

WATER RESOURCES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Control of Water Abstraction

Section 5 – Qualifying abstraction

13. **Part 2** of the Act establishes a requirement for Ministerial approval for certain abstractions from the water environment in Scotland that are above the specified rate threshold, and are not exempt under section 7.
14. **Section 5** sets out the abstractions to which the provisions of Part 2 apply (“qualifying abstractions”). The requirement for Ministerial approval applies to an abstraction from any body of inland water in Scotland that is above the threshold rate set by or under section 8.
15. Inland water is defined by the 2003 Act as all standing or flowing water on the surface of the land (other than partly saline water in the vicinity of river mouths) and all groundwater within the landward limits of coastal water.

Section 6 – Prohibition arising

16. This section prohibits abstractions from inland water in Scotland above the specified threshold rate that have not been approved by the Scottish Ministers (unless they are exempt from the requirement to obtain approval by virtue of section 7).

Section 7 – Exemption from approval

17. This section sets out which abstractions are exempt from the requirement for Ministerial approval. The following abstractions are exempt:
 - abstractions already authorised under the Controlled Activities Regulations on the day on which section 7(1) comes into force;
 - abstractions by Scottish Water for the purpose of the exercise of its core functions (see section 70(2) of the 2002 Act, as amended by section 26 of this Act) in relation to premises in Scotland; and
 - abstractions for the purposes of generating electricity by hydro-power, irrigating agricultural or horticultural land, operating a fish farm or maintaining a quarry or a mine.
18. Ministers may by regulations modify an exemption, or provide for an exemption in other circumstances.

Section 8 – The relevant threshold

19. This section sets out the rate threshold above which abstractions from inland water in Scotland are subject (unless otherwise exempt) to the approval of the Scottish Ministers.

The rate threshold is 10 megalitres per day, although Ministers may seek to alter that threshold in future by regulations. One megalitre contains one million litres.

20. The Scottish Ministers may by regulations prescribe a method of calculation of the rate of abstraction, and in doing so may provide for some or all of the water abstracted to be left out of account in specified circumstances. Those circumstances could include, for example, where the water abstracted is returned to the water environment unaltered and within a defined period of time.

Section 9 – Consultation on changes

21. Before making regulations altering certain details of the abstraction control regime under section 7 or 8, the Scottish Ministers must consult Scottish Water, the Scottish Environment Protection Agency, Scottish Natural Heritage, and such other persons or organisations as they think appropriate.

Section 10 – Application for approval

22. This section provides that any person may apply to the Scottish Ministers for approval of a qualifying abstraction. The details of the procedure for making such an application must be set out by the Scottish Ministers in regulations.

Section 11 – Factors as to approval

23. This section sets out the factors to which the Scottish Ministers are to have regard when deciding whether to approve a qualifying abstraction. In contrast to the determination by the Scottish Environment Protection Agency of applications for the authorisation of abstractions under regulation 15 of the Controlled Activities Regulations which focuses on mitigating any adverse impacts on the water environment, Ministers must consider any economic, social and other benefits, any adverse impacts, and any relevant advice given by Scottish Water or the Scottish Environment Protection Agency in deciding whether to approve a proposed abstraction. Ministers are required to give their reasons for not approving an application.

Section 12 – Conditions of approval

24. This section enables the Scottish Ministers to attach conditions to their approval of an abstraction and to set a period for which their approval has effect. They may also extend the period for which it has effect or vary the conditions attached to the approval after consulting the holder. Conditions may, in particular, impose an upper limit on the rate at which water may be abstracted, and restrict the purposes for which the abstracted water may be used. The section also provides that the holder of an approval cannot transfer it to another person without the Scottish Ministers' prior consent.

Section 13 – Additional requirements

25. This section requires the holder of an approval to report, if required, to the Scottish Ministers on activities in relation to the abstraction or any associated operations. It also obliges the holder to pay any administrative fee, whether annual or otherwise, that the Scottish Ministers may fix relating to the costs of operating the abstraction control regime (other than costs relating to applications for approval, in respect of which a separate fee may be fixed under section 9). The fee fixed under this section might cover, for example, the cost of monitoring qualifying abstractions or suspected qualifying abstractions in accordance with regulations made under section 17.

Section 14 – Advice from other bodies

26. This section enables the Scottish Ministers to request from Scottish Water and the Scottish Environment Protection Agency, and requires those bodies to give, advice

concerning any adverse impact of the proposed abstraction upon, respectively, Scottish Water's core functions and the environment.

Section 15 – Suspension and revocation

27. This section provides for the suspension and revocation of the Scottish Ministers' approval if the holder requests it, or if the holder of the approval breaches conditions of or related to the approval. The holder must be informed of the reasons for any proposed involuntary suspension or revocation, and be given the opportunity to make representations before it is imposed.

Section 16 – Appeal against decision

28. This section makes provision for persons (who have sought approval for a qualifying abstraction or hold such an approval) to appeal to the sheriff against a relevant decision by the Scottish Ministers in relation to that approval. The sheriff may uphold or quash the decision, or vary it (by, for example, substituting a different period of validity of the approval, or removing or altering a condition attached to it). Any such appeal must be made within 21 days of the decision being intimated.

Section 17 – Monitoring and records

29. This section provides for the Scottish Ministers to make regulations about:
- monitoring of any qualifying abstraction, or an abstraction that is suspected of being a qualifying abstraction, and related activities and associated operations,
 - keeping of records, and the extent to which records must be made available to the Scottish Environment Protection Agency and other interested persons.
30. Regulations under this section may make provision for entry onto premises, steps that may be taken at premises so entered, and criminal sanctions for failing to comply with the regulations or for obstructing persons exercising functions conferred by those regulations.

Section 18 – Abstraction-related offence

31. This section provides that it is a criminal offence wilfully or recklessly to make a qualifying abstraction that is not approved or exempt, or wilfully or recklessly to breach any conditions attached to an approval as to the rate at which water may be abstracted or the purposes for which the water may be used.
32. On summary conviction, the maximum fine for this offence is the statutory maximum (currently £10,000) whereas, on conviction on indictment, it is an unlimited fine.

Section 19 – Corporate offending

33. This section provides that where an organisation such as a company or partnership commits an offence under section 18 (an abstraction-related offence) and the commission of the offence is attributable to a responsible official within the organisation such as a director or partner (or a person purporting to act in such a capacity), that official may be prosecuted for the offence in addition to the organisation itself.

Section 20 – Procedure for regulations

34. This section provides that regulations made under Part 2 are subject to the negative procedure (for which, see section 28 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#)) with the exception of regulations which modify the list of exempt abstractions, modify the relevant threshold, prescribe additional circumstances in which the Scottish Ministers may suspend or revoke their approval of an abstraction,

*These notes relate to the Water Resources (Scotland) Act
2013 (asp 5) which received Royal Assent on 9th April 2013*

or make provision about monitoring and record keeping in relation to such abstractions, which are instead subject to the affirmative procedure (for which, see section 29 of the 2010 Act).

Section 21 – Controlled Activities Regulations

35. This section provides that nothing in Part 2 of the Act affects any requirement for authorisation under the Controlled Activities Regulations. It clarifies that an abstraction may require both an authorisation under those Regulations and approval under Part 2.
36. As it is possible that the Controlled Activities Regulations might be altered or replaced in future, the section also enables the Scottish Ministers by regulations to modify this section and section 7, should that prove necessary as a result of the Controlled Activities Regulations being revoked or amended or new regulations be made regarding the same subject-matter.