

*Status: Point in time view as at 18/10/1996.*

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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**

**I1** 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**

**I2** 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**

**I3** 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**

**I4** Sch. 1 para. 4 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

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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**

**I5** 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**

**I6** 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**

**I7** 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**

**I8** 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**

**I9** 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**

**I10** 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**

**I11** 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**

**I12** 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**

**I13** 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**

**I14** 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**

**I15** 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**

**I16** 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**

**I17** Sch. 1 para. 17 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

### *Documents*

<sup>F1</sup>18 .....

#### **Textual Amendments**

**F1** 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 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.
- (2) In sub-paragraph (1) above “interest” and “land” have the meanings assigned to them by section 114 of the National Parks and Access to the <sup>M1</sup>Countryside Act 1949.

#### **Commencement Information**

**I18** Sch. 1 para. 19 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

#### **Marginal Citations**

**M1** 1949 c. 97.

## 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**

**I19** Sch. 2 para. 1 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

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

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**Textual Amendments**

**F2** 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**

**I20** 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**

**I21** 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)*

- <sup>F3</sup>5 .....

**Textual Amendments**

**F3** 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**

**I22** 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**

**I23** 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**

**I24** 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**

**I25** 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>F4</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**

**F4** 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**

**I26** 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>M2</sup>Countryside (Scotland) Act 1967 (access to open country) shall be amended as follows.

**Commencement Information**

**I27** Sch. 3 para. 1 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

**Marginal Citations**

**M2** 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**

**I28** 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

**I29** 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

**I30** 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

**I31** 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 infestment 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

**I32** 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

**I33** 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**

**I34** 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**

**I35** 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**

**I36** 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

**I37** 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

**I38** 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

**I39** 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

**I40** 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

**I41** 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**

**I42** 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**

**I43** 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>M3</sup>Environmental Protection Act 1990; and
  - (b) the Commission by section 71 of the <sup>M4</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



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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

**I44** 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

**M3** 1990 c. 43.

**M4** 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

**I45** 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 [F5the 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**

**F5** Sch. 4 para. 4 repealed (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 48

**Commencement Information**

**I46** 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>F6</sup> . . . he shall not be treated for the purposes of any superannuation or other pension scheme as having been retired on redundancy.

**Textual Amendments**

**F6** Words in Sch. 4 para. 5 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I

**Commencement Information**

**I47** 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 industrial tribunal.
- (2) An industrial 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 industrial 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 industrial tribunal under this paragraph.

**Commencement Information**

**I48** Sch. 4 para. 6 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 18/10/1996.*

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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**

**I49** 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**

**I50** 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**

**I51** 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 18/10/1996.*

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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

**I52** Sch. 4 para. 10 wholly in force at 27.11.1991 see s. 28(2) and S.I. 1991/2633, art. 3, Sch.

## SCHEDULE 5

Section 15.

### PROVISIONS AS TO APPLICATIONS FOR, MAKING, COMING INTO OPERATION, AND VALIDITY OF, CONTROL ORDERS

- 1 An application for a control order—
- (a) shall specify the area to which the control order sought by the application is to apply and all such other relevant information as the Secretary of State may from time to time require; and
  - (b) without prejudice to the generality of sub-paragraph (a) above, shall, so far as practicable, include a statement of what [<sup>F7</sup>SEPA considers] to be the minimum acceptable flow for each such water, as measured at control points described in that statement.

#### Textual Amendments

**F7** Words in Sch. 5 para. 1(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(7)(a) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

**I53** Sch. 5 para. 1 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 2 On making an application for a control order [<sup>F8</sup>SEPA] shall in two successive weeks publish in at least one newspaper circulating <sup>F9</sup> . . . in the proposed control area, and in the Edinburgh Gazette, a notice—
- (a) stating the general effect of the application;
  - (b) specifying a place in the proposed control area where a copy of the application and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of twenty-eight days beginning with the date of the first publication of the notice; and
  - (c) stating that, within the said period, any person may by notice in writing to the Secretary of State object to the application.

#### Textual Amendments

**F8** Words in Sch. 5 para. 2 substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(7)(b) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

**F9** Words in Sch 5 para. 2 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 96(7)(b), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3(xxvii)

*Status: Point in time view as at 18/10/1996.*

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#### Commencement Information

**I54** Sch. 5 para 2 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 3 (1) Not later than the date on which a notice is first published in accordance with paragraph 2 above, [F<sup>10</sup>SEPA] shall serve a copy of it (together with a copy of the application and of any relevant map or plan) on—
- (a) every local authority whose area is comprised wholly or partly in the proposed control area;
  - (b) any statutory body the exercise of whose functions may be affected by the control order if made; and
  - (c) any body or association appearing to [F<sup>10</sup>SEPA] to represent persons who in [F<sup>11</sup>its] opinion may be affected by the control order if made.
- (2) In this paragraph the expression “statutory body” means any body exercising functions conferred on it by or under any enactment.

#### Textual Amendments

**F10** Words in Sch. 5 para. 3(1)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(7)(c) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

**F11** Word in Sch. 5 para. 3(1)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(7)(c) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

**I55** Sch. 5 para. 3 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 4 Not later than the date on which the said notice is first published, [F<sup>12</sup>SEPA] shall cause a copy of it to be displayed in at least one prominent position in the proposed control area.

#### Textual Amendments

**F12** Words in Sch. 5 para. 4 substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(7)(d) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

**I56** Sch. 5 para. 4 wholly in force at 1.10.1991 see s. 28(2) S.I. 1991/2187, art. 3, Sch.

- 5 If before the expiration of the said period of twenty-eight days an objection is received by the Secretary of State from any person referred to in paragraph 3(1) above, or from any other person appearing to the Secretary of State to be likely to be affected by the proposed control order or, as the case may be, to represent persons likely to be so affected, and the objection is not withdrawn, the Secretary of State shall cause a public local inquiry to be held.

#### Commencement Information

**I57** Sch. 5 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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- 6 The provisions of subsection (2) to (8) of section 210 of the <sup>M5</sup>Local Government (Scotland) Act 1973 (which relate to the holding of local inquiries) shall apply to a public local inquiry held under paragraph 5 above as they apply to local inquiries held under that section.

**Commencement Information**

**I58** Sch. 5 para. 6 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

**Marginal Citations**

**M5** 1973 c. 65.

- 7 After considering any objections to the application which are not withdrawn and, where a public local inquiry is held, the report of the person who held the inquiry, the Secretary of State may make a control order as proposed in the application or, subject to paragraph 8 below, with such modifications to these proposals as he thinks fit, or may refuse to make a control order.

**Commencement Information**

**I59** Sch. 5 para. 7 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 8 The Secretary of State shall not make a control order with any modification to the proposals in the application unless he has first—
- (a) intimated the terms of the modification to the parties referred to in paragraph 3 above and on any other person who in the Secretary of State's opinion may be affected by the modification;
  - (b) given them an opportunity to make representations against the modification; and
  - (c) considered any representations so made.

**Commencement Information**

**I60** Sch. 5 para. 8 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 9 If the Secretary of State makes a control order [<sup>F13</sup>SEPA] shall publish, as described in paragraph 2 above in relation to a notice under that paragraph, a notice stating that the order has been made, and naming a place where a copy of the order may be seen at all reasonable hours, and paragraphs 3 and 4 above shall apply to any such notice as they apply to a notice required to be published by the said paragraph 2.

**Textual Amendments**

**F13** Words in Sch. 5 para. 9 substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(7)(d) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

**Commencement Information**

**I61** Sch. 5 para. 9 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

*Status: Point in time view as at 18/10/1996.*

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- 10 If any person affected by a control order desires to question the validity of it, or of any provision contained in it, on the grounds that it is not within the powers of Part II of this Act, or on the grounds that any requirement of that Part has not been complied with in relation to the making of the order, he may, within the period of six weeks beginning with the date on which the notice required by paragraph 9 above is first published, make an application to the Court of Session, and on any such application the Court—
- (a) may suspend the operation of the control order, or of any provision contained in it, either generally, or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
  - (b) if satisfied that the control order, or any provision contained in it, is not within the powers of Part II of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement, may quash the order, or any provision contained in it, either generally or in so far as it affects any property of the applicant.

**Commencement Information**

**I62** Sch. 5 para. 10 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

- 11 Subject to the provisions of paragraph 10 above, a control order shall not, either before or after it has been made, be questioned in any legal proceedings, and shall become operative on the date on which the notice required by paragraph 9 above is first published.

**Commencement Information**

**I63** Sch. 5 para. 11 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

SCHEDULE 6

Section 17.

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

*Applications for Licences under Part II*

- 1 (1) An application for a licence under section 17 of this Act shall contain such information as to—
- (a) the inland or ground waters from which water is intended to be abstracted;
  - (b) the point of abstraction and the amount of water to be abstracted;
  - (c) the land to be irrigated and the method and purpose of that irrigation; and
  - (d) such other matters relevant to the consideration of the application,
- as [F14SEPA] may require.
- (2) [F14SEPA] shall—
- (a) in each year, within the period of fourteen days beginning with the closing date publish in at least one newspaper circulating in the control area a notice stating briefly—

*Status: Point in time view as at 18/10/1996.*

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- (i) the nature of any application made to [F15:it] for a licence in such an area;
  - (ii) where and when particulars of such application may be inspected; and
  - (iii) the period within which objections should be made, in writing, to [F15:it]; and
- (b) maintain at [F15:its]office a register containing particulars of any application made or licence granted under this section, to be available for inspection by any person free of charge at all reasonable hours, and the particulars of any such application or licence shall be entered in that register within the period of seven days beginning with the receipt of the application, or, as the case may be, the granting of the licence.
- (3) Any person who objects to an application for a licence under this section must do so in writing to [F14:SEPA] within the period of twenty-eight days beginning with the closing date.
- (4) An application for a licence under this section shall be deemed to have been granted unconditionally, and [F14:SEPA] shall grant a licence accordingly, if [F16:it fails]to intimate [F15:its] decision on the application to the applicant within the period of fifty-six days beginning with the closing date.
- <sup>F17</sup>(5) .....
- (6) If during the process of applying for a licence the applicant ceases to occupy the land referred to in section 17(1) of this Act, [F14:SEPA] shall, at the request of the succeeding occupier, consider the application as if it had been made by the succeeding occupier.

#### Textual Amendments

- F14** Words in Sch. 6 para. 1(1)(2)(3)(4)(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(a)(i)-(iv)(vi) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F15** Words in Sch. 6 para. 1(2)(a)(i)(iii)(b)(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(a)(ii)(iv) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F16** Words in Sch. 6 para. 1(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(a)(iv) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F17** Sch. 6 para. 1(5) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 96(8)(a)(v), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3(xxvii)

#### Commencement Information

- I64** Sch. 6 para. 1 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Appeal against refusal to grant licence*

- 2 (1) Where an applicant is aggrieved by a decision under section 17 of this Act of [F18:SEPA], he may, within the period of twenty-eight days beginning with the day on which he received that decision, appeal by notice in writing to the Secretary of State; and the applicant shall, within that time, serve a copy of the notice on [F18:SEPA].



*Status: Point in time view as at 18/10/1996.*

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- (2) Where an appeal is brought under this paragraph, the Secretary of State may allow or dismiss it or may attach fresh conditions to the licence or may cancel or vary any condition already attached, whether the appeal relates to that condition or not.
- (3) Where any objections have been made under paragraph 1(3) above, the Secretary of State, before determining the appeal, shall require [<sup>F18</sup>SEPA] to serve on any such objector a copy of the notice of appeal; and the Secretary of State, in determining the appeal, shall take into account any further objections made in writing by any such person and received by him within such time as he may direct.
- (4) Before determining any appeal under this paragraph, the Secretary of State may, if the appellant or [<sup>F18</sup>SEPA] or any objector so requests, afford to them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.
- (5) The decision of the Secretary of State on any appeal under this paragraph shall be final.
- [<sup>F19</sup>(6) This paragraph is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).]

#### Textual Amendments

- F18** Words in Sch. 6 para. 2(1)(3)(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(b)(i)(ii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F19** Sch. 6 para. 2(6) inserted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(b)(iii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

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

- C1** Sch. 6 para. 2: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. 114(1)(2)(a)(iv) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

- I65** Sch. 6 para. 2 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Variation of licence and late application for licence*

- 3 (1) [<sup>F20</sup>SEPA] may on the application of the holder of a licence vary the licence; and, where the effect of the variation would be to increase the quantity of water authorised to be abstracted, the provisions of this paragraph shall apply in relation to the application for variation and to the variation of the licence.
- (2) [<sup>F20</sup>SEPA] may consider at any time an application for a licence under section 17 of this Act if [<sup>F21</sup>it is] satisfied that, in all the circumstances, the applicant could not reasonably have met the closing date.
- (3) Subject to the following provisions of this paragraph, the provisions of—
- section 17 of this Act, other than subsection (2);
  - paragraph 1 above, other than sub-paragraphs (2)(a), (3) and (4); and
  - paragraph 2 above,
- shall apply to such an application for variation or to such late application and to any licence varied or granted in pursuance of that application.

*Status: Point in time view as at 18/10/1996.*

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- (4) An applicant for variation of or a late applicant for a licence shall publish in a newspaper circulating in that part of the control area which includes the waters to which the licence relates or would relate a notice stating briefly—
- (a) the nature of the application; and
  - (b) the date by which objections to the application should be made, in writing, to [F22SEPA].
- (5) Objections to an application made under this paragraph shall not be considered by [F22SEPA] unless they are made to [F23it] in writing not later than the period of fourteen days beginning with the date of publication of the notice referred to in sub-paragraph (4) above.
- (6) An application made under this paragraph shall be deemed to have been granted unconditionally if [F24SEPA fails to intimate its] decision on the application to the applicant within the period of twenty-eight days beginning with the date of publication of the notice referred to in sub-paragraph (4) above; and [F22SEPA] shall grant or vary the licence accordingly.
- (7) A licence granted following an application made under this paragraph shall, subject to the provisions of Part II of this Act, remain in force until the end of the calendar year in respect of which it was granted.

#### Textual Amendments

- F20** Words in Sch. 6 para. 3(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(c)(i) (ii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F21** Words in Sch. 6 para. 3(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(c)(ii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F22** Words in Sch. 6 para. 3(4)(b)(5)(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(c)(iii)-(v) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F23** Word in Sch. 6 para. 3(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(c)(iv) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F24** Words in Sch. 6 para. 3(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(c)(v) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

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

- C2** Sch. 6 para. 3(3): power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. 114(1)(2)(a)(iv) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

- I66** Sch. 6 para. 3 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Revocation of licences*

- 4 [F25SEPA] may revoke a licence granted by [F26it] under Part II of this Act if the holder is convicted of an offence under section 16 of this Act.

#### Textual Amendments

- F25** Words in Sch. 6 para. 4 substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(d) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

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**F26** Word in Sch. 6 para. 4 substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(d) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

**I67** Sch. 6 para. 4 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

#### *Transfer of licences*

- 5 (1) Subject to sub-paragraph (2) below, where the holder of a licence under this Part ceases to occupy the land referred to in section 17(1) of this Act, the licence shall cease to have effect.
- (2) If a person as described in sub-paragraph (1) above notifies [<sup>F27</sup>SEPA] in writing not later than the expiration of the period of fourteen days beginning with the date on which another person succeeds him in occupation of that land—
- (a) the licence shall be transferred to the succeeding occupier of that land;
  - (b) the register kept under paragraph 1(2)(b) above shall be amended accordingly; and
  - (c) the licence shall be amended and have effect accordingly.

#### Textual Amendments

**F27** Words in Sch. 6 para. 5(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 96(8)(e) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Commencement Information

**I68** Sch. 6 para. 5 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

## 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.

*Status: Point in time view as at 18/10/1996.*

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- (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**

**I69** 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**

**I70** 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 a water authority 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;
  - (b) the authority shall (as they think appropriate)—
    - (i) cause notice of the prohibition or limitation to be published in one or more newspapers circulating within that part of the authority's 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 they think 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.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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

**I71** 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.

#### Commencement Information

**I72** 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 a water authority<sup>F28</sup> . . . , 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 that authority<sup>F29</sup> . . . 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>M6</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 a water authority<sup>F28</sup> . . . 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.

*Status: Point in time view as at 18/10/1996.*

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- (3) A drought order which authorises a water authority <sup>F28</sup> . . . to enter upon land shall provide that the authority <sup>F29</sup> . . . 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>F30</sup>section 111 of the <sup>M7</sup>New Roads and Street Works Act 1991].

#### Textual Amendments

- F28** Words in Sch. 7 para. 5(1)-(3) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 170(5)(a) (i)-(iii), **Sch. 14**; S.I. 1996/323, **art. 4**
- F29** Words in Sch. 7 para. 5(1)(a)(3) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 170(5) (a)(i)(iii), **Sch. 14**; S.I. 1996/323, **art. 4**
- F30** 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

- I73** 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

- M6** 1980 c. 45.  
**M7** 1991 c. 22

### *Miscellaneous*

- 6 An interruption or diminution of the supply of water shall not affect the right of a water authority to recover any fixed or minimum charge <sup>F31</sup> . . .

#### Textual Amendments

- F31** 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

- I74** Sch. 7 para. 6 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, **Sch.**

- 7 The Secretary of State may require a water authority <sup>F32</sup> . . . on whom powers have been conferred by a drought order to furnish him with such information relating to the exercise by them of any of these powers as he considers necessary to enable him to discharge his functions under Part III of this Act.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

#### Textual Amendments

**F32** Words in [Sch. 7 para. 7](#) repealed (1.4.1996) by [1994 c. 39, s. 180\(1\)\(2\)](#), [Sch. 13 para. 170\(5\)\(c\)](#), [Sch. 14](#); [S.I. 1996/323, art. 4](#)

#### Commencement Information

**I75** [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 <sup>F33</sup>(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
    - (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>F34</sup> council constituted under section 2 of the Local Government etc. (Scotland) Act 1994]. . . whose area would be affected by the order. (b) Such water authority as the Secretary of State may direct.
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).

*Status: Point in time view as at 18/10/1996.*

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Orders concerning the taking of water from a source or the discharge of water to a place.	(a) Every [ <sup>F34</sup> council constituted under section 2 of the Local Government etc. (Scotland) Act 1994], <sup>F35</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>F36</sup> (c) SEPA.]
Orders which authorise the execution of any works.	(a) Every [ <sup>F34</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>F37</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;
  - (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

- F33** 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**
- F34** 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**
- F35** 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**



*Status: Point in time view as at 18/10/1996.*

**Changes to legislation:** *Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

- F36** 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
- F37** 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

- I76** 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.
- (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.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

- (7) The provisions of subsection (2) to (8) of section 210 of the <sup>M8</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**

**I77** [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**

**M8** [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**

**I78** [Sch. 8 para. 3](#) wholly in force at 1.10.1991 see [s. 28\(2\)](#) and [S.I. 1991/2187, art. 3, Sch.](#)

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 a water authority 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.

**Commencement Information**

**I79** [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**

**I80** [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.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

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

**Commencement Information**

**181** 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**

**182** 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

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- (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

**I83** Sch. 9 para. 5 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

## SCHEDULE 10

Section 27.

### MISCELLANEOUS AMENDMENTS

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

F38 1

#### Textual Amendments

**F38** 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

**I84** 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.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

*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**

**185** 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.
- (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 ”.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

- (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
- (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**

**186** 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 ”.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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**

**I87** 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)*

F39 6

**Textual Amendments**

**F39** 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.

F40 (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—

- (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>M9</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**

**F40** 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**

**I88** Sch. 10 para. 7 wholly in force at 1.10.1991 see s. 28(2) and S.I. 1991/2187, art. 3, Sch.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

#### Marginal Citations

**M9** 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

**I89** 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>F41</sup>(b) .....
- (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—



*Status: Point in time view as at 18/10/1996.*

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- (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>F41</sup>(6) . . . . .

**Textual Amendments**

**F41** 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**

**I90** 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;
- (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”.

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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

**I91** 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

**I92** 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.”

#### Commencement Information

**I93** 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

**I94** Sch. 10 para. 13 wholly in force at 1.4.1992 see s. 28(2) and S.I. 1991/2633, art. 4

*Status: Point in time view as at 18/10/1996.*

*Changes to legislation: Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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)*

## SCHEDULE 11

Section 27.

### REPEALS

#### Commencement Information

**195** 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 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).

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*Status: Point in time view as at 18/10/1996.*

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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, 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 18/10/1996.

**Changes to legislation:**

Natural Heritage (Scotland) Act 1991 is up to date with all changes known to be in force on or before 19 October 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.