

2006 No. 1054 (S. 10)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

WATER, SCOTLAND

**The Water Environment and Water Services (Scotland) Act 2003
(Consequential Provisions and Modifications) Order 2006**

Made - - - - - *31st March 2006*

Coming into force - - - - - *1st April 2006*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998(a);

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 and shall come into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

Modifications

2. The modifications specified in Schedule 1 shall have effect.

Consequential Provision

3.—(1) In the event that any provisions or conditions on matters relating to the protection of the water environment contained in any of the enactments or instruments referred to in paragraph (2) differ and cannot reasonably be reconciled with the conditions contained in an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005(b), the relevant provisions and conditions of such enactments or instruments shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.

(2) The enactments and instruments mentioned in paragraph (1) are—

(a) 1998 c.46.
(b) S.S.I. 2005/348.

- (a) the local enactments listed in Schedule 2;
- (b) all constructional schemes, confirming orders and authorisations to which paragraph 32 of Schedule 17 (transitional provisions and savings) to the Electricity Act 1989^(a) refers;
- (c) all consents granted under section 36 of that Act^(b); and
- (d) all orders made under paragraph 2 of Schedule 5 to that Act.

(3) In this article, “protection of the water environment” has the same meaning as in section 1(2) of the Water Environment and Water Services (Scotland) Act 2003^(c).

DAVID CAIRNS
Parliamentary Under Secretary of State
Scotland Office,
Department for Constitutional Affairs

Dover House,
London
31st March 2006

(a) 1989 c.29.
(b) Section 36 was amended by the Energy Act 2004 (c.20), section 93. There is another amendment to section 36 not relevant to this Order.
(c) 2003 asp 3.

PART 1

MODIFICATION OF PUBLIC GENERAL ACTS

Electricity Act 1989 (c.29)

- 1.—(1) The Electricity Act 1989 is amended in accordance with sub-paragraphs (2) to (5).
- (2) In section 36 (consent required for construction etc. of generating stations)—
- (a) insert at the beginning of subsection (5), “Subject to subsections (5A) and (5B),”; and
- (b) after subsection (5), insert—
- “(5A) In the case of a generating station in respect of which a controlled activity, within the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, will be carried on, the Secretary of State shall, before granting a consent under subsection (1), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment and have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.
- (5B) In the event that the conditions of a consent granted under subsection (1) on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ, and cannot reasonably be reconciled, the relevant conditions of that consent shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.”.
- (3) In section 111 (general interpretation)(a), insert at the appropriate place—
- ““protection of the water environment” has the same meaning as in section 1(2) of the Water Environment and Water Services (Scotland) Act 2003;”.
- (4) In Schedule 5 (water rights for hydro-electric generating stations in Scotland)(b)—
- (a) insert at the beginning of paragraph 5, “Subject to paragraphs 5A and 5B,”; and
- (b) after paragraph 5, insert—
- “**5A.** Before making an order under paragraph 2, and in considering the matters referred to in paragraphs 3 to 5, the Secretary of State shall—
- (a) obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment (and in particular as to the extent to, and the circumstances in, which water may be taken and the quantity of compensation water to be provided); and
- (b) have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.
- 5B.** In the event that the provisions of an order made under paragraph 2 on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ and cannot reasonably be reconciled, the relevant provisions of that order shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.”.

(a) There are amendments to section 111 not relevant to this Order.
 (b) There are amendments to Schedule 5 not relevant to this Order.

(5) In Schedule 9, paragraph 5 (Fisheries Committee: Scotland)–

- (a) insert at the beginning of sub-paragraph (6), “Subject to sub-paragraph (6A),”; and
- (b) after sub-paragraph (6), insert–

“(6A) In the case of a generating station in respect of which a controlled activity within the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 will be carried on, the Committee shall, before making a recommendation under sub-paragraph (6), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment.”.

Finance Act 1996 (c.8)

2. In section 43A(4) of the Finance Act 1996 (contaminated land)(a)–

- (a) omit the word “or” where it occurs after paragraph (j); and
- (b) after paragraph (k), insert–

“; or

(1) a notice served under regulation 28(2) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.”.

PART 2

MODIFICATION OF SUBORDINATE LEGISLATION

Landfill Tax Regulations 1996 (S.I. 1996/1527)

3. In regulation 33(4) of the Landfill Tax Regulations 1996 (bodies eligible for approval)(b), after paragraph (j), insert–

“(k) a notice served under regulation 28(2) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.”.

(a) Section 43A was inserted by S.I. 1996/1529 and amended by the Pollution Prevention and Control Act 1999 (c.24), Schedule 3 which is not yet in force and S.S.I. 2000/323.
(b) Regulation 33(4) was amended by S.I. 2000/1973, S.S.I. 2000/323 and S.R. 2003/46.

SCHEDULE 2

Article 3(2)

LOCAL ENACTMENTS

<i>Title</i>	<i>Reference</i>
The Loch Leven Water Power Act 1901 (a)	c.cclxx (1 Edw. 7)
The Loch Leven Water Power (Amendment) Act 1904 (b)	c.ccxli (4 Edw. 7)
The Loch Leven Water Power Order Confirmation Act 1908 (c)	c.xxviii (8 Edw. 7)
The Loch Leven Water Power (Transfer) Order Confirmation Act 1910 (d)	c.cxxxviii (10 Edw. 7 & 1 Geo. 5)
The Lochaber Water Power Act 1921 (e)	c.xliv (11 & 12 Geo. 5)
The Grampian Electricity Supply Act 1922 (f)	c.lxxix (12 & 13 Geo. 5)
The Lochaber Water Power Act 1930 (g)	c.cx (20 & 21 Geo. 5)
The Lochaber Water Power Order Confirmation Act 1938 (h)	c.lxiv (1 & 2 Geo. 6)
The Lochaber Water Power Order Confirmation Act 1940	c.xxiv (3 & 4 Geo. 6)
The South of Scotland Electricity Order Confirmation Act 1956 (i)	c.xciv (4 & 5 Eliz. 2)
The North of Scotland Electricity Order Confirmation Act 1958 (j)	c.ii (7 & 8 Eliz. 2)

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- (a) Amended by the Loch Leven Water Power (Amendment) Act 1904 (c.ccxli), section 25; the Loch Leven Water Power Order Confirmation Act 1908 (c.xxviii), section 4; the Loch Leven Water Power (Transfer) Order Confirmation Act 1910 (c.cxxxviii), section 3; the North of Scotland Electricity Order Confirmation Act 1958 (c.ii), the Schedule, Schedule 3 to the Order; the Post Office Act 1969 (c.48), Schedule 11, Part II; S.I. 1969/1066 and the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, Part I of the Schedule to the Order.
- (b) Amended by the Post Office Act 1969 (c.48), Schedule 11, Part II; S.I. 1969/1066 and the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, article 6 of the Order.
- (c) Amended by the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, article 6 of the Order.
- (d) Amended by the North of Scotland Electricity Order Confirmation Act 1958 (c.ii), the Schedule, Schedule 3 to the Order and the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, article 6 of and Part I of the Schedule to the Order.
- (e) Amended by the Lochaber Water Power Act 1930 (c.cx), section 30; the Lochaber Water Power Order Confirmation Act 1938 (c.lxiv), section 28; the Lochaber Water Power Order Confirmation Act 1940 (c.xxiv), section 14 and the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, Parts I and II of the Schedule to the Order.
- (f) Amended by the Grampian Electricity Supply Act 1924 (c.lii), section 26 and the North of Scotland Electricity Order Confirmation Act 1958 (c.ii), the Schedule, Schedule 3 to the Order.
- (g) Amended by the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, Part I of the Schedule to the Order.
- (h) Amended by the Lochaber Water Power Order Confirmation Act 1940 (c.xxiv), section 10 and the Loch Leven and Lochaber Water Power Order Confirmation Act 1995 (c.vii), the Schedule, Part II of the Schedule to the Order.
- (i) Amended by the Criminal Justice Act 1982 (c.48), Schedule 15, paragraphs 9 and 10 and the Energy Act 1983 (c.25), Schedule 4, Part I.
- (j) Amended by the Aberdeen Harbour Order Confirmation Act 1960 (c.i), the Schedule, article 186(1) of the Order; the Criminal Justice Act 1982 (c.48), Schedule 15, paragraphs 11 and 12 and the Energy Act 1983 (c.25), Schedule 4, Part I.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provisions and modifications in consequence of the Water Environment and Water Services (Scotland) Act 2003 (“the 2003 Act”) and the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the CAR”) made under the 2003 Act which provide the mechanism by which activities which impact on the water environment are authorised and regulated in Scotland.

This Order makes provision for the interaction of the CAR with the authorisation and regulation of the construction and operation of generating stations under the Electricity Act 1989 (c.29) (“the 1989 Act”). These provisions extend to Scotland only. It also makes provision for the application of enforcement action under the CAR to provisions relating to landfill tax.

Article 2 and paragraph 1 of Part 1 of Schedule 1 make provision in respect of generating stations regulated under the 1989 Act. They provide—

- (a) for regard to be had to the advice of the Scottish Environment Protection Agency (“SEPA”) and to the purposes of Part 1 of the 2003 Act before consent is granted under section 36 of the 1989 Act in respect of a generating station to which the CAR applies or an order made under paragraph 2 of Schedule 5 to that Act;
- (b) that insofar as the conditions of such a consent or the provisions of such an order cannot be reconciled with those contained in an authorisation under the CAR they are modified so far as necessary to be consistent with that authorisation; and
- (c) for regard to be had to the advice of SEPA before recommendations are made under paragraph 5(6) of Schedule 9 to the 1989 Act.

Article 2, paragraph 2 of Part 1 of Schedule 1 and Part 2 of that Schedule make consequential amendments to section 43A(4) of the Finance Act 1996 (c.8) and regulation 33(4) of the Landfill Tax Regulations 1996. This provides that works carried out in compliance with enforcement notices served under the CAR requiring remedial works are treated as taxable for landfill tax purposes.

Article 3 makes consequential provision in respect of existing schemes, orders and authorisations referred to in paragraph 32 of Schedule 17 to the 1989 Act, local enactments listed in Schedule 2 to the Order, consents granted under section 36 of the 1989 Act and all orders made under paragraph 2 of Schedule 5 to that Act. In so far as they contain provision or conditions relating to the protection of the water environment which cannot be reconciled with conditions contained in an authorisation under the CAR they are modified so far as necessary to be consistent with that authorisation.

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