



# Natural Heritage (Scotland) Act 1991

## 1991 CHAPTER 28

### 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.

[<sup>F1</sup>(3) A drought order may only be made on the application of [<sup>F2</sup>Scottish Water].]

(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;

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*Changes to legislation: There are currently no known outstanding effects for the Natural Heritage (Scotland) Act 1991, Part III. (See end of Document for details)*

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- (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 [<sup>F3</sup>Scottish Water] to prohibit or limit the use of water for such purposes as it thinks fit;
  - (b) authorise [<sup>F3</sup>Scottish Water] 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 [<sup>F3</sup>Scottish Water]—
- (a) the Secretary of State may give to [<sup>F3</sup>Scottish Water] 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 [<sup>F3</sup>Scottish Water] to comply with any such direction and that duty shall be enforceable under section 11 of the <sup>M1</sup>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 [<sup>F3</sup>Scottish Water] to prohibit or limit the use of water for certain purposes specified in the order and the Secretary of State shall give to [<sup>F3</sup>Scottish Water] 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.

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- (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.

#### Textual Amendments

- F1** S. 20(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 170(2)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F2** Words in s. 20(3) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(2)(a)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F3** Words in s. 20(5)(6)(7) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(2)(b)(c)(d)** (with s. 67); S.S.I. 2002/118, **art. 2**

#### Commencement Information

- I1** s. 20 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, **Sch.**

#### Marginal Citations

- M1** 1980 c. 45.

## 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.

*Status: Point in time view as at 28/11/2004.*

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### Commencement Information

**I2** S. 21 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

## 22 Interpretation, transitional provisions and savings.

(1) In this Part of this Act—

“compensation water” means water which [<sup>F4</sup>Scottish Water]. . . is under an obligation to discharge into a river, stream, brook, or other running water or into a canal as a condition of performing [<sup>F4</sup>its] 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 <sup>F5</sup>. . . 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 <sup>M2</sup>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 <sup>M3</sup>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.

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#### **Textual Amendments**

- F4** Words in definition of “compensation water” in s. 22(1) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(3)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F5** Word in s. 22(1) repealed (28.11.2004) by 2000 asp 5, ss. 76(1), 77, Sch. 12 Pt. 1 para. 53(2), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
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#### **Commencement Information**

- I3** s. 22 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, **art. 3, Sch.**
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#### **Marginal Citations**

- M2** 1980 c. 45.
- M3** 1978 c. 30.

**Status:**

Point in time view as at 28/11/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Natural Heritage (Scotland) Act 1991, Part III.