

## SCHEDULE

### PART IV

#### AMENDMENTS TO PRIMARY LEGISLATION

##### *The Flood Prevention (Scotland) Act 1961*

- 1.—(1) The Flood Prevention (Scotland) Act 1961(1) is amended as follows.
- (2) In section 3(3) (supplementary provisions as to powers of local authorities)—
  - (a) omit paragraph (c); and
  - (b) after paragraph (d) insert—

“; or
  - (e) any regulations made under section 20 (regulation of controlled activities) of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#)”.

##### *The Harbours Act 1964*

- 2.—(1) The Harbours Act 1964(2) is amended as follows.
- (2) In section 57 (interpretation) in the definition of “river works powers”—
  - (a) omit “or by the Rivers (Prevention of Pollution) (Scotland) Act 1951”; and
  - (b) omit “and 1951”.

##### *The Control of Pollution Act 1974*

- 3.—(1) The Control of Pollution Act 1974 is amended as follows.
- (2) In section 30D (general duties to achieve and maintain objectives etc.)(3)—
  - (a) in subsection (1) omit “Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 and of the”; and
  - (b) in subsection (2) omit “or the provisions of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965”.

##### *The Water (Scotland) Act 1980*

- 4.—(1) The Water (Scotland) Act 1980(4) is amended as follows.
- (2) In section 17 (acquisition of water rights)—

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(1) 1961 c. 41, as relevantly amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), section 4, Schedule 2, paragraph 8, the Flood Prevention and Land Drainage (Scotland) Act 1997 (c. 36), section 5 and S.I.2003/2155.

(2) 1964 c. 40, as relevantly amended by the Water Act 1989 (c. 15), Schedule 27, paragraph 27, the Companies Act 1989 (c. 40), Schedule 18, paragraph 5, the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 7, the Merchant Shipping Act 1995 (c. 21), Schedule 13, paragraph 33, the Transport Act 2000 (c. 38), section 274 and Schedule 31, Part IV, the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), section 76 and Schedule 13, Part 1, S.I. 1992/1421, 1996/973 and 1999/3445.

(3) Section 30D was inserted by the Water Act 1989 (c. 15), section 168, Schedule 23, paragraph 4 and amended by the Environmental Protection Act 1990 (c. 43), Schedule 15, paragraph 15, the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), section 4 and Schedule 1, paragraph 27 and the Environment Act 1995 (c. 25), Schedule 22, paragraph 29(2).

(4) 1980 c. 45. Section 109 was amended by the New Roads and Street Works Act 1991 (c. 22), Schedule 8, paragraph 108, the Local Government Finance Act 1992 (c. 14), Schedule 11, paragraph 38 and Schedule 14, the Local Government etc. (Scotland) Act 1994 (c. 39), section 179, Schedule 13, paragraph 119 and Schedule 14, the Environment Act 1995 (c. 25), Schedule 22, paragraph 34 and Schedule 24, the Local Government and Rating Act 1997 (c. 29), section 33 and Schedule 3, paragraph 16, the [Fire \(Scotland\) Act 2005 \(asp 5\)](#), Schedule 3, paragraph 9 and S.I. 1996/323.

- (a) in subsection (1), omit the words from “, but no such agreement” to the end;
  - (b) in subsection (3)–
    - (i) omit paragraph (a) and the following “or”; and
    - (ii) for “the said Part III” substitute “Part III of Schedule 4”;
  - (c) in subsection (4), omit paragraph (a) and the following “or”;
  - (d) in subsection (5)–
    - (i) insert at the beginning “Subject to subsections (5A) and (5B)”;
    - (ii) omit the words “agreement or” in both places where they occur;
  - (e) after subsection (5), insert–
    - “(5A) Before making an order for the compulsory acquisition of water rights, and in considering the matters referred to in subsections (3) to (5), the Scottish Ministers 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 \(asp 3\)](#).
    - (5B) In the event that the provisions of an order for the compulsory acquisition of water rights which makes provision 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.”; and
  - (f) omit subsection (6).
- (3) In section 109(1) (interpretation) insert the following definitions in the appropriate places alphabetically–
- ““protection of the water environment” has the same meaning as in section 1(2) of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#)”; and
  - ““the water environment” has the same meaning as in section 3 of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#)”.

#### *The Environmental Protection Act 1990*

- 5.**—(1) The Environmental Protection Act 1990(5) is amended as follows.
- (2) In section 7(12) (conditions of authorisations)–
- (a) omit “and” in each case where it appears immediately after paragraphs (e) and (f); and
  - (b) insert after paragraph (g)–
    - “and
    - (h) Part 1 of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#).”.

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(5) 1990 c. 43, as relevantly amended by the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), Schedule 1, paragraph 56, the Environment Act 1995 (c. 25), Schedule 22, paragraph 45 and Schedule 24 and the Pollution Prevention and Control Act 1999 (c. 24), section 6 and Schedule 3.

*The Planning and Compensation Act 1991*

6.—(1) The Planning and Compensation Act 1991(6) is amended as follows.

(2) In Part I (provisions that do not provide for interest) of Schedule 18 omit the entry for section 46B of the Control of Pollution Act 1974.

*The Radioactive Substances Act 1993*

7.—(1) The Radioactive Substances Act 1993(7) is amended as follows.

(2) In Part II of Schedule 3 (enactments, other than local enactments, to which s.40 applies) for paragraph 16 substitute—

“16. Sections 30A, 30B, 30D, 41 to 42B and 56(1) to (3) of the Control of Pollution Act 1974.”.

*The Environment Act 1995*

8.—(1) The Environment Act 1995(8) is amended as follows.

(2) In section 33(5) (general duties with respect to pollution control)—

(a) in paragraph (b) omit “Part III of the 1951 Act, the Rivers (Prevention of Pollution) (Scotland) Act 1965 and”;

(b) omit “and” where it occurs immediately after paragraph (ga); and

(c) insert after paragraph (h)—

“and;

(i) the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#) and any regulations made under that Act.”.

(3) In section 56(1) (interpretation of Part I)—

(a) omit the definition of “the 1951 Act”; and

(b) in the definition of “environmental licence” applying in relation to SEPA, omit paragraphs (a) and (e).

(4) In section 108(15) (powers of enforcing authorities and persons authorised by them) in the definition of “pollution control functions” applying in relation to SEPA, omit paragraphs (b) and (c).

(5) In section 114(2) (power of Secretary of State to delegate his functions of determining, or to refer matters involved in, appeals)—

(a) for sub-paragraph (i) of paragraph (a) substitute—

“(i) section 42B(5) of the Control of Pollution Act 1974,”;

(b) omit sub-paragraph (iv) of paragraph (a);

(c) after sub-paragraph (viii) insert—

“(ix) regulations under section 20 (regulation of controlled activities) of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#),”; and

(d) omit paragraph (b).

(6) In paragraph 4(3) of Schedule 20 (delegation of appellate functions of the Secretary of State)—

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(6) 1991 c. 34, as relevantly amended by [S.S.I. 2003/175](#).

(7) 1993 c. 12, as relevantly amended by the Clean Air Act 1993 (c. 11), Schedule 4, paragraph 6, the Environment Act 1995 (c. 25), Schedule 17, paragraph 8, Schedule 22, paragraphs 224 and 230 and Schedule 24, the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), section 4 and Schedule 2, paragraph 54 and S.I. 1999/662.

(8) 1995 c. 25, as relevantly amended by the Pollution Prevention and Control Act 1999 (c. 24), section 6, Schedule 2, paragraphs 16 and 17 and Schedule 3, S.I. 1999/743, 2000/1973, S.S.I. 2000/325, 2003/171 and 2004/175.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 No. 181*

- (a) omit “or” where it appears before sub sub paragraph (d); and
- (b) after sub sub paragraph (d) insert-
  - “; or
- (e) regulation 46(j) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348).”.

*The Criminal Procedure (Scotland) Act 1995*

**9.—(1)** The Criminal Procedure (Scotland) Act 1995(9) is amended as follows.

(2) In Schedule 9 (certificates as to proof of certain routine matters)–

- (a) omit the entry in the table relating to the Control of Pollution Act 1974; and
- (b) insert at the end of the table the entry–

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“The Water Environment (Controlled Activities) (Scotland) Regulations 2005 Regulation 40	Two persons authorised to do so by the Scottish Environment Protection Agency	That they have analysed a sample identified in the certificate (by label or otherwise) and that the sample is of a nature and composition specified in the certificate.”.
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(9) 1995 c. 46, as amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 73, the Crime and Punishment (Scotland) Act 1997 (c. 48), sections 30 and 62, the Building (Scotland) Act 2003 (asp 8), Schedule 6, paragraph 22, the Communications Act 2003 (c. 21), Schedule 17, paragraph 133 and Schedule 19, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), Schedule 1, paragraph 58 and Schedule 4, paragraph 5 and S.I. 1999/1820.