Regulatory Reform (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

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**Regulators and regulatory functions**
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**Sustainable economic growth and sustainable development**
1, 2, 3, 4, 5, 6, 7, 8

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Amendment 6 pre-empts amendment 7

**Primary authorities**
14, 99

**Regulations for protecting and improving the environment**
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**SEPA’s powers of enforcement**
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**Significant environmental harm: offence**
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110, 97, 98, 112

Offences in relation to controlled waste and litter: fixed penalty notices
74, 75
Amendments in debating order

**Regulatory functions: consultation**

Jenny Marra

113 In section 1, page 1, leave out line 26 and insert—

<( ) such persons as appear to the Scottish Ministers to be likely to have an interest in,
or to be affected by, the proposed regulations, and

( ) members of the public.>

Jenny Marra

114 In section 6, page 5, leave out line 22 and insert—

<( ) such persons as appear to the Scottish Ministers to be likely to have an interest in,
or to be affected by, the proposed regulations, and

( ) members of the public.>

Jenny Marra

115 In section 6, page 5, line 24, at end insert—

<( ) When laying a draft under subsection (5), the Scottish Ministers must also lay before the
Parliament a statement giving details of—

(a) the consultation undertaken under subsection (4), and

(b) the changes (if any) which, in light of the views and comments received by them,
the Scottish Ministers have made to the proposed draft.>

Jenny Marra

117 In section 11, page 7, line 22, leave out from <and> to end of line 25 and insert—

<( ) such persons as appear to the Scottish Ministers to be likely to have an interest in,
or to be affected by, the proposed regulations, and

( ) members of the public.>

**Regulators and regulatory functions**

Fergus Ewing

9 In section 1, page 2, line 17, at end insert—

<br does not include any such functions exercisable by a planning authority,>

Fergus Ewing

10 In schedule 1, page 33, line 8, at end insert—

<Scottish Fire and Rescue Service>
Fergus Ewing
11 In section 2, page 3, line 28, at end insert—

<( ) The Scottish Ministers must publish (in such manner as they consider appropriate) any
direction given under subsection (7).>

Fergus Ewing
12 In section 4, page 4, line 26, at end insert—

<( ) The Scottish Ministers must publish (in such manner as they consider appropriate) any
such guidance.>

Fergus Ewing
13 In section 5, page 4, line 32, at end insert—

<( ) The Scottish Ministers must publish (in such manner as they consider appropriate) any
code of practice issued under subsection (1).>

Sustainable economic growth and sustainable development

Alison Johnstone
Supported by: Claudia Beamish
1 In section 4, page 4, line 22, leave out <economic growth> and insert <development>

Alison Johnstone
Supported by: Jenny Marra
2 Leave out section 4

Alison Johnstone
Supported by: Jenny Marra
3 In section 6, page 5, line 15, leave out from <and> to end of line 18

Alison Johnstone
Supported by: Claudia Beamish
4 In section 6, page 5, line 17, leave out <economic growth> and insert <development>

Alison Johnstone
Supported by: Jenny Marra
5 In section 7, page 6, line 4, leave out <, 4>

Alison Johnstone
Supported by: Jenny Marra
6 In section 38, page 28, line 23, leave out from second <and> to end of line 24

Alison Johnstone
Supported by: Claudia Beamish
7 In section 38, page 28, line 24, leave out <economic growth> and insert <development>
This Part applies where—

(a) a person carries on an activity in the area of two or more local authorities, and

(b) each of those authorities has the same relevant function in relation to that activity.

(2) In this Part (other than section 7E), “the regulated person” means the person referred to in subsection (1)(a).

Meaning of “relevant function”

(1) In this Part, “relevant function”, in relation to a local authority, means a regulatory function—

(a) exercised by that authority, and

(b) specified for the purposes of this Part by order made by the Scottish Ministers.

(2) In subsection (1), “regulatory function” has the same meaning as in section 1(5).

Nomination of primary authorities

(1) For the purposes of this Part, the Scottish Ministers may nominate a local authority to be the “primary authority” for the exercise of the relevant function in relation to the regulated person.

(2) The Scottish Ministers may delegate their function under subsection (1) to another person.

(3) Sections 7F and 7G apply in any case where a primary authority is nominated under this section in relation to the regulated person.

Nomination of primary authorities: conditions and registers

(1) The Scottish Ministers may nominate a local authority under section 7C(1) in relation to the regulated person only if—

(a) the Scottish Ministers consider the authority suitable for nomination, and

(b) the authority and the regulated person have agreed in writing to the nomination.
(2) The Scottish Ministers may in particular consider as suitable for nomination under subsection (1)—
   (a) the local authority in whose area the regulated person principally carries out the activity in relation to which the relevant function is exercised, or
   (b) the local authority in whose area the regulated person administers the carrying out of that activity.

(3) The Scottish Ministers may at any time revoke a nomination under section 7C(1) if they consider that—
   (a) the authority is no longer suitable for nomination, or
   (b) it is appropriate to do so for any other reason.

(4) Subsection (2) applies in relation to a revocation of a nomination as it applies in relation to a nomination.

(5) The Scottish Ministers must maintain or cause to be maintained a register of nominations.

(6) Subsections (1) to (5) apply in relation to a person to whom the function under section 7C(1) is delegated as they apply in relation to the Scottish Ministers.

7E Primary authorities: power to make further provision

(1) The Scottish Ministers may by order make further provision about the exercise of relevant functions by primary authorities in relation to persons (in this section, “regulated persons”).

(2) The provision that may be made under subsection (1) includes provision—
   (a) requiring a local authority other than the primary authority (an “enforcing authority”) to notify the primary authority before taking any enforcement action against a regulated person pursuant to the relevant function,
   (b) prescribing the circumstances in which—
      (i) the enforcing authority may not take any enforcement action against a regulated person,
      (ii) the primary authority may direct the enforcing authority not to take any enforcement action against a regulated person,
      (iii) the enforcing authority must notify the primary authority that it has taken enforcement action against a regulated person,
   (c) specifying time periods for the purposes of paragraph (b),
   (d) prescribing the circumstances in which provision made by virtue of paragraphs (a) to (c) does not apply including, in particular, circumstances—
      (i) where the enforcement action is required urgently to avoid a significant risk of serious harm to human health, the environment (including the health of animals or plants) or the financial interests of consumers,
      (ii) where the application of provision made by virtue of those paragraphs would be wholly disproportionate,
(e) requiring an enforcing authority to notify the primary authority, as soon as reasonably practicable, of any enforcement action it takes against a regulated person in circumstances prescribed under paragraph (d).

(3) In subsection (2), “enforcement action” means any action—

(a) which relates to securing compliance with or enforcement of any requirement, restriction, condition, standard, outcome or guidance in the event of breach (or putative breach) of the requirement, restriction, condition, standard, outcome or (as the case may be) guidance,

(b) taken with a view to or in connection with—

(i) the imposition of any sanction (criminal or otherwise) in respect of an act or omission, or

(ii) the pursuit of any remedy conferred by an enactment in respect of an act or omission.

(4) Where a relevant function consists of or includes a function of inspection, an order under subsection (1) may make provision for or about an inspection plan including, in particular, provision for or in connection with—

(a) prescribing the circumstances in which a primary authority may make, revise or withdraw an inspection plan, 

(b) specifying the matters that a primary authority must take into account in preparing an inspection plan,

(c) specifying the matters that must be included in an inspection plan,

(d) prescribing the circumstances in which a primary authority must consult a regulated person in relation to the carrying out of the function of inspection,

(e) prescribing the arrangements for notifying a local authority about the making, revising or withdrawal of an inspection plan,

(f) specifying the duties of a local authority in relation to an inspection plan,

(g) prescribing the circumstances in which a local authority must notify a primary authority before carrying out the function of inspection.

(5) An “inspection plan” is a plan made by a primary authority containing recommendations as to how a local authority with the function of inspection should exercise that function in relation to a regulated person.

(6) Before making an order under subsection (1), the Scottish Ministers must consult—

(a) any primary authority to which the order would apply,

(b) such persons or bodies as appear to the Scottish Ministers to represent the interests of persons substantially affected by the proposed order, and

(c) such other persons or bodies as the Scottish Ministers consider appropriate.

7F Advice and guidance

(1) The primary authority has the function of giving advice and guidance to—

(a) the regulated person in relation to the relevant function,

(b) other local authorities having the relevant function as to how they should exercise that function in relation to the regulated person.
(2) The primary authority may make arrangements with the regulated person as to how the authority will exercise its function under subsection (1).

7G Power to charge

The primary authority may charge the regulated person such fees as it considers represent the costs reasonably incurred by it in exercising functions as the primary authority under or by virtue of this Part in relation to the regulated person.

7H Guidance

(1) The Scottish Ministers may issue guidance to local authorities about the operation of this Part including, in particular, guidance about—

(a) inspection plans for or about which provision is made under an order under section 7E(1),

(b) arrangements under section 7F(2),

(c) the charging of fees under section 7G.

(2) A local authority must have regard to any guidance issued to it under this section.

(3) Before issuing guidance under this section, the Scottish Ministers must consult such persons as they consider appropriate.

(4) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance issued under this section.

(5) The Scottish Ministers may at any time vary or revoke any guidance issued under this section.

Fergus Ewing

99 In section 44, page 31, line 10, leave out <12 or section 15> and insert <7B, 7E, 12 or 15>

Regulations for protecting and improving the environment

Alison Johnstone

116 In schedule 2, page 35, line 11, at end insert—

<(3A) Securing that permits have effect subject to the condition that the person to whom a permit is granted, including any person to whom a permit is transferred, must satisfy a regulator that the person has made, or will make, adequate provision by way of financial security to enable the person—

(a) to operate any regulated facility in accordance with a permit for the duration of that permit, including any condition imposed connected with remediation of a site,

(b) to comply with—

(i) any condition imposed or notice served by a regulator,

(ii) any court order obtained by the regulator to secure compliance with any such notice served,
(c) to pay to the regulator any costs arising to secure compliance with any condition, notice or court order.

(3B) In sub-paragraph (3A), “adequate provision by way of financial security” means financial provision which is sufficient in value, secure and accessible as required.

Paul Wheelhouse

15 In schedule 2, page 37, line 11, at end insert—

<(  ) to be varied, suspended or revoked as mentioned in paragraph (a) in consequence of the person to whom the permit was granted or (as the case may be) who is authorised to carry on the regulated activities to which the registration relates ceasing to be a fit and proper person within the meaning of the regulations.>

Paul Wheelhouse

16 In schedule 2, page 37, line 12, at end insert—

<(  ) Providing for the transfer of a permit or registration to be refused if the person to whom it is proposed to be transferred is not a fit and proper person within the meaning of the regulations.>

Paul Wheelhouse

17 In schedule 2, page 42, line 5, at end insert—

<Fit and proper persons

The regulations may make provision that the conditions subject to which a registration or permit has effect include a condition that the person authorised to carry on the regulated activities to which the registration relates, or to whom the permit is granted, must remain a fit and proper person within the meaning of the regulations.>

SEPA’s powers of enforcement

Paul Wheelhouse

18 In section 12, page 8, line 2, leave out <relevant offence> and insert <offence to which the penalty relates>

Paul Wheelhouse

19 In section 12, page 8, line 4, leave out from second <on> to end of line 5 and insert <in relation to an offence constituted by an act or omission if a fixed monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.>

Paul Wheelhouse

20 In section 12, page 8, line 9, leave out <relevant>

Paul Wheelhouse

21 In section 13, page 8, line 24, leave out <relevant offence> and insert <offence to which the penalty relates>
Paul Wheelhouse
22 In section 14, page 9, line 23, after <13(2)(a)> insert <in respect of an offence constituted by an act or omission>

Paul Wheelhouse
23 In section 14, page 9, line 24, leave out from <for> to end of line 26 and insert <may be commenced against the person in respect of that offence constituted by that act or omission—>

Paul Wheelhouse
24 In section 14, page 9, line 31, leave out <such>

Paul Wheelhouse
25 In section 14, page 9, line 31, after <proceedings> insert <in respect of that offence constituted by that act or omission>

Paul Wheelhouse
26 In section 14, page 9, line 36, leave out <, no criminal proceedings for the relevant offence> and insert <in respect of an offence constituted by an act or omission, no criminal proceedings>

Paul Wheelhouse
27 In section 14, page 9, line 37, leave out <the act or omission giving rise to the penalty> and insert <that offence constituted by that act or omission>

Paul Wheelhouse
28 In section 14, page 9, line 38, at end insert—
   <( ) The references in subsections (1)(a) and (3) to criminal proceedings being commenced are to be read as if they included references to—
   (a) a warning being given by the procurator fiscal,
   (b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,
   (c) a compensation offer under section 302A of that Act being sent,
   (d) a combined offer under section 302B of that Act being sent, and
   (e) a work order under section 302ZA of that Act being made.>

Paul Wheelhouse
29 In section 15, page 10, line 7, leave out <relevant offence> and insert <offence to which the penalty relates>

Paul Wheelhouse
30 In section 15, page 10, line 9, leave out from second <on> to end of line 10 and insert <in relation to an offence constituted by an act or omission if a variable monetary penalty has already been imposed on that person in respect of the same offence constituted by the same act or omission.>

Paul Wheelhouse
31 In section 15, page 10, line 21, leave out <relevant>
Paul Wheelhouse
32 In section 16, page 10, line 36, leave out <relevant offence> and insert <offence to which the penalty relates>.

Paul Wheelhouse
33 In section 17, page 12, line 2, at end insert—
<( ) either—>

Paul Wheelhouse
34 In section 17, page 12, line 4, at end insert <, or
( ) both such a penalty is imposed on, and such an undertaking is accepted from, a person.>

Paul Wheelhouse
35 In section 17, page 12, line 5, leave out from <for> to end of line 7 and insert <may be commenced against the person for an offence constituted by an act or omission if the variable monetary penalty or, as the case may be, the undertaking related to that offence constituted by that act or omission.>

Paul Wheelhouse
36 In section 17, page 12, line 14, at end insert—
<( ) The reference in subsection (2) to criminal proceedings being commenced is to be read as if it included a reference to—
(a) a warning being given by the procurator fiscal,
(b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,
(c) a compensation offer under section 302A of that Act being sent,
(d) a combined offer under section 302B of that Act being sent, and
(e) a work order under section 302ZA of that Act being made.>

Paul Wheelhouse
37 In section 18, page 12, line 26, at end insert—
<( ) Where provision is included as mentioned in subsection (1), it must provide that the maximum amount of the non-compliance penalty that may be imposed in any case is not to exceed the maximum amount of the variable monetary penalty to which the non-compliance penalty relates in such a case.>

Paul Wheelhouse
38 In section 19, page 13, line 19, leave out from <for> to end of line 21 and insert <may be commenced against the person from whom the enforcement undertaking is accepted in respect of an offence constituted by an act or omission if the undertaking relates to that offence constituted by that act or omission.>

Paul Wheelhouse
39 In section 19, page 14, line 18, at end insert—
The reference in subsection (4)(a) to criminal proceedings being commenced is to be read as if it included a reference to—

(a) a warning being given by the procurator fiscal,

(b) a conditional offer (within the meaning of section 302 of the Criminal Procedure (Scotland) Act 1995) being sent,

(c) a compensation offer under section 302A of that Act being sent,

(d) a combined offer under section 302B of that Act being sent, and

(e) a work order under section 302ZA of that Act being made.>

Paul Wheelhouse

40 In section 20, page 15, line 4, after <penalty> insert <in respect of an offence constituted by an act or omission>

Paul Wheelhouse

41 In section 20, page 15, line 5, leave out <in respect of a relevant offence in relation to which> and insert <if, in respect of that offence as constituted by that act or omission>

Paul Wheelhouse

42 In section 20, page 15, line 13, leave out <or> and insert—

<( ) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act, or>

Paul Wheelhouse

43 In section 20, page 15, line 16, after <must> insert <also>

Paul Wheelhouse

44 In section 20, page 15, line 16, after <penalty> insert <in respect of an offence constituted by an act or omission>

Paul Wheelhouse

45 In section 20, page 15, line 17, leave out <in respect of a relevant offence in relation to which> and insert <if, in respect of that offence as constituted by that act or omission>

Paul Wheelhouse

46 In section 20, page 15, line 25, leave out <or> and insert—

<( ) the person has accepted, or is deemed to have accepted, a combined offer issued under section 302B of that Act, or>

Environmental regulation: court powers on publicity orders

Alex Fergusson

118 In section 28, page 20, line 8, at end insert—
In deciding on the terms of a publicity order that it proposes to make, the court must have regard to any representations made by the prosecutor or by or on behalf of the person.

**Commission of offences: vicarious and corporate liability**

**Paul Wheelhouse**

100 After section 28, insert—

<Corporate offending

(1) Subsection (2) applies where—

(a) an offence under section 28(7) is committed by a relevant organisation, and

(b) the commission of the offence involves the connivance or consent, or is attributable to the neglect, of a responsible official of the relevant organisation.

(2) The responsible official (as well as the relevant organisation) commits the offence.

(3) In this section—

“a relevant organisation” means—

(a) a company,

(b) a limited liability partnership,

(c) a partnership (other than a limited liability partnership), or

(d) another body or association,

“a responsible official” means—

(a) in the case of a company, a director, secretary, manager or similar officer of the company,

(b) in the case of a limited liability partnership, a member of the partnership,

(c) in the case of a partnership (other than a limited liability partnership), a partner of the partnership, or

(d) in the case of another body or association, a person who is concerned in the management or control of its affairs,

and in each case includes a person purporting to act in a capacity mentioned in any of paragraphs (a) to (d) of this definition.>

**Alex Fergusson**

119 In section 29, page 20, line 25, at beginning insert <in the course of carrying out a regulated activity>

**Paul Wheelhouse**

47 In section 29, page 20, line 26, leave out from <and> to end of line 27

**Paul Wheelhouse**

48 In section 30, page 21, line 7, at end insert <and>
Paul Wheelhouse

49  In section 30, page 21, line 8, leave out from <and> to end of line 9

Paul Wheelhouse

50  In section 30, page 21, line 29, at end insert—

<(  ) An order under subsection (6) may specify only activities that are environmental activities within the meaning of section 9.>

Paul Wheelhouse

108 After section 32, insert—

<Corporate offending

(1)  Subsection (2) applies where—

(a)  an offence under section 31(1) or 32(7) is committed by a relevant organisation, and

(b)  the commission of the offence involves the connivance or consent, or is attributable to the neglect, of a responsible official of the relevant organisation.

(2)  The responsible official (as well as the relevant organisation) commits the offence.

(3)  In this section—

“a relevant organisation” means—

(a)  a company,

(b)  a limited liability partnership,

(c)  a partnership (other than a limited liability partnership), or

(d)  another body or association,

“a responsible official” means—

(a)  in the case of a company, a director, secretary, manager or similar officer of the company,

(b)  in the case of a limited liability partnership, a member of the partnership,

(c)  in the case of a partnership (other than a limited liability partnership), a partner of the partnership, or

(d)  in the case of another body or association, a person who is concerned in the management or control of its affairs,

and in each case includes a person purporting to act in a capacity mentioned in any of paragraphs (a) to (d) of this definition.>

Significant environmental harm: offence

Paul Wheelhouse

101  In section 31, page 21, line 32, leave out subsection (1) and insert—

<(1)  It is an offence for a person to—>
(a) act, or permit another person to act, in a way that causes or is likely to cause significant environmental harm, or
(b) fail to act, or permit another person not to act, in a way such that (in either case) the failure to act causes or is likely to cause significant environmental harm.

Paul Wheelhouse
102 In section 31, page 22, leave out lines 4 to 6 and insert <permits another person to act or not to act as mentioned in that subsection>

Paul Wheelhouse
103 In section 31, page 22, line 10, leave out subsection (3) and insert—

<(  ) A person who acts, fails to act or permits another person to act or not to act as mentioned (in each case) in subsection (1) commits an offence under that subsection whether or not the person—

(a) intended the acts or failures to act to cause, or be likely to cause, significant environmental harm, or

(b) knew that, or was reckless or careless as to whether, the acts or failures to act would cause or be likely to cause such harm.>

Paul Wheelhouse
104 In section 32, page 23, line 29, after <occasion> insert—

<(a)>

Paul Wheelhouse
105 In section 32, page 23, line 29, at end insert—

<b> vary the steps specified in a remediation order.>

Paul Wheelhouse
106 In section 32, page 23, line 34, at end insert—

<(ii) imprisonment for a term not exceeding 12 months, or

(iii) both.>

Paul Wheelhouse
107 In section 32, page 23, line 35, at end insert—

<(ii) imprisonment for a term not exceeding 5 years, or

(iii) both.>
The Climate Change (Scotland) Act 2009 is amended as follows.

After section 88 insert—

“Carrier bag offences: fixed penalty notices

88A Offences relating to supply of carrier bags: fixed penalty notices

(1) A person authorised for the purpose of this section by an enforcement authority may give a person a fixed penalty notice if the person so authorised has reason to believe that the person to whom the notice is given has committed a relevant offence.

(2) In subsection (1), “relevant offence” means an offence provided for in regulations made under section 88.

(3) The Scottish Ministers may by regulations make further provision about fixed penalty notices under subsection (1).

(4) Subject to section 89, the regulations may in particular include provision about—

(a) the enforcement authority in relation to the regulations; and

(b) the functions of that authority in relation to fixed penalty notices.

(5) Schedule 1A makes further provision about fixed penalties.”.

After schedule 1 insert—

“SCHEDULE 1A
(introduced by section 88A(5))
FIXED PENALTIES

Preliminary

1 In this schedule, unless the context otherwise requires—

“enforcement authority” means the enforcement authority provided for in the regulations;

“notice” means a fixed penalty notice given under section 88A(1);

“the offence” means the offence to which the notice relates;

“prescribed” means prescribed by the regulations;

“the regulations” means regulations under section 88A(3).

Content of fixed penalty notice

2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.
(2) A notice must also contain the following information—
   (a) the amount of the fixed penalty;
   (b) the payment deadline;
   (c) the discounted amount and the discounted payment deadline;
   (d) the name of—
      (i) the enforcement authority to which payment should be made; or
      (ii) a person acting on behalf of the enforcement authority to whom payment
           should be made;
   (e) the address at which payment should be made; and
   (f) the method by which payment should be made.

(3) A notice given to a person must state that—
   (a) any liability to conviction of the offence is discharged if the person makes payment of—
      (i) the fixed penalty before the payment deadline; or
      (ii) the discounted amount before the discounted payment deadline;
   (b) the payment of a fixed penalty is not a conviction nor may it be recorded as such;
   (c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the discounted amount or fixed penalty has not been paid;
   (d) the person has the right to make representations as mentioned in paragraph 8.

Period in which notice can be given
3 A notice may not be given after such time relating to the offence as may be prescribed.

Amount of penalty
4 (1) The amount of the fixed penalty, and the discounted amount, are such amounts as may be prescribed.

   (2) The maximum amount of the fixed penalty that may be prescribed is an amount equal to level 2 on the standard scale (within the meaning of section 225(1) of the Criminal Procedure (Scotland) Act 1995).

   (3) The discounted amount prescribed must be less than the maximum amount of the fixed penalty.

Deadlines for payment
5 (1) The payment deadline is the first working day occurring at least 28 days after the day on which the notice is given.
(2) But the enforcement authority may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.

(3) The discounted payment deadline is the first working day occurring at least 14 days after the day on which notice is given.

(4) But the enforcement authority may extend the discounted payment deadline in any particular case after the notice is given if it considers it appropriate to do so.

(5) On extending the payment deadline under sub-paragraph (2), or the discounted payment deadline under sub-paragraph (4), the enforcement authority must notify the recipient of the notice.

(6) In this paragraph, “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

Method of payment

6 The fixed penalty (and the discounted payment amount) is payable—

(a) to the enforcement authority or the person acting on its behalf specified in the notice;

(b) at the address specified in the notice; and

(c) by the method specified in the notice.

Restriction on proceedings and effect of payment

7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.

(2) But no such proceedings may be commenced against a person if—

(a) the person makes payment of the discounted amount on or before the discounted payment deadline (or that deadline as extended under paragraph 5(4)); or

(b) the person makes payment of the fixed penalty on or before the payment deadline (or that deadline as extended under paragraph 5(2)).

(3) In proceedings for the offence, a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the enforcement authority; and

(b) states that payment of an amount specified in the certificate was, or was not, received by a date so specified,

is sufficient evidence of the facts stated.

(4) Where the enforcement authority is a local authority, the reference to a person having responsibility for the financial affairs of the enforcement authority in sub-paragraph (3)(a) is to be read as a reference to the person who has, as respects the local authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).
Withdrawal of fixed penalty notice

8 (1) A recipient of a notice may make representations to the enforcement authority as to why the notice ought not to have been given.

(2) If, having considered any representations under sub-paragraph (1), the enforcement authority considers that the notice ought not to have been given, it may give to the person a notice withdrawing the notice.

(3) Where a notice under sub-paragraph (2) is given—
   (a) the enforcement authority must repay any amount which has been paid in pursuance of the fixed penalty notice; and
   (b) no proceedings may be commenced against the person for the offence.

Effect of prosecution on fixed penalty notice

9 Where proceedings for an offence in respect of which a notice has been given are commenced, the notice is to be treated as withdrawn.

General and supplemental

10 The regulations may make provision about—
   (a) the application by enforcement authorities of payments received under this schedule;
   (b) the keeping of accounts, and the preparation and publication of statements of account, in relation to such payments.

11 (1) The regulations may prescribe—
   (a) the form of notices including notices under paragraph 8(2);
   (b) the circumstances in which notices may not be given; and
   (c) the method by which fixed penalties may be paid.

(2) The regulations may modify sub-paragraphs (1) and (3) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.

12 The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.”.

Contaminated land and special sites

Paul Wheelhouse

52 In section 34, page 24, line 21, at end insert—

<( ) In section 78F (determination of appropriate person to bear responsibility for remediation), after subsection (5) insert—
“(5A) But where the contaminated land is owned or occupied by the Crown by virtue of its having vested as bona vacantia in the Crown, or its having fallen to the Crown as ultimus haeres, the Crown is not an appropriate person under subsection (4) or (5) for the purposes of this Part.”.

Paul Wheelhouse

53 In section 34, page 24, line 24, leave out <a local authority>

Paul Wheelhouse

54 In section 34, page 24, line 25, at beginning insert <a local authority>

Paul Wheelhouse

55 In section 34, page 24, line 26, leave out <and>

Paul Wheelhouse

56 In section 34, page 24, line 26, at end insert—

...( ) the land is not designated as a special site by virtue of section 78C(7) or 78D(6) above; and>

Paul Wheelhouse

57 In section 34, page 24, line 27, at beginning insert <the local authority>

Paul Wheelhouse

58 In section 34, page 25, line 11, at end insert—

...( ) A non-contamination notice shall not prevent the land, or any of the land, to which the notice relates being identified as contaminated land on a subsequent occasion.

...( ) Where land, or any of the land, to which a non-contamination notice relates is subsequently identified as contaminated land, or is subsequently designated as a special site by virtue of section 78C(7) or 78D(6), subsection (3)(b) above does not prevent a remediation notice being served in respect of the land.>

Paul Wheelhouse

59 In section 34, page 25, leave out lines 35 to 38 and insert—

...( ) the Scottish Environment Protection Agency has given the local authority a notice under section 78Q(4) above that the land to which the notices relate is no longer land which is required to be designated as a special site; and

...( ) the date specified in the notice given under that section has passed.>

Paul Wheelhouse

60 In section 34, page 26, line 9, leave out <subsections (2) and> and insert <subsection>

Paul Wheelhouse

61 In section 34, page 26, line 18, leave out <and> and insert—

...( ) each person—
(i) who appears to the Scottish Environment Protection Agency to be an appropriate person in relation to that land, and

(ii) in respect of whom details have been given by the Scottish Environment Protection Agency to the local authority sufficient to enable notice of such removal to be given; and>

Paul Wheelhouse  
62 In section 34, page 26, leave out lines 24 and 25

Paul Wheelhouse  
63 In section 34, page 26, line 31, at end insert—

<(  ) In section 78X (supplementary provisions), in subsection (4), after paragraph (f) insert—

“(g) in relation to property and rights that have vested as bona vacantia in the Crown, or that have fallen to the Crown as ultimus haeres, the Queen’s and Lord Treasurer’s Remembrancer.”.>

Powers of entry etc. under section 108 of the Environment Act 1995 and related offences

Paul Wheelhouse  
64 After section 34, insert—

<Amendment of powers under section 108 of Environment Act 1995

Amendment of powers under section 108 of Environment Act 1995

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

(2) In section 108 (powers of enforcing authorities and persons authorised by them)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (b) is repealed,

(ii) after paragraph (c) insert—

“(d) of determining whether any of the following offences are being or have been committed—

(i) an offence under section 110 of this Act;

(ii) an offence under section 31(1) of the Regulatory Reform (Scotland) Act 2013 (offences relating to significant environmental harm);

(iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;

(iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or
(e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in subsection (1A) below which the authorised person reasonably believes is being or has been committed.”,

(b) after subsection (1) insert—

“(1A) The offence is a relevant offence (within the meaning of section 39 of the Regulatory Reform (Scotland) Act 2013) for the purpose of provision made under section 16, or of section 27, of that Act).”,

(c) in subsection (4)—

(i) in paragraph (h), after sub-paragraph (iii) insert—

“(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 31(1) of the Regulatory Reform (Scotland) Act 2013;”,

(ii) in paragraph (j), the words from “to answer” to the end become sub-paragraph (i) of that paragraph, and after that sub-paragraph insert “; and

(ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration;”;

(iii) after paragraph (j) insert—

“(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person’s name, address and date of birth;”;

(iv) after paragraph (k) insert—

“(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—

(i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 31(1) of the Regulatory Reform (Scotland) Act 2013, which he reasonably believes is being or has been committed; or

(ii) may assist in determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above;”;

(d) in subsection (5), after “with” insert “, or whether an offence under section 31(1) of the Regulatory Reform (Scotland) Act 2013 is being, or has been, committed,”,

(e) in subsection (6), paragraph (a) and the word “and” immediately following it are repealed,

(f) after subsection (7) insert—
“(7A) An authorised person may not exercise the power in subsection (4)(ka) above to seize and remove documents except under the authority of a warrant by virtue of Schedule 18 to this Act.

(7B) Section 108A applies where documents are removed under that power.

(7C) Subsections (7D) and (7E) apply where a document removed under that power contains information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

(7D) The information may not be used—

(a) in evidence for the purpose of proceedings mentioned in paragraph (ka)(i) of subsection (4) above against a person who would be entitled to make such a claim in relation to the document; or

(b) to determine whether any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above.

(7E) The document must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after the information is identified as information described in subsection (7C) above (but the authorised person may retain, or take copies of, any other information contained in the document).”,

(g) in subsection (12), at the end add “, except in a case where the proceedings relate to—

(a) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or

(b) another offence where in giving evidence the person makes a statement inconsistent with the answer.”,

(h) in subsection (15)—

(i) after the definition of “authorised person” insert—

"document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing;”,

(ii) in the definition of “pollution control functions”, paragraph (a) is repealed.

(3) After section 108, insert—

“108A Procedure where documents removed

(1) An authorised person (within the meaning of subsection (15) of section 108 of this Act) who removes any documents under the power in subsection (4)(ka) of that section shall, if requested to do so by a person mentioned in subsection (2) below, provide that person with a record of what the authorised person removed.

(2) The persons are—

(a) a person who was the occupier of any premises from which the documents were removed at the time of their removal;

(b) a person who had possession or control of the documents immediately before they were removed.
The authorised person shall provide the record within a reasonable time of the request for it.

A person who had possession or control of documents immediately before they were removed may apply to SEPA—

(a) for access to the documents; or

(b) for a copy of them.

SEPA shall—

(a) allow the applicant supervised access to the documents for the purpose of copying them or information contained in them; or

(b) copy the documents or information contained in them (or cause the documents or information to be copied) and provide the applicant with such copies within a reasonable time of the application.

But SEPA need not comply with subsection (5) above where it has reasonable grounds for believing that to do so might prejudice—

(a) any investigation for a purpose mentioned in paragraph (a), (d) or (e) of subsection (1) of section 108 of this Act; or

(b) any criminal proceedings which may be brought as a result of any such investigation.

In subsection (5) above, “supervised access” means access under the supervision of a person approved by SEPA.

A person who claims that an authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above may apply to the sheriff for an order under subsection (10) below.

An application under subsection (8) above—

(a) relating to a failure to comply with the requirements of subsection (1) or (3) above may be made only by a person who is entitled to make a request under subsection (1) above;

(b) relating to a failure to comply with subsection (5) above may be made only by a person who had possession or control of the documents immediately before they were removed.

The sheriff may, if satisfied that the authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above, order the person, or as the case may SEPA, to comply with the requirements within such time and in such manner as may be specified in the order.”.

In Schedule 18 (supplemental provisions with respect to powers of entry)—

(a) in paragraph 2—

(i) after sub-paragraph (1) insert—

“(1A) If it is shown to the satisfaction of the sheriff or a justice of the peace, on sworn information in writing, that there are reasonable grounds for the exercise in relation to any documents of a power in section 108(4)(ka) of this Act, the sheriff or justice of the peace may by warrant authorise SEPA to designate a person who shall be authorised to exercise the power in relation to the documents in accordance with the warrant and, if need be, by force.”,
(ii) for sub-paragraph (3) substitute—

“(3) A warrant under this Schedule in respect of the power in section 108(6) of this Act to enter any premises used for residential purposes shall not be issued unless the sheriff or justice of the peace is satisfied that such entry is necessary for any purpose for which the power is proposed to be exercised.”,

(iii) after sub-paragraph (4) add—

“(5) A sheriff may grant a warrant under this Schedule in relation to premises situated in an area of Scotland even though the area is outside the territorial jurisdiction of that sheriff; and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.”,

(b) in paragraph 3—

(i) after “shall” insert “, if so required.”,

(ii) the words “designation and other” are repealed.>

Paul Wheelhouse

90 In schedule 3, page 52, line 31, at end insert—

<( ) In section 110 (offences)—

(a) in subsection (1), after “to” insert “assault, hinder or”,

(b) in subsection (4)—

(i) in paragraph (a), after “of” where it second occurs insert “assaulting, hindering or”,

(ii) in sub-paragraph (i) of that paragraph, after “maximum” insert “or to imprisonment for a term not exceeding 12 months, or to both”,

(iii) in paragraph (b), for the words “level 5 on the standard scale” substitute “the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 or to imprisonment for a term not exceeding 12 months, or to both”, and

(c) after subsection (5) insert—

“(5A) A person may be convicted of the offence under subsection (1) above of hindering or obstructing even though it is—

(a) effected by means other than physical means, or

(b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by an authorised person.

(5B) Subsection (5C) applies where, in the trial of a person (“the accused”) charged in summary proceedings with an offence under subsection (1) above, the court—

(a) is not satisfied that the accused committed the offence, but

(b) is satisfied that the accused committed an offence under subsection (2) above.

(5C) The court may acquit the accused of the charge and, instead, find the accused guilty of an offence under subsection (2) above.”.>
In schedule 3, page 53, leave out lines 10 to 20

In schedule 3, page 53, line 20, at end insert—

The amendments made by paragraph 25 to subsection (4) of section 110 of the Environment Act 1995 do not affect the penalty for an offence under that section committed before the coming into force of those amendments.

Smoke control areas: fuels and fireplaces

After section 37, insert—

Smoke control areas: authorised fuels and exempt fireplaces

The Clean Air Act 1993 is amended as follows.

In section 20 (offence of emitting smoke in smoke control area where emission caused by use of fuel other than authorised fuel)—

(a) after subsection (5) insert—

“(5A) In this Part, “authorised fuel” means a fuel included in a list of authorised fuels kept by the Scottish Ministers for the purposes of this Part.

(5B) The Scottish Ministers must—

(a) publish the list of authorised fuels; and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(5C) The list must be published in such manner as the Scottish Ministers consider appropriate.”,

(b) in subsection (6), for “In” substitute “Except as provided in subsection (5A), in”.

In section 21 (power by order to exempt certain fireplaces)—

(a) the existing text becomes subsection (5); and for the word “The” at the beginning of that subsection substitute “Except where subsection (1) applies, the”.

(b) before that subsection insert—

“(1) For the purposes of this Part, the Scottish Ministers may exempt any class or description of fireplace from the provisions of section 20 (prohibition of smoke emissions in smoke control areas) if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke.

(2) An exemption under subsection (1) may be made subject to such conditions as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers must—
(a) publish a list of those classes or descriptions of fireplace that are exempt under subsection (1), including details of any conditions to which an exemption is subject; and

(b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to the classes or descriptions of fireplace that are so exempt or to the conditions to which an exemption is subject.

(4) The list must be published in such manner as the Scottish Ministers consider appropriate.”.

(4) In the title of section 21, the words “by order” are repealed.

(5) In section 29 (interpretation of Part 3), in the definition of “authorised fuel”, for “20(6)” substitute “20”.

Leave to proceed for applications relating to marine licence applications

Fergus Ewing

111 In section 40, page 30, line 6, at end insert—

<Applications under section 63A: requirement for leave

(1) No proceedings may be taken in respect of an application under section 63A(1) unless the Inner House of the Court of Session has granted leave for the application to proceed.

(2) The Court may grant leave under subsection (1) for an application to proceed only if it is satisfied that—

(a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and

(b) the application has a real prospect of success.

(3) The Court may grant leave under subsection (1) for an application to proceed—

(a) subject to such conditions as the Court thinks fit, or

(b) only on such of the grounds specified in the application as the Court thinks fit.

(4) An application under section 63A(1) may be made even though the Court has not granted leave for the application to proceed.”.

Planning authorities’ functions: fees and charges

Margaret McDougall

120 In section 41, page 30, line 18, at end insert—

<(1AAA)Before making provision such as mentioned in subsection (1A)(da), the Scottish Ministers must prepare and publish guidance setting out the principles to which they must have regard in determining whether the functions of a planning authority are not being, or have not been, performed satisfactorily.
Before preparing and publishing guidance under subsection (1AAA), the Scottish Ministers must consult—

(a) each planning authority,

(b) such other persons as appear to the Scottish Ministers to have a significant interest in such guidance, and

lay the guidance before the Scottish Parliament.

Margaret McDougall

In section 41, page 30, line 18, at end insert—

Before making provision such as mentioned in subsection (1A)(da) such that the charge or fee payable to a planning authority is lower than that payable to another planning authority, the Scottish Ministers must take all reasonable steps to support the planning authority to improve the performance of its functions.

Margaret McDougall

In section 41, page 30, line 18, at end insert—

Where the Scottish Ministers make provision such as mentioned in subsection (1A)(da) such that the charge or fee payable to a planning authority is lower than that payable to another planning authority, they must ensure that the lower charge or fee is not set—

(a) at a level, or

(b) for a period,

that will adversely affect the performance of, or as the case may be the range of services offered by, the planning authority.

Margaret McDougall

In section 41, page 30, line 18, at end insert—

Before making provision such as mentioned in subsection (1A)(da) such that the charge or fee payable to a planning authority is lower than that payable to another planning authority, the Scottish Ministers must lay before the Scottish Parliament a statement setting out—

(a) the percentage variation by which, and

(b) the period for which,

they propose to vary the fee or charge.

Margaret McDougall

Leave out section 41

Street traders’ licences: food businesses

Fergus Ewing

In section 42, page 30, line 29, leave out <one> and insert <a food authority in Scotland>
In section 42, page 30, line 30, after <subsection> insert—

(a)  

In section 42, page 30, line 33, at end insert <, or

(b)  where no such food authority has registered the establishment for those purposes, a food authority which is—

(i)  the licensing authority to which the application mentioned in subsection (4) in respect of the activity is made, or

(ii)  another licensing authority to which an application for a street trader’s licence in respect of the activity is or has been made.”.>

In schedule 3, page 43, line 33, at end insert—

Sewerage (Scotland) Act 1968

(1)  The Sewerage (Scotland) Act 1968 is amended as follows.

(2)  In section 29A (priority substances etc.), in subsection (3)—

(a)  the word “or” immediately following paragraph (a) is repealed, and

(b)  for paragraph (b) substitute—

“(b)  regulations made under section 10 of the Regulatory Reform (Scotland) Act 2013, or

(c)  any directive concerning the same subject-matter as the directive mentioned in subsection (1).”.

(3)  In section 38H (Controlled Activities Regulations), for subsection (3)(b) substitute—

“(b)  regulations made under section 10 of the Regulatory Reform (Scotland) Act 2013.”.>

In section 46 (receptacles for household waste), in subsection (4)—

(a)  the word “and” immediately following paragraph (d) is repealed,

(b)  after paragraph (e) add—

“(f)  the removal of the receptacles placed for the purpose of facilitating the emptying of them; and

(g)  the time when the receptacles must be placed for that purpose and removed.”.

In section 47 (receptacles for commercial or industrial waste), in subsection (4)—
(a) the word “and” immediately following paragraph (d) is repealed,
(b) after paragraph (e) add—
“(f) the removal of the receptacles placed for the purpose of facilitating the emptying of them; and
(g) the time when the receptacles must be placed for that purpose and removed.”.

Paul Wheelhouse
71 In schedule 3, page 47, leave out lines 1 to 5

Paul Wheelhouse
72 In schedule 3, page 47, leave out lines 10 to 14

Paul Wheelhouse
73 In schedule 3, page 47, line 14, at end insert—

<Water Resources (Scotland) Act 2013

(1) The Water Resources (Scotland) Act 2013 is amended as follows.
(2) In section 5 (qualifying abstraction), in subsection (2), for the words from “20(3)(b)” to the end of the subsection substitute “23(5) of the 2003 Act.”.
(3) In section 21 (Controlled Activities Regulations), for subsection (5)(b) substitute—
“(b) regulations made under section 10 of the Regulatory Reform (Scotland) Act 2013.”.
(4) In section 50 (Controlled Activities Regulations), for subsection (5)(b) substitute—
“(b) regulations made under section 10 of the Regulatory Reform (Scotland) Act 2013.”.>

Paul Wheelhouse
76 In schedule 3, page 50, line 12, at end insert—

<( ) section 69 (execution of works by local authority),>

Paul Wheelhouse
77 In schedule 3, page 50, line 20, at end insert—

<( ) In section 30Y (introductory), in subsection (1) (meaning of “abandonment” in relation to a mine), in paragraph (b)—
(a) the word “or” immediately following sub-paragraph (i) is repealed, and
(b) after sub-paragraph (ii) insert “or
(iii) any disclaimer by notice signed by the Queen’s and Lord Treasurer’s Remembrancer under section 1013 of the Companies Act 2006 (Crown disclaimer of property vesting as bona vacantia).”.
Paul Wheelhouse

78 In schedule 3, page 51, line 8, at end insert—

<() In section 104 (orders and regulations)—

(a) in subsection (1), the following words are repealed—

(i) “(except sections 63 and 65(6))”, and

(ii) “regulations made by virtue of section 18 of this Act or”, and

(b) in subsection (2), the following words are repealed—

(i) “regulations shall be made by virtue of section 18 of this Act and no”, and

(ii) “regulations or”.

Paul Wheelhouse

79 In schedule 3, page 51, line 12, at end insert—

<Scottish Board of Health Act 1919

In the Scottish Board of Health Act 1919, in section 4 (transfer of powers and duties to and from the Board), paragraph (d) of subsection (1) is repealed.>

Paul Wheelhouse

80 In schedule 3, page 51, line 18, leave out <paragraph 18 is> and insert <paragraphs 10, 14 and 18 are>

Paul Wheelhouse

81 In schedule 3, page 51, line 25, at end insert—

<Water Act 1989

In the Water Act 1989, in Schedule 23 (control of water pollution in Scotland), paragraphs 2 and 3 are repealed.

Planning (Consequential Provisions) Act 1990

In the Planning (Consequential Provisions) Act 1990, in Schedule 2 (consequential amendments), paragraph 31(1) is repealed.>

Paul Wheelhouse

82 In schedule 3, page 51, line 27, at end insert—

<() in section 79 (statutory nuisances and inspections therefor), in subsection (10), the words from “Part I” to “under”, where it third occurs, are repealed.>

Paul Wheelhouse

83 In schedule 3, page 51, line 27, at end insert—

<() in section 80 (summary proceedings for statutory nuisances)—

(i) in paragraph (a) of subsection (9), the words “or 65” are repealed,

(ii) paragraph (b) of that subsection, and the word “or” immediately preceding it, are repealed,
Paul Wheelhouse

84 In schedule 3, page 51, line 31, at end insert—

<( ) paragraph 2 is repealed.>

Paul Wheelhouse

85 In schedule 3, page 51, line 33, at end insert—

<( ) in Schedule 16 (repeals), in Part 1 (enactments relating to processes), the entry relating to 1990 c.43 (Environmental Protection Act 1990) is repealed.>

Paul Wheelhouse

86 In schedule 3, page 52, line 16, at end insert—

<Clean Air Act 1993

In the Clean Air Act 1993, in section 42 (colliery spoilbanks)—

(a) in subsection (2), for the words “or quarry” substitute “, or the operator of a quarry,”, and

(b) in subsection (6), for the words from “mine” to the end substitute—

“mine” is to be construed in accordance with section 180 of the Mines and Quarries Act 1954;
“operator”, in relation to a quarry, has the meaning given by regulation 2(1) of the Quarries Regulations 1999 (S.I. 1999/2024);
“owner”, in relation to a mine, is to be construed in accordance with section 181(1) and (4) of the Mines and Quarries Act 1954;
“quarry” is to be construed in accordance with regulation 3 of the Quarries Regulations 1999.”.>

Paul Wheelhouse

87 In schedule 3, page 52, line 29, at end insert—

<( ) In section 21 (transfer of functions to SEPA)—

(a) in subsection (1)—

(i) paragraph (a)(i), (iii) and (iv) are repealed,

(ii) in paragraph (a)(ii), the words from “Part III” to “and” are repealed,

(iii) paragraphs (c), (d), (f) and (h) are repealed, and

(b) in subsection (2), paragraph (b) is repealed.>

Paul Wheelhouse

88 In schedule 3, page 52, line 31, at end insert—

<( ) In section 56 (interpretation of Part 1), in subsection (1), in the definition of “disposal authority”, paragraph (b) is repealed.>
Paul Wheelhouse

89 In schedule 3, page 52, line 31, at end insert—

<( ) In section 91 (interpretation of Part 4), in subsection (1), in the definition of “action plan”, for “84(2)(b)” substitute “84(2)”.>

Paul Wheelhouse

91 In schedule 3, page 52, line 33, at end insert—

<( ) In Schedule 11 (air quality: supplemental provisions)—

(a) in paragraph 1(1)(b), the words “or 84” are repealed, and
(b) in paragraph 4(2)(b), the words “or 84” are repealed.>

Paul Wheelhouse

92 In schedule 3, page 53, line 3, at end insert—

<( ) paragraph 1 is repealed,>

Paul Wheelhouse

93 In schedule 3, page 53, line 8, at end insert—

<( ) paragraph 93 is repealed,>

Paul Wheelhouse

94 In schedule 3, page 53, line 9, at end insert—

<( ) In Schedule 23 (transitional and transitory provisions and savings), the following paragraphs are repealed—

(a) paragraph 4,
(b) paragraph 6,
(d) paragraph 8, and
(e) paragraph 18.>

Paul Wheelhouse

110* In schedule 3, page 53, line 20, at end insert—

<Criminal Procedure (Scotland) Act 1995

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

(2) In section 277 (transcript of police interview sufficient evidence)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed, and
(ii) after paragraph (b) insert “; or

(c) a person authorised by the Scottish Environment Protection Agency under section 108 of the Environment Protection Act 1995 and an accused person.”, and

(b) after subsection (4) add—
“(5) Subsection (1) is without prejudice to section 108(12) of the Environment Act 1995.”.

(3) In section 280 (routine evidence)—

(a) after subsection (3), insert—

“(3A) For the purposes of any criminal proceedings, a report purporting to be signed by a person authorised by the Scottish Environment Protection Agency for the purpose of this subsection is sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatory.”, and

(b) in subsection (6)—

(i) after “(1)”, where it first occurs, insert “, (3A)”, and

(ii) in paragraph (b), after “subsection”, where it second occurs, insert “(3A) or”.

(4) In Schedule 9 (certificates as to proof of certain routine matters)—

(a) in the table, omit the entry relating to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 Regulation 40, and

(b) at the end of the table insert the following entries—

| Regulations made by virtue of section 10 of the Regulatory Reform (Scotland) Act 2013 (asp 00) | A person authorised to do so by a regulator (within the meaning of paragraph 3(1) of schedule 2 to that Act) | That the person has 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. In relation to a person specified in the certificate that, on a date and in relation to an activity so specified, the person held or, as the case may be, did not hold a permit (within the meaning of paragraph 33 of schedule 2 to that Act) |
| “The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209) Regulation 44 | A person authorised to do so by the Scottish Environment Protection Agency | That the person has 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. |
granted by such a regulator and, where the person held such a permit, any condition to which the permit is subject.

In relation to a person specified in the certificate that, on a date and in relation to an activity so specified, the person held or, as the case may be, did not hold registration (within the meaning of paragraph 33 of schedule 2 to that Act) granted by such a regulator and, where the person held such registration—

(a) any condition to which the registration is subject;

(b) whether the registration subsisted on the date specified in the certificate.

In relation to a person specified in the certificate that, on a date and in relation to an activity so specified, the person had given notification (within the meaning of paragraph 33 of schedule 2 to that Act) to such a regulator and, where the person gave such notification, whether the notification subsisted on the date specified in the certificate.

In relation to a permit or registration (in each case within the meaning of paragraph 33 of schedule 2 to that Act) a description of any variation, transfer,
surrender, suspension or revocation of the permit or registration.

In relation to a person specified in the certificate that, on a date so specified, such regulator served on the person a notice mentioned in paragraph 18 of schedule 2 to that Act.

That such a regulator has, in pursuance of paragraph 4(3)(d) of schedule 2 to that Act, made general binding rules as mentioned in that paragraph, or has, in pursuance of paragraph 11 of that schedule, made standard rules as mentioned in that paragraph; and the content of those general binding rules or standard rules.”.

Paul Wheelhouse

97 In schedule 3, page 53, line 24, at end insert—

<Planning (Consequential Provisions) (Scotland) Act 1997

In the Planning (Consequential Provisions) (Scotland) Act 1997, in Schedule 2 (consequential amendments), paragraph 23(1) is repealed.>

Paul Wheelhouse

98 In schedule 3, page 53, line 33, at end insert—

<Pollution Prevention and Control Act 1999

In the Pollution Prevention and Control Act 1999, in Schedule 3 (repeals), in the third column of the entry relating to the Environmental Protection Act 1990, the words “In section 79(10), the words “under Part I or”’ are repealed.>

Paul Wheelhouse

112 In schedule 3, page 55, line 17, at end insert—

<Natural Heritage (Scotland) Act 1991

(1) The Natural Heritage (Scotland) Act 1991 is amended as follows.

(2) In section 7 (powers of entry), after subsection (11) add—
“(12) In subsection (1) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

(3) In Schedule 1 (constitution and proceedings of Scottish Natural Heritage), after paragraph 17(2) add—

“(3) In sub-paragraph (1) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

Offences in relation to controlled waste and litter: fixed penalty notices

Paul Wheelhouse

74 In schedule 3, page 47, leave out lines 21 to 24 and insert—

<(a) in subsection (1), in paragraph (a)—

(i) for the words “officer of a local authority” substitute “person or a constable”, and

(ii) the words from “in” to the end of paragraph (b) are repealed,

(b) in subsection (4), paragraph (b) and the word “or” immediately preceding it are repealed,

(c) after subsection (8) insert—

“(8A) If an authorised person proposes to give a person a notice under this section, the authorised person may require the person to give him his name and address.

(8B) A person commits an offence if he fails to give his name and address when required to do so under subsection (8A) above.

(8C) A person who commits an offence under subsection (8B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”,

(d) in subsection (11), in paragraph (a), for the words from “the” where it first occurs to “committed” substitute “a proper officer”,

(e) after subsection (11) insert—

“(11A) In subsection (11) above, “proper officer” means—

(a) in a case where a notice under this section is given by an officer of a local authority authorised as mentioned in paragraph (a) of the definition of “authorised person” in subsection (13) below, the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration);

(b) in a case where a notice under this section is given by an officer of Loch Lomond and The Trossachs National Park Authority authorised as mentioned in paragraph (b) of that definition, the proper officer for that Authority appointed under paragraph 12(3) of schedule 2 to the National Parks (Scotland) Act 2000.”,

(f) in subsection (12)—

(i) after “payable”, where it second occurs, insert—
“(a) in a case such as is mentioned in paragraph (a) of subsection (11A) above,”; and
(ii) at the end insert—
“(b) in a case such as is mentioned in paragraph (b) of that subsection, to Loch Lomond and The Trossachs National Park Authority; and as respects the sums received by that Authority, those sums shall accrue to that Authority.”,

(g) in subsection (13)—
(i) for the definition of “authorised officer” substitute—
“‘authorised person’ means—
(a) an officer of a local authority who is authorised in writing by the authority for the purpose of issuing notices under this section in relation to a relevant offence committed in the area of the authority;
(b) an officer of Loch Lomond and The Trossachs National Park Authority who is authorised in writing by the Authority for the purpose of issuing notices under this section in relation to a relevant offence committed in the area designated as the National Park for which the Authority is established; or
(c) such other persons as may be specified by order made by the Scottish Ministers.”., and
(ii) the definition of “proper officer” is repealed, and

(h) after subsection (13) insert—
“(13A) The Scottish Ministers may by order make such modifications of this section as they consider necessary or expedient in connection with the specification of a person by an order under paragraph (c) of the definition of “authorised person” in subsection (13) above.

(13B) An order under subsection (13A) above may include provision—
(a) applying any provision of this section to such a person with such modifications as may be specified in the order;
(b) for any such provision not to apply in relation to such a person.”.

Paul Wheelhouse

75 In schedule 3, page 47, line 32, at end insert—
<( ) In section 88 (fixed penalty notices for leaving litter)—
 (a) in subsection (1), in paragraph (a)—
 (i) for the words “officer of a litter authority” substitute “person or a constable”, and
 (ii) the words from “in” to the end of paragraph (b) are repealed,
 (b) in subsection (5A), for the words “to the litter authority in whose area the offence was committed” substitute—
“(a) where the notice is given by an officer of a litter authority authorised as mentioned in paragraph (a) of the definition of “authorised person” in subsection (10) below, to that litter authority;

(b) where the notice is given by an officer of Loch Lomond and The Trossachs National Park Authority authorised as mentioned in paragraph (b) of that definition, to that Authority.”;

(c) in subsection (6)—

(i) the words from “a litter” to the end become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) Loch Lomond and The Trossachs National Park Authority, shall accrue to that Authority.”;

d) in subsection (8), in paragraph (a)(ii), for the words from “the” where it first occurs to “committed” substitute “a proper officer”,

e) after subsection (8) insert—

“(8A) In subsection (8) above, “proper officer” means—

(a) in a case where a notice under this section is given as mentioned in paragraph (a) of subsection (5A) above, the officer who has, as respects the litter authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration);

(b) in a case where a notice is given as mentioned in paragraph (b) of that subsection, the proper officer for that Authority appointed under paragraph 12(3) of schedule 2 to the National Parks (Scotland) Act 2000.

(8B) If an authorised person proposes to give a person a notice under this section, the authorised person may require the person to give him his name and address.

(8C) A person commits an offence if he fails to give his name and address when required to do so under subsection (8B) above.

(8D) A person who commits an offence under subsection (8C) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”;

(f) in subsection (10)—

(i) for the definition of “authorised officer” substitute—

“authorised person” means—

(a) an officer of a litter authority who is authorised in writing by the authority for the purpose of issuing notices under this section in relation to an offence under section 87 above committed in the area of the authority;

(b) an officer of Loch Lomond and The Trossachs National Park Authority who is authorised in writing by the Authority for the purpose of issuing notices under this section in relation to an offence under section 87 above committed in the area designated as the National Park for which the Authority is established; or

(c) such other persons as may be specified by order made by the Scottish Ministers.”;
(ii) the definition of “proper officer” is repealed, and

(g) after subsection (10) insert—

“(10A) The Scottish Ministers may by order make such modifications of this section as they consider necessary or expedient in connection with the specification of a person by an order under paragraph (c) of the definition of “authorised person” in subsection (10) above.

(10B) An order under subsection (10A) above may include—

(a) provision applying any provision of this section to such a person with such modifications as may be specified in the order;

(b) provision for any such provision not to apply in relation to such a person.”.