

SCHEDULE 2

(introduced by section 20)

CONTROLLED ACTIVITIES REGULATIONS: PARTICULAR PURPOSES

PART 1

LIST OF PURPOSES

Controlled activities

- 1 (1) Further defining the activities specified in subsection (3) of section 20.
- (2) Modifying the definitions of those activities.
- (3) Specifying other activities as controlled activities.

Regulators

- 2 (1) Determining the authorities (whether SEPA or any other public or local authority or the Scottish Ministers) by whom functions conferred by the regulations for or in connection with regulating controlled activities are to be exercisable (such authorities being referred to in this schedule as “regulators”).
- (2) Securing that such functions are exercised with a view to achieving the environmental objectives set out in river basin management plans.
- (3) Specifying any other purposes for which any such functions are to be exercisable.
- (4) Enabling the Scottish Ministers to give directions (whether general or specific) with which regulators are to comply, or guidance to which regulators are to have regard, in exercising functions under the regulations, including—
 - (a) directions providing for any functions exercisable by one regulator to be exercisable instead by another,
 - (b) directions given for the purpose of the implementation of any obligations of the United Kingdom under the Community Treaties or under any international agreement to which the United Kingdom is a party,
 - (c) directions relating to the exercise of any function in a particular case or description of case,
 - (d) directions providing for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

Regulation of controlled activities

- 3 (1) Prohibiting persons from carrying on, or from causing or permitting others to carry on, any controlled activity, or from carrying on any such activity except so far as it is—
 - (a) authorised by or under, and
 - (b) carried on in accordance with,the regulations.

Status: This is the original version (as it was originally enacted).

- (2) Specifying rules of general application (“general binding rules”) subject to which controlled activities may be carried on.
- (3) Treating as authorised the carrying on of controlled activities which are subject to general binding rules.
- (4) Enabling regulators to authorise the carrying on of controlled activities (whether or not the carrying on of any such activities is subject to general binding rules)—
 - (a) by way of a licence granted under the regulations (a “water use licence”),
 - (b) subject to a requirement to register the carrying on of the activity (“registration”).

Notification of proposals to carry on controlled activities

- 4 (1) Requiring persons proposing to carry on controlled activities to notify regulators of the proposals.
- (2) Prescribing the form and content of notifications and otherwise regulating the procedure for notifying proposed controlled activities.
- (3) Requiring regulators to advise persons notifying them of proposals to carry on controlled activities as to whether the carrying on of the activities requires to be authorised by regulators under the regulations in pursuance of paragraph 3(4) and, if so, the type of authorisation required.

Water use licences

- 5 (1) Prescribing the form and content of applications for water use licences.
- (2) Specifying restrictions or other requirements in connection with applications for, or the grant of, licences.
- (3) Otherwise regulating the procedure to be followed in connection with applications for licences and the determination of applications.
- (4) Enabling licence applications to be treated as notifications in specified circumstances.
- (5) Prescribing the contents of licences.
- (6) Authorising licences to be granted subject to conditions imposed by regulators.
- (7) Enabling the granting of licences authorising the carrying on of more than one controlled activity.
- (8) Securing that licences have effect subject to specified conditions.
- (9) Requiring licences or the conditions to which they are subject to be reviewed by regulators (whether periodically or in specified circumstances).
- (10) Authorising or requiring the variation of licences or such conditions by regulators (whether on applications made by holders of licences or otherwise).
- (11) Regulating the transfer and surrender of licences.
- (12) Authorising the suspension of licences by regulators.

Status: This is the original version (as it was originally enacted).

- (13) Authorising the revocation of licences by regulators.
- (14) Authorising the imposition by regulators of requirements with respect to the taking of preventive or remedial action (by holders of licences or other persons) in connection with the surrender and revocation of licences.

Registration

- 6 (1) Regulating the procedure for registration required by provision made in pursuance of paragraph 3(4)(b), including variation and revocation of registrations.
- (2) Specifying restrictions or other requirements in connection with registration.

Charging schemes

- 7 (1) Authorising, or authorising regulators to make, vary and revoke schemes for, the charging by regulators of fees or other charges—
 - (a) in respect of notifications,
 - (b) in respect of, or in respect of applications for—
 - (i) the grant of a licence,
 - (ii) the variation of a licence or the conditions to which it is subject,
 - (iii) the transfer, surrender or revocation of a licence,
 - (iv) registration,
 - (c) in respect of the subsistence of a licence or registration,
 - (d) in respect of other specified matters.
- (2) Regulating the procedure for making, varying and revoking such schemes.

Publicity and consultation

- 8 Securing that—
 - (a) publicity is given to specified matters,
 - (b) regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) which are open to public inspection,
 - (c) copies of entries in such registers, or of specified documents, may be obtained by members of the public.
- 9 Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions (including consultation on any guidance they propose to issue in connection with the exercise of those functions), and providing for them to take into account representations made to them on consultation.

Enforcement and offences

- 10 (1) Conferring on regulators functions with respect to the monitoring and inspection of the carrying on of controlled activities, including—
 - (a) power to take samples or to make copies of information,
 - (b) power to arrange for preventive or remedial action to be taken at the expense of those carrying on the controlled activities.

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- (2) Authorising regulators to appoint suitable persons to exercise any such functions and conferring powers (such as those specified in section 108(4) of the Environment Act 1995 (c. 25)) on persons so appointed.
- 11 (1) Authorising regulators to serve on any persons carrying on controlled activities (whether or not the carrying on of those activities is authorised by or under the regulations) notices, including notices requiring them—
- (a) to notify the controlled activities being carried on by them,
 - (b) to take preventive or remedial action at their own expense in respect of contraventions, actual or potential, of—
 - (i) in relation to activities being carried on under water use licences, any conditions to which the licences are subject,
 - (ii) in relation to activities being carried on subject to general binding rules, those rules,
 - (c) in relation to activities being carried on subject to registration, to take preventive or remedial action at their own expense where the activities are being carried on otherwise than as described in the registration,
 - (d) to provide such financial security as the regulators serving the notices consider appropriate pending the taking of preventive or remedial action required by virtue of paragraph (b) or (c),
 - (e) to take steps to remove imminent risks of serious adverse impacts on the status of the water environment (whether or not arising from any such contraventions),
 - (f) to stop the carrying on of controlled activities and to take such preventive or remedial action as may be specified in the notice.
- (2) Providing for the enforcement of such notices by civil proceedings.
- 12 Creating offences and dealing with matters relating to such offences, including—
- (a) the provision of defences, and
 - (b) evidentiary matters.
- 13 Enabling, where a person has been convicted of an offence under the regulations—
- (a) a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment),
 - (b) a regulator to arrange for such action at that person's expense.

Appeals

- 14 (1) Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations.
- (2) Making provision for (or for the determination of) matters relating to the making, considering and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings).

General

- 15 (1) Making provision which, subject to any modifications that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by any of sections 157, 158 and 160 of the Environmental Protection Act 1990 (c. 43).
- (2) Making provision about the application of the regulations to the Crown.

PART 2

SUPPLEMENTARY PROVISIONS

Particular types of controlled activity

- 16 The regulations may provide for specified provisions of the regulations to have effect in relation only to—
- (a) specified controlled activities,
 - (b) the carrying on of controlled activities in specified circumstances, or
 - (c) the carrying on of controlled activities by specified persons or descriptions of persons.

General binding rules

- 17 General binding rules may—
- (a) impose conditions or requirements,
 - (b) prescribe standards or objectives to be complied with or achieved,
 - (c) require standards or objectives specified in or under other enactments to be complied with or achieved.

Imposition of conditions

- 18 In connection with the imposition of conditions as mentioned in paragraph 5(6) the regulations may in particular provide—
- (a) for such conditions to be imposed in the light of any specified general principles and any directions or guidance given under the regulations,
 - (b) for such guidance to include guidance sanctioning reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing a condition,
 - (c) for such conditions to be imposed by reference to agreements between or among holders of licences as to the carrying on by them of the controlled activities authorised by the licences.

Charging schemes

- 19 The regulations may—
- (a) require any such scheme as is mentioned in paragraph 7 to be so framed that the fees and charges payable under the scheme—
 - (i) are determined in the light of any specified general principles and any directions or guidance given under the regulations,
 - (ii) are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator to whom they are so payable) as is specified,
 - (b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

Offences

- 20 (1) The regulations may provide for any such offence as is mentioned in paragraph 12 to be triable—

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- (a) only summarily,
 - (b) either summarily or on indictment.
- (2) The regulations may provide for such an offence to be punishable—
- (a) on summary conviction by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 6 months), or
 - (ii) a fine not exceeding such amount as is specified (which must not exceed £20,000),
 or both,
 - (b) on conviction on indictment by—
 - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 5 years), or
 - (ii) a fine,
 or both.
- (3) The regulations may provide for continuing offences and for any such offences to be punishable by a daily or other periodic fine of such amount as is specified (in addition to any punishment provided for in pursuance of sub-paragraph (2)).
- (4) The Scottish Ministers may by order substitute for the sum for the time being specified in sub-paragraph (2)(a)(ii) such other sum as appears to them to be justified by a change in the value of money appearing to them to have taken place since the last occasion on which the sum was fixed.

Interpretation

- 21 In this schedule—
- “general binding rules” means rules specified in the regulations in pursuance of paragraph 3(2),
 - “notification” means notification of a proposal to carry on a controlled activity in accordance with any provision made in the regulations in pursuance of paragraph 4(1),
 - “registration” means registration under any provision made in the regulations in pursuance of paragraph 3(4)(b),
 - “the regulations” means regulations under section 20,
 - “regulators” has the meaning given in paragraph 2(1),
 - “specified” means specified in the regulations,
 - “water use licence” means a licence granted under any provision made in the regulations in pursuance of paragraph 3(4)(a).