



Spray Irrigation (Scotland) Act 1964

CHAPTER 90

ARRANGEMENT OF SECTIONS

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SCHEDULE—Provisions as to applications for, making, coming into operation, and validity of, control orders.

ELIZABETH II



1964 CHAPTER 90

An Act to enable river purification boards in Scotland in pursuance of their functions to control the abstraction of water for the purpose of spray irrigation; and for purposes connected therewith. [31st July 1964]

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

1.—(1) For the purpose of assisting them in the performance of the duties laid on them by section 17(1) of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (which relates among other things to the promotion of the cleanliness of rivers and the conservation of water resources) a river purification board may make application to the Secretary of State for an order to control in respect of any stream or locality in their area the abstraction of water for the purpose of spray irrigation, and after consideration of the application the Secretary of State may, if he thinks fit, and in accordance with the provisions of the Schedule to this Act, make a control order. Power to control spray irrigation. 14 & 15 Geo. 6. c. 66.

(2) Where the Secretary of State in performance of the duty laid on him by section 1 of the Water (Scotland) Act 1946 or by section 1(1) of the said Act of 1951 (which provisions among other things lay a duty on the Secretary of State to promote the conservation of water and the cleanliness of rivers) is satisfied that in relation to any stream or locality the question of a control order should be considered, he may require the river purification board concerned to make application under the foregoing subsection for such an order and the board shall comply with any such requirement. 9 & 10 Geo. 6. c. 42.

(3) The provisions of the Schedule to this Act shall have effect with regard to applications for, and to the making, coming into operation, and the validity of, a control order.

(4) In this Act—

“spray irrigation” means the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray;

“control order” means an order made under this section;

“control area” means all streams and localities to which a control order relates, but does not include any underground stream, or any body of water, whether underground or otherwise, which is not a stream.

Regulation by
licence of
spray irrigation
in control
area.

2.—(1) On the coming into force of a control order no person shall for the purpose of spray irrigation abstract water from the control area, or cause or permit any other person so to abstract water, except in pursuance of a licence under this Act granted by the river purification board concerned and except in accordance with the provisions of that licence, unless the operation of the licence has been suspended by virtue of a declaration made under section 7(2) of this Act.

(2) Any person guilty of a contravention of the provisions of the foregoing subsection shall be liable on summary conviction to a fine not exceeding £50.

Licences.

3.—(1) A person may apply for a licence to abstract water for the purpose of spray irrigation from a stream specified in his application where he is the occupier of land contiguous to that stream or where he will be such an occupier on the date when the licence comes into force.

(2) Subject to the following provisions of this Act any such licence shall remain in force for one calendar year, and any application therefor shall be made not later than the 15th day of September in the year immediately preceding the year for which it is proposed that the licence is to be in force.

(3) An application for a licence under this section shall be made to the appropriate river purification board and shall contain such information as to the source of supply, the point of abstraction of water, the amount of water to be abstracted, the land to be irrigated, the purpose of the irrigation, and other matters relevant to consideration of the application, as that board may require.

(4) It shall be the duty of a river purification board

(a) in each year, as soon as may be after the date mentioned in subsection (2) of this section, to publish in a local newspaper circulating in each area to which a

control order relates, a notice stating briefly the nature of any applications made to them for licences in that area and where and when particulars of those applications may be inspected ; and

- (b) to maintain at their office a register containing particulars of any application made or licence granted for the purposes of this Act to be open to public inspection free of charge at all reasonable hours ; and the particulars of any such application or licence shall be entered in that register within seven days of the receipt of the application, or as the case may be, the granting of the licence.

(5) Any person who objects to such an application may, not later than the 15th day of October in the year in which the application is made, make representations accordingly in writing to the board.

(6) A river purification board, having regard to their statutory duties, and after consideration of an application and any representations against it duly made—

- (a) may grant a licence either unconditionally or containing such conditions as they may reasonably impose, which, without prejudice to that generality, may include conditions as to the means of abstraction of water, the point of abstraction of water, the amount of water to be abstracted during any period, and the periods during which water may be abstracted, or
- (b) may refuse to consent to the application, and in the case of refusal of consent the board shall communicate in writing their decision and the reasons therefor to the applicant.

(7) Where a river purification board fail to inform an applicant of their decision on his application by the 15th day of November in the year in which the application is made, the application shall be deemed to have been granted unconditionally, and the board shall issue a licence accordingly.

(8) Where on an application under this section the applicant is aggrieved by the decision of the river purification board, he may, within 28 days of his receipt of that decision appeal by notice in writing to the Secretary of State ; and the applicant shall, within that time, serve a copy of that notice on the river purification board.

(9) Where an appeal is brought as aforesaid, the Secretary of State may allow or dismiss the appeal, or may cancel or vary any condition attached to the licence, whether the appeal relates to that condition or not, and may deal with the application as if it had been made to him in the first instance.

(10) Where any representations have been made under subsection (5) of this section, the Secretary of State, before determining the appeal, shall require the river purification board to serve a copy of the notice of appeal on each of the persons who made those representations; and the Secretary of State, in determining the appeal, shall take into account any further representations in writing received by him from those persons within such time as he may direct.

(11) Before determining any appeal under this section the Secretary of State shall, if the applicant or the river purification board or any person who under subsection (5) of this section has made representations regarding the application so desire, afford to them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(12) The decision of the Secretary of State on any appeal under this section shall be final.

(13) On the granting of a licence under this section there shall be payable to the river purification board by the holder of the licence a fee of £5 or such other sum as the Secretary of State may by order prescribe.

(14) Any licence granted under this section shall specify—

- (a) the person to whom and the land to which it relates;
- (b) the year in respect of which it is to be in force;
- (c) the purpose for which the water is to be abstracted for spray irrigation under the licence; and
- (d) any conditions to which the licence is subject by virtue of this section.

(15) In any action brought against a person in respect of the abstraction of water from a source of supply, it shall be a defence for him to prove that the water was abstracted in pursuance of a licence under this Act, and that the provisions of the licence were complied with.

Special provisions regarding late application for a licence.

4.—(1) A river purification board may at any time consider an application for a licence in respect of abstraction of water from a particular source of supply from a person who satisfies them that in all the circumstances he could not reasonably comply with the provisions of subsection (2) of the last foregoing section regarding applications, and the provisions of that section except subsection (2) and paragraph (a) of subsection (4) shall, subject to the next following subsection, apply to such an application and to any licence granted in pursuance thereof.

(2) On making an application under the foregoing subsection or under section 6(2) of this Act and section 3 as applied thereby, the applicant shall publish in a local news-

paper, circulating in the area where the licence would have or has effect, a notice stating briefly the nature of his application, and in relation to that application the dates mentioned in subsections (5) and (7) of the last foregoing section shall not apply, but—

(a) representations against the application may not be entertained if made later than 14 days from the date of publication of the notice as aforesaid ;

(b) the board shall have 28 days from the said date to arrive at a decision in relation to the application ;

and subsections (5) and (7) of the last foregoing section shall have effect accordingly.

(3) A licence granted by virtue of subsection (1) of this section shall, subject to the provisions of this Act, remain in force until the end of the calendar year in respect of which it was granted.

5.—(1) Where the holder of a current licence under this Act or of any such licence for the calendar year next following ceases to occupy the land specified in the licence, the licence shall be transferred to the succeeding occupier and the register kept under section 3 of this Act and the licence shall be amended and have effect accordingly. Transfer of licences.

(2) Where an application for a licence under the last two foregoing sections has been made but not yet granted, and the person making the application ceases to occupy the land to which the licence would relate, the river purification board to whom the application was made shall, at the request of the succeeding occupier, consider the application as having been made by him in the first instance.

6.—(1) A river purification board may revoke a licence granted by them under this Act if the holder is convicted of an offence under section 2 of this Act in connection with that licence. Revocation and variation of licences.

(2) A river purification board may on the application of the holder of a licence vary that licence ; and, where the effect of the variation would be to increase the quantity of water authorised to be abstracted, the provisions of section 3 as read with section 4(2) of this Act shall apply with any necessary modifications to the application for variation and to the variation of the licence as they apply to applications for, and the grant of, licences under that section.

7.—(1) Where by reason of exceptional shortage of rain or other emergency it appears to a river purification board that it is necessary to impose a temporary restriction on the abstraction of water, they may restrict or suspend the operation of any Special provisions for shortage or abundance of water.

licence under this Act relating to a stream or locality affected by the shortage or emergency :

Provided that if occasioned by exceptional shortage of rain that restriction or, as the case may be, that suspension shall apply equitably to all licences relating to the stream or locality in question.

(2) Where by reason of abundance of water it appears to a river purification board that restrictions on the abstraction of water from a stream or locality may be temporarily relaxed or suspended, the board may so declare, and while such a declaration has effect the operation of licences under this Act relating to the stream or locality in question shall be relaxed to the extent authorised by the declaration (which shall apply equitably to all such licences) or, as the case may be, shall be suspended.

(3) A river purification board shall communicate any decision taken by them under this section to the holders of licences affected thereby.

Expenses.

8. There shall be paid out of moneys provided by Parliament—

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

Construction,
citation and
extent.

9.—(1) This Act may be cited as the *Spray Irrigation (Scotland) Act 1964*.

(2) This Act shall be construed as one with the *Rivers (Prevention of Pollution) (Scotland) Act 1951*, and the reference in section 20(1)(b) of the said Act of 1951 to an authorisation granted under that Act shall be construed as including a reference to a licence granted under this Act.

(3) This Act shall come into operation at the expiration of the period of one month beginning with the day on which it is passed.

(4) This Act shall extend to Scotland only.

SCHEDULE

Section 1.

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

1. An application for a control order—

- (a) shall specify all streams or localities to which the control order sought by the application would relate and all such other relevant information as the Secretary of State may from time to time require ; and
- (b) without prejudice to the foregoing generality, after a date to be appointed by the Secretary of State, shall, so far as practicable, include a statement of what the river purification board concerned consider to be the minimum acceptable flows for each such stream, as measured at control points described in that statement.

2. On making an application for a control order the river purification board concerned shall in two successive weeks publish in at least one local newspaper circulating in their area and in the area to which the control order would relate, and in the Edinburgh Gazette, a notice—

- (a) stating the general effect of the application ;
- (b) specifying a place in the said 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 28 days from 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.

3.—(1) Not later than the date on which the said notice is first published as aforesaid, the river purification board shall serve a copy thereof (together with a copy of the application and of any relevant map or plan) on the following—

- (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 ;
- (c) any body or association appearing to the river purification board to represent persons who in their opinion may be affected by the control order if made ; and
- (d) every person known to the river purification board to have any interest in any land to which the control order applied for would relate :

Provided that where it appears to the Secretary of State, from representations made to him by the board, that compliance with head (d) of this sub-paragraph would be unduly onerous, it shall be sufficient compliance if the board, having submitted proposals in this regard to the Secretary of State, take such steps as he may direct as respects service of the said copy documents upon such of the persons referred to in the said head (d) as in his opinion may be

materially affected by the control order if made, and as respects further publication of those documents.

(2) In this paragraph the expression "statutory body" means any body exercising functions conferred on it by or under any enactment.

4. Not later than the date on which the said notice is first published as aforesaid, the river purification board shall cause a copy thereof to be displayed in a prominent position in the area to which the control order applied for would relate.

5. If before the expiration of the said period of 28 days an objection is received by the Secretary of State from any party on whom a copy of the said notice is required by paragraph 3 of this Schedule to be served, or from any other party 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.

10 & 11 Geo. 6. c. 43. 6. The provisions of subsections (2) to (9) of section 355 of the Local Government (Scotland) Act 1947 (which relate to the holding of local inquiries) shall apply in relation to a public local inquiry held under the foregoing paragraph as they apply in relation to local inquiries held under the said section 355.

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 with such modifications to these proposals as (subject to the next following sub-paragraph) he thinks fit, or may refuse to make a control order:

Provided that 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 on whom a copy of the notice mentioned in paragraph 3 of this Schedule is required by that paragraph to be served 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 there-
ant; and
- (c) considered any representations so made.

8. The power to make a control order shall be exercisable by statutory instrument and shall include power to vary or revoke any control order by a subsequent control order.

9. If the Secretary of State makes a control order the river purification board shall publish in the manner prescribed by paragraph 2 of this Schedule 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 of this Schedule shall apply to any such notice as they apply to a notice required to be published by the said paragraph 2.

10. If any person aggrieved by a control order desires to question the validity thereof, or of any provision contained therein, on the grounds that it is not within the powers of this Act, or on the grounds that any requirement of this Act has not been complied with in relation to the making of the order, he may, within six weeks from the date on which the notice required by the last foregoing paragraph 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 therein, 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 therein, is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as aforesaid, may quash the order, or any provision contained therein, either generally or in so far as it affects any property of the applicant.

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

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