

SCHEDULES

SCHEDULE 16

Section 106.

POLLUTION OF RIVERS AND COASTAL WATERS IN SCOTLAND: AMENDMENT OF THE CONTROL OF POLLUTION ACT 1974

- 1 The Control of Pollution Act 1974, as it has effect in Scotland, shall be amended in accordance with the following paragraphs.
- 2 After section 30E there shall be inserted the following sections—

“Control of entry of polluting matter and effluents into water

30F Pollution offences.

- (1) A person contravenes this section if he causes or knowingly permits any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters.
- (2) A person contravenes this section if he causes or knowingly permits any matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a sewer or from a drain in contravention of a prohibition imposed under section 30G below.
- (3) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged—
 - (a) into any controlled waters; or
 - (b) from land in Scotland, through a pipe, into the sea outside the seaward limits of controlled waters.
- (4) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged, in contravention of any prohibition imposed under section 30G below, from a building or from any plant—
 - (a) on to or into any land; or
 - (b) into any waters of a loch or pond which are not inland waters.
- (5) A person contravenes this section if he causes or knowingly permits any matter whatever to enter any inland waters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of—
 - (a) pollution due to other causes; or
 - (b) the consequences of such pollution.
- (6) Subject to the following provisions of this Part, a person who contravenes this section shall be guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

30G Prohibition of certain discharges by notice or regulations.

- (1) For the purposes of section 30F above a discharge of any effluent or other matter is, in relation to any person, in contravention of a prohibition imposed under this section if, subject to the following provisions of this section—
 - (a) SEPA has given that person notice prohibiting him from making or, as the case may be, continuing the discharge; or
 - (b) SEPA has given that person notice prohibiting him from making or, as the case may be, continuing the discharge unless specified conditions are observed, and those conditions are not observed.
- (2) For the purposes of section 30F above a discharge of any effluent or other matter is also in contravention of a prohibition imposed under this section if the effluent or matter discharged—
 - (a) contains a prescribed substance or a prescribed concentration of such a substance; or
 - (b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.
- (3) Nothing in subsection (1) above shall authorise the giving of a notice for the purposes of that subsection in respect of discharges from a vessel; and nothing in any regulations made by virtue of subsection (2) above shall require any discharge from a vessel to be treated as a discharge in contravention of a prohibition imposed under this section.
- (4) A notice given for the purposes of subsection (1) above shall expire at such time as may be specified in the notice.
- (5) The time specified for the purposes of subsection (4) above shall not be before the end of the period of three months beginning with the day on which the notice is given, except in a case where SEPA is satisfied that there is an emergency which requires the prohibition in question to come into force at such time before the end of that period as may be so specified.
- (6) Where, in the case of such a notice for the purposes of subsection (1) above as (but for this subsection) would expire at a time at or after the end of the said period of three months, an application is made before that time for a consent in pursuance of section 34 of this Act in respect of the discharge to which the notice relates, that notice shall be deemed not to expire until the result of the application becomes final—
 - (a) on the grant or withdrawal of the application;
 - (b) on the expiration, without the bringing of an appeal with respect to the decision on the application, of any period prescribed by virtue of section 39(2) below as the period within which any such appeal must be brought; or
 - (c) on the withdrawal or determination of any such appeal.

30H Discharges into and from sewers etc.

- (1) For the purposes of section 30F above where—
- (a) any sewage effluent is discharged as mentioned in subsection (3) or (4) of that section from any sewer or works—
 - (i) vested in a sewerage authority; or
 - (ii) vested in a person other than a sewerage authority and forming (or forming part of) a system provided by him such as is mentioned in section 98(1)(b) of the Local Government etc. (Scotland) Act 1994; and
 - (b) the authority or, as the case may be, the person did not cause or knowingly permit the discharge but was bound (either unconditionally or subject to conditions which were observed) to receive into the sewer or works matter included in the discharge,
- the authority or person shall be deemed to have caused the discharge.

- (2) A sewerage authority shall not be guilty of an offence under section 30F of this Act by reason only of the fact that a discharge from a sewer or works vested in the authority contravenes conditions of a consent relating to the discharge if—

- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works; and
- (b) the authority either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions but the conditions were not observed; and
- (c) the authority could not reasonably have been expected to prevent the discharge into the sewer or works;

and a person shall not be guilty of such an offence in consequence of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage authority if the authority was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

- (3) A person in whom any such sewer or works as is described in subsection (1) (a)(ii) above is vested (such person being in this subsection referred to as a “relevant person”) shall not be guilty of an offence under section 30F of this Act by reason only of the fact that a discharge from the sewer or works contravenes conditions of a consent relating to the discharge if—

- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works; and
- (b) the relevant person either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions but the conditions were not observed; and
- (c) the relevant person could not reasonably have been expected to prevent the discharge into the sewer or works;

and another person shall not be guilty of such an offence in consequence of a discharge which he caused or permitted to be made into a sewer or works vested in a relevant person if the relevant person was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

30I Defence to principal offences in respect of authorised discharges.

- (1) Subject to the following provisions of this section, a person shall not be guilty of an offence under section 30F above in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of, any act or omission under and in accordance with—
- (a) a consent in pursuance of section 34 of this Act or under Chapter II of Part III of the Water Resources Act 1991 (which makes corresponding provision for England and Wales);
 - (b) an authorisation for a prescribed process designated for central control granted under Part I of the Environmental Protection Act 1990;
 - (c) a waste management or disposal licence;
 - (d) a licence granted under Part II of the Food and Environment Protection Act 1985;
 - (e) section 33 of the Water (Scotland) Act 1980 (temporary discharge by authorities in connection with the construction of works);
 - (f) any provision of a local Act or statutory order which expressly confers power to discharge effluent into water; or
 - (g) any prescribed enactment.
- (2) Nothing in any disposal licence shall be treated for the purposes of subsection (1) above as authorising—
- (a) any such entry or discharge as is mentioned in subsections (2) to (4) of section 30F above; or
 - (b) any act or omission so far as it results in any such entry or discharge.
- (3) In this section—
- “disposal licence” means a licence issued in pursuance of section 5 of this Act;
- “local Act” includes enactments in a public general Act which amend a local Act;
- “statutory order” means an order, byelaw, scheme or award made under an Act of Parliament, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; and
- “waste management licence” means such a licence granted under Part II of the Environmental Protection Act 1990.

30J Other defences to principal offences.

- (1) A person shall not be guilty of an offence under section 30F above in respect of the entry of any matter into any waters or any discharge if—
- (a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health;
 - (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and

- (c) particulars of the entry or discharge are furnished to SEPA as soon as reasonably practicable after the entry occurs.
- (2) A person shall not be guilty of an offence under section 30F above by reason of his causing or permitting any discharge of trade or sewage effluent from a vessel.
- (3) A person shall not be guilty of an offence under section 30F above by reason only of his permitting water from an abandoned mine or an abandoned part of a mine to enter controlled waters.
- (4) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—
- (a) at least one falls on or before that date, and
 - (b) at least one falls after that date,
- the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).
- (6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.
- (7) A person shall not, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters, be guilty of an offence under section 30F above by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland waters if—
- (a) he deposits the refuse on the land with the consent of SEPA;
 - (b) no other site for the deposit is reasonably practicable; and
 - (c) he takes all reasonably practicable steps to prevent the refuse from entering those inland waters.
- (8) A roads authority obliged or entitled to keep open a drain by virtue of section 31 of the Roads (Scotland) Act 1984 shall not be guilty of an offence under section 30F above by reason of its causing or permitting any discharge to be made from a drain kept open by virtue of that section unless the discharge is made in contravention of a prohibition imposed under section 30G above.”
- 3 Sections 31(1), (2), (3), (7) and (10) (offences relating to pollution of rivers and coastal waters) and 32 (control of discharges of trade and effluent etc. into rivers and coastal waters etc.) shall cease to have effect.
- 4 In section 31(8) (maximum penalties) for the words “paragraphs (a) and (b) of the preceding subsection” there shall be substituted the words “section 30F(6) above”.

- 5 In section 31B(4)(d) (nitrate sensitive areas: maximum penalties) for the words “subsection (7) of section 31 above” there shall be substituted the words “subsection (6) of section 30F above”.
- 6 In section 34(3) (consents for discharges of trade and effluent) for the words “section 32(1)” there shall be substituted the words “section 30F(2) to (4)”.
- 7 In section 39(1)(a) (appeals to the Secretary of State) for the words “section 31(3)” there shall be substituted the words “section 30J(4)”.
- 8 In section 56(1) (interpretation etc of Part II) the following definitions shall be inserted in the appropriate places—
- ““drain” has the same meaning as in the Sewerage (Scotland) Act 1968;”;
and
““sewer” has the same meaning as in the Sewerage (Scotland) Act 1968;”.
- 9 In section 87(3) (time-bar in relation to legal proceedings)—
- (a) the words from the beginning to “offence; and” shall cease to have effect;
 - (b) for the words “section 23 of the Summary Jurisdiction (Scotland) Act 1954” there shall be substituted the words “section 331 of the Criminal Procedure (Scotland) Act 1975”;
 - (c) for the words “such offence” there shall be substituted the words “offence under section 30F of this Act or regulations or byelaws made in pursuance of section 31 of this Act”; and
 - (d) for the words “subsection (2) of section 23 of the said Act of 1954” there shall be substituted the words “subsection (3) of section 331 of the said Act of 1975”;
 - (e) the words “in its application to Scotland” shall cease to have effect.