

*Status: Point in time view as at 01/04/2006.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 24 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Natural Heritage (Scotland) Act 1991

## 1991 CHAPTER 28

An Act to establish Scottish Natural Heritage; to make provision as to the management of water resources in Scotland; and for connected purposes. [27th June 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

**E1** This Act extends to Scotland only except as provided by s. 28(5).

## PART I

### SCOTTISH NATURAL HERITAGE

#### *Establishment of SNH*

#### **1 Scottish Natural Heritage.**

- (1) There shall be established a body to be known as “Scottish Natural Heritage” (in this Part of this Act referred to as “SNH”) whose general aims and purposes shall be—
  - (a) to secure the conservation and enhancement of; and
  - (b) to foster understanding and facilitate the enjoyment of,the natural heritage of Scotland; and SNH shall have regard to the desirability of securing that anything done, whether by SNH or any other person, in relation to the natural heritage of Scotland is undertaken in a manner which is sustainable.
- (2) Schedule 1 to this Act shall have effect with respect to the constitution and proceedings of and other matters relating to Scottish Natural Heritage.

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- (3) For the purposes of this Act, “the natural heritage of Scotland” includes the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity; and references to “natural heritage” shall be construed accordingly.

#### Commencement Information

**I1** S. 1 wholly in force at 27.11.1991 see s. 28(2) ad [S.I. 1991/2633](#) , [art. 3](#) , [Sch.](#)

### *Functions of SNH*

## 2 General functions of Scottish Natural Heritage

- (1) SNH shall have the following general functions—
- (a) the provision of advice to the Secretary of State or any other minister on the development and implementation of policies for or affecting the natural heritage of Scotland;
  - (b) the provision of advice and the dissemination of knowledge to any persons (including the provision and promotion of publicity and information services) about the natural heritage (including its use and enjoyment) and any matters arising from the discharge of its functions;
  - (c) the commissioning or support (whether by financial means or otherwise) of research which in its opinion is relevant to any of its functions or, in the case of research which is directly related to its functions, if it considers it appropriate to do so initiating and carrying out such research itself;
  - (d) the power to accept any gift or contribution made to it for the purposes of any of its functions and, subject to the terms of such gift or contribution, it shall apply the gift or contribution to those purposes;
  - (e) the power to form or promote or join with any other person in forming or promoting companies (within the meaning of the <sup>M1</sup>Companies Act 1985);
  - (f) the power to form partnerships with other persons; and
  - (g) the power to do all such other things as are incidental or conducive to the discharge of its functions including (without prejudice to the generality of this paragraph) the power to make charges for any service undertaken by it and the power to acquire, hold and dispose of land or any interest in or right over land.
- (2) SNH may, and if so requested by the Secretary of State or any general, regional or district planning authority shall, advise the Secretary of State or, as the case may be, the authority in relation to any matter arising under [<sup>F1</sup>the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Planning (Hazardous Substances) (Scotland) Act 1997] which affects the natural heritage of Scotland.

#### Textual Amendments

**F1** Words in s. 2(2) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 48\(1\)](#)

#### Commencement Information

**I2** S. 2 wholly in force at 1. 4. 1992; S. 2 not in force at Royal Assent see s. 28(2); S. 2(1) wholly in force at 27.11.1991 and s. 2(2) wholly in force at 1. 4. 1992 by [S.I. 1991/2633](#), [arts. 3, 4](#), [Sch.](#);

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#### Marginal Citations

M1 1985 c. 6.

### 3 Duty to take account of certain matters.

- (1) Subject to subsection (2) below, it shall be the duty of SNH in exercising its functions to take such account as may be appropriate in the circumstances of—
- actual or possible ecological and other environmental changes to the natural heritage of Scotland;
  - the needs of agriculture, fisheries and forestry;
  - the need for social and economic development in Scotland or any part of Scotland;
  - the need to conserve sites and landscapes of archaeological or historical interest;
  - the interests of owners and occupiers of land; and
  - the interests of local communities.
- (2) Paragraphs (b) to (f) of subsection (1) above shall not apply as regards any function exercised by SNH in pursuance of any of paragraphs (b) to (e) of section 133(2) of the <sup>M2</sup>Environmental Protection Act 1990 (special functions to be exercised through the joint committee).

#### Commencement Information

I3 S. 3 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

#### Marginal Citations

M2 1990 c. 43.

### 4 Nature conservation functions.

- (1) Except as regards the joint committee within the meaning of Part VII of the Environmental Protection Act 1990 and subject to the following provisions of this section, Part VII of that Act shall not extend to Scotland.
- (2) Sections 128(4), 128(5) (in so far as it relates to Schedule 7) and 132(3) of that Act shall continue to extend to Scotland and any reference in those sections to “the Councils” shall include a reference to SNH.
- (3) Section 131 of that Act, in so far as it relates to the joint committee mentioned in subsection (1) above, shall continue to extend to Scotland.
- (4) Section 133 of that Act shall continue to extend to Scotland and—
- the references to “the Councils” shall include a reference to SNH; and
  - in subsection (3) after the words “section 132 above” there shall be inserted the words “ or, as the case may be, the nature conservation functions of Scottish Natural Heritage ”,
- and in discharging its nature conservation functions, SNH shall have regard to any advice given to it by the joint committee under the said subsection (3).

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- (5) The amendments made by Schedule 9 to that Act to enactments extending to Scotland shall continue to extend to Scotland.
- (6) SNH shall have the functions previously discharged by the Nature Conservancy Council for Scotland under the enactments amended by Schedule 2 to this Act in accordance with those enactments as so amended.
- (7) SNH shall be responsible for the establishment, maintenance and management of nature reserves (within the meaning of section 15 of the National Parks and Access to the <sup>M3</sup>Countryside Act 1949) in Scotland.
- (8) Paragraph 12 of Schedule 11 to the said Act of 1990 shall continue to extend to Scotland; and references to a new council shall, as regards the exercise of functions in part of a nature reserve or area of scientific interest in Scotland, be construed as references to SNH.
- (9) In this section “nature conservation” means the conservation of flora, fauna or geological or physiographical features.
- (10) Subject to anything in this section and Schedules 2 and 10 to this Act, for any reference in any enactment (including an enactment contained in a local or private Act and any order, regulation or other instrument having effect by virtue of an Act) to the Nature Conservancy Council for Scotland there shall be substituted a reference to Scottish Natural Heritage.

#### Extent Information

**E2** S. 4(2)(4) and (10) extend also to England and Wales.

#### Commencement Information

**I4** S. 4 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### Marginal Citations

**M3** 1949 c. 97.

## 5 Development projects or schemes.

- (1) SNH may prepare proposals with respect to any area for a development project or scheme which is designed to achieve the conservation or enhancement of or which fosters understanding or enjoyment of the natural heritage of Scotland.
- (2) Proposals prepared under subsection (1) above in relation to any area shall—
  - (a) in relation to that area involve the application of new or developed methods, concepts or techniques; and
  - (b) be designed to illustrate the appropriateness of such a project or scheme to that area or other areas of a similar nature or which present similar problems to that area.
- (3) SNH may undertake, promote or coordinate, either by itself or in conjunction with any other authority or person, measures to implement the proposals mentioned in subsection (1) above.

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- (4) Where SNH has prepared a proposal for a development project or scheme for any area which involves the compulsory acquisition of land under subsection (6)(a) below, a compulsory purchase order for that purpose shall be subject to special parliamentary procedure in any case where an objection has been duly made by the owner of the land and has not been withdrawn.
- (5) In subsection (4) above “owner” shall have the same meaning as in the <sup>M4</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (6) For the purposes of its function under subsection (3) above, SNH may—
  - (a) acquire land compulsorily;
  - (b) exercise any powers to carry out work or provide services or facilities conferred by the <sup>M5</sup>Countryside (Scotland) Act 1967 on local authorities or planning authorities;
  - (c) with the approval of the Secretary of State and the Treasury, acquire by agreement and carry on or set up and carry on, directly or through an agent, or themselves carry on as agent, any business or undertaking, and, subject to such approval, may dispose of any such business or undertaking.
- (7) The power conferred by paragraph (b) of subsection (6) above—
  - (a) may be exercised by SNH either on or in connection with land belonging to it, or with the consent of all persons having an interest therein, on or in connection with other land; and
  - (b) shall be exercisable in relation to land not belonging to it on such terms as may be arranged by agreement with the persons having an interest in the land.
- (8) Where any person having such an interest in the land as enables him to bind the land enters into any such agreement as is mentioned in subsection (7) above, the agreement—
  - (a) in a case where the land affected by the agreement is registered in the Land Register of Scotland, may be registered in that register;
  - (b) in any other case, may be recorded in the appropriate Division of the General Register of Sasines,and if so registered or recorded shall be enforceable at the instance of SNH against persons deriving title to the land from the person who entered into the agreement:

Provided that any such agreement shall not be enforceable against a third party who has in good faith and for value acquired right (whether completed by infertment or not) to the land prior to the agreement being registered or recorded or against any person deriving title from such a third party.
- (9) The <sup>M6</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory acquisition of land under this section as if this section had been in force immediately before the commencement of that Act, and in relation to such acquisition of land, SNH shall be treated as if it were a local authority within the meaning of that Act.
- (10) No land may be compulsorily acquired under this section unless the acquisition is authorised by the Secretary of State.
- (11) Any power to acquire land under this section shall include power to acquire a servitude or other right in or over land by the creation of a new right.

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#### Commencement Information

**I5** S. 5 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### Marginal Citations

**M4** 1947 c. 42.

**M5** 1967 c. 86.

**M6** 1947 c. 42.

## <sup>F2</sup>6 Natural Heritage Areas.

#### Textual Amendments

**F2** S. 6 repealed (29.11.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), Sch. 7 para. 8 (with s. 55(2)); S.S.I. 2004/495, art. 2

#### Commencement Information

**I6** S. 6 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

## 7 Powers of entry.

- (1) For the purpose of surveying land in connection with—
  - (a) the exercise or the proposed exercise of any of the functions of SNH under this Act or any other enactment in relation to land;
  - (b) the making of an access order by SNH under Part II of the <sup>M7</sup>Countryside (Scotland) Act 1967; or
  - (c) the acquisition under this Act or any other enactment of land or of any interest in land whether by agreement or compulsorily,
 any person duly authorised in writing by SNH may, at any reasonable time, enter upon the land.
- (2) For the purpose of surveying land, or of estimating its value, in connection with any claim for compensation payable by SNH by virtue of—
  - (a) Part II of the Countryside (Scotland) Act 1967; or
  - (b) this Part of this Act,
 in respect of that or any other land, any person being an officer of the Valuation Office of the Inland Revenue Department or a person duly authorised in writing by SNH may, at any reasonable time, enter upon the land.
- (3) A person authorised under this section to enter upon any land shall, if so required by the occupier or anyone acting on his behalf, produce evidence of his authority, and shall not demand admission as of right to any land which is occupied unless at least fourteen days' notice in writing of the intended entry has been given to the occupier and, where practicable, to the owner.
- (4) The power conferred on SNH in connection with the exercise of its functions under section 5 of this Act shall be construed as including power to search and bore for the purpose of ascertaining the nature of the soil or subsoil or the presence of minerals.

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- (5) No works authorised by subsection (4) above shall be carried out unless notice of the intention to do so has been included in a notice under subsection (3) above, and if the land in question is held by any statutory undertaker and such undertaker objects to the proposed works on the ground that carrying out such works would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the [<sup>F3</sup>Scottish Ministers]. . .

<sup>F4</sup>(5A) . . . . .

- (6) Subject to subsection (7) below, if the sheriff is satisfied that there is a reasonable ground for entry upon any land which a person is entitled to enter in pursuance of this section and—

- (a) that admission to that land has been refused;
- (b) that such refusal is apprehended; or
- (c) that the land is unoccupied or the occupier is temporarily absent,

then the sheriff may grant a warrant authorising that person to enter the land, if necessary using such force as is reasonable in all the circumstances, and a warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.

- (7) Without prejudice to subsection (3) above, in any case to which paragraph (a) or (b) of subsection (6) above applies the sheriff shall not grant a warrant unless he is satisfied that a notice of the intended entry has been served on the occupier of the land and, where practicable, on the owner not less than fourteen days before the demand for entry was made.

- (8) A person entering upon any land by virtue of this section may take with him such other persons and such equipment as may be necessary, and on leaving any land upon which he has so entered, being either unoccupied land, or land from which the occupier is temporarily absent, shall leave it as effectively secured against unauthorised entry as he found it.

- (9) A person who wilfully obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (10) It shall be the duty of SNH to compensate any person who has sustained damage by reason of—

- (a) the exercise by a person authorised by SNH of any powers conferred on him by virtue of this section; or
- (b) the failure of a person so authorised to perform the duty imposed on him by subsection (8) above,

except where the damage is attributable to the fault of the person who sustained it; and any dispute as to a person's entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.

- (11) SNH shall not authorise any person to exercise a power to enter land under section 108 of the National Parks and Access to the <sup>M8</sup>Countryside Act 1949; but nothing in this subsection shall affect the validity of anything done in pursuance of an authorisation granted before the date of coming into force of this section by the Nature Conservancy Council for Scotland.

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#### Textual Amendments

- F3** Words in s. 7(5) substituted (1.7.1999) by S.I. 1999/1820 , art. 4 , **Sch. 2 Pt. I para. 104(a)** ; S.I. 1998/3178 , **art. 3**
- F4** S. 7(5A) repealed (1.7.1999) by S.I. 1999/1820 , art. 4 , **Sch. 2 Pt. I para. 104(b)** , Pt. IV ; S.I. 1998/3178 , **art. 3**

#### Modifications etc. (not altering text)

- C1** S. 7(5) modified (1.3.1996) by 1995 c. 45 , s. 16(1) , **Sch. 4 para. 2(10)(i)** ; S.I. 1996/218 , **art. 2**  
 S. 7(5) extended (1.3.1996) by 1995 c. 45 , s. 16(1) , **Sch. 4 para. 2(1)(xxxix)** ; S.I. 1996/218 , **art. 2**

#### Commencement Information

- I7** S. 7 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633 , **art. 4**

#### Marginal Citations

- M7** 1967 c. 86 .  
**M8** 1949 c. 97 .

### Grants and loans

#### 8 Government grants to Scottish Natural Heritage.

- (1) The Secretary of State may, with the approval of the Treasury, make to SNH grants of such amounts as he thinks fit.
- (2) A grant under this section may be made subject to such conditions (including, in particular, conditions as to the use of the money for the purposes of the Joint Nature Conservation Committee established in pursuance of section 128(4) of the <sup>M9</sup>Environmental Protection Act 1990) as the Secretary of State may, with the approval of the Treasury, determine.

#### Commencement Information

- I8** S. 8 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633 , art. 3, **Sch.**

#### Marginal Citations

- M9** 1990 c. 43.

#### 9 Grants and loans.

- (1) SNH may, with the consent of or in accordance with a general authorisation given by the Secretary of State, give financial assistance by way of grant or loan (or partly in one way and partly in the other) to any person, including a public body, in respect of expenditure incurred or to be incurred by him in doing anything which, in the opinion of SNH, is conducive to the attainment of its general aims and purposes as mentioned in section 1(1) of this Act.
- (2) No consent or general authorisation shall be given by the Secretary of State under subsection (1) above without the approval of the Treasury.



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- (3) On making a grant or loan SNH may impose such conditions as it thinks fit, including (in the case of a grant) conditions for repayment in specified circumstances.
- (4) SNH shall exercise its powers under subsection (3) above so as to ensure that any person receiving a grant or loan under this section in respect of premises to which the public are to be admitted (on payment or otherwise) shall, in the means of access both to and within the premises, and in the parking facilities and sanitary conveniences to be available (if any), make provision, so far as it is in the circumstances both practicable and reasonable, for the needs of members of the public visiting the premises who are disabled.

#### Commencement Information

**I9** S. 9 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

### Miscellaneous

## 10 Reports, accounts etc.

- (1) SNH shall—
  - (a) furnish the Secretary of State with such returns, accounts and other information with respect to its property and activities or proposed activities as he may, from time to time, require;
  - (b) afford to the Secretary of State facilities for the verification of information so furnished; and
  - (c) for the purpose of such verification, permit any person authorised in that behalf by the Secretary of State to inspect and make copies of the accounts, books, documents or papers of SNH and to give that person such explanation of anything he is entitled to inspect as he may reasonably require.
- (2) SNH shall—
  - (a) as soon as possible after the 31st March following the date upon which section 1 of this Act comes into force make to the Secretary of State a report on the exercise and performance of its functions to that date; and
  - (b) make a similar report to him as to each period of twelve months thereafter as soon as possible after the end of such period,and a copy of every such report shall be laid before each House of Parliament by the Secretary of State:

Provided that if the date upon which the said section 1 comes into force falls on a day after 30th September and before 31st March, the first report of SNH under this section shall be for the period ending with the next succeeding 31st March.
- (3) SNH shall keep proper accounts and other records, and shall prepare for each financial year a statement of account in such form as the Secretary of State with the approval of the Treasury may direct and shall submit those statements of account to the Secretary of State at such time as he may with the approval of the Treasury direct.
- (4) The Secretary of State shall, <sup>F5</sup> . . . transmit to the [<sup>F6</sup> Auditor General for Scotland for auditing] the statement of account of SNH for the financial year last ended.

<sup>F7</sup>(5) . . . . .

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- (6) In this section “financial year” means the period beginning with the date upon which section 1 of this Act comes into force and ending with the 31st March following that date and each period of twelve months thereafter:

Provided that if the date upon which the said section 1 comes into force falls on a day after 30th September and before 31st March, the first financial year of SNH shall end with the next succeeding 31st March.

#### Textual Amendments

- F5** Words in s. 10(4) repealed (1.4.2000) by 2000 asp 1, s. 26(a), **Sch. 4**; S.S.I. 2000/10, **art. 2(3)**  
**F6** Words in s. 10(4) substituted (1.4.2000) by 2000 asp 1, s. 26(a), **Sch. 4**; S.S.I. 2000/10, **art. 2(3)**  
**F7** S. 10(5) repealed (1.4.2000) by 2000 asp 1, s. 26(b), **Sch. 4** ; S.S.I. 2000/10, **art. 2(3)**

#### Commencement Information

- I10** S. 10 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, **art. 3**, **Sch.**

## 11 Directions by Secretary of State.

- (1) Subject to subsection (3) below, the Secretary of State may give SNH directions of a general or specific character with regard to the discharge of its functions; and it shall be the duty of SNH to comply with any such directions.
- (2) A direction given under this section may be varied or revoked by a subsequent direction so given.
- (3) The Secretary of State shall not give directions under this section in respect of functions conferred on SNH by virtue of section 4(6) of this Act.

#### Commencement Information

- I11** S. 11 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, **art. 3**, **Sch.**

## <sup>F8</sup>12 Advisory Committee on SIs.

#### Textual Amendments

- F8** S. 12 repealed (29.11.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), **Sch. 7 para. 8** (with s. 55(2), **Sch. 5 Pt. 2**); S.S.I. 2004/495, **art. 2**

#### Commencement Information

- I12** S. 12 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, **art. 4**

## 13 Access to open country.

Part II of the <sup>M10</sup>Countryside (Scotland) Act 1967 shall be amended in accordance with Schedule 3 to this Act to enable SNH to enter into access agreements or to make access orders under that Part of that Act.

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#### Commencement Information

**I13** S. 13 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### Marginal Citations

**M10** 1967 c. 86.

## 14 Dissolution of bodies.

- (1) On a date to be appointed by the Secretary of State—
  - (a) the Nature Conservancy Council for Scotland; and
  - (b) the Countryside Commission for Scotland,shall each be dissolved.
- (2) On the date appointed for the purposes of subsection (1) above, all heritable or moveable property wherever situated held by each of the Nature Conservancy Council for Scotland and the Countryside Commission for Scotland immediately before that date shall be transferred to and vest in SNH and all rights, liabilities and obligations of both the Nature Conservancy Council for Scotland and the Countryside Commission for Scotland to which either of them were entitled or subject immediately before that date shall, on that date, be transferred to SNH.
- (3) In the Countryside (Scotland) Act 1967 for the words “the Commission” where they occur there shall be substituted the words “ Scottish Natural Heritage ”.
- (4) Subject to anything in this section and Schedule 10 to this Act, for any reference in any enactment (including an enactment contained in a local or private Act and any order, regulation or other instrument having effect by virtue of an Act) to the Countryside Commission for Scotland there shall be substituted a reference to Scottish Natural Heritage.
- (5) Schedule 4 to this Act shall have effect for the purpose of making transitional provisions and savings in consequence of the dissolution of the Nature Conservancy Council for Scotland and the Countryside Commission for Scotland under subsection (1) above.

#### Commencement Information

**I14** S. 14 wholly in force at 1.4.1992; S. 14 not in force at Royal Assent see s. 28(2); S. 14 (1)(2)(5) in force at 27. 11. 1991 by s.I. 1991/2633, art. 3, Sch.; S. 14(3)(4) in force at 1. 4. 1992 by S.I. 1991/2633, art. 4

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## PART II

### IRRIGATION

#### Modifications etc. (not altering text)

- C2** Pt. II (ss. 15-19): transfer of functions (12.10.1995) by 1995 c. 25, s. 21(1)(a)(i) (with ss. 7(6), 115, 117); S.I. 1995/2649, art. 2(b)

#### <sup>F9</sup>15 Power to control abstraction of water for irrigation.

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#### Textual Amendments

- F9** Ss. 15-19 repealed (1.4.2006) by Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 1, Sch. Pt. I (with Sch. Pt. III)

#### Commencement Information

- I15** S. 15 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### <sup>F9</sup>16 Offence of unlicensed abstraction of water for irrigation.

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#### Textual Amendments

- F9** Ss. 15-19 repealed (1.4.2006) by Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 1, Sch. Pt. I (with Sch. Pt. III)

#### Commencement Information

- I16** S. 16 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### <sup>F9</sup>17 Licences.

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#### Textual Amendments

- F9** Ss. 15-19 repealed (1.4.2006) by Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 1, Sch. Pt. I (with Sch. Pt. III)

#### Commencement Information

- I17** S. 17 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### <sup>F9</sup>18 Special provisions for shortage or abundance of water.

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*Status: Point in time view as at 01/04/2006.*

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**Textual Amendments**

**F9** Ss. 15-19 repealed (1.4.2006) by [Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), art. 1, **Sch. Pt. I** (with Sch. Pt. III)

**Commencement Information**

**I18** S. 18 wholly in force at 1.10.1991 see s. 28(2) and [S.I. 1991/2187](#), art. 3, **Sch.**

**<sup>F9</sup>19 Transitional provisions.**

**Textual Amendments**

**F9** Ss. 15-19 repealed (1.4.2006) by [Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), art. 1, **Sch. Pt. I** (with Sch. Pt. III)

**Commencement Information**

**I19** S. 19 wholly in force at 1.10.1991 see s. 28(2) and [S.I. 1991/2187](#), art. 3, **Sch.**

**PART III**

**DROUGHT**

**20 Drought orders.**

(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any locality exists or is threatened then, subject to this Part of this Act, he may by order (in this Part referred to as an “ordinary drought order”) make such provision as appears to him to be expedient with a view to meeting the deficiency.

(2) If the Secretary of State—

- (a) is satisfied that circumstances exist which would permit him to make an ordinary drought order in respect of a locality; and
- (b) is further satisfied that the deficiency or threatened deficiency of water supplies is such as to be likely to impair the economic or social well-being of persons in that locality,

then, subject to this Part of this Act, he may by order (referred to in this Part as an “emergency drought order”) make such provision as appears to him to be expedient with a view to meeting the deficiency.

[<sup>F10</sup>(3) A drought order may only be made on the application of [<sup>F11</sup>Scottish Water].]

(4) A drought order may—

- (a) authorise the applicant to take water from any source specified in the order subject to such conditions or restrictions as may be so specified;
- (b) authorise the applicant to discharge water to any place specified in the order subject to such conditions or restrictions as may be so specified;

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- (c) authorise the applicant to prohibit or limit the taking by any person of water from a source specified in the order if the applicant is satisfied that the taking of water from that source seriously affects the supplies available to the applicant;
  - (d) suspend or modify, subject to any conditions specified in the order, any restriction or obligation to which the applicant is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether as regards quantity, pressure, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water.
- (5) Without prejudice to subsection (4) above, an emergency drought order may—
- (a) authorise [<sup>F12</sup>Scottish Water] to prohibit or limit the use of water for such purposes as it thinks fit;
  - (b) authorise [<sup>F12</sup>Scottish Water] to supply water in its limits of supply or in any place within its limits of supply by means of stand-pipes or water tanks, and to erect or set up and maintain stand-pipes or water tanks in any road in that limits of supply.
- (6) Where powers have been conferred by an emergency drought order on [<sup>F12</sup>Scottish Water]—
- (a) the Secretary of State may give to [<sup>F12</sup>Scottish Water] such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
  - (b) it shall be the duty of [<sup>F12</sup>Scottish Water] to comply with any such direction and that duty shall be enforceable under section 11 of the <sup>M11</sup>Water (Scotland) Act 1980,
- and the Secretary of State may vary or revoke any such direction by a further direction for those purposes; and references in subsection (9) below to a direction under this subsection include references to such a further direction.
- (7) Without prejudice to subsection (4) above, an ordinary drought order may make provision authorising [<sup>F12</sup>Scottish Water] to prohibit or limit the use of water for certain purposes specified in the order and the Secretary of State shall give to [<sup>F12</sup>Scottish Water] a direction as to the purposes which may be so specified and may vary or revoke any such direction by a further direction for those purposes.
- (8) Where any purpose set out in a direction given under subsection (7) above will cease to be one which may be specified in an ordinary drought order (by virtue of variation or revocation by a subsequent direction), the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.
- (9) The giving of a direction under subsection (6) above or the variation or revocation of a direction by a further direction under subsection (7) above shall not affect—
- (a) the validity of anything done in the exercise of that power or in pursuance of an order before the giving of the direction under subsection (6) above or the further direction under subsection (7) above; or

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- (b) any obligation or liability accrued or incurred before the giving of the direction under subsection (6) above or the further direction under subsection (7) above.
- (10) Schedule 7 to this Act makes further provision with regard to drought orders.
- (11) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought order.
- (12) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.

#### Textual Amendments

- F10** S. 20(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 170(2)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F11** Words in s. 20(3) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(2)(a)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F12** Words in s. 20(5)(6)(7) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(2)(b)(c)(d)** (with s. 67); S.S.I. 2002/118, **art. 2**

#### Commencement Information

- I20** s. 20 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, **art. 3, Sch.**

#### Marginal Citations

- M11** 1980 c. 45.

## 21 Offences against drought orders.

- (1) A person who—
  - (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or
  - (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,shall be guilty of an offence under this section.
- (2) A person who—
  - (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order; or
  - (b) fails to allow a person authorised for the purpose by or under any such order to inspect and examine any such apparatus or any records made thereby or kept by that person in connection with that apparatus or to take copies of any such records,shall be guilty of an offence under this section.
- (3) In any proceedings against a person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to a fine.

#### Commencement Information

**I21** S. 21 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

## 22 Interpretation, transitional provisions and savings.

- (1) In this Part of this Act—

“compensation water” means water which [<sup>F13</sup>Scottish Water]. . . is under an obligation to discharge into a river, stream, brook, or other running water or into a canal as a condition of performing [<sup>F13</sup>its] functions;

“drought order” means, subject to subsection (3) below, any order made under section 20 of this Act;

“emergency drought order” means an order made under subsection (2) of section 20 of this Act;

“inland navigation” includes any canal or navigable river;

“land” includes buildings and other structures, land covered with water, and any <sup>F14</sup>. . . interest, servitude or right in or over land;

“ordinary drought order” means an order made under subsection (1) of section 20 of this Act,

and any other expression which is used in this Part of this Act and is defined in section 109 of the <sup>M12</sup>Water (Scotland) Act 1980 shall have the same meaning in this Part as it is given in that section.

- (2) In this Part of this Act—

(a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and

(b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

- (3) An order made under section 77 or 78 of the Water (Scotland) Act 1980 which is in force at the commencement of this Part of this Act shall continue to have effect and shall be treated as if it were made under this Part; and references in this Part to a drought order shall include such an order.

- (4) Where an application for an order under section 77 or 78 of that Act of 1980 has been made but not determined at the commencement of this Part of this Act, the application shall be deemed to be an application for an order under this Part and any thing duly done before the commencement of this Part for the purposes of an application for an order under these sections shall be deemed to have been duly done for the purposes of an application under this Part and the proceedings on the application shall be continued accordingly.

- (5) Without prejudice to section 17(2) of the <sup>M13</sup>Interpretation Act 1978, references in any enactment other than in this Act to an order made under section 77 or 78 of that Act of 1980, or to an application for such an order, shall be construed as references to a drought order made under section 20 of this Act, or to an application for such an order.



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#### Textual Amendments

- F13** Words in definition of “compensation water” in s. 22(1) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(3)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F14** Word in s. 22(1) repealed (28.11.2004) by 2000 asp 5, ss. 76(1), 77, Sch. 12 Pt. 1 para. 53(2), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

#### Commencement Information

- I22** s. 22 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, **art. 3, Sch.**

#### Marginal Citations

- M12** 1980 c. 45.  
**M13** 1978 c. 30.

## PART IV

### GENERAL

#### 23 Finance.

There shall be defrayed out of money provided by Parliament—

- (a) any expenses of the Secretary of State incurred under this Act; and
- (b) any increase attributable to this Act in the sums so payable under any other enactment.

#### Commencement Information

- I23** S. 23 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, **art. 3, Sch.**

#### 24 Rights of entry and inspection under Parts II and III.

- (1) Any person duly authorised in writing by [<sup>F15</sup>SEPA], [<sup>F16</sup>or [<sup>F17</sup>Scottish Water]] may at any reasonable time enter upon any land for the purpose of—
  - (a) exercising any power or performing any duty conferred or imposed on [<sup>F18</sup>SEPA or][<sup>F19</sup>Scottish Water]. . . or that person by virtue of Part II or III of this Act;
  - (b) determining whether circumstances exist which require the exercise of such a power or performance of such a duty and, if so, in what manner such power or duty should be exercised or performed;
  - (c) determining whether any provision of either of these Parts of this Act or of an instrument made by virtue of one of these Parts is being complied with; or
  - (d) carrying out such inspections, measurements and tests on the land or of any articles, including water, on it and taking away such samples of the land or such articles as he considers appropriate for such inspections, measurements or tests.
- (2) Subject to subsection (3) below, if the sheriff is satisfied that there is a reasonable ground for entry upon any land which a person is entitled to enter in pursuance of subsection (1) above and—

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- (a) that admission to that land has been refused;
- (b) that such refusal is apprehended;
- (c) that entry upon the land was sought in an emergency;
- (d) that the land is unoccupied or the occupier is temporarily absent; or
- (e) that an application for admission to the land would defeat the object of the entry,

then the sheriff may grant a warrant authorising that person to enter the land, if necessary using such force as is reasonable in all the circumstances.

- (3) Without prejudice to subsection (6) below, in any case to which paragraph (a) or (b) of subsection (2) above applies the sheriff shall not grant a warrant unless he is satisfied that a notice of the intended entry has been served on the occupier of the land not less than seven days before the demand for entry was made.
- (4) A warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.
- (5) A person authorised to enter upon any land in pursuance of this section—
  - (a) shall, if so required, produce evidence of his authority before he enters upon the land; and
  - (b) may take with him on to the land such other persons and such equipment as may be necessary.
- (6) Admission to any land used for residential purposes and admission with heavy equipment to any other land shall not, except—
  - (a) in an emergency;
  - (b) in a case where land is unoccupied; or
  - (c) in a case where to serve notice of intended entry would defeat the object of the entry,
 be demanded as of right in pursuance of subsection (1) above unless a notice of intended entry has been served on the occupier not less than seven days before the demand is made.
- (7) A person who, in the exercise of the powers conferred on him by virtue of this section, enters upon any land which is unoccupied or from which the occupier is temporarily absent shall leave the land as effectively secured against unauthorised entry as he found it.
- (8) A person who wilfully obstructs any person acting in the exercise of his powers under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) It shall be the duty of [<sup>F20</sup>SEPA or], [<sup>F21</sup> Scottish Water] to compensate any person who has sustained loss or damage by reason of—
  - (a) the exercise by a person authorised by [<sup>F22</sup>SEPA or][<sup>F23</sup>Scottish Water]. . . of any powers conferred on him by virtue of this section; or
  - (b) the failure of a person so authorised to perform the duty imposed on him by subsection (7) above; or
  - (c) the occupation and use of land authorised by a drought order by virtue of paragraph 5 of Schedule 7 to this Act,

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except where the loss or damage is attributable to the fault of the person who sustained it; and any dispute as to a person's entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.

- (10) Any reference in this section to an emergency is a reference to a case where a person requiring entry upon land has reasonable cause to believe that—
- (a) there is a reduction in the volume, or a deterioration in the quality, of water such as would be likely to endanger human life or health or adversely affect the viability of aquatic flora or fauna; and
  - (b) immediate entry is necessary to verify the existence of these circumstances or to ascertain their cause or to effect a remedy.
- (11) In this section “land” includes a vessel.

#### Textual Amendments

- F15** Words in s. 24(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(5)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 4(1)(b)(c)**
- F16** Words in s. 24(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 170(4)(a)(i)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F17** Words in s. 24(1) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(4)(a)(i)** (with s. 67); S.S.I. 2002/128, **art. 2**
- F18** Words in s. 24(1)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(5)(a)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 4(1)(b)(c)**
- F19** Words in s. 24(1)(a) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(4)(a)(ii)**
- F20** S. 24(9): words “SEPA or a” substituted for “a river purification authority or” (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(5)(b)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 4(1)(b)(c)**
- F21** S. 24(9): words “Scottish Water” substituted for “a water authority” (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(4)(b)(i)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F22** Words in s. 24(9)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(5)(b)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F23** Words in s. 24(9)(a) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(4)(b)(ii)** (with s. 67); S.S.I. 2002/118, **art. 2**

#### Commencement Information

- I24** S. 24 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, **Sch.**

## 25 Service of documents.

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
  - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.
- (2) For the purpose of this section and section 7 of the <sup>M14</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper

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address of any person on whom a document is to be served shall be his last known address, except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purpose of this section and for the purpose of the said section 7 in its application to this section.
- (4) Where under any provision of this Act any document is required to be served on the owner or on the occupier of any land then—
  - (a) if the name or address of the owner or, as the case may be, of the occupier of the land cannot after reasonable inquiry be ascertained; or
  - (b) in the case of service on the occupier, if the land appears to be or is unoccupied, that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.
- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

#### **Commencement Information**

**I25** S. 25 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### **Marginal Citations**

**M14** 1978 c. 30.

## **26 Offences by persons other than natural persons.**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to the negligence of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Act is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the

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consent or connivance of, or to be attributable to the negligence of, a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### Commencement Information

**I26** S. 26 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### [<sup>F24</sup>26A Meaning of SEPA.

In this Act “SEPA” means the Scottish Environment Protection Agency.]

#### Textual Amendments

**F24** S. 26A inserted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(6) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### 27 Consequential and miscellaneous amendments and repeals.

- (1) The enactments specified in Schedule 10 to this Act shall have effect subject to the amendments specified in that Schedule.
- (2) The enactments specified in Schedule 11 of this Act are hereby repealed to the extent specified in the third column of that Schedule.

#### Commencement Information

**I27** S. 27 wholly in force at 1.4.1992; S. 27 not in force at Royal Assent see s. 28(2); S. 27 in force for certain purposes at 1.10.1991 by S.I. 1991/2187, art. 3, Sch. and in force for certain purposes at 27.11.1991 and at 1.4.1992 (insofar as not already in force) by S.I. 1991/2633, arts. 3, 4, Sch.

#### 28 Short title, commencement and extent.

- (1) This Act may be cited as the Natural Heritage (Scotland) Act 1991.
- (2) This Act shall come into force on such date as the Secretary of State may, by order made by statutory instrument appoint and different days may be so appointed for different provisions or for different purposes.
- (3) An order under subsection (2) above may make such transitional provision as appears to the Secretary of State necessary or expedient in connection with the provision brought into force by the order.
- (4) Subject to subsection (5) below, this Act extends to Scotland only.
- (5) Section 4(2) and (4) of this Act and so much of sections 4(10) and 27 of and Schedules 2, 10 and 11 to this Act as relates to enactments extending to England and Wales shall extend also to England and Wales.

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#### **Subordinate Legislation Made**

- P1** [S. 28\(2\)](#):S. 28(2) power exercised by [S.I. 1991/2187](#)  
[S. 28\(2\)](#):S. 28(2) power exercised by [S.I. 1991/2633](#)
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#### **Commencement Information**

- I28** [S. 28](#) wholly in force at 27.11.1991 see [s. 28\(2\)](#) and [S.I. 1991/2633](#), [art. 3](#), [Sch.](#)

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### CONSTITUTION AND PROCEEDINGS OF SCOTTISH NATURAL HERITAGE

##### *Incorporation and status*

1 SNH shall be a body corporate and shall have a common seal.

##### **Commencement Information**

**I29** Sch. 1 para. 1 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

2 (1) SNH shall not—

- (a) be regarded as a servant or agent of the Crown;
- (b) have any status, immunity or privilege of the Crown;
- (c) be exempt from any tax, duty, rate, levy or other charge whatsoever whether general or local,

and its property shall not be regarded as property of, or held on behalf of, the Crown.

(2) Sub-paragraph (1) above shall have effect subject to paragraph 19 below.

##### **Commencement Information**

**I30** Sch. 1 para. 2 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

##### *Membership*

3 The members of SNH shall be not less than eight, nor more than twelve, persons appointed by the Secretary of State.

##### **Commencement Information**

**I31** Sch. 1 para. 3 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

4 In making appointments under paragraph 3 above, the Secretary of State shall have regard to the desirability of ensuring that the membership of SNH contains at any time, so far as is practicable, persons of knowledge or experience relevant to the principal areas of activity of SNH.

##### **Commencement Information**

**I32** Sch. 1 para. 4 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

*Status: Point in time view as at 01/04/2006.*

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- 5 The Secretary of State shall satisfy himself—
- (a) before he appoints a person to be a member that the person will have no such financial or other interest as is likely to affect prejudicially the performance of his functions as a member: and
  - (b) from time to time that each person so appointed continues, and has continued, to have no such interest.

**Commencement Information**

**I33** Sch. 1 para. 5 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 6 A person in respect of whom the Secretary of State requires to be satisfied as is mentioned in paragraph 5 above shall, whenever requested by the Secretary of State to do so, furnish the Secretary of State with such information as the Secretary of State may consider necessary for the purposes of fulfilling that requirement.

**Commencement Information**

**I34** Sch. 1 para. 6 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 7 Subject to this paragraph and paragraphs 9 and 10 below, each member of SNH—
- (a) shall hold and vacate office in accordance with the terms of his appointment;
  - (b) may, by notice in writing to the Secretary of State, resign his membership; and
  - (c) after ceasing to hold office shall be eligible for reappointment as a member.

**Commencement Information**

**I35** Sch. 1 para. 7 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 8 The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend paragraph 3 above so as to substitute for the numbers for the time being specified as, respectively, the minimum and maximum membership of SNH such other numbers as he thinks fit.

**Commencement Information**

**I36** Sch. 1 para. 8 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 9 The Secretary of State may remove a member from office if he is satisfied that the member—
- (a) has been adjudged bankrupt, has made an arrangement with his creditors, has had his estate sequestrated or has granted a trust deed for his creditors or a composition contract;
  - (b) is incapacitated by physical or mental illness;
  - (c) has been absent from meetings of SNH for a period longer than three months without the permission of SNH; or



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- (d) is otherwise unable or unfit to discharge his functions as a member or is unsuitable to continue as a member.

**Commencement Information**

**I37** Sch. 1 para. 9 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

*Chairman and Deputy Chairman*

- 10 (1) The Secretary of State shall appoint one of the members of SNH to be chairman and, after consulting the chairman, shall appoint one of the members to be deputy chairman.
- (2) The chairman and deputy chairman shall hold and vacate office in terms of their appointment.
- (3) A member of SNH who is chairman or deputy chairman may resign his office by notice in writing to the Secretary of State; but if the chairman or deputy chairman ceases to be a member of SNH (whether or not on giving notice under paragraph 7(b) above) he shall cease to be its chairman or, as the case may be, deputy chairman.

**Commencement Information**

**I38** Sch. 1 para. 10 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

*Remuneration and allowances*

- 11 (1) SNH shall—
- (a) pay to its members such remuneration and allowances (if any); and
- (b) as regards any member or former member in whose case the Secretary of State may so determine, pay such pension, allowance or gratuity to or in respect of him, or make such payments towards the provision of such pension, allowance or gratuity,
- as the Secretary of State may, with the approval of the Treasury, determine.
- (2) If a person ceases to be a member of SNH, and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may require SNH to pay to that person a sum of such amount as the Secretary of State may, with the approval of the Treasury, determine.

**Commencement Information**

**I39** Sch. 1 para. 11 wholly in force at 27.11.1991 see S.I. 1991/2633, art. 3, Sch.

*Staff*

- 12 (1) There shall be a chief officer of SNH.
- (2) The Secretary of State shall, after consultation with the chairman or person designated to be chairman (if there is a person holding or designated to hold that

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office), make the first appointment of the chief officer of SNH on such terms and conditions as he may, with the consent of the Treasury, determine; and thereafter SNH may, with the approval of the Secretary of State, make subsequent appointments to that office on such terms and conditions as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine.

**Commencement Information**

**I40** Sch. 1 para. 12 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 13 Subject to paragraph 3 of Schedule 4 to this Act, SNH may appoint on such terms and conditions as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine such other employees as it thinks fit.

**Commencement Information**

**I41** Sch. 1 para. 13 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 14 (1) SNH shall, in the case of such of its employees or former employees as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine—
- (a) pay such pensions, allowances or gratuities to or in respect of those employees;
  - (b) make such payments towards provision of such pensions, allowances or gratuities; or
  - (c) provide and maintain such schemes (whether contributory or not) for the payment of such pensions allowances or gratuities,
- as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine.
- (2) The reference in sub-paragraph (1) above to pensions, allowances or gratuities in respect of employees of SNH includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.
- (3) If an employee of SNH becomes a member of SNH and was by reference to his employment by SNH a participant in a pension scheme established and administered by it for the benefit of its employees—
- (a) SNH may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of SNH whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 11 above; but
  - (b) if SNH determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on SNH shall be exercised only with the consent of the Secretary of State given with the approval of the Treasury.

**Commencement Information**

**I42** Sch. 1 para. 14 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

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### *Proceedings*

- 15 (1) SNH may regulate its own procedure (including making provision in relation to the quorum for its meetings and the meetings of any committee appointed by it).
- (2) The proceedings of SNH and of any committee appointed by it shall not be invalidated by any vacancy amongst its members or the members of such committee or by any defect in the appointment of such member.

#### **Commencement Information**

**I43** Sch. 1 para. 15 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

### *Committees*

- 16 (1) SNH may appoint persons who are not members of it to be members of any committee established by it:
- Provided that no such committee shall consist entirely of persons who are not members of SNH.
- (2) SNH shall pay to a person so appointed such remuneration and allowances (if any) as the Secretary of State may, with the consent of the Treasury, determine.
- (3) SNH may regulate the procedure of any committee established by it and any such committee shall comply with any directions given to them by it.

#### **Commencement Information**

**I44** Sch. 1 para. 16 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

### *Delegation of powers*

- 17 (1) Anything authorised or required by or under any enactment to be done by SNH may be done by any of its committees which, or by any of its members or employees who, is authorised (generally or specifically) for the purpose by SNH.
- (2) Nothing in sub-paragraph (1) above shall prevent SNH from doing anything that a committee, member or employee has been authorised to do.

#### **Commencement Information**

**I45** Sch. 1 para. 17 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

### *Documents*

F25 18 .....

#### **Textual Amendments**

**F25** Sch. 1 para. 18 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), Sch. 5 (with ss. 9(3)(5)(7), 13, 14(3))

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### *Land*

- 19 (1) For the purposes of the application of any enactment or rule of law to land [<sup>F26</sup>which or] an interest in which belongs to SNH, and which is managed as a nature reserve, SNH shall be deemed to be a Government department; and any other land occupied by it shall be deemed, for the purpose of any rate on property, to be property occupied by or on behalf of the Crown for public purposes.

[<sup>F27</sup>(2) In sub-paragraph (1) above—

“ interest ” includes any right over the land, whether exercisable by virtue of ownership or by virtue of a licence or agreement and, without prejudice to that generality, includes sporting rights; and

“ land ” includes—

- (i) land covered by water; and
- (ii) salmon fishings.]

#### **Textual Amendments**

**F26** Words in Sch. 1 para. 19(1) inserted (28.11.2004) by 2000 asp 5, s. 76(1), 77, **Sch. 12 Pt. I para. 53(3)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

**F27** Sch. 1 para. 19(2) substituted (28.11.2004) by 2000 asp 5, ss. 76(1), 77, **Sch. 12 Pt. I para. 53(3)(b)** (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

#### **Commencement Information**

**I46** Sch. 1 para. 19 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, **art. 3, Sch.**

## SCHEDULE 2

Section 4.

### AMENDMENT OF ENACTMENTS CONFERRING NATURE CONSERVATION FUNCTIONS

#### *National Parks and Access to the Countryside Act 1949 (c. 97)*

- 1 (1) The National Parks and Access to the Countryside Act 1949 shall be amended as follows.
- (2) In section 15A (meaning of “Nature Conservancy Council”), in paragraph (b) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.
- (3) In section 16(5) (agreements in Scotland for establishing nature reserves), in paragraph (c) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.
- (4) In section 103(2) (procedure as to compulsory acquisition of land), for the words “the Nature Conservancy Council for Scotland” in both places where they occur there shall be substituted the words “ Scottish Natural Heritage ”.

#### **Commencement Information**

**I47** **Sch. 2 para. 1** wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, **art. 4**

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*Deer (Scotland) Act 1959 (c. 40)*

F28<sub>2</sub>

**Textual Amendments**

**F28** Sch. 2 para. 2 repealed (18.10.1996) by 1996 c. 44, ss. 13(2), 14(2), Sch. 2

*Countryside Act 1968 (c. 41)*

- 3 In section 15(6A) of the Countryside Act 1968 (definition of Nature Conservancy Council), for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.

**Commencement Information**

**I48** Sch. 2 para. 3 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Conservation of Seals Act 1970 (c. 30)*

- 4 In section 10(5) of the Conservation of Seals Act 1970 (definition of Nature Conservancy Council) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.

**Commencement Information**

**I49** Sch. para. 4 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Badgers Act 1973 (c. 57)*

F29<sub>5</sub>

**Textual Amendments**

**F29** Sch. 2 para. 5 repealed (16.10.1992) by Protection of Badgers Act 1992 (c. 51), s. 15(2)(3), Sch.

*Import of Live Fish (Scotland) Act 1978 (c. 35)*

- 6 In section 1(2) of the Import of Live Fish (Scotland) Act 1978 (consultation before making order to limit import) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.

**Commencement Information**

**I50** Sch. 2 para. 6 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Animal Health Act 1981 (c. 22)*

- 7 (1) The Animal Health Act 1981 shall be amended as follows.

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- (2) In section 21(9) (destruction of wildlife on infection, definition of “Nature Conservancy Council”) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.
- (3) In section 22 (powers of entry for section 21), in subsection (7)(a) after the words “Environmental Protection Act 1990” there shall be inserted “ or by Scottish Natural Heritage under section 4(7) of the Natural Heritage (Scotland) Act 1991 ”.

**Commencement Information**

**I51** Sch. 2 para. 7 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Wildlife and Countryside Act 1981 (c. 69)*

- 8 (1) The Wildlife and Countryside Act 1981 shall be amended as follows.
- (2) In section 27(3A) (interpretation of Part I) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.
- (3) In section 27A(b) (construction of references to Nature Conservancy Council) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.
- (4) In section 29(11) (reports to relate to certain areas of special scientific interest) after the word “1990” there shall be inserted the words “ or under section 10(2) of the Natural Heritage (Scotland) Act 1991 ”.
- (5) In section 52 (interpretation of Part II) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.

**Commencement Information**

**I52** Sch. 2 para. 8 wholly in force at 1.4.1992 see s. 28(2) and S. I. 1991/2633, art. 4

*Inheritance Tax Act 1984 (c. 51)*

- 9 In Schedule 3 to the Inheritance Act 1984 (gifts for national purposes) for the words “Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.

**Commencement Information**

**I53** Sch. 2 para. 9 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Environmental Protection Act 1990 (c. 43)*

- 10 (1) The Environmental Protection Act 1990 shall be amended as follows.

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- (2) In section 36(7) (waste disposal licences for certain protected areas) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.
- <sup>F30</sup>(3) . . . . .
- (4) In section 128(1) (establishment of new councils) for the word “three” there shall be substituted the word “ two ”.
- (5) In section 132(3) (cooperation between Nature Conservancy Councils) after the word “section” where it first occurs there shall be inserted the words “ or in the Natural Heritage (Scotland) Act 1991 (in so far as it relates to the nature conservation functions of Scottish Natural Heritage) ”.

**Textual Amendments**

**F30** Sch. 2 para. 10(3) repealed (1.4.1996) by 1995 c. 25, s. 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3(xxvii)

**Commencement Information**

**I54** Sch. 2 para. 10 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

SCHEDULE 3

Section 13.

ACCESS TO OPEN COUNTRY

- 1 Part II of the <sup>M15</sup>Countryside (Scotland) Act 1967 (access to open country) shall be amended as follows.

**Commencement Information**

**I55** Sch. 3 para. 1 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

**Marginal Citations**

**M15** 1967 c. 86.

- 2 In section 10, in subsection (2) (definition of “open country”) after the words “any landblank appearing” there shall be inserted the words “ to Scottish Natural Heritage or ”.

**Commencement Information**

**I56** Sch. 3 para. 2 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 3 (1) Section 13 (making of access agreements) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) An access agreement may be made—

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- (a) by Scottish Natural Heritage with any person having an interest in land;
  - (b) by a general or district planning authority with any person having an interest in land situated in the area of the authority,
- whereby the provisions of this Part of this Act relating to access agreements shall apply to the land.”
- (3) In subsection (2) after the words “payments by” there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”.
- (4) In subsection (7) after the words “confer any right against him, and” there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”.

#### Commencement Information

**I57** Sch. 3 para. 3 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 4 (1) Section 14 (making of access orders) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) Subject to subsection (2) below, an access order may be made—
- (a) by Scottish Natural Heritage, as regards any land in Scotland;
  - (b) by a general or district planning authority, as regards any land in their area,
- but an order so made shall be submitted to the Secretary of State and shall not have effect unless confirmed by him.”
- (3) In subsection (2)—
- (a) in paragraph (a) for the word “authority” there shall be substituted the word “ body ”; and
  - (b) in paragraph (b) for the words “said authority” there shall be substituted the word “ body ”.
- (4) In subsection (3) for the words “said authority” there shall be substituted the word “ body ”.
- (5) In subsection (8) after the word “order” there shall be inserted the words “ made by a general or district planning authority ”.

#### Commencement Information

**I58** Sch. 3 para. 4 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 5 (1) Section 15 shall be amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a)—
    - (i) for the words “authority by whom” there shall be substituted the words “ body by which ”; and
    - (ii) for the word “authority” where it second occurs there shall be substituted the word “ body ”; and



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- (b) in paragraph (c) for the words “said authority” and “authority” where they respectively occur there shall be substituted the word “body”.
- (3) In subsection (3) the words “(whether made by the Secretary of State or by a local planning authority)” shall be omitted.
- (4) In subsection (4)—
  - (a) after the words “Secretary of State” where they first occur, there shall be inserted the words “, except as regards an access order made by Scottish Natural Heritage, ”; and
  - (b) for the words “the local planning authority concerned” there shall be substituted the words “the body by which the order was made”.

#### Commencement Information

**I59** Sch. 3 para. 5 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

6 In section 16, for subsection (5) there shall be substituted the following subsections—

“(5) As soon as practicable after an agreement or instrument such as is mentioned in subsection (4) above is made or an order so mentioned is confirmed, it shall be registered or, as the case may be, recorded in pursuance of subsection (6) or (7) below.

(6) In the case of an agreement or order made by Scottish Natural Heritage or an instrument or order varying or revoking such an agreement or order—

- (a) if an interest in the land to which the agreement, instrument or order relates falls to be registered in the Land Register of Scotland, Scottish Natural Heritage shall cause the agreement, instrument or order to be registered in that register;
- (b) in any other case it shall cause the agreement, instrument or order to be recorded in the appropriate Division of the General Register of Sasines.

(7) In the case of an agreement or order made by the general or district planning authority or an instrument or order varying or revoking such an agreement or order—

- (a) if an interest in the land to which the agreement, instrument or order relates falls to be registered in the Land Register of Scotland, the general or district planning authority shall cause the agreement, instrument or order to be registered in that register;
- (b) in any other case they shall cause the agreement, instrument or order to be recorded in the appropriate Division of the General Register of Sasines.

(8) Subject to subsection (9) below, an agreement, instrument or order registered or recorded in pursuance of subsection (6) or, as the case may be, subsection (7) above shall be enforceable at the instance of respectively Scottish Natural Heritage or the general or district planning authority against persons deriving title to the land or the relevant interest therein from the person so entitled when the agreement, instrument or order was made.

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- (9) An agreement, instrument or order shall not be enforceable as mentioned in subsection (8) above against a third party who has in good faith and for value acquired right (whether completed by infertment or not) to the land or to the relevant interest therein prior to the agreement, instrument or order being registered or, as the case may be, recorded in pursuance of subsection (6) or (7) above, or against any person deriving title from such third party.
- (10) In this section “relevant interest” means an interest which is subject to an agreement, instrument or order such as is mentioned in subsection (4) above.”

#### Commencement Information

**I60** Sch. 3 para. 6 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 7 (1) Section 17 shall be amended as follows.
- (2) In subsection (4)—
- (a) for the words from the beginning to “situated” there shall be substituted the words “ Where, as regards any access agreement or order made by Scottish Natural Heritage or a general or district planning authority, it appears to it or them ”;
  - (b) for the words “an access” there shall be substituted the word “ the ”;
  - (c) after the words “subsection (2) above,” there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”; and
  - (d) for the words “the authority” where they second occur there shall be substituted the words “ Scottish Natural Heritage or the authority, it or, as the case may be, they ”.
- (3) In subsection (5)—
- (a) for the words “the local planning authority” in both places where they occur there shall be substituted the words “ Scottish Natural Heritage or, as the case may be, the general or district planning authority ”;
  - (b) after the words “fourteen days’ notice of” there shall be inserted the words “ its or ”;
  - (c) before the words “the authority” in both places where they occur there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”;
  - (d) after the words “reasonably incurred by” there shall be inserted the words “ it or ”;
  - (e) after the words “reduced by” there shall be inserted the words “ its or ”; and
  - (f) for the words “authority’s contribution” there shall be substituted the words “ contribution of Scottish Natural Heritage or, as the case may be, the authority ”.

#### Commencement Information

**I61** Sch. 3 para. 7 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 8 (1) Section 18 shall be amended as follows.
- (2) In subsection (1)—

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- (a) for the words from “the last foregoing section” to the words “contravention occurred” there shall be substituted the words “section 17 of this Act—
    - (a) if the agreement or order was made by Scottish Natural Heritage, it;
    - (b) if the agreement or order was made by the general or district planning authority, they,”;
  - (b) after the words “as may appear to” there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”.
- (3) In subsection (2)—
- (a) for the words “the local planning authority” there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, the general or district planning authority ”; and
  - (b) before the word “them” there shall be substituted the words “ it or ”.

**Commencement Information**

**I62** Sch. 3 para. 8 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 9 (1) Section 20 shall be amended as follows.
- (2) For the words from “the general or district” to “situated” there shall be substituted the words “—
- (a) where the order was made by Scottish Natural Heritage, it; or
  - (b) where the order was made by a general or district planning authority, they,” and the words from the beginning of the section to the words “depreciation or damage” shall become subsection (1) of the section.
- (3) In the proviso the words “Provided that” shall be omitted and the remaining words of the proviso shall become subsection (2) of the section.

**Commencement Information**

**I63** Sch. 3 para. 9 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 10 (1) Section 22 shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “local planning authority by whom” there shall be substituted the words “ body by which ”; and
  - (b) for the word “authority” there shall be substituted the word “ body ”.
- (3) In subsection (3) for the words “local planning authority” there shall be substituted the words “ body by which compensation is payable ”.

**Commencement Information**

**I64** Sch. 3 para. 10 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 11 (1) Section 23 shall be amended as follows.
- (2) In subsection (1)—

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- (a) for the words “local planning authority” there shall be substituted the words “body by which compensation is payable”;
- (b) for the words “authority are” there shall be substituted the words “body is”; and
- (c) for the word “they” in both places where it occurs there shall be substituted the word “it”.

(3) In subsection (2)—

- (a) for the words “local planning authority” and the word “authority” where they respectively occur there shall be substituted the word “body”;
- (b) for the word “their” there shall be substituted the word “its”; and
- (c) for the word “they” there shall be substituted the word “it”.

#### Commencement Information

**I65** Sch. 3 para. 11 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

12 (1) Section 24 shall be amended as follows.

(2) In subsection (1)—

- (a) after the words “Where it appears” there shall be inserted the words “to Scottish Natural Heritage as respects any land in Scotland or”;
- (b) in paragraph (b) for the words “the local planning authority” there shall be substituted the words “Scottish Natural Heritage or, as the case may be, the general or district planning authority”; and
- (c) before the words “the authority” in both places where they occur there shall be inserted the words “Scottish Natural Heritage or, as the case may be,”.

(3) In subsection (2)—

- (a) for the words “A local planning authority” there shall be substituted the words “Scottish Natural Heritage or, as the case may be, a general or district planning authority”;
- (b) before the word “them” in each place where it occurs there shall be inserted the words “it or”; and
- (c) before the word “they” there shall be inserted the words “it or”.

(4) In subsection (3)—

- (a) for the words “a local planning authority” there shall be substituted the words “Scottish Natural Heritage or, as the case may be, a general or district planning authority”;
- (b) before the word “them” there shall be inserted the words “it or”; and
- (c) before the words “the authority” in each place where they occur there shall be inserted the words “Scottish Natural Heritage or”.

#### Commencement Information

**I66** Sch. 3 para. 12 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

13 In section 26 at the end there shall be inserted the following subsection—

“(3) Scottish Natural Heritage shall, within 14 days of—

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- (a) an access agreement having been made by it; or
  - (b) an access order made by it having been confirmed,
- send to the general or district planning authority in whose area the land to which the agreement or order applies is situated a copy of such agreement or order.”

#### Commencement Information

**I67** Sch. 3 para. 13 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 14 (1) Section 27 shall be amended as follows.
- (2) In subsection (1) for the word “authority” in each place where it occurs there shall be substituted the word “ body ”.
- (3) In subsection (2)—
- (a) for the words “authority by whom” there shall be substituted the words “ body by which ”; and
  - (b) for the word “authority” where it second occurs there shall be substituted the word “ body ”.
- (4) In subsection (3) for the words “said authority” in each place where they occur there shall be substituted the word “ body ”.
- (5) In subsection (4)—
- (a) at the beginning there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”;
  - (b) before the words “the authority” there shall be inserted the words “ Scottish Natural Heritage or ”; and
  - (c) before the word “them” there shall be inserted the words “ it or ”.
- (6) In subsection (5) for the words from “a local planning authority” to the end there shall be substituted the words “ Scottish Natural Heritage or a general or district planning authority as respects land held by it or them ”.

#### Commencement Information

**I68** Sch. 3 para. 14 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 15 (1) In section 28—
- (a) for the words “A general or district planning authority” there shall be substituted the words “ Where Scottish Natural Heritage or, as the case may be, a general or district planning authority have made an access agreement or order it or they ”; and
  - (b) after the words “comprised in” there shall be inserted the word “ such ”.

#### Commencement Information

**I69** Sch. 3 para. 15 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

- 16 (1) Section 29 shall be amended as follows.

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- (2) At the beginning there shall be inserted the words “ Scottish Natural Heritage or, as the case may be, ”.
- (3) The words “in their area” shall be omitted.
- (4) After the word “order” there shall be inserted the words “ made by it or them ”.

**Commencement Information**

**I70** Sch. 3 para. 16 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

SCHEDULE 4

Section 14.

TRANSITIONAL ARRANGEMENTS ON THE DISSOLUTION OF EXISTING BODIES

*Preliminary*

- 1 In this Schedule—
- “the appointed day” means the date appointed for the purposes of section 14(1) of this Act;
  - “the Commission” means the Countryside Commission for Scotland;
  - “the Council” means the Nature Conservancy Council for Scotland;
  - “relevant” in relation to anything dSchedule 4 Paraone by or in relation to the Commission or, as the case may be, the Council before the appointed day, means anything which, if it were to be done on or after the appointed day, would be done by or in relation to SNH.

**Commencement Information**

**I71** Sch. 4 para. 1 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

*Preparation of accounts and reports*

- 2 (1) The requirement imposed on—
- (a) the Council by paragraphs 20 and 21 of Schedule 6 to the <sup>M16</sup>Environmental Protection Act 1990; and
  - (b) the Commission by section 71 of the <sup>M17</sup>Countryside (Scotland) Act 1967,
- to prepare accounts and a report shall become, with effect from the appointed day, a requirement imposed on SNH.
- (2) Where the appointed day is a date other than 31st March, the requirement—
- (a) as regards the accounts and report of the Council; and
  - (b) as regards the accounts of the Commission,
- shall relate to the preparation of accounts and a report or, as the case may be, accounts for the period beginning with 1st April immediately preceding the appointed day and ending on that day, and for the reference in the said paragraph 21 and section 71 to

*Status: Point in time view as at 01/04/2006.*

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30th November there may be substituted such other date as the Secretary of State may, in the order appointing the appointed day, determine.

- (3) Where the appointed day is a date other than 31st December, the requirement as regards the report of the Commission shall relate to the preparation of the report for the period beginning with 1st January immediately preceding the appointed day and ending on that day.

#### Commencement Information

**I72** Sch. 4 para. 2 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

#### Marginal Citations

**M16** 1990 c. 43.

**M17** 1967 c. 86.

#### *Offers of employment*

- 3 (1) SNH shall, not later than such date as the Secretary of State may determine, make an offer of employment by it to each person employed immediately before that date by—
- (a) the Council; and
  - (b) the Commission,
- and any question as to the persons to whom an offer of employment is to be made under this paragraph shall be determined by the Secretary of State.
- (2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom it is made than the terms on which he is employed on the date on which the offer is made.
- (3) An offer made in pursuance of this paragraph shall not be revocable during the period of three months commencing with the date on which it is made.
- (4) Sub-paragraph (1) above does not apply to any person whose contract of employment with either the Council or, as the case may be, the Commission terminates on the day immediately preceding the appointed day.

#### Commencement Information

**I73** Sch. 4 para. 3 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

#### *Continuity of employment, redundancy etc.*

- 4 Where a person becomes an employee of SNH in consequence of an offer made under paragraph 3(1) above, then, for the purposes of [F31the Employment Rights Act 1996], his period of employment with the Council or, as the case may be, the Commission shall count as a period of employment by SNH, and the change of employment shall not break the continuity of the period of employment.

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**Textual Amendments**

**F31** Sch. 4 para. 4 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 48

**Commencement Information**

**I74** Sch. 4 para. 4 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 5 Where an offer is made to a person in pursuance of paragraph 3(1) above, none of the redundancy procedures applicable to such a person shall apply to him; and where that person ceases to be employed by the Council or, as the case may be, the Commission—
- (a) on becoming employed by SNH; or
  - (b) having unreasonably refused an offer,
- <sup>F32</sup> . . . he shall not be treated for the purposes of any superannuation or other pension scheme as having been retired on redundancy.

**Textual Amendments**

**F32** Words in Sch. 4 para. 5 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I

**Commencement Information**

**I75** Sch. 4 para. 5 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

*Disputes*

- 6 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 3 above complies with sub-paragraph (2) of that paragraph shall be referred to and determined by an [<sup>F33</sup>employment tribunal].
- (2) An [<sup>F33</sup>employment tribunal] shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of three months beginning with the date of the offer or, where the tribunal is satisfied that it was not reasonably practicable for that to be done, within such further period as the tribunal considers reasonable.
- (3) Subject to sub-paragraph (4) below, there shall be no appeal from the decision of an [<sup>F33</sup>employment tribunal] under this paragraph.
- (4) An appeal to the Employment Appeal Tribunal may be made only on a point of law arising from a decision of, or in proceedings before, an [<sup>F33</sup>employment tribunal] under this paragraph.

**Textual Amendments**

**F33** Words in Sch. 4 para. 6 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

**Commencement Information**

**I76** Sch. 4 para. 6 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.



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### *Continuity of exercise of functions*

- 7 (1) Any relevant thing done by or in relation to the Council or, as the case may be, the Commission before the appointed day shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to SNH.
- (2) Any relevant thing which, immediately before the appointed day, is in the process of being done by or in relation to the Council or, as the case may be, the Commission may be continued by or in relation to SNH.

#### **Commencement Information**

**I77** Sch. 4 para. 7 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

### *Construction of references to the Council and the Commission*

- 8 (1) This paragraph applies to any agreement, any instrument and any other document, subsisting immediately before the appointed day which refers (in whatever terms) to the Council or, as the case may be, the Commission.
- (2) Any agreement, instrument or other document to which this paragraph applies shall have effect on and after the appointed day with the substitution—
- (a) for any reference to the Council or, as the case may be, the Commission of a reference to SNH;
  - (b) for any reference in general terms to members of or to persons employed by or agents of the Council or, as the case may be, the Commission of a reference to members of or persons employed by or agents of SNH; and
  - (c) for any reference to a member or officer of the Council or, as the case may be, the Commission of a reference to such person as SNH may appoint or, in default of appointment, to the member or officer of SNH who corresponds as nearly as may be to the member or officer in question.

#### **Commencement Information**

**I78** Sch. 4 para. 8 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

- 9 The Secretary of State may, by order, make such consequential modifications of any provision of any local or private Act passed, or subordinate legislation made, before the appointed day which refers to the Council or, as the case may be, the Commission as appear to him to be necessary or expedient.

#### **Commencement Information**

**I79** Sch. 4 para. 9 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

### *Supplementary*

- 10 (1) The Secretary of State may, in relation to any particular functions of the Council or the Commission, by order exclude or modify or supplement any provision of this Schedule or make such other transitional provision as he may think necessary or expedient.

*Status: Point in time view as at 01/04/2006.*

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(2) Nothing in this paragraph or in paragraph 8 or 9 above shall apply in relation to contracts of employment made by the Council or the Commission.

**Commencement Information**

**I80** Sch. 4 para. 10 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

<sup>F34</sup>SCHEDULE 5

Section 15.

**Textual Amendments**

**F34** Sch. 5 repealed (1.4.2006) by Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 1, Sch. Pt. I (with Sch. Pt. III)

<sup>F35</sup>SCHEDULE 6

Section 17.

PROVISIONS AS TO APPLICATIONS FOR, VARIATION,  
REVOCATION AND TRANSFER OF LICENCES UNDER PART II

**Textual Amendments**

**F35** Sch. 6 repealed (1.4.2006) by Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), art. 1, Sch. Pt. I (with Sch. Pt. III)

<sup>F35</sup> *Applications for Licences under Part II*

1 .....

<sup>F35</sup> *Appeal against refusal to grant licence*

2 .....

<sup>F35</sup> *Variation of licence and late application for licence*

3 .....

<sup>F35</sup> *Revocation of licences*

4 .....

<sup>F35</sup> *Transfer of licences*

5 .....

*Status: Point in time view as at 01/04/2006.*

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## SCHEDULE 7

Section 20.

### FURTHER PROVISIONS REGARDING DROUGHT ORDERS

#### *Duration of drought orders*

- 1 (1) This paragraph applies to the period for which the following have effect—
- (a) an authorisation given;
  - (b) a prohibition or limitation imposed; or
  - (c) a suspension or modification effected,
- by or under any drought order made under section 20 of this Act.
- (2) The period mentioned in sub-paragraph (1) above shall expire no later than the end of the period of—
- (a) in the case of an ordinary drought order, six months; or
  - (b) in the case of an emergency drought order, three months,
- beginning with the day on which the order comes into operation unless that period is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power to amend the order.
- (3) The Secretary of State shall not extend the periods mentioned in sub-paragraph (2) above beyond the end of the period of—
- (a) in the case of an ordinary drought order, one year; or
  - (b) in the case of an emergency drought order, five months,
- beginning with the day on which the order comes into operation.

#### **Commencement Information**

**181** Sch. 7 para. 1 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Exercise of power to make a drought order*

- 2 (1) A drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (2) A drought order shall be made by statutory instrument.

#### **Commencement Information**

**182** Sch. 7 para. 2 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Prohibition or limitation of use of water*

- 3 Where a drought order contains a provision authorising [<sup>F36</sup>Scottish Water]to prohibit or limit the use of water—
- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;

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- (b) [<sup>F37</sup>Scottish Water] shall (as [<sup>F37</sup>it thinks] appropriate)—
- (i) cause notice of the prohibition or limitation to be published in one or more newspapers circulating within that part of [<sup>F38</sup>its] limits of supply which would be affected by the provision of the order; or
  - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply,
- and shall take such other steps, if any, as [<sup>F37</sup>it thinks] appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply; and
- (c) the prohibition or limitation shall not come into operation until the expiration of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.

#### Textual Amendments

- F36** Words in Sch. 7 para. 3 substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(5)(a)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F37** Words in Sch. 7 para. 3(b) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(5)(b)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F38** Word in Sch. 7 para. 3(b)(i) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(5)(b)(iii)** (with s. 67); S.S.I. 2002/118, **art. 2**

#### Commencement Information

- I83** Sch. 7 para. 3 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, **Sch.**

#### *Abstractions and discharges of water*

- 4 (1) Any drought order which—
- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.
- (2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.

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#### Commencement Information

**I84** Sch. 7 para. 4 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Works under drought orders*

- 5 (1) A drought order may authorise [<sup>F39</sup>Scottish Water]. . . , subject to any conditions and restrictions specified in the order, to execute any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order and—
- (a) may authorise [<sup>F39</sup>Scottish Water]. . . for the purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the execution and maintenance of the works; and
- (b) may apply in relation to the execution of the works such of the provisions of Part III of and Schedules 3 and 4 to the <sup>M18</sup>Water (Scotland) Act 1980 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.
- (2) Where a drought order authorises [<sup>F40</sup>Scottish Water]. . . to enter upon any land, the provisions of subsections (2), (4), (5), (7), (8) and (9) of section 24 of this Act shall apply, subject to sub-paragraph (3) below, to the right of entry given by such an order as they apply to the right of entry given by that section.
- (3) A drought order which authorises [<sup>F41</sup>Scottish Water]. . .to enter upon land shall provide that [<sup>F41</sup>Scottish Water]. . . shall give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry: and a sheriff shall not grant a warrant under paragraph (a) or (b) of section 24(2) of this Act unless he is satisfied that such notice has been given.
- (4) Any works to be carried out under the authority of an emergency drought order shall be included in the definition of emergency works in [<sup>F42</sup>section 111 of the <sup>M19</sup>New Roads and Street Works Act 1991].

#### Textual Amendments

- F39** Words in Sch. 7 para. 5(1) substituted (1.4.2002) by 2002 asp 3, s. 71, Sch. 7 para. 22(5)(c)(i) (with s. 67); S.S.I. 2002/118, art. 2
- F40** Words in Sch. 7 para. 5(2) substituted (1.4.2002) by 2002 asp 3, s. 71, Sch. 7 para. 22(5)(c)(ii) (with s. 67); S.S.I. 2002/118, art. 2
- F41** Words in Sch. 7 para. 5(3) substituted (1.4.2002) by 2002 asp 3, s. 71, Sch. 7 para. 22(5)(c)(iii) (with s. 67); S.S.I. 2002/118, art. 2
- F42** Words in Sch. 7 para. 5(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), Sch. 8, Pt. IV, para. 127; S.I. 1992/2990, art. 2(2), Sch. 2.

#### Commencement Information

**I85** Sch. 7 para. 5 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### Marginal Citations

**M18** 1980 c. 45.

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M19 1991 c. 22

### *Miscellaneous*

- 6 An interruption or diminution of the supply of water shall not affect the right of [F43 Scottish Water] to recover any fixed or minimum charge F44 . . .

#### Textual Amendments

- F43** Words in Sch. 7 para. 6 substituted (1.4.2002) by 2002 asp 3, s. 71, Sch. 7 para. 22(5)(d) (with s. 67); S.S.I. 2002/118, art. 2
- F44** Words in Sch. 7 para. 6 repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 170(5)(b), Sch. 14; S.I. 1996/323, art. 4

#### Commencement Information

- I86** Sch. 7 para. 6 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 7 [F45 Where powers have been conferred on Scottish Water by a drought order, the Scottish Ministers may require it] to furnish him with such information relating to the exercise by [F45 it] of any of these powers as he considers necessary to enable him to discharge his functions under Part III of this Act.

#### Textual Amendments

- F45** Words in Sch. 7 para. 7 substituted (1.4.2002) by 2002 asp 3, s. 71, Sch. 7 para. 22(5)(e) (with s. 67); S.S.I. 2002/118, art. 2

#### Commencement Information

- I87** Sch. 7 para. 7 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

## SCHEDULE 8

Section 20.

### PROCEDURE FOR MAKING DROUGHT ORDERS

#### *Application for orders*

- 1 [F46(1) Before making an application for a drought order, the applicant shall consult—
- (a) SEPA, in a case where notice of the application is required to be served on it under this paragraph; and
  - (b) any district salmon fishery board on whom notice of the application is required to be served under this paragraph.]
- (2) The applicant for a drought order shall cause a notice of the application—
- (a) to be served on the persons specified in the Table set out in sub-paragraph (3) below; and
  - (b) to be published in one or more newspapers circulating—
    - (i) within the locality which would be affected by the order; and

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(ii) within any locality from which, in the opinion of the applicant, an alternative supply of water is likely to be taken, and in the Edinburgh Gazette.

(3) The said Table is as follows—

TABLE

All orders	(a) Every [ <sup>F47</sup> council constituted under section 2 of the Local Government etc. (Scotland) Act 1994]. . . whose area would be affected by the order. (b) <sup>F48</sup> . . .
Orders which suspend or modify any enactment or any order or scheme made or confirmed under any enactment.	Such persons (if any) as are specified by name in the enactment, order or scheme as being persons for whose protection it was enacted or made.
Orders which suspend or modify an agreement.	The parties to the agreement (other than the applicant).
Orders concerning the taking of water from a source or the discharge of water to a place.	(a) Every [ <sup>F47</sup> council constituted under section 2 of the Local Government etc. (Scotland) Act 1994], <sup>F49</sup> . . . and district salmon fishery board in whose area or district the source, or the place at which water is to be discharged, is situated. (b) Every navigation authority exercising functions over any watercourse which would be affected by the order. [ <sup>F50</sup> (c) SEPA.]
Orders which authorise the execution of any works.	(a) Every [ <sup>F47</sup> council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] within whose area the works are situated. (b) If the order authorises the execution of works in, under or over a watercourse, [ <sup>F51</sup> SEPA and every] district salmon fishery board within whose area or district the works, or any part of the works, are situated.
Orders which authorise the occupation and use of land.	Every owner, lessee and occupier of the land.
Orders which prohibit or limit the taking of water.	Every named person to whom the prohibition or limitation applies.

(4) A notice for the purposes of this paragraph of an application for a drought order—  
 (a) shall state the general effect of the application;

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- (b) shall specify a place—
  - (i) within the locality which would be affected by the order; and
  - (ii) within the locality from which, in the opinion of the applicant, an alternative supply of water is likely to be taken,
 where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable times within a period of seven days from the date on which it is served or, as the case may be, published;
- (c) shall state that objections to the application may be made to the Secretary of State within seven days from the date on which it is served or, as the case may be, published; and
- (d) in the case of an application for an order authorising the occupation and use of land, shall specify the land to which the application relates.

#### Textual Amendments

- F46** Sch. 8 para. 1(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(9)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F47** Words in Sch. 8 para. 1(3) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 170(6)(a)**; S.I. 1996/323, **art. 4**
- F48** Sch. 8: para. (b) of the first entry in the Table in para. 1(3) repealed (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 22(6)** (with s. 67); S.S.I. 2002/118, **art. 2**
- F49** Words in Sch. 8 para. 1(3) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 96(9)(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F50** Words in Sch. 8 para. 1(3) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(9)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F51** Words in Sch. 8 para. 1(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 96(9)(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Commencement Information

- I88** Sch. 8 para. 1 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, **Sch.**

#### *Objections to and making of orders*

- 2 (1) If any objection is duly made with respect to an application for a drought order and is not withdrawn, then, subject to the provisions of this paragraph, the Secretary of State shall, before making the order, either—
  - (a) cause a local inquiry to be held; or
  - (b) afford an opportunity—
    - (i) to the objector; and
    - (ii) if the objector avails himself of the opportunity, to the applicant and to any other persons to whom it appears to the Secretary of State expedient to afford the opportunity,
 of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (2) Subject to sub-paragraph (3) below, where, on an application for a drought order, it appears to the Secretary of State that a drought order is required to be made urgently if it is to enable the deficiency of supplies of water to be effectively met, he may direct that the requirements of sub-paragraph (1) above shall be dispensed with in relation to the application.



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- (3) Nothing in sub-paragraph (2) above shall authorise the Secretary of State to fail to consider any objection to a proposed drought order which has been duly made and not withdrawn.
- (4) Notwithstanding anything in sub-paragraph (1) above, the Secretary of State may—
- (a) require any person who has made an objection to a proposed drought order to state in writing the grounds of his objection; and
  - (b) disregard the objection for purposes of this paragraph if the Secretary of State is satisfied—
    - (i) that the objection relates exclusively to matters which can be dealt with on a reference under Schedule 9 to this Act or by any person by whom compensation is to be assessed; or
    - (ii) in a case where the order is one confined to the extension of a period specified in a previous order, that the objection is one that has in substance been made with respect to the application for that previous order.
- (5) Subject to the requirements of this paragraph, the Secretary of State, upon being satisfied that the proper notices have been published and served, may if he thinks fit, make the order in respect of which the application is made with or without modifications.
- (6) The Secretary of State may hold a local inquiry on any application for an order under this Act notwithstanding that he is not required to do so by this paragraph.
- (7) The provisions of subsection (2) to (8) of section 210 of the <sup>M20</sup>Local Government (Scotland) Act 1973 (which relate to the holding of local inquiries) shall apply to a public local inquiry held under this paragraph as they apply to local inquiries held under that section.

**Commencement Information**

**I89** Schedule 8 para. 2 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

**Marginal Citations**

**M20** 1973 c. 65

- 3 After a drought order has been made, the person on whose application it was made shall cause to be published (in the manner in which notice of the application was required under paragraph 1 above to be published) a notice stating that the order has been made and naming a place where a copy of it may be inspected.

**Commencement Information**

**I90** Sch. 8 para. 3 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

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## SCHEDULE 9

Section 20.

### COMPENSATION IN RESPECT OF DROUGHT ORDERS

- 1 Except as provided by section 24(9) of this Act and the following provisions of this Schedule, no liability shall attach to [<sup>F52</sup>Scottish Water] or a water development board for loss or damage sustained by any person by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.

#### Textual Amendments

**F52** Words in [Sch. 9 para. 1](#) substituted (1.4.2002) by [2002 asp 3, s. 71, Sch. 7 para. 22\(7\)](#) (with [s. 67](#)); [S.S.I. 2002/118, art. 2](#)

#### Commencement Information

**I91** [Sch. 9 para. 1](#) wholly in force at 1.10.1991 see [s. 28\(2\)](#) and [S.I. 1991/2187, art. 3, Sch.](#)

- 2 The provisions of this Schedule shall not apply to compensation in respect of the entry upon or occupation or use of land in the exercise of powers conferred—
- (a) by section 24 of this Act; or
  - (b) by a drought order by virtue of paragraph 5 of Schedule 7 to this Act.

#### Commencement Information

**I92** [Sch. 9 para. 2](#) wholly in force at 1.10.1991 see [s. 28\(2\)](#) and [S.I. 1991/2187, art. 3, Sch.](#)

- 3
- (1) This paragraph shall apply for determining the compensation to be made, in addition to any made under section 24(9) of this Act, where an ordinary drought order has been made.
  - (2) Compensation in respect of the taking of water from a source or its taking from a source otherwise than in accordance with a restriction or obligation which has been suspended or modified shall be made by the applicant for the order to—
    - (a) the owners of the source of water; and
    - (b) all other persons interested in the source of water or injuriously affected by the taking of the water,
 for loss or damage sustained by reason of the taking of the water.
  - (3) Compensation in respect of water's being discharged or not discharged to any place or its being discharged otherwise than in accordance with a restriction or obligation (whether relating to the treatment or discharge of the water) which has been suspended or modified shall be made by the applicant for the order to—
    - (a) the owners of the place of discharge; and
    - (b) all other persons interested in the place of discharge or injuriously affected by the discharge or lack of discharge,
 for loss or damage sustained by reason of the water being discharged or not discharged or being discharged otherwise than in accordance with the restriction or obligation.
  - (4) Compensation in respect of the imposition of a prohibition or limitation on the taking of water from a source shall be made by the applicant for the order, to any persons to

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whom the prohibition or limitation applies, for loss or damage sustained by reason of the prohibition or limitation.

**Commencement Information**

**I93** Sch. 9 para. 3 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 4 (1) A claim for the compensation under this Schedule shall be made by serving upon the applicant a notice stating the grounds of the claim and the amount claimed.
- (2) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall, in default of agreement, be referred to, and determined by, the Lands Tribunal for Scotland.

**Commencement Information**

**I94** Sch. 9 para. 4 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 5 (1) A claim for compensation under paragraph 3 above may be made at any time not later than six months after the end of the period for which the order authorises, as the case may be—
- (a) the taking or discharge of water;
  - (b) the imposition of a prohibition or limitation on the taking of water; or
  - (c) the suspension or modification of any restriction or obligation.
- (2) Where a claim for compensation under paragraph 3 above is made during the continuance of the ordinary drought order, the Lands Tribunal for Scotland may, if it thinks fit, award a sum representing the loss or damage which is likely to be sustained by the claimant in respect of each day on which, as the case may be—
- (a) water is taken or discharged; or
  - (b) water is not discharged or is discharged otherwise than in accordance with an obligation or restriction.
- (3) In assessing the compensation to be made under paragraph 3(2) above the Lands Tribunal for Scotland may, if it thinks fit, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the applicant and other persons taking water from the source, may fairly be apportioned to the claimant.
- (4) In assessing the compensation to be made under paragraph 3(3) above in respect of the lack of discharge of compensation water, the Lands Tribunal for Scotland may, if it thinks fit, have regard to the amount of water which, under the conditions existing by reason of the shortage of rain, would have been available to the claimant during the period during which the deficiency of supplies of water is continued, if the applicant in relation to whom the obligation was imposed had never carried on its undertaking.

**Commencement Information**

**I95** Sch. 9 para. 5 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

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## SCHEDULE 10

Section 27.

### MISCELLANEOUS AMENDMENTS

#### *Rivers (Prevention of Pollution) (Scotland) Act 1951 (c. 66)*

F53<sup>1</sup> .....

#### Textual Amendments

**F53** Sch. 10 para. 1 repealed (1.4.1996) by 1995 c. 25, s. 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### *Superannuation Act 1965 (c. 74)*

- 2 In paragraph 7 of section 39(1) of the Superannuation Act 1965 (public offices) the entry relating to the Nature Conservancy Council for Scotland shall be omitted and at the appropriate place there shall be inserted the following entry— “ Scottish Natural Heritage. ”

#### Commencement Information

**I96** Sch. 10 para. 2 wholly in force at 1. 4. 1992; Sch. 10 para. 2 not in force at Royal Assent se s. 28(2); Sch. 10 para. 2 in force for certain purposes at 27.11.1991 and in force at 1.4.1992 (in so far as not already in force) by S.I. 1991/2633, arts. 3, 4, Sch.

#### *Parliamentary Commissioner Act 1967 (c. 13)*

- 3 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) at the appropriate place there shall be inserted the following entry— “ Scottish Natural Heritage. ”

#### Commencement Information

**I97** Sch. 10 para. 3 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

#### *Countryside (Scotland) Act 1967 (c. 86)*

- 4 (1) The Countryside (Scotland) Act 1967 shall be amended as follows.
- (2) In section 13(6) (consultation on access agreements) for the word “they” there shall be substituted the word “ it ”.
- (3) In section 49A (management agreements) for subsections (1) to (3) there shall be substituted the following subsections—
- “(1) Scottish Natural Heritage may enter into an agreement with any person having an interest in land to do, or to secure the doing of, whatever in the opinion of the parties to the agreement may be necessary to secure the conservation and enhancement or to foster the understanding and enjoyment of the natural heritage of Scotland.

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- (2) A planning authority may enter into an agreement with any person having an interest in land to do or to secure the doing of whatever in the opinion of the parties to the agreement may be necessary to preserve or enhance the natural beauty of the countryside or to promote the enjoyment of the countryside by the public.
- (3) An agreement under subsection (1) or (2) above shall be known as a “management agreement”.
- (4) In section 54 for subsection (4) there shall be substituted the following subsection—
  - “(4) Scottish Natural Heritage may in relation to land—
    - (a) owned or managed by it; or
    - (b) to which an access agreement or order made by it applies,make byelaws with respect to any of the matters mentioned in the foregoing provisions of this section.”
- (5) In section 60(4) (publication of byelaws) for the words “sum, not exceeding 5p for every copy,” there shall be substituted the words “reasonable sum”.
- (6) In section 61(1) (improvement of waterways) for the words from “whose area” to “and within” there shall be substituted the words “may, as respects any waterway in”.
- (7) In section 66 (duty of ministers to have regard to desirability of conservation) for the words “the natural beauty and amenity of the countryside” there shall be substituted the words “the natural heritage of Scotland within the meaning of the Natural Heritage (Scotland) Act 1991”.
- (8) In section 69(1)(b) (rules for compulsory acquisition) after the word “if” there shall be inserted the words “it or”.
- (9) In subsection (3) of section 70 (application of provisions relating to compensation) for the word “authority” in the second place where it occurs there shall be substituted the word “body”.
- (10) In Schedule 2, in paragraph (e) for the words “the local planning authority” there shall be substituted the words “Scottish Natural Heritage or, as the case may be, the general or district planning authority”.
- (11) Schedule 3 shall be amended as follows—
  - (a) in paragraph 1(1)—
    - (i) for the words “an authority make” there shall be substituted the words “a body makes”; and
    - (ii) for the word “they” there shall be substituted the word “it”;
  - (b) in paragraph 4 for the word “authority” in the second and third places where it occurs there shall be substituted the word “body”.
- (12) In Schedule 4 for sub-paragraph (2) there shall be substituted the following sub-paragraph—
  - “(2) Before or as soon as possible after the coming into operation of an access agreement—
    - (a) Scottish Natural Heritage, in relation to an agreement made by it; or

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(b) the general or district planning authority, in relation to an agreement made by them,

shall agree with the owner of the interest in the land what proportion of the figure set by the district valuer should be paid by Scottish Natural Heritage or, as the case may be, the general or district planning authority in respect of each twelve month period.”

**Commencement Information**

**I98** Sch. 10 para. 4 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Sewerage (Scotland) Act 1968 (c.47)*

5 The Sewerage (Scotland) Act 1968 shall be amended as follows with regard to the penalties for certain offences—

- (a) in subsection (8) of section 12, for the words “level 4 on the standard scale” there shall be substituted the word “ £20,000 ”;
- (b) in subsection (2) of section 24, for the words from “level” to the end of that subsection there shall be substituted the word “ £20,000 ”; and
- (c) in subsection (2) of section 46, for the words from “level 5” to “therefor” there shall be substituted the word “ £20,000 ”.

**Commencement Information**

**I99** Sch. 10 para. 5 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

*Local Government (Scotland) Act 1973 (c. 65)*

<sup>F54</sup>6 .....

**Textual Amendments**

**F54** Sch. 10 para. 6 repealed (1.4.1996) by 1995 c. 25, s. 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

*Control of Pollution Act 1974 (c. 40)*

7 (1) The Control of Pollution Act 1974 shall be amended as follows.

<sup>F55</sup>(2) .....

(3) After section 55 there shall be inserted the following section—

**“55A Regulations under this Part.**

Regulations made under this Part of this Act may provide that any provision of this Part, except this section and sections 43 to 45, shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty’s Government in the United Kingdom—

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- (a) to give effect to any Community obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party,

and “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.”.

- (4) At the end of subsection (4) of section 93 and of subsection (3) of section 94 (application of the <sup>M21</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951 to these sections), there shall be inserted the words “ and a reference to Part II of the Natural Heritage (Scotland) Act 1991 ”.

**Textual Amendments**

**F55** Sch. 10 para. 7(2) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**Commencement Information**

**I100** Sch. 10 para. 7 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, **art. 3**, **Sch.**

**Marginal Citations**

**M21** 1951 c. 66.

*House of Commons Disqualification Act 1975 (c. 24)*

- 8 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place there shall be inserted the following entry— “ Scottish Natural Heritage. ”

**Commencement Information**

**I101** Sch. 10 para. 8 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, **art. 3**, **Sch.**

*Water (Scotland) Act 1980 (c. 45)*

- 9 (1) The Water (Scotland) Act 1980 shall be amended as follows.
- (2) In subsection (1) of section 31 (consultation with English authorities)—
  - (a) after the words “consult with” there shall be inserted “ (a) ”; and
  - (b) at the end of the subsection there shall be added the words “; and
    - (b) the river purification board in whose area any watercourse or underground strata from which or to which it is proposed to transfer water under this subsection is situated.”
- (3) In subsection (3)(a) of section 33 (notice of temporary discharge of water into watercourses)—
  - (a) after the word “intentions” there shall be inserted “ (i) ”; and
  - <sup>F56</sup>(b) .....

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- (4) The words of section 76K (power to give effect to international obligations) shall be subsection (1) of that section and the section shall be further amended as follows—
- (a) in subsection (1) leave out the words from “ to give effect ” to the end of that subsection and insert—
- “(a) to give effect to any Community obligation or exercise any related right; or
- (b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party.”; and
- (b) after subsection (1) there shall be added the following subsection—
- “(2) In this section—
- “modifications” includes additions, alterations and omissions; and
- “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.”.
- (5) In section 101 (power to make regulations) after subsection (1) there shall be inserted the following subsection—
- “(1A) Regulations made under this Act may make—
- (a) such supplemental, consequential or transitional provision as the Secretary of State thinks fit;
- (b) different provision for different cases or classes of case.”

<sup>F56</sup>(6) .....

#### Textual Amendments

**F56** Sch. 10 para. 9(3)(b)(6) repealed (1.4.1996) by 1995 c. 25, s. 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

**I102** Sch. 10 para. 9 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### Road Traffic Regulation Act 1984 (c. 27)

- 10 (1) Section 22 of the Road Traffic Regulation Act 1984 (countryside areas to which special traffic regulation applies) shall be amended as follows.
- (2) In subsection (1), for paragraph (b) there shall be substituted the following—
- “(b) in the case of Scotland, roads in, or forming part of, or adjacent to or contiguous with—
- (i) a country park within the meaning of section 48 of the Countryside (Scotland) Act 1967;
- (ii) a National Scenic Area designated under section 262C of the Town and Country Planning (Scotland) Act 1972;
- (iii) a Natural Heritage Area designated under section 6 of the Natural Heritage (Scotland) Act 1991;



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- (iv) an area in respect of which Scottish Natural Heritage has prepared proposals for a development project or scheme under section 5 of the Natural Heritage (Scotland) Act 1991;
- (v) a nature reserve within the meaning of section 15 of the National Parks and Access to the Countryside Act 1949 or an area which is subject to an agreement under section 15 of the Countryside Act 1968 (areas of special scientific interest);
- (vi) a long distance route within the meaning of section 54 of the said Act of 1967 (power to make byelaws);
- (vii) land belonging to the National Trust for Scotland which is held by the Trust inalienably; or
- (viii) open country, being land which appears to the Secretary of State to consist wholly or predominantly of mountain, moor, heath, hill, woodland, cliff or foreshore, and any waterway; and in this sub-paragraph “waterway” and “foreshore” shall include any bank, barrier, dune, beach, flat or other land adjacent to the waterway or foreshore.”

- (3) In subsection (4) for the words “the Countryside Commission for Scotland” there shall be substituted the words “ Scottish Natural Heritage ”.

**Commencement Information**

**I103** Sch. 10 para. 10 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Roads (Scotland) Act 1984 (c. 54)*

- 11 (1) The Roads (Scotland) Act 1984 shall be amended as follows.
- (2) In section 20A(6) (environmental assessment of road construction projects) for paragraph (a) there shall be substituted the following paragraph—
- “(a) Scottish Natural Heritage, if the proposal relates to land falling within paragraph (a) or (c) of subsection (5) above; and”
- (3) In section 98(1) (control of stray and other animals on roads) for the word “countryside” there shall be substituted the word “ land ”.

**Commencement Information**

**I104** Sch. 10 para. 11 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Agriculture Act 1986 (c. 49)*

- 12 In section 18(2) of the Agriculture Act 1986 (designation and management of environmentally sensitive areas) for paragraph (c) there shall be substituted the following paragraph—
- “(c) in the case of an area in Scotland, Scottish Natural Heritage.”

*Status: Point in time view as at 01/04/2006.*

**Changes to legislation:** *Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 24 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I105** Sch. 10 para. 12 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

#### *Electricity Act 1989 (c. 29)*

- 13 In paragraph 4(2) of Schedule 9 to the Electricity Act 1989 (preservation of amenity and fisheries in Scotland) for the words “the Countryside Commission for Scotland, the Nature Conservancy Council for Scotland” there shall be substituted “ Scottish Natural Heritage ”.

#### Commencement Information

**I106** Sch. 10 para. 13 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

## SCHEDULE 11

Section 27.

### REPEALS

#### Commencement Information

**I107** Sch. 11 wholly in force at 1. 4. 1992; Sch. 11 not in force at Royal Assent see s. 28(2); Sch. 11 in force for certain purposes at 1.10.1991 by S.I.1991/2187, art. 3, Sch. and in force at 1.4.1992 insofar as not already in force by S.I. 1991/2633, art. 4

Chapter	Short title	Extent of repeal
1964 c. 90.	Spray Irrigation (Scotland) Act 1964.	The whole Act.
1965 c. 74.	Superannuation Act 1965.	In section 39(1), in paragraph 7 the words “The Nature Conservancy Council for Scotland.”
1967 c. 13.	Parliamentary Commissioner Act 1967.	In Schedule 2, the words “Countryside Commission for Scotland” and “Nature Conservancy Council for Scotland”.
1967 c. 86.	Countryside (Scotland) Act 1967.	Part I. In section 10(2), the words “with the waterways therein or contiguous or adjacent thereto”. In section 12(1), the words from the beginning to “open-air recreation”. In section 13, subsection (6). In section 14, subsection (6). In

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		section 15(3), the words “(whether made by the Secretary of State or by a local planning authority)”.Section 71.In section 75, subsection (1)(a), in subsections (1) and (2) the words “the Commission”, and subsection (4).In section 78(1), the definition of “the countryside”.Schedule 1.
1968 c. 41.	Countryside Act 1968.	In section 37 the words “and the Nature Conservancy Council for Scotland”.
1972 c. 52.	Town and Country Planning (Scotland) Act 1972.	In section 262C, subsections (1) and (2).
1973 c. 57.	Badgers Act 1973.	In section 9(4) the words “the Nature Conservancy Council for Scotland”.
1975 c. 24.	House of Commons Disqualification Act 1975.	In Part III of Schedule 1, the words “Chairman of the Countryside Commission for Scotland and any other member of the Commission in receipt of remuneration.” and in the entry relating to members of Nature Conservancy Councils, the words “the Nature Conservancy Council for Scotland”.
1980 c.45.	Water (Scotland) Act 1980.	Sections 77 to 79.Schedules 5 and 6.
1981 c. 69.	Wildlife and Countryside Act 1981.	In section 34(6) the words “and the Countryside Commission for Scotland in relation to Scotland”.
1984 c. 54.	Roads (Scotland) Act 1984.	In section 20A(6) the word “and” and paragraph (c).In section 98, subsection (6).
1990 c. 43.	Environmental Protection Act 1990.	In section 128, in subsection (1) the words “the Nature Conservancy Council for Scotland”, and in subsection (2), paragraph (b).In Schedule 6, paragraph 16.In Schedule 9,

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paragraphs 1(3), 1(4)(b), 2, 7,  
12, 13(c) and 16(b).

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**Status:**

Point in time view as at 01/04/2006.

**Changes to legislation:**

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