



# Natural Heritage (Scotland) Act 1991

## 1991 CHAPTER 28

### 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.