in that event, the authority shall intimate in writing to the applicant their decision and the reasons therefor.
- (4) A licence granted under this section shall specify—
  - (a) the person to whom the licence has been granted and the waters to which it relates;
  - (b) the year in respect of which it is to be in force;
  - (c) the land to be irrigated and the method and purpose of that irrigation; and
  - (d) any conditions to which it is subject.
- (5) Schedule 6 to this Act shall have effect with regard to procedure for the application for a licence under this section, for appeals against a decision regarding such an application and for the variation, revocation and transfer of such licences.

## **18 Special provisions for shortage or abundance of water**

- (1) Where by reason of an exceptional shortage of rain or of any unforeseen event having a substantial effect on the availability of water it appears to a river purification authority that it is necessary to do so, they may limit or suspend the operation of any licence under this Part of this Act relating to affected waters.
- (2) A limitation or suspension imposed under subsection (1) above shall apply equitably to all licences relating to the affected waters and it shall have effect until the river purification authority decide that it is no longer necessary.
- (3) Where by reason of an abundance of water it appears to a river purification authority that restrictions on the abstraction of water in a control area may be temporarily relaxed or lifted, the authority may so declare and shall relax the operation of licences under this Part relating to the affected waters to the extent authorised by the declaration (which shall apply equitably to all such licences).
- (4) A relaxation or lifting of restrictions on the abstraction of water, whether under licence or not, shall have effect until the river purification authority declare that these restrictions are again to apply.
- (5) A river purification authority shall communicate any decision taken by them under this section to the holder of any licence affected by such decision.

## **19 Transitional provisions**

- (1) Where, at the commencement of this Part of this Act, an application for a control order, a licence or for variation of a licence under the Spray Irrigation (Scotland) Act 1964 has been made but not determined, the application shall be treated as if it had been made under this Part.
- (2) Any control order or licence under that Act of 1964 which is in force at the commencement of this Part of this Act shall continue to have effect and shall be treated as if it were made or granted under this Part.

## PART III

### DROUGHT

#### 20 Drought orders

- (1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any locality exists or is threatened then, subject to this Part of this Act, he may by order (in this Part referred to as an “ordinary drought order”) make such provision as appears to him to be expedient with a view to meeting the deficiency.
- (2) If the Secretary of State—
  - (a) is satisfied that circumstances exist which would permit him to make an ordinary drought order in respect of a locality; and
  - (b) is further satisfied that the deficiency or threatened deficiency of water supplies is such as to be likely to impair the economic or social well-being of persons in that locality,then, subject to this Part of this Act, he may by order (referred to in this Part as an “emergency drought order”) make such provision as appears to him to be expedient with a view to meeting the deficiency.
- (3) A drought order may be made only on the application of—
  - (a) in the case of an ordinary drought order, either a water authority or a water development board; or
  - (b) in the case of an emergency drought order, a water authority,and where applications are made both by a board and by an authority in respect of the same locality, the Secretary of State may make separate drought orders in favour of the board and in favour of the authority.
- (4) A drought order may—
  - (a) authorise the applicant to take water from any source specified in the order subject to such conditions or restrictions as may be so specified;
  - (b) authorise the applicant to discharge water to any place specified in the order subject to such conditions or restrictions as may be so specified;
  - (c) authorise the applicant to prohibit or limit the taking by any person of water from a source specified in the order if the applicant is satisfied that the taking of water from that source seriously affects the supplies available to the applicant;
  - (d) suspend or modify, subject to any conditions specified in the order, any restriction or obligation to which the applicant is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether as regards quantity, pressure, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water.
- (5) Without prejudice to subsection (4) above, an emergency drought order may—
  - (a) authorise the water authority to prohibit or limit the use of water for such purposes as it thinks fit;

- (b) authorise the water authority to supply water in its limits of supply or in any place within its limits of supply by means of stand-pipes or water tanks, and to erect or set up and maintain stand-pipes or water tanks in any road in that limits of supply.
- (6) Where powers have been conferred by an emergency drought order on a water authority—
  - (a) the Secretary of State may give to the authority such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
  - (b) it shall be the duty of the authority to comply with any such direction and that duty shall be enforceable under section 11 of the Water (Scotland) Act 1980, and the Secretary of State may vary or revoke any such direction by a further direction for those purposes; and references in subsection (9) below to a direction under this subsection include references to such a further direction.
- (7) Without prejudice to subsection (4) above, an ordinary drought order may make provision authorising the water authority to prohibit or limit the use of water for certain purposes specified in the order and the Secretary of State shall give to water authorities generally a direction as to the purposes which may be so specified and may vary or revoke any such direction by a further direction for those purposes.
- (8) Where any purpose set out in a direction given under subsection (7) above will cease to be one which may be specified in an ordinary drought order (by virtue of variation or revocation by a subsequent direction), the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.
- (9) The giving of a direction under subsection (6) above or the variation or revocation of a direction by a further direction under subsection (7) above shall not affect—
  - (a) the validity of anything done in the exercise of that power or in pursuance of an order before the giving of the direction under subsection (6) above or the further direction under subsection (7) above; or
  - (b) any obligation or liability accrued or incurred before the giving of the direction under subsection (6) above or the further direction under subsection (7) above.
- (10) Schedule 7 to this Act makes further provision with regard to drought orders.
- (11) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought order.
- (12) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.

## **21 Offences against drought orders**

- (1) A person who—
  - (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or
  - (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,

shall be guilty of an offence under this section.

- (2) A person who—
- (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order; or
  - (b) fails to allow a person authorised for the purpose by or under any such order to inspect and examine any such apparatus or any records made thereby or kept by that person in connection with that apparatus or to take copies of any such records,

shall be guilty of an offence under this section.

- (3) In any proceedings against a person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

## 22 Interpretation, transitional provisions and savings

- (1) In this Part of this Act—
- “compensation water” means water which a water authority or water development board is under an obligation to discharge into a river, stream, brook, or other running water or into a canal as a condition of performing their functions;
  - “drought order” means, subject to subsection (3) below, any order made under section 20 of this Act;
  - “emergency drought order” means an order made under subsection (2) of section 20 of this Act;
  - “inland navigation” includes any canal or navigable river;
  - “land” includes buildings and other structures, land covered with water, and any estate, interest, servitude or right in or over land;
  - “ordinary drought order” means an order made under subsection (1) of section 20 of this Act,

and any other expression which is used in this Part of this Act and is defined in section 109 of the Water (Scotland) Act 1980 shall have the same meaning in this Part as it is given in that section.

- (2) In this Part of this Act—
- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
  - (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.
- (3) An order made under section 77 or 78 of the Water (Scotland) Act 1980 which is in force at the commencement of this Part of this Act shall continue to have effect and shall be treated as if it were made under this Part; and references in this Part to a drought order shall include such an order.



- (4) Where an application for an order under section 77 or 78 of that Act of 1980 has been made but not determined at the commencement of this Part of this Act, the application shall be deemed to be an application for an order under this Part and any thing duly done before the commencement of this Part for the purposes of an application for an order under these sections shall be deemed to have been duly done for the purposes of an application under this Part and the proceedings on the application shall be continued accordingly.
- (5) Without prejudice to section 17(2) of the Interpretation Act 1978, references in any enactment other than in this Act to an order made under section 77 or 78 of that Act of 1980, or to an application for such an order, shall be construed as references to a drought order made under section 20 of this Act, or to an application for such an order.

## PART IV

### GENERAL

#### 23 Finance

There shall be defrayed out of money provided by Parliament—

- (a) any expenses of the Secretary of State incurred under this Act; and
- (b) any increase attributable to this Act in the sums so payable under any other enactment.

#### 24 Rights of entry and inspection under Parts II and III

- (1) Any person duly authorised in writing by a river purification authority, a water authority or a water development board may at any reasonable time enter upon any land for the purpose of—
  - (a) exercising any power or performing any duty conferred or imposed on the authority or board or that person by virtue of Part II or III of this Act;
  - (b) determining whether circumstances exist which require the exercise of such a power or performance of such a duty and, if so, in what manner such power or duty should be exercised or performed;
  - (c) determining whether any provision of either of these Parts of this Act or of an instrument made by virtue of one of these Parts is being complied with; or
  - (d) carrying out such inspections, measurements and tests on the land or of any articles, including water, on it and taking away such samples of the land or such articles as he considers appropriate for such inspections, measurements or tests.
- (2) Subject to subsection (3) below, if the sheriff is satisfied that there is a reasonable ground for entry upon any land which a person is entitled to enter in pursuance of subsection (1) above and—
  - (a) that admission to that land has been refused;
  - (b) that such refusal is apprehended;
  - (c) that entry upon the land was sought in an emergency;
  - (d) that the land is unoccupied or the occupier is temporarily absent; or
  - (e) that an application for admission to the land would defeat the object of the entry,

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*Status: This is the original version (as it was originally enacted).*

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then the sheriff may grant a warrant authorising that person to enter the land, if necessary using such force as is reasonable in all the circumstances.

- (3) Without prejudice to subsection (6) below, in any case to which paragraph (a) or (b) of subsection (2) above applies the sheriff shall not grant a warrant unless he is satisfied that a notice of the intended entry has been served on the occupier of the land not less than seven days before the demand for entry was made.
- (4) A warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.
- (5) A person authorised to enter upon any land in pursuance of this section—
  - (a) shall, if so required, produce evidence of his authority before he enters upon the land; and
  - (b) may take with him on to the land such other persons and such equipment as may be necessary.
- (6) Admission to any land used for residential purposes and admission with heavy equipment to any other land shall not, except—
  - (a) in an emergency;
  - (b) in a case where land is unoccupied; or
  - (c) in a case where to serve notice of intended entry would defeat the object of the entry,
 be demanded as of right in pursuance of subsection (1) above unless a notice of intended entry has been served on the occupier not less than seven days before the demand is made.
- (7) A person who, in the exercise of the powers conferred on him by virtue of this section, enters upon any land which is unoccupied or from which the occupier is temporarily absent shall leave the land as effectively secured against unauthorised entry as he found it.
- (8) A person who wilfully obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) It shall be the duty of a river purification authority, water authority or water development board to compensate any person who has sustained loss or damage by reason of—
  - (a) the exercise by a person authorised by the authority or board of any powers conferred on him by virtue of this section; or
  - (b) the failure of a person so authorised to perform the duty imposed on him by subsection (7) above; or
  - (c) the occupation and use of land authorised by a drought order by virtue of paragraph 5 of Schedule 7 to this Act,
 except where the loss or damage is attributable to the fault of the person who sustained it; and any dispute as to a person's entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.
- (10) Any reference in this section to an emergency is a reference to a case where a person requiring entry upon land has reasonable cause to believe that—

- (a) there is a reduction in the volume, or a deterioration in the quality, of water such as would be likely to endanger human life or health or adversely affect the viability of aquatic flora or fauna; and
- (b) immediate entry is necessary to verify the existence of these circumstances or to ascertain their cause or to effect a remedy.

(11) In this section “land” includes a vessel.

## **25 Service of documents**

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
  - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.
- (2) For the purpose of this section and section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;
- and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purpose of this section and for the purpose of the said section 7 in its application to this section.
- (4) Where under any provision of this Act any document is required to be served on the owner or on the occupier of any land then—
- (a) if the name or address of the owner or, as the case may be, of the occupier of the land cannot after reasonable inquiry be ascertained; or
  - (b) in the case of service on the occupier, if the land appears to be or is unoccupied, that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.
- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

**26 Offences by persons other than natural persons**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to the negligence of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Act is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to the negligence of, a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**27 Consequential and miscellaneous amendments and repeals**

- (1) The enactments specified in Schedule 10 to this Act shall have effect subject to the amendments specified in that Schedule.
- (2) The enactments specified in Schedule 11 of this Act are hereby repealed to the extent specified in the third column of that Schedule.

**28 Short title, commencement and extent**

- (1) This Act may be cited as the Natural Heritage (Scotland) Act 1991.
- (2) This Act shall come into force on such date as the Secretary of State may, by order made by statutory instrument appoint and different days may be so appointed for different provisions or for different purposes.
- (3) An order under subsection (2) above may make such transitional provision as appears to the Secretary of State necessary or expedient in connection with the provision brought into force by the order.
- (4) Subject to subsection (5) below, this Act extends to Scotland only.
- (5) Section 4(2) and (4) of this Act and so much of sections 4(10) and 27 of and Schedules 2, 10 and 11 to this Act as relates to enactments extending to England and Wales shall extend also to England and Wales.