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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 429**

**WATER SUPPLY**

**The Scottish Water (Loch of Boardhouse) Water Order 2008**

*Made - - - - 16th December 2008*

*Coming into force - - 18th December 2008*

The Scottish Ministers, on the application of Scottish Water, make the following Order in exercise of the powers conferred by sections 17(2), 29(1) and 107(1)(b) of the Water (Scotland) Act 1980<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 17(5A) of that Act, they have obtained and had regard to the advice of the Scottish Environment Protection Agency.

**Citation and commencement**

1. This Order may be cited as the Scottish Water (Loch of Boardhouse) Water Order 2008 and shall come into force on 18th December 2008.

**Interpretation**

2. In this Order—

“the Act” means the Water (Scotland) Act 1980;

“approved” means approved by the Scottish Ministers;

“day” means a period of 24 hours reckoned from midnight;

“deposited plan” means the plan, prepared in triplicate, docketed and signed as relative to this Order and marked “the Scottish Water (Loch of Boardhouse) Water Order 2008”, one copy of which is deposited in the office of the Scottish Government, Victoria Quay, Edinburgh, one copy at the head office of Scottish Water at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, Fife, and one copy at Scottish Water’s Orkney Area Office, Seafire Road, Kirkwall;

“gauge” includes a gauge, weir or other apparatus for measuring the flow of water;

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(1) 1980 c. 45 Section 17(2) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180 (1) and (2), schedule 13, paragraph 119(10)(b) and schedule 14, and by the Water Industry (Scotland) Act 2002 (asp 3) section 71(1) and schedule 6, paragraph 14(3)(a), (b), (c). Section 29(1) was amended by the Water Industry (Scotland) Act 2002 (asp 3), section 71(1) and schedule 6, paragraph 23(a). Section 107(1)(b) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180(1) and (2), schedule 13, paragraph 119(52)(a) and schedule 14, and by the Water Industry (Scotland) Act 2002 (asp 3), section 71(1) and schedule 6, paragraph 61(a). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

“intake” includes any work by which water is taken by Scottish Water for the purpose of the undertaking;

“Scottish Water” means the body corporate established by section 20(1) of the Water Industry (Scotland) Act 2002(2);

“undertaking” means the water undertaking for the time being of Scottish Water; and

“works” means the works described in Schedule 1 to this Order and shown on the deposited plan.

### **Incorporation and Application of Provisions of Schedule 4 to the Act**

3. The provisions of paragraphs 2 and 10(3) of Schedule 4 to the Act(3) modified and adapted to read as set out in Schedule 2 to this Order shall apply to the undertaking insofar as affected by the provisions of this Order, and the terms used in the provisions of those paragraphs, as so modified and adapted, which are defined in this Order, shall have the same meaning as in this Order.

### **Water Rights**

4. Subject to the provisions of this Order, Scottish Water may, for the purposes of the undertaking and by means of an existing intake located at Ordnance Survey National Grid Reference HY 26951 25451 take water from Loch of Boardhouse in the area of Orkney Islands Council.

5.—(1) During the construction of the works, Scottish Water may take from Loch of Boardhouse such water as it may require for such construction.

(2) After completion of the works, in any day, Scottish Water—

(a) may take from the Loch a quantity of water not greater than 5180 cubic metres, as measured and recorded by an approved gauge (Works No. 3);

(b) may not take water from the Loch such as to reduce the flow rate in the fish pass at Hunto Dam (part of Works No. 1)—

(i) below 69 litres per second, when the surface level of the Loch is more than 15.228 metres above Ordnance Datum; or

(ii) below 47 litres per second, when the surface level of the Loch is equal to or less than 15.228 metres above Ordnance Datum; and

(c) in any event, shall not take water from the Loch when its surface level is less than 15.1 metres above Ordnance Datum.

(3) For the purposes of paragraph (2), the surface level of the Loch shall be measured by a level measurement device (part of Works No. 1), and the flow rate shall be set by the height of the adjustable penstock (part of Works No. 1).

6. If the power to take water conferred by this Order has not been exercised by 1st November 2018 the said power shall cease.

### **Revocation**

7. The Orkney County Council (Loch of Boardhouse) Water Order 1958(4) and the Orkney Islands Council (Loch of Boardhouse) (Amendment) Water Order 1989(5) are revoked.

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(2) 2002 asp 3, as amended by the [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#).

(3) Paragraph 2 of Schedule 4 was amended by the [Roads \(Scotland\) Act 1984 \(c. 54\)](#), section 156(1) and schedule 9, paragraph 81(15)(a); paragraph 10(3) was amended by the [Criminal Justice Act 1982 \(c. 48\)](#), section 77 and schedule 15, paragraph 27 and by the [Criminal Procedure \(Consequential Provisions\) \(Scotland\) Act 1995 \(c. 40\)](#), section 3(2) and schedule 2.

(4) S.I.1958/738 (s.33).

(5) S.I. 1989/1676 (s.129).

Victoria Quay,  
Edinburgh  
16th December 2008

*R N IRVINE*  
A member of the staff of the Scottish Ministers

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## SCHEDULE 1

Article 2

The works referred to in this Order and shown on the deposited plan are:

Works No. 1	Installation of a new fish pass, incorporating an adjustable penstock in the Hunto Dam (located at Ordnance Survey National Grid Reference HY 25570 27165) and the installation of a level measurement device.
Works No. 2	Installation of two new pumps (to be located within the existing pumping station located at Ordnance Survey National Grid Reference HY 26914 25429), to pump water from the existing inlet (located at Ordnance Survey National Grid Reference HY 26951 25451) to the existing water treatment works (located at Ordnance Survey National Grid Reference HY 26887 25392).
Works No. 3	Installation of an approved gauge (to measure and record the flow abstracted from the Loch of Boardhouse), to be housed in the existing water treatment works referred to at Works No. 2 above, and which are located at Ordnance Survey National Grid Reference HY 26887 25392.

## SCHEDULE 2

Article 3

The modifications and adaptations of Schedule 4 to the Act referred to in this Order are–

1. For paragraph 2 of Schedule 4 there is substituted–

“In the construction of the works described in Schedule 1 to the Scottish Water (Loch of Boardhouse) Water Order 2008, Scottish Water may deviate laterally to any extent not exceeding the limits of deviation shown on the deposited plan and it may deviate vertically from the levels shown on the deposited plan to any extent:

provided that–

- (a) no control building shall be constructed at a greater height above the general surface of the ground than that shown on the deposited plan and 2 metres in addition thereto; and
- (b) except for the purposes of crossing a stream, canal, dyke, watercourse or railway, or of crossing any lands where the consent of all persons interested in those lands has been obtained, no pipe or other conduit or aqueduct shall be raised above the surface of the ground otherwise than in accordance with the deposited plan.”.

2. For paragraph 10(3) of Schedule 4 there is substituted–

“If Scottish Water–

- (a) fails to construct or maintain in good order any such gauge as is mentioned in the Scottish Water (Loch of Boardhouse) Water Order 2008, or refuses to allow any person

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interested to inspect and examine any such gauge or any records made thereby or kept by it in connection therewith or to take copies of any such records; or

- (b) takes any water contrary to the provisions of the Scottish Water (Loch of Boardhouse) Water Order 2008,

it shall, without prejudice to its civil liability, if any, to a person aggrieved, be liable, in the case of an offence under paragraph (a) of this subsection, on summary conviction to a fine not exceeding level 3 on the standard scale, and, in the case of an offence under paragraph (b) of this subsection—

- (i) on summary conviction to a fine not exceeding the statutory maximum; and
- (ii) on conviction on indictment, to a fine.”.