Draft Order laid before Parliament under section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
WATER, SCOTLAND

The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006

Made - - - -	*2006*
Coming into force - -	*2006*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998(**1**);

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 and shall come into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

Modifications

2. The modifications specified in Schedule 1 shall have effect.

Consequential Provision

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 enactments or instruments referred to in paragraph (2) differ and cannot reasonably be reconciled with the conditions contained in an authorisation granted

(**1**) 1998 c. 46.

under the Water Environment (Controlled Activities) (Scotland) Regulations 2005(**2**), the relevant provisions and conditions of such enactments or instruments shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.

(2) The enactments and instruments mentioned in paragraph (1) are–

(a) the local enactments listed in Schedule 2;

(b) all constructional schemes, confirming orders and authorisations to which paragraph 32 of Schedule 17 (transitional provisions and savings) to the Electricity Act 1989(**3**) refers;

(c) all consents granted under section 36 of that Act(**4**); and

(d) all orders made under paragraph 2 of Schedule 5 to that Act.

(3) In this article, "protection of the water environment" has the same meaning as in section 1(2) of the Water Environment and Water Services (Scotland) Act 2003(**5**).

Parliamentary Under Secretary of State Scotland Office,
Department for Constitutional Affairs

Dover House,London
2006

(**2**) S.S.I. 2005/348.
(**3**) 1989 c. 29.
(**4**) Section 36 was amended by the Energy Act 2004 (c. 20), section 93. There is another amendment to section 36 not relevant to this Order.
(**5**) 2003 asp 3.

SCHEDULE 1 Article 2

PART 1

MODIFICATION OF PUBLIC GENERAL ACTS

Electricity Act 1989 (c. 29)

1.—(1) The Electricity Act 1989 is amended in accordance with sub-paragraphs (2) to (5).

(2) In section 36 (consent required for construction etc. of generating stations)–

(a) insert at the beginning of subsection (5), "Subject to subsections (5A) and (5B),"; and

(b) after subsection (5), insert–

"(5A) In the case of a generating station in respect of which a controlled activity, within the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, will be carried on, the Secretary of State shall, before granting a consent under subsection (1), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment and have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

(5B) In the event that the conditions of a consent granted under subsection (1) 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 conditions of that consent shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.".

(3) In section 111 (general interpretation)(**6**), insert at the appropriate place–

""protection of the water environment" has the same meaning as in section 1(2) of the Water Environment and Water Services (Scotland) Act 2003;".

(4) In Schedule 5 (water rights for hydro-electric generating stations in Scotland)(**7**)–

(a) insert at the beginning of paragraph 5, "Subject to paragraphs 5A and 5B,"; and

(b) after paragraph 5, insert–

"**5A.** Before making an order under paragraph 2, and in considering the matters referred to in paragraphs 3 to 5, the Secretary of State 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.

5B. In the event that the provisions of an order made under paragraph 2 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

(**6**) There are amendments to section 111 not relevant to this Order.
(**7**) There are amendments to Schedule 5 not relevant to this Order.