

SCHEDULE 1

(introduced by section 42)

WATER SHORTAGE ORDERS

Notice of proposal

- 1 (1) Scottish Water must publish notice of a proposal—
 - (a) in at least one newspaper circulating in the area to which the proposal relates,
 - (b) on its website, and
 - (c) in such other manner as it thinks fit.
- (2) A notice under sub-paragraph (1) must contain details of—
 - (a) Scottish Water's reasons for making the proposal,
 - (b) the nature of the proposal, and the general effect that it would have (if implemented),
 - (c) any premises that Scottish Water would intend to enter in connection with the proposal (if implemented).
- (3) A notice under sub-paragraph (1) must also—
 - (a) name a place where a copy of the proposal, and any map or plan which accompanies it, may be inspected free of charge at all reasonable hours,
 - (b) state that representations about the proposal may be made by any person —
 - (i) in writing to the Scottish Ministers,
 - (ii) within the period of 14 days beginning with the day on which the notice is published under this paragraph.

Notifying owners etc.

- 2 (1) Sub-paragraph (2) applies where—
 - (a) a draft order would permit Scottish Water to—
 - (i) carry out and maintain works on any premises, or
 - (ii) take any other steps on any premises, and
 - (b) Scottish Water would not otherwise be entitled to do so.
- (2) Where this sub-paragraph applies, Scottish Water must (so far as reasonably practicable) give every owner, lessee and occupier of the premises—
 - (a) a copy of the proposal containing the draft order,
 - (b) a notice—
 - (i) explaining the nature and general effect of the draft order,
 - (ii) specifying the premises and the way in which they would be affected by the draft order,
 - (iii) stating that representations about the proposal may be made by the person concerned in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to that person,
 - (c) either—
 - (i) a map or plan showing the location of the premises, or
 - (ii) details of the place where such a map or plan may be inspected.

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- (3) Scottish Water must make such a map or plan available for inspection at all reasonable times and free of charge.
- (4) Sub-paragraph (5) applies where a draft order would restrict or prohibit the abstraction of water by any person.
- (5) Where this sub-paragraph applies, Scottish Water must give the person—
 - (a) a copy of the proposal containing the draft order,
 - (b) a notice—
 - (i) explaining the nature and general effect of the draft order,
 - (ii) explaining the effect of the draft order in relation to the abstraction of water by the person,
 - (iii) explaining the effect of the draft order in relation to any associated authorisation under the Controlled Activities Regulations,
 - (iv) specifying the period for which the restriction or prohibition is likely to have effect,
 - (v) stating that representations about the proposal may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.
- (6) In this paragraph, reference to the effect of a draft order (including something permitted or otherwise done under it) is to the effect that a water shortage order would have if it were made in the same terms as the draft order.
- (7) In this paragraph and paragraphs 3 to 5, “draft order” means draft water shortage order included in a proposal.

Additional notice

- 3 (1) Sub-paragraph (2) applies where—
 - (a) the Scottish Ministers intend to make a water shortage order that would restrict or prohibit the abstraction of water by any person, and
 - (b) because the restriction or prohibition is not mentioned in the draft order, the person has not been given a notice under paragraph 2(5).
- (2) Where this sub-paragraph applies, the Scottish Ministers must give the person—
 - (a) a copy of the proposal containing the draft order,
 - (b) a notice—
 - (i) explaining the nature and general effect of the draft order,
 - (ii) explaining the effect that the restriction or prohibition would have on the abstraction of water by the person,
 - (iii) explaining the effect that the restriction or prohibition would have on any associated authorisation under the Controlled Activities Regulations,
 - (iv) specifying the period for which the restriction or prohibition is likely to have effect,
 - (v) stating that representations about the proposal, and the restriction or prohibition, may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.

SEPA's advice

- 4 (1) The Scottish Ministers must seek SEPA's advice in relation to—
- (a) any adverse impact on the water environment that may arise if a water shortage order were made in the same terms as the draft order,
 - (b) the need to restrict or prohibit the abstraction of water by any person, by reason of any such adverse impact.
- (2) SEPA must give the Scottish Ministers advice sought under sub-paragraph (1).
- (3) In this paragraph—
- “SEPA” means the Scottish Environment Protection Agency,
 - “water environment” is as defined by section 3 of the 2003 Act.

Representations and decision

- 5 (1) The Scottish Ministers must not decide whether to make a water shortage order until—
- (a) the period for making representations under paragraphs 1 to 3 has expired, and
 - (b) they have received advice under paragraph 4.
- (2) Before deciding whether to make a water shortage order, the Scottish Ministers must consider—
- (a) any representations timeously made,
 - (b) the advice so received.
- (3) The Scottish Ministers may decide to—
- (a) make a water shortage order in the same terms as the draft order,
 - (b) make such an order in such other terms as they consider appropriate,
 - (c) refuse to make such an order.
- (4) The Scottish Ministers must notify Scottish Water of their decision under sub-paragraph (3).

Publication of order

- 6 (1) Where the Scottish Ministers make a water shortage order, Scottish Water must publish notice of the order—
- (a) in at least one newspaper circulating in the area to which the order relates,
 - (b) on its website, and
 - (c) in such other manner as it thinks fit.
- (2) Where the Scottish Ministers make a water shortage order that imposes water saving measures, Scottish Water must—
- (a) publish notice of the order—
 - (i) in at least one newspaper circulating in the area to which the order relates,
 - (ii) on its website, and
 - (iii) in such other manner as it thinks fit, and
 - (b) take such steps as it considers appropriate to bring the order to the attention of persons who are subject to the water saving measures.

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- (3) A notice under sub-paragraph (2) must specify—
- (a) the water saving measures that are imposed by the order,
 - (b) the persons in relation to whom the measures are imposed,
 - (c) the circumstances (if any) that are specified in the order in relation to the measures.
- (4) If sub-paragraph (2) applies, sub-paragraph (1) does not apply.

Notice regarding abstraction

- 7 Where the Scottish Ministers make a water shortage order that restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person—
- (a) a copy of the order,
 - (b) a notice—
 - (i) explaining the effect of the order in relation to the abstraction of water by the person,
 - (ii) explaining the effect of the order in relation to any associated authorisation under the Controlled Activities Regulations,
 - (iii) specifying the period for which the restriction or prohibition has effect.

Effect of order

- 8 (1) An ordinary water shortage order—
- (a) has effect from the day 3 days after the day on which notice of it is published under paragraph 6,
 - (b) ceases to have effect on the day falling 6 months after the day on which it first has effect.
- (2) An emergency water shortage order—
- (a) has effect from the day after the day on which notice of it is published under paragraph 6,
 - (b) ceases to have effect on the day falling 3 months after the day on which it first has effect.
- (3) The Scottish Ministers may extend the period for which a water shortage order has effect—
- (a) on the application of Scottish Water,
 - (b) on more than one occasion.
- (4) The period for which a water shortage order has effect may be extended (in total) by a period of not more than two months from the day on which the order would otherwise cease to have effect under sub-paragraph (1)(b) or (as the case may be) (2)(b).

Notice of extension

- 9 (1) This paragraph applies where the Scottish Ministers extend the period for which a water shortage order has effect under paragraph 8(3).
- (2) Scottish Water must publish notice of the extension—
- (a) in at least one newspaper circulating in the area to which the order relates,

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- (b) on its website, and
 - (c) in such other manner as it thinks fit.
- (3) Where the order imposes water saving measures, Scottish Water must—
- (a) publish notice of the extension—
 - (i) in at least one newspaper circulating in the area to which the order relates,
 - (ii) on its website, and
 - (iii) in such other manner as it thinks fit, and
 - (b) take such further steps as it considers appropriate to bring the extension to the attention of persons who are subject to the water saving measures.
- (4) A notice under sub-paragraph (3) must specify—
- (a) the water saving measures that are imposed by the order,
 - (b) the persons in relation to whom the measures are imposed,
 - (c) the circumstances (if any) that are specified in the order in relation to the measures.
- (5) If sub-paragraph (3) applies, sub-paragraph (2) does not apply.
- (6) Where the order restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person notice of the extension.

Appeal against extension

- 10 (1) A person who is aggrieved by the extension of the period for which a water shortage order has effect under paragraph 8(3) may appeal to the sheriff.
- (2) An appeal under sub-paragraph (1) must be made—
- (a) by way of summary application,
 - (b) within the period of 14 days beginning with the day on which notice of the extension is published under paragraph 9.
- (3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.
- (4) In the appeal, the sheriff may—
- (a) affirm or quash the extension,
 - (b) direct the Scottish Ministers to amend the order in a specified manner.
- (5) The sheriff's determination of the appeal is final, except on a point of law.

Review and revocation of order

- 11 (1) The Scottish Ministers may review a water shortage order at any time.
- (2) Following such a review, the Scottish Ministers may revoke the order wholly or partly.
- (3) Where the Scottish Ministers revoke the order (whether wholly or partly), Scottish Water must publish notice of that fact—
- (a) in at least one newspaper circulating in the area to which the order relates,
 - (b) on its website, and

(c) in such other manner as it thinks fit.

(4) Where the revocation of the order (whether wholly or partly) removes a restriction or prohibition on the abstraction of water by any person, the Scottish Ministers must give the person notice of the revocation.

Power to enter

- 12 (1) Scottish Water may—
- (a) enter any premises for the purposes of—
 - (i) assessing whether there is a serious deficiency, or threat of a serious deficiency, of water supplies in an area,
 - (ii) carrying out its functions under a water shortage order,
 - (iii) carrying out its functions under Part 7,
 - (iv) determining whether a water saving measure, or restriction or prohibition on abstraction, imposed by a water shortage order is being complied with,
 - (b) take any steps at the premises that are reasonably required for those purposes.
- (2) Sub-paragraph (1) authorises entry only if the occupier of the premises has been given at least 24 hours' notice of the intended entry for those purposes.

Entry warrants

- 13 (1) Scottish Water may apply to the sheriff for a warrant authorising it to—
- (a) enter particular premises for the purposes mentioned in paragraph 12(1),
 - (b) take any steps at the premises which are reasonably required for those purposes.
- (2) The sheriff may grant the warrant sought if satisfied—
- (a) that there are reasonable grounds for entering the premises for those purposes, and
 - (b) that—
 - (i) the first and second conditions are met,
 - (ii) the third condition is met, or
 - (iii) the fourth condition is met.
- (3) The first condition is that—
- (a) admission to the premises has been refused,
 - (b) the taking of steps at the premises has been obstructed, or
 - (c) such refusal or obstruction may reasonably be expected.
- (4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.
- (5) The third condition is that the premises are unoccupied.
- (6) The fourth condition is that the case is one of urgency.
- (7) A warrant under sub-paragraph (1)—
- (a) allows the use of reasonable force (if required),
 - (b) remains valid until the purposes mentioned in paragraph 12(1) are fulfilled.

Approved persons

- 14 (1) Sub-paragraph (2) applies to the authority conferred on Scottish Water by—
- (a) paragraph 12(1), or
 - (b) a warrant under paragraph 13(1).
- (2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in paragraph 12(1).

Taking steps

- 15 (1) Sub-paragraphs (2) to (6) apply in relation to the exercise of the authority mentioned in paragraph 14(1)(a) or (b).
- (2) An approved person must, if required by the occupier of the premises—
- (a) produce evidence of the approved person's identity (and approval), and
 - (b) explain the nature of the authority by (as the case may be)—
 - (i) reference to paragraph 12, or
 - (ii) showing a copy of the warrant.
- (3) An approved person may take onto the premises—
- (a) other persons acting under the approved person's direction,
 - (b) such equipment as is necessary in connection with the steps that may be taken there.
- (4) The steps that may be taken by an approved person on the premises include—
- (a) carrying out any inspection or test, or taking any measurement, there,
 - (b) installing or maintaining any measuring, testing or sampling equipment for use there.
- (5) An approved person may enter the premises only at a reasonable time.
- (6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.
- (7) In sub-paragraphs (2) to (6), “approved person” means person approved as mentioned in paragraph 14(2).

Obstruction offence

- 16 (1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in paragraph 14(1)(b).
- (2) In sub-paragraph (1), “approved person” means person approved as mentioned in paragraph 14(2).
- (3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Compensation

- 17 (1) Scottish Water must compensate any person who has sustained loss or damage in consequence of—

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- (a) the abstraction or discharge of water by Scottish Water in accordance with a water shortage order,
 - (b) a restriction or prohibition on the abstraction of water imposed by such an order,
 - (c) the exercise by an approved person of the authority mentioned in paragraph 14(1)(a) or (b).
- (2) Sub-paragraph (1) does not apply to loss or damage that is attributable to—
- (a) the fault of the person who sustained it,
 - (b) the imposition of a water saving measure by a water shortage order,
 - (c) the relaxation by such an order of any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,
 - (d) the supply of water by Scottish Water by means other than through pipes, in accordance with an emergency water shortage order,
 - (e) a serious deficiency of water supplies that the provisions of a water shortage order are intended to abate.
- (3) A claim for compensation under this paragraph must be given to Scottish Water—
- (a) by notice in writing,
 - (b) within the period of 6 months beginning with the day on which the water shortage order to which the claim relates expires.
- (4) A notice under sub-paragraph (3) must state—
- (a) the grounds of the claim,
 - (b) the amount of compensation claimed.
- (5) Any question of disputed compensation under this paragraph is to be determined by the sheriff.
- (6) In sub-paragraph (1)(c), “approved person” means person approved as mentioned in paragraph 14(2).

References to publication etc.

- 18 (1) A relevant requirement is to be fulfilled without undue delay.
- (2) In sub-paragraph (1), “relevant requirement” means requirement—
- (a) to publish or give notice of something (or otherwise bring attention to it), and
 - (b) imposed on Scottish Water or the Scottish Ministers by paragraph 6, 7, 9 or 11.
- 19 (1) A reference in this Part to the day on which a notice is published under paragraph 1, 6 or 9 is to the earliest day when the notice has been so published in each manner mentioned in sub-paragraph (2).
- (2) That is, published by Scottish Water—
- (a) in at least one newspaper circulating in the relevant area, and
 - (b) on its website.
- (3) The operation of sub-paragraph (1) is not affected by additional publication of the notice in any manner at any time.