



# Water Resources (Scotland) Act 2013

## 2013 asp 5

### PART 2

#### CONTROL OF WATER ABSTRACTION

##### *Introduction*

#### **5 Qualifying abstraction**

- (1) In this Part, “qualifying abstraction” means abstraction of water by any person—
  - (a) from a particular body of inland water within Scotland, and
  - (b) at a rate above the relevant threshold.
- (2) In this Part, “abstraction” in relation to a body of inland water has the same meaning as in section 20(3)(b) of the 2003 Act in relation to a body of water of the sort to which that section relates (see section 20(6) of that Act).
- (3) In this Part, “inland water” is as defined by section 3 of the 2003 Act.

#### **6 Prohibition arising**

- (1) A qualifying abstraction is prohibited if it is not—
  - (a) approved as described in subsection (2), or
  - (b) exempt by virtue of section 7.
- (2) It is approved if—
  - (a) it has been approved by the Scottish Ministers under this Part, and
  - (b) their approval has not ceased to have effect by reason of—
    - (i) the expiry of any period specified under section 12(1)(a) (including where extended), or
    - (ii) the imposition of a suspension or revocation under section 15(1)(a) to (c).

## 7 Exemption from approval

- (1) A qualifying abstraction is exempt if, on the day on which this subsection comes into force, it is subject to an authorisation under the Controlled Activities Regulations.
- (2) The exemption under subsection (1) comes to an end if the authorisation subsequently—
  - (a) is varied so as to relate to a greater rate of abstraction than that to which it relates on the day mentioned in that subsection, or
  - (b) ceases to have effect for any reason, except temporarily.
- (3) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of the exercise by Scottish Water of its core functions in relation to premises in Scotland.
- (4) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of—
  - (a) generating electricity by hydro-power,
  - (b) irrigating agricultural or horticultural land,
  - (c) operating a fish farm, or
  - (d) maintaining a quarry or a coal or other mine.
- (5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.
- (6) The Scottish Ministers may by regulations—
  - (a) modify any of the exemptions under this section,
  - (b) specify further circumstances in which a qualifying abstraction is exempt from their approval under this Part.

## 8 The relevant threshold

- (1) In this Part, “the relevant threshold” means—
  - (a) the rate of 10 megalitres of water per day, or
  - (b) such other rate as the Scottish Ministers may by regulations prescribe.
- (2) The Scottish Ministers may by regulations prescribe a method of calculation for the purpose of subsection (1).
- (3) Regulations under subsection (2) may (in particular) include provision for all or some of an amount of water abstracted to be left out of account in specified circumstances.

## 9 Consultation on changes

Before making regulations under section 7(6) or 8(1)(b) or (2), the Scottish Ministers must consult—

- (a) Scottish Water,
- (b) SEPA,
- (c) Scottish Natural Heritage,
- (d) such other persons as they consider appropriate.

## *Role of Ministers*

### **10 Application for approval**

- (1) Any person may apply to the Scottish Ministers for their approval of a qualifying abstraction.
- (2) The Scottish Ministers must by regulations make provision about the procedure in relation to an application under subsection (1).
- (3) In particular, the regulations may—
  - (a) specify the form in which it is to be made,
  - (b) fix a reasonable fee for making it,
  - (c) describe the information that is to accompany it,
  - (d) require the applicant to give public notice of it,
  - (e) allow interested persons to make representations about it.

### **11 Factors as to approval**

- (1) In deciding whether to approve a qualifying abstraction, the Scottish Ministers must have regard to—
  - (a) the applicant's financial position,
  - (b) the proposed use of the water to be abstracted,
  - (c) any—
    - (i) economic, social or other benefit that may arise in Scotland (or an area within it) in consequence of the abstraction,
    - (ii) adverse impact of any kind that may arise in Scotland (or an area within it) in consequence of the abstraction,
  - (d) any relevant advice given under section 14(3) or (4),
  - (e) such additional factors as they consider to be relevant.
- (2) If the Scottish Ministers do not approve a qualifying abstraction, they must give the applicant their reasons.

### **12 Conditions of approval**

- (1) If the Scottish Ministers approve a qualifying abstraction, they may—
  - (a) specify the period for which their approval has effect,
  - (b) attach conditions to their approval.
- (2) Conditions under subsection (1)(b) may—
  - (a) impose restrictions on—
    - (i) the rate at which water may be abstracted (above the relevant threshold),
    - (ii) the purposes for which the water may be used,
  - (b) require that particular steps be taken in relation to the abstraction or any associated operations,
  - (c) relate to compensation for any adverse impact of a specific kind caused by the abstraction,
  - (d) concern such other matters as the Scottish Ministers consider to be relevant.

- (3) It is the holder who is subject to any conditions attached under subsection (1)(b).
- (4) Except with the Scottish Ministers' prior consent, their approval of a qualifying abstraction is not transferable by the holder to another person.
- (5) After consulting the holder, the Scottish Ministers may—
  - (a) under subsection (1)(a), extend any period specified under that subsection,
  - (b) under subsection (1)(b)—
    - (i) vary or remove any conditions attached to their approval, or
    - (ii) attach new conditions to their approval.

### **13 Additional requirements**

- (1) The holder must—
  - (a) at such times and in such form as they may require, give the Scottish Ministers a report on the holder's activities in carrying out (or in relation to) the abstraction or any associated operations, and
  - (b) pay the Scottish Ministers such reasonable fee as they may by regulations fix in accordance with subsection (2)(a) (and do so as required by virtue of subsection (2)(b)).
- (2) Regulations under subsection (1)(b)—
  - (a) must relate to costs attributable to the exercise of the Scottish Ministers' administrative functions under this Part,
  - (b) may require payment of the fee annually or otherwise.
- (3) In the application of subsection (2)(a), no account is to be taken of costs to which a fee fixed by virtue of section 10(3)(b) relates.

### **14 Advice from other bodies**

- (1) Subsections (3) and (4) apply where the Scottish Ministers are considering—
  - (a) an application under section 10(1),
  - (b) what period (if any) should be specified under section 12(1)(a), or
  - (c) what conditions (if any) should be attached under section 12(1)(b).
- (2) Subsection (3) does not apply if Scottish Water is the applicant.
- (3) Scottish Water must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the exercise of its core functions in relation to premises in Scotland.
- (4) SEPA must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the environment in Scotland.
- (5) In subsection (3), the reference to Scottish Water's core functions is to be construed in accordance with section 70(2) of the 2002 Act.
- (6) In subsections (3) and (4), the references to impact are to impact that may arise if the qualifying abstraction in question were to be carried out.

## **15 Suspension and revocation**

- (1) The Scottish Ministers may suspend or revoke their approval of a qualifying abstraction—
  - (a) if the holder requests that they do so,
  - (b) if the holder—
    - (i) breaches any conditions attached under section 12(1)(b), or
    - (ii) fails to comply with section 13(1), or
  - (c) in such other circumstances as they may by regulations prescribe.
- (2) Before imposing a suspension or revocation under subsection (1)(b) or (c), the Scottish Ministers must—
  - (a) with reasons, inform the holder of their intention to do so,
  - (b) allow the holder to make representations.

### *Appeal, monitoring and offence*

## **16 Appeal against decision**

- (1) For the purpose of subsections (2) to (4), a relevant decision is one—
  - (a) following an application under section 10(1), not to approve a qualifying abstraction,
  - (b) to specify a period under section 12(1)(a),
  - (c) to attach any conditions under section 12(1)(b), or
  - (d) to impose a suspension or revocation under section 15(1)(b) or (c).
- (2) The applicant or (as the case may be) holder may appeal to the sheriff against a relevant decision, if aggrieved—
  - (a) in the case to which subsection (1)(a) or (d) relates, by the making of the relevant decision,
  - (b) in the case to which subsection (1)(b) relates, by the shortness of the period so specified,
  - (c) in the case to which subsection (1)(c) relates, by the nature or terms of the conditions so attached.
- (3) An appeal under subsection (2) must be made—
  - (a) by way of summary application,
  - (b) within the period of 21 days beginning with the day on which the relevant decision is duly intimated.
- (4) In the appeal, the sheriff may uphold, vary or quash the relevant decision.

## **17 Monitoring and records**

- (1) The Scottish Ministers may by regulations make provision about the monitoring of—
  - (a) an abstraction of water from a body of inland water that is, or is suspected of being, a qualifying abstraction,
  - (b) any activities appearing to relate to such an abstraction of water or any associated operations.
- (2) The Scottish Ministers may by regulations make provision about—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the keeping of records in connection with this Part, or
  - (b) the extent to which such records are to be made available to them, SEPA or other interested persons.
- (3) Regulations under subsection (1) or (2) may confer functions on the Scottish Ministers, SEPA or other specified persons.
- (4) Regulations under subsection (1) or (2) may include provision—
- (a) allowing entry onto premises under a warrant or otherwise,
  - (b) about the steps that may be taken at premises so entered,
  - (c) for summary offences and penalties as respects—
    - (i) failure to comply with requirements imposed by the regulations, or
    - (ii) obstruction of persons exercising functions conferred by the regulations.

## **18 Abstraction-related offence**

- (1) A person commits an offence if the person wilfully or recklessly—
- (a) contravenes the prohibition constituted by section 6(1), or
  - (b) breaches any conditions to which the person is subject by virtue of section 12(2)(a).
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

## **19 Corporate offending**

- (1) Subsection (2) applies where—
- (a) an offence under section 18(1) is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.
- (2) The responsible official (as well as the organisation) commits the offence.
- (3) “Relevant organisation” means—
- (a) company,
  - (b) limited liability partnership,
  - (c) ordinary partnership,
  - (d) other body or association.
- (4) “Responsible official” means—
- (a) in the case of a company, director, secretary, manager or similar officer,
  - (b) in the case of a limited liability partnership, member,
  - (c) in the case of an ordinary partnership, partner,
  - (d) in the case of another body or association, person who is concerned in the management or control of its affairs,
- but in each case also includes person purporting to act in such a capacity.

*Regulations etc.*

**20 Procedure for regulations**

- (1) Regulations under section 7(6), 8(1)(b) or (2), 15(1)(c) or 17(1) or (2) are subject to the affirmative procedure.
- (2) Other regulations under this Part are subject to the negative procedure.
- (3) Regulations under this Part may make different provision for different purposes.

**21 Controlled Activities Regulations**

- (1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.
- (2) An authorisation under the Controlled Activities Regulations is subject to approval of a qualifying abstraction by the Scottish Ministers under this Part, so far as relevant in relation to the activities to which the authorisation relates (except where the authorisation exempts the abstraction under section 7(1)).
- (3) In this Part—
  - (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
  - (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations.
- (4) The Scottish Ministers may by regulations modify—
  - (a) subsections (1) to (3),
  - (b) section 7(1).
- (5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—
  - (a) the Controlled Activities Regulations, or
  - (b) any subsequent regulations made under section 20 of the 2003 Act.

**22 Other definitions for Part**

In this Part—

- “holder” means person in whose favour the Scottish Ministers’ approval under this Part has effect for the time being,  
“premises” includes any land, building or other place,  
“SEPA” means the Scottish Environment Protection Agency.