



Water Resources (Scotland) Act 2013

2013 asp 5

PART 7

WATER SHORTAGE ORDERS

Main provisions

38 Proposal for order

- (1) Scottish Water may propose to the Scottish Ministers that they make a water shortage order if it believes that there is—
 - (a) a serious deficiency of water supplies in an area, or
 - (b) a threat of a serious deficiency of water supplies in an area.
- (2) A proposal must include—
 - (a) a draft water shortage order,
 - (b) details of—
 - (i) the deficiency or threat as respects the water supplies,
 - (ii) the steps that Scottish Water has taken to abate the deficiency or threat,
 - (iii) the steps (other than steps in accordance with the draft order) that Scottish Water intends to take in order to abate the deficiency or threat,
 - (iv) how Scottish Water considers that the taking of those steps will abate the deficiency or threat,
 - (v) any prior communications about the proposal between Scottish Water and persons likely to be affected by the draft order,
 - (c) such other information as the Scottish Ministers may reasonably require.
- (3) A proposal must be accompanied by—
 - (a) a map or plan showing the location of—
 - (i) any source from which Scottish Water proposes to abstract water,
 - (ii) any place to which Scottish Water proposes to discharge water,
 - (iii) any works which Scottish Water proposes to carry out,

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- (iv) any premises at which Scottish Water proposes to take any other steps in order to abate the deficiency or threat,
 - (b) a copy of any associated application made by Scottish Water under the Controlled Activities Regulations,
 - (c) such other documents as the Scottish Ministers may reasonably require.
- (4) The Scottish Ministers may instruct Scottish Water about the form in which a proposal is to be presented to them.

39 Making of order

- (1) The Scottish Ministers may make an ordinary water shortage order in relation to an area if the first and second conditions are met.
- (2) The Scottish Ministers may make an emergency water shortage order in relation to an area if the first, second and third conditions are met.
- (3) The first condition is that Scottish Water has made a proposal.
- (4) The second condition is that the Scottish Ministers are satisfied that the deficiency or threat in question exists.
- (5) The third condition is that the Scottish Ministers are satisfied that there is a risk to the health, or social or economic well-being, of people in the area.
- (6) The function of making a water shortage order is not exercisable by Scottish statutory instrument.

40 Content of order

- (1) A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate—
 - (a) a serious deficiency of water supplies in an area, or
 - (b) a threat of a serious deficiency of water supplies in an area.
- (2) In particular, a water shortage order may—
 - (a) permit Scottish Water to—
 - (i) abstract water from any source specified in the order,
 - (ii) discharge water to any place specified in the order,
 - (iii) carry out and maintain works on any premises specified in the order for any purpose specified in the order,
 - (b) impose conditions or restrictions on any abstraction or discharge of water so permitted,
 - (c) relax 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) restrict or prohibit the abstraction of water by any person from any source specified in the order,
 - (e) impose one or more water saving measures in relation to—
 - (i) persons of such descriptions as are specified in the order,
 - (ii) premises of such categories as are so specified,
 - (iii) other property of such types as are so specified,

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(iv) such purposes or circumstances as are so specified.

- (3) A water shortage order may include—
- (a) provision by way of exceptions or exemptions,
 - (b) different provision for different purposes in any respects.
- (4) An emergency water shortage order (but not an ordinary water shortage order) may permit Scottish Water to supply water by means other than through pipes.

41 Abstraction and discharge

- (1) Permission as mentioned in section 40(2)(a)(i) or (ii) allows Scottish Water to abstract or (as the case may be) discharge the water even if—
- (a) it is not otherwise entitled to do so,
 - (b) the abstraction or discharge would interfere with any right of any other person in the water.
- (2) A restriction or prohibition as mentioned in section 40(2)(d) restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

42 Scheduled provision

Schedule 1 makes further provision in relation to water shortage orders.

Appeal and offence

43 Appeal against order

- (1) A person who is aggrieved by a water shortage order may appeal to the sheriff against—
- (a) the making of the order,
 - (b) the terms of the order.
- (2) An appeal under subsection (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 order is published under paragraph 6 of schedule 1.
- (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 the order,
 - (b) direct the Scottish Ministers to—
 - (i) amend the order in a specified manner,
 - (ii) revoke the order wholly or partly.
- (5) The sheriff's determination of the appeal is final, except on a point of law.

44 Non-compliance offence

- (1) A relevant person commits an offence if the person, without reasonable excuse, fails to comply with—
 - (a) a water saving measure imposed by a water shortage order, or
 - (b) a restriction or prohibition on the abstraction of water imposed by such an order.
- (2) In subsection (1), “relevant person” means person who is, or ought to be, aware of the order.
- (3) 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.

45 Corporate offending

- (1) Subsection (2) applies where—
 - (a) an offence under section 44(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.

Recommendations and directions

46 Recommendations issuable

- (1) If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area, it must—
 - (a) publicise the threat in the area, and
 - (b) recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat.
- (2) Scottish Water must take such steps as it considers appropriate to bring its recommendation under subsection (1)(b) to the attention of people in the area.

47 Directions on functions

- (1) The Scottish Ministers may give Scottish Water directions as to the exercise of its functions under a water shortage order.
- (2) Scottish Water must comply with directions given to it under subsection (1).
- (3) Directions under subsection (1) may vary or revoke earlier such directions.
- (4) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to Scottish Water.

Definitions etc.

48 Water saving measures

In this Part, “water saving measures” means measures listed in schedule 2.

49 Serious deficiencies

The references in this Part to a serious deficiency of water supplies (whether actual or threatened) are to an insufficiency of water supplies available to Scottish Water to enable it to carry out its functions under Part II of the 1980 Act.

50 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 any restriction or prohibition as mentioned in section 40(2)(d), so far as relevant in relation to the activities to which the authorisation relates.
- (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,
 - (c) a reference to an application under the Controlled Activities Regulations is to an application in accordance with regulation 11 (including as applied by regulation 24) of those Regulations.
- (4) The Scottish Ministers may by regulations modify—
 - (a) subsections (1) to (3),
 - (b) section 38(3)(b),
 - (c) in schedule 1, paragraphs 2(5)(b)(iii), 3(2)(b)(iii) and 7(b)(ii).
- (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.

(6) Regulations under subsection (4) are subject to the negative procedure.

51 Other expressions in Part

In this Part—

“emergency water shortage order” means one under section 39(2),

“ordinary water shortage order” means one under section 39(1),

“premises” includes any land, building or other place,

“proposal” means proposal under section 38(1) (relating to a water shortage order),

“water shortage order” means emergency water shortage order or ordinary water shortage order.