
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.