

Draft Order laid before the Scottish Parliament under section 36(6) of the Water Environment and Water Services (Scotland) Act 2003, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

**ENVIRONMENTAL PROTECTION
WATER**

**The Water Environment (Consequential and
Savings Provisions) (Scotland) Order 2006**

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

The Scottish Ministers, in exercise of the powers conferred by sections 36(3) and 37 of the Water Environment and Water Services (Scotland) Act 2003(1) and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 36(6) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 and shall come into force on 1st April 2006.

Repeals, Revocations, Savings and Amendments

2. The repeals specified in Part I, the revocations specified in Part II, the savings specified in Part III, and the amendments specified in Parts IV and V of the Schedule to this Order shall have effect.

The Water (Scotland) Act 1980 – provision in relation to existing orders, etc.

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 orders or enactments 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(2), the relevant provisions and conditions of such orders or enactments shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.

(1) 2003 asp 3.
(2) S.S.I. 2005/348.

- (2) The orders and enactments mentioned in paragraph (1) are—
- (a) all orders made under section 17 of the Water (Scotland) Act 1980⁽³⁾; and
 - (b) all enactments which by virtue of paragraph 1 of Schedule 9 to that Act have effect as if done under that section.

St Andrew's House,
Edinburgh
2006

Authorised to sign by the Scottish Ministers

(3) 1980 c. 45 as relevantly amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 119 and Schedule 14, the Water Industry (Scotland) Act 2002 (asp 3), Schedule 6, paragraph 14, S.I. 1994/3308 and 1996/323.

SCHEDULE

Article 2

PART I

REPEALS

<i>Reference</i>	<i>Short title or title</i>	<i>Extent of repeal</i>
1951 c. 66	The Rivers (Prevention of Pollution) (Scotland) Act 1951	The whole Act
1965 c. 13	The Rivers (Prevention of Pollution) (Scotland) Act 1965	The whole Act
1974 c. 40	The Control of Pollution Act 1974(4)	Sections 30F to 31A Sections 33 to 40 In section 41(1)– (a) paragraphs (b) and (c), (b) in paragraph (d), sub paragraph (i), and (c) paragraphs (f) and (h) to (m) Section 42B(2)(a) and (b) Sections 46 to 50 Section 93(4) Section 94(3)
1980 c. 45	The Water (Scotland) Act 1980(5)	Schedule 1, Part III
1995 c. 25	The Environment Act 1995	Section 24 Section 34(1), (3) and (4)
1991 c. 28	The Natural Heritage (Scotland) Act 1991(6)	Sections 15 to 19 Schedules 5 and 6
1991 c.iv	The Tay Road Bridge Confirmation Act 1991	Article 16(2) of the Provisional Order contained in the Schedule

(4) 1974 c. 40, as relevantly amended by the Water Act 1989 (c. 15), Schedule 23, paragraph 4 and Schedule 27, Part I, the Environmental Protection Act 1990 (c. 43), section 145, the Local Government, etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 94, the Environment Act 1995 (c. 25), Schedule 16, paragraphs 2 and 6, Schedule 19, paragraph 1, Schedule 22, paragraph 29 and Schedule 24, the *Anti-Social Behaviour, etc. (Scotland) Act 2004* (asp 8), Schedule 2, paragraph 2 and S.S.I. 2003/331.

(5) 1980 c. 45, as relevantly amended by the *Water Industry (Scotland) Act 2002* (asp 3), Schedule 6, paragraph 64.

(6) 1991 c. 28, as relevantly amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 96 and Schedule 24.

<i>Reference</i>	<i>Short title or title</i>	<i>Extent of repeal</i>
1994 c.iii	The British Railways (No. 3) Order Confirmation Act 1994	Article 11(4) of the Provisional Order contained in the Schedule
2003 asp 15	The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003	In section 28(2)– (a) paragraph (c), and (b) the word “and” immediately preceding that paragraph
2004 asp 10	The Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004	Section 12(6)

PART II

REVOCATIONS

Table 1

<i>Reference</i>	<i>Regulations revoked</i>
S.I.1973/1846	The Lothians River Purification Board (Peffer Burn West) Control Order 1973
S.I. 1983/1182	The Control of Pollution (Exemption of Certain Discharges from Control) Order 1983
S.I. 1984/864	The Control of Pollution (Consents for Discharges) (Notices) Regulations 1984
S.I. 1984/865	The Control of Pollution (Consents for Discharges) (Secretary of State Functions) Regulations 1984
S.I. 1986/1623	The Control of Pollution (Exemption of Certain Discharges from Control) (Variation) Order 1986
S.I. 1993/1154	The Control of Pollution (Exemption of Certain Discharges from Control) (Scotland) Variation Order 1993
S.I. 1993/1156	The Control of Pollution (Discharges by Islands Councils) (Scotland) Regulations 1993
S.I. 1995/2382	The Tay River Purification Board (Ordie Burn) Control Order 1995
S.S.I. 2000/432	The Control of Pollution (Registers) and (Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000
S.S.I. 2003/168	The Anti Pollution Works (Scotland) Regulations 2003

Table 2

<i>Reference</i>	<i>Regulations</i>	<i>Extent of revocation</i>
S.I. 1993/1155	The Control of Pollution (Registers) (Scotland) Regulations 1993(7)	Regulations 5 to 8 and 10. In regulation 3(2), omit “subject to regulations 4A(2) and 7(2)”.
S.I. 1996/973	The Environment Act 1995 (Consequential and Transitional Provisions) (Scotland) Regulations 1996(8)	Regulation 3.
S.I. 1999/1750	The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999(9)	In Schedule 2, in the entry for the Control of Pollution Act 1974, omit “36(2B),”.

PART III

SAVINGS

1. Notwithstanding the repeal of the Rivers (Prevention of Pollution) (Scotland) Act 1951 by this Order, the definition of “tidal waters” contained in section 35(1) of that Act shall continue to have effect, on and after 1st April 2006, as it had effect immediately before that date, for the purposes of section 92(2)(a) of the Agriculture Act 1970(10) and section 151(1) of the Roads (Scotland) Act 1984(11).

2. Notwithstanding the repeal of section 30F of the 1974 Act by this Order, section 30F(6) shall continue to have effect, on and after 1st April 2006, as it had effect immediately before that date, for the purposes of section 31B(4)(d) of the 1974 Act(12).

3. Notwithstanding the repeal of section 31A of the 1974 Act by this Order, the Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(13) shall continue to have effect, on and after 1st April 2006, as they had effect immediately before that date.

4. Notwithstanding the repeal of section 33 of the 1974 Act by this Order, the 1991 Order shall continue to have effect, and section 33(1), (3) and (4) of the 1974 Act shall continue to have effect for the purposes of that Order, on and after 1st April 2006, as they had effect immediately before that date.

5. Notwithstanding the repeal of sections 47 and 48 of the 1974 Act by this Order, those sections shall continue to have effect, on and after 1st April 2006, as they had effect immediately before that date, in so far as they may have application to, or may be exercisable in relation to, the subject matter of the 1991 Order.

(7) S.I. [1993/1155](#), amended by S.I. [1996/973](#), S.S.I. [2000/432](#) and [2003/168](#).

(8) S.I. [1996/973](#), amended by the Employment Rights Act 1996 (c. 18), Schedule 3, Part II and S.S.I. [2001/206](#).

(9) S.I. [1999/1750](#), amended by the Transport Act 2000 (c. 38), section 274 and Schedule 31, Part IV, the Disability Discrimination Act 2005 (c. 13), Schedule 2, S.I. [2000/1563](#) and [3253](#) and [2001/1149](#) and [1283](#).

(10) 1970 c. 40.

(11) 1984 c. 54.

(12) Section 31B was inserted by the Water Act 1989 (c. 15), Schedule 23, paragraph 4 and amended by the Environment Act 1995 (c. 25) Schedule 16, paragraph 5.

(13) S.S.I. [2003/531](#). These Regulations were made by virtue of, among others, the powers under section 31A of the Control of Pollution Act 1974 (c. 40).

6. Notwithstanding the amendment of section 17 of, and the repeal of Part III of Schedule 1 to, the Water (Scotland) Act 1980(14) by this Order—

- (a) those provisions shall continue to have effect, on and after 1st April 2006, as they had effect immediately before that date, in relation to any application for an order to approve an agreement to acquire rights to take water from any stream or other source which has been submitted by Scottish Water under section 17(1) of that Act on or before 31st March 2006; and
- (b) all orders made under section 17(1) of that Act, or enactments which by virtue of paragraph 1 of Schedule 9 to that Act, have effect as if done under that section, shall continue to have effect, on and after 1st April 2006, as they had effect immediately before that date.

7. In this Part of the Schedule—

“the 1974 Act” means the Control of Pollution Act 1974; and

“the 1991 Order” means the Control of Pollution (Continuation of Byelaws) (Scotland) Order 1991(15).

PART IV

AMENDMENTS TO PRIMARY LEGISLATION

The Flood Prevention (Scotland) Act 1961

1.—(1) The Flood Prevention (Scotland) Act 1961(16) 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(17) 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”.

(14) 1980 c. 45. Part III has been amended by the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), Schedule 6, paragraph 64.

(15) S.I. 1991/1156. This Order was made by virtue of the powers under section 33(2) of the Control of Pollution Act 1974 and continues in effect a byelaw made by Clyde River Purification Board under section 25(1)(c) of the Rivers (Prevention of Pollution) (Scotland) Act 1951 regulating the keeping and use of vessels provided with sanitary appliances on Loch Lomond and Loch Eck.

(16) 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.

(17) 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.

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.)**(18)**—
- (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**(19)** is amended as follows.
- (2) In section 17 (acquisition of water rights)—
- (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.”;
 - (f) omit subsection (6).
- (3) In section 109(1) (interpretation) insert the following definitions in the appropriate places alphabetically—

(18) 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).

(19) 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.

““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(20) 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 \(asp 3\)](#).”.

The Planning and Compensation Act 1991

6.—(1) The Planning and Compensation Act 1991(21) 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(22) 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(23) 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.”.

(20) 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.

(21) 1991 c. 34, as relevantly amended by S.S.I. 2003/175.

(22) 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.

(23) 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.

- (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)–
- (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(**24**) 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–

“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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(24) 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.

PART V

AMENDMENTS TO SUBORDINATE LEGISLATION

The Control of Pollution (Registers) (Scotland) Regulations 1993

10. In regulation 2 of the Control of Pollution (Registers) (Scotland) Regulations 1993⁽²⁵⁾, for the definition of “relevant event” substitute ““relevant event” means the service of such notice as is referred to in section 41(1)(a);”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under sections 36(3) and 37 of the [Water Environment and Water Services Scotland Act 2003 \(asp 3\)](#) (“the 2003 Act”), makes consequential and savings provisions necessary or expedient in consequence of the 2003 Act and the Water Environment (Controlled Activities) (Scotland) Regulations 2005 ([S.S.I. 2005/348](#)) (“the 2005 Regulations”), made under the 2003 Act. The 2005 Regulations provide the mechanism by which activities which impact on the water environment are authorised and regulated in Scotland.

Article 2 gives effect to the repeals, revocations, savings and amendments specified in the Schedule to the Order. In the Schedule, the repeals are listed in Part I, the revocations in Table 1 of Part II and the partial revocations in Table 2 of Part II. The savings provisions are in Part III and the amendments to primary and secondary legislation are listed in Parts IV and V respectively.

The purpose of those provisions is to make the existing legislative framework which regulates the water environment consistent with the new regulatory regime contained in the 2003 Act and the 2005 Regulations. In particular the current measures on pollution control as they apply to the water environment contained in the Control of Pollution Act 1974 and the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 are repealed. Such matters will now be regulated under the 2005 Regulations. Provision is also made in relation to the interaction of the 2005 Regulations with section 17 of the Water (Scotland) Act 1980 ([c. 45](#)) (“the 1980 Act”), which makes provision for the Scottish Ministers to make orders to provide for the acquisition of water rights by Scottish Water.

Article 3 provides that the terms of existing orders made under section 17 of the 1980 Act, or enactments (which, by virtue of paragraph 1 of Schedule 9 to that Act, have effect as if done under that section), under which water rights are acquired, are to be treated as modified to the extent necessary to be consistent with any relevant authorisation made under the 2005 Regulations.

(25) S.I. [1993/1155](#), as relevantly amended by S.I. [1996/973](#), [S.S.I. 2000/432](#) and [2003/168](#).