

WATER RESOURCES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 7 – Water Shortage Orders

Section 38 – Proposal for order

71. This section makes provision for Scottish Water to propose to the Scottish Ministers that they (the Scottish Ministers) make a water shortage order. Scottish Water may only do this if it believes that there is a serious deficiency (or threat of a serious deficiency) of water supplies in an area. The section sets out the information that must be included in and accompany the proposal. The Scottish Ministers may also instruct Scottish Water about the form in which a proposal is to be presented. A water shortage order made under the provisions of the Act is an administrative order and is not a statutory instrument.
72. The provision for water shortage orders replaces the provision for drought orders in the Natural Heritage (Scotland) Act 1991 (the relevant provisions of which are repealed by section 53 of, and paragraph 1(2) of schedule 4 to, this Act).

Section 39 – Making of order

73. This section enables the Scottish Ministers to make two different types of water shortage order: an ordinary water shortage order and an emergency water shortage order. In order for Ministers to make an ordinary water shortage order, Scottish Water must have made a proposal and Ministers must be satisfied that the deficiency or threat in question exists. In order to make an emergency water shortage order, Ministers must, in addition, be satisfied that there is a risk to the health, or social or economic well-being, of people in the area affected. The differences in the effect of an ordinary water shortage order and an emergency water shortage order are that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (see section 40(4)), and an emergency water shortage order comes into force more quickly after it is made and is of shorter duration (see paragraph 8 of schedule 1).

Section 40 – Content of order

74. A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate a serious deficiency (or threat of a serious deficiency) of water supplies in an area. Examples of what a water shortage order may do are given. Subsection (4) provides that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (which an ordinary water shortage order may not do).

Section 41 – Abstraction and discharge

75. This section provides that Scottish Water may abstract water from any source or discharge water to any place where permitted to do so by a water shortage order, even if Scottish Water is not otherwise entitled to do so, or if the abstraction or

discharge would interfere with any right (in the water) of another person (including, for example, a person who has an exclusive right to abstract that water). This provision does not, however, override any requirement for an authorisation under the Controlled Activities Regulations (see section 50(1)), so Scottish Water will still require to apply for and obtain authorisation from the Scottish Environment Protection Agency if those regulations require it.

76. The section also provides that a water shortage order can restrict or prohibit the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

Section 42 – Scheduled provision

77. This section introduces schedule 1, which makes further provision in relation to procedural and other matters concerning water shortage orders.

Section 43 – Appeal against order

78. This section enables a person who is aggrieved by a water shortage order to appeal to the sheriff, who may affirm the order or direct the Scottish Ministers to amend or revoke it (wholly or partly). Any appeal must be made within 14 days from the day on which notice of the order is published. The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

Section 44 – Non-compliance offence

79. This section makes it an offence for a person who is (or ought to be) aware of a water shortage order to fail, without reasonable excuse, to comply with a water saving measure or a restriction or prohibition on the abstraction of water imposed the order.
80. 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 45 – Corporate offending

81. This section provides that, where an organisation such as a company or partnership commits an offence under section 44(1), and the commission of the offence is attributable to a responsible official of 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 46 – Recommendations issuable

82. This section requires Scottish Water, if it considers there to be a threat of a serious deficiency of water supplies in an area, to publicise that fact and to recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat. Unlike water saving measures imposed by a water shortage order, it is not a criminal offence to fail to comply with water saving measures recommended under this section.

Section 47 – Directions on functions

83. This section enables the Scottish Ministers to give directions to Scottish Water regarding the exercise of its functions under a water shortage order.

Section 48 – Water saving measures

84. This section introduces schedule 2, which lists the water saving measures that may be imposed in a water shortage order under section 40(2)(e) or recommended under section 46.

Section 49 – Serious deficiencies

85. This section provides that references in Part 7 of the Act to a serious deficiency of water supplies means an insufficiency of water supplies available to enable Scottish Water to carry out its functions under Part II of the 1980 Act (concerning the supply of wholesome water for domestic and non-domestic purposes).

Section 50 – Controlled Activities Regulations

86. This section makes it clear that, although the Scottish Ministers may permit Scottish Water to make an abstraction or take other measures in connection with a water shortage order, that permission does not absolve Scottish Water of the need to separately obtain any authorisation required under the Controlled Activities Regulations.
87. Scottish Water must apply separately for any authorisation that it may need under the Controlled Activities Regulations, and is required by section 38(3)(b) to provide to the Scottish Ministers a copy of any associated application under those Regulations when proposing a water shortage order.
88. This section confirms that any restriction or prohibition on the abstraction of water imposed by a water shortage order overrides any authorisation of that abstraction under the Controlled Activities Regulations, while the water shortage order is in effect.

Section 51 – Other expressions in Part

89. This section defines various expressions used in Part 7.