

EXECUTIVE NOTE

THE WATER ENVIRONMENT (CONSEQUENTIAL PROVISIONS) (SCOTLAND) ORDER 2006 SSI/2006/127

The above instrument is made in exercise of the powers conferred by sections 36(3) and 37 of the Water Environment and Water Services (Scotland) Act 2003 ('the 2003 Act'). The instrument is subject to negative resolution procedure.

Policy Objectives

1. The purpose of this Order is to make amendments consequential upon the 2003 Act. Those amendments bring existing law regulating the water environment into line with the new regulatory regime which controls activities which impact on the water environment established under the 2003 Act and in particular the Water Environment (Controlled Activities) (Scotland) Regulations 2005 ('the 2005 Regulations') made under section 20 of that Act.

Background

2. On 23 October 2000 the Water Framework Directive was adopted (Directive 2000/60/EC establishing a framework for Community action in the field of water policy). The Directive entered into force on 22 December 2000, and the Executive has had three years from that date to transpose its provisions into Scots Law.

3. The 2003 Act transposed the requirements of the Directive into Scots Law, establishing a framework to protect and improve the ecological status of Scotland's water environment, whilst also protecting the social and economic needs of those who depend upon it. Under section 20 of that Act, Scottish Ministers were given the power to introduce such measures as they consider necessary or expedient to regulate 'controlled activities' for the purposes of protection of the water environment.

4. The 2005 Regulations were made in June last year, and introduce flexible and risk-based controls to regulate 'controlled activities' – including point-source discharges, abstraction, impoundment and building, engineering and other works that impact on the physical quality of aquatic habitats. The Regulations will enter into full force on 1 April 2006.

5. This Order is part of a series of instruments as described below. It amends existing secondary legislation to take account of the repeal of Part II of the Control of Pollution Act 1974 by the Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 and the revocation of the Groundwater Regulations 1998 as a consequence of the new integrated regime under the 2003 Act and 2005 Regulations.

Consultation

6. In April 2004 we consulted widely on our proposals to introduce Regulations over 'controlled activities'. As part of that exercise we consulted formally on our general proposals for consequential amendments. More recently we have been working

collaboratively with key stakeholders such as SEPA in refining our detailed proposals for amendment.

Regulatory Impact Assessment

7. These amendments do not in themselves generate any costs. Accordingly, an RIA has not been prepared.

Associated Statutory Instruments

8. The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 was laid before the Parliament in February, and dealt principally with those amendments necessary to align key primary legislation with the 2003 Act and 2005 Regulations. As detailed in the Executive Note to that Order, we are now bringing forward the attached Order in respect of associated amendments to secondary legislation.

9. In addition, provision has been made in the following instruments to define how the 2005 Regulations should interact with the Electricity Act 1989 and the Waste Management Licensing Regulations 1994 respectively:

- The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006;
- The Waste Management Licensing (Water Environment) (Scotland) Regulations 2006.

10. Together, these instruments make the principal amendments necessary to ensure an integrated and coherent approach to protection of Scotland's water environment. It is anticipated that amendments to further legislation will be made during the course of the coming year.

SCOTTISH EXECUTIVE
Environment and Rural Affairs Department

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