



Water Environment and Water Services (Scotland) Act 2003

2003 asp 3

PART 1

PROTECTION OF THE WATER ENVIRONMENT

CHAPTER 3

MEASURES FOR PROTECTION OF THE WATER ENVIRONMENT

20 Regulation of controlled activities

- (1) The Scottish Ministers may by regulations make such provision for or in connection with regulating any activity (a “controlled activity”) as they consider necessary or expedient for the purposes of protection of the water environment.
- (2) Such regulations may, in particular—
 - (a) make provision for or in connection with regulating the activities specified in subsection (3),
 - (b) otherwise make such provision for or in connection with the basic measures and supplementary measures mentioned in paragraph 2 of Article 11 of the Directive as the Scottish Ministers consider necessary or expedient for the purpose of facilitating the achievement of the environmental objectives set out in river basin management plans.
- (3) The activities referred to in subsection (2)(a) are—
 - (a) activities liable to cause pollution of the water environment,
 - (b) abstraction of water from bodies of surface water or groundwater,
 - (c) the construction, alteration or operation of impounding works in bodies of surface water,
 - (d) building, engineering or other works in, or in the vicinity of, any body of inland surface water,
 - (e) activities connected with any of the activities specified in paragraphs (a) to (d).

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- (4) The provision which may be made in regulations under this section includes provision for any of the purposes specified in Part 1 of schedule 2.
- (5) Part 2 of that schedule has effect for supplementing Part 1.
- (6) In subsection (3)—
- “abstraction”, in relation to a body of surface water or groundwater, means the doing of anything whereby any water is removed by mechanical means from that body of water, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another body of water within the water environment,
- “impounding works”, in relation to a body of surface water, means—
- (a) any dam, weir or other works in the body of water by which water may be impounded,
 - (b) any works diverting the flow of water in the body of water in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a),
- “pollution”, in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances or heat into the water environment, or any part of it, which may give rise to any harm; and “harm” means—
- (a) harm to the health of human beings or other living organisms,
 - (b) harm to the quality of the water environment, including—
 - (i) harm to the quality of the water environment taken as a whole,
 - (ii) other impairment of, or interference with, the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,
 - (c) offence to the senses of human beings,
 - (d) damage to property, or
 - (e) impairment of, or interference with, amenities or other legitimate uses of the water environment.
- (7) This section is without prejudice to section 22.

21 Controlled activities regulations: procedure

- (1) Before making any regulations under section 20, the Scottish Ministers must consult—
- (a) SEPA,
 - (b) every responsible authority,
 - (c) such persons appearing them to be representative of the interests of local government, industry, agriculture, fisheries and small businesses respectively as they think fit, and
 - (d) such other persons as they think fit.
- (2) Before making any regulations under that section specifying rules as mentioned in paragraph 3(2) of schedule 2 (general binding rules), the Scottish Ministers must, in addition to consulting as required by subsection (1)—
- (a) publish a draft of the proposed rules, and publicise the opportunity to make representations about them under subsection (3), in such manner as they think fit, and

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- (b) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as they may determine.
- (3) Any person who wishes to make representations about the proposed rules to the Scottish Ministers may do so within the period determined under subsection (2)(b).
- (4) The Scottish Ministers must, in making the regulations specifying the rules, have regard to any representations on the proposed rules received by them within that period.

22 Remedial and restoration measures

- (1) The Scottish Ministers may by regulations make such provision for or in connection with remedial or restoration measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans.
- (2) In this section “remedial or restoration measures” means the carrying out of any operations or works, or the taking of any other action, in relation to any land or body of water with a view to—
 - (a) remedying or mitigating the effects of any pollution (as defined in section 20(6)) of the water environment,
 - (b) improving or restoring the characteristics of any body of water.
- (3) Regulations under this section may, in particular, make provision—
 - (a) conferring on SEPA or any responsible authority power to undertake, or arrange for the undertaking of, remedial or restoration measures,
 - (b) for determining which other persons (if any) are the appropriate persons to bear responsibility for remedial or restoration measures and conferring on SEPA or any responsible authority power—
 - (i) to serve notices requiring such persons to undertake remedial or restoration measures, or
 - (ii) to undertake, or arrange for the undertaking of, such measures at the expense of such persons.

23 Fixing of charges for water services

- (1) The Scottish Ministers may by regulations make such provision for or in connection with the fixing of charges for the provision of water services as they consider necessary or expedient for the purposes of protection of the water environment.
- (2) Regulations under subsection (1) may, in particular, make provision for securing that, in the fixing of such charges, account is taken of such principles, objectives or other matters as are specified in the regulations.
- (3) Before making any regulations under subsection (1), the Scottish Ministers must consult such persons as they think fit.
- (4) In this section, “water services” means services which provide, for households, public institutions or any economic activity—
 - (a) abstraction (as defined in section 20(6)), impoundment, storage, treatment and distribution of surface water or groundwater,

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- (b) waste-water collection and treatment facilities which subsequently discharge into surface water.

24 Planning permission: fish farming

- (1) The Town and Country Planning (Scotland) Act 1997 (c. 8) is amended as follows.
- (2) In section 26 (meaning of “development”)—
 - (a) in subsection (6)—
 - (i) for “tank” in the first and second places where it occurs substitute “equipment”,
 - (ii) after “waters” in the first place where it occurs insert “, transitional water or coastal water”,
 - (iii) before the definition of “fish farming” insert—

““coastal water” has the meaning given by section 3(8) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);

“equipment” includes any tank, cage or other structure, or long-line, for use in fish farming;”,
 - (iv) the definition of “tank” is repealed,
 - (v) at the end insert—

““transitional water” has the meaning given by section 3(7) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);”,
 - (b) after subsection (6) insert—

“(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of “equipment” and “fish farming” in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), “modifications” includes amendments and repeals.”
- (3) In section 40 (assessment of environmental effects), after subsection (3) insert—
 - (4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.
 - (5) In subsection (4), “water environment” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3).”
- (4) In section 275 (regulations and orders)—
 - (a) in subsection (4), after “26(2)(f)” insert “and (6A)”,
 - (b) after subsection (5) insert—

“(5A) No order made under section 26(6A) is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament.”

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- (5) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of or in connection with the application of the Town and Country Planning (Scotland) Act 1997 (c. 8), by virtue of this section, to operations in transitional water or coastal water.
- (6) An order under subsection (5) may, in particular, make provision for any planning authority specified in the order to be the planning authority for the purposes of the application of that Act, by virtue of this section, to operations in such areas of transitional water or coastal water as the order may specify in relation to the authority, despite those operations relating to land outwith the district of the authority.
- (7) Before making an order under subsection (5) the Scottish Ministers must consult—
 - (a) every planning authority,
 - (b) SEPA,
 - (c) such other persons as they think fit.