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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 348**

**ENVIRONMENTAL PROTECTION  
WATER**

**The Water Environment (Controlled  
Activities) (Scotland) Regulations 2005**

*Made - - - - 7th June 2005*

*Coming into force in accordance with regulation 1*

The Scottish Ministers, in exercise of the powers conferred by sections 20, 25, 36(2) and (3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003<sup>(1)</sup>, and of all other powers enabling them in that behalf, after consulting the persons specified in section 21(1) of that Act, having published a draft of the proposed general binding rules in accordance with section 21(2), having had regard to the representations received about the proposed rules in accordance with section 21(4) of that Act, and having complied with the requirements of section 21 of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 36(6) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**PART I**

**General**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Water Environment (Controlled Activities) (Scotland) Regulations 2005.

(2) Subject to paragraphs (3) and (4) these Regulations shall come into force on 1st April 2006.

(3) Regulation 54 shall come into force for the purposes of paragraphs 7 and 8 of Schedule 10 only, on 1st July 2005.

(4) Regulation 54 for all other purposes, and the remainder of Schedule 10, shall come into force on 1st October 2005.

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(1) 2003 asp 3; amended by section 66 and para 6 of Schedule 2 to the [Anti Social Behaviour etc. \(Scotland\) Act 2004](#) (asp 8).

## Interpretation

### 2.—(1) In these Regulations—

- “the Act” means the Water Environment and Water Services (Scotland) Act 2003;
- “an application” means an application made in accordance with regulation 12;
- “authorisation” means an authorisation granted under regulation 7, 8 or 9;
- “controlled activity” is any activity referred to in regulation 4(1);
- “the Directive” means Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy as amended<sup>(2)</sup>;
- “the Groundwater Directive” means Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances<sup>(3)</sup>;
- “general binding rules” has the meaning given in regulation 7;
- “land” includes land covered by water, and any works, plant or fixed machinery, building or other structure in, on or over land;
- “operator” means, in relation to a controlled activity, any person who carries on or has control over the carrying on of that activity;
- “person” includes a body corporate, limited liability partnership and Scottish partnership;
- “pollutant” means any substance or heat liable to cause pollution, including those listed in Schedule 1, and for the purposes of this definition “substance” includes bacteria and other pathogens;
- “premises” includes any land, vehicle, vessel or mobile plant;
- “the register” means the register maintained by SEPA under regulation 33;
- “registration” means an authorisation granted under regulation 8;
- “responsible person” means the person who is responsible for securing compliance with the terms of a water use licence and has been identified as such by SEPA in accordance with regulation 9(6), and for the purposes of these Regulations includes—
  - (a) where the responsible person has been adjudged bankrupt or the estate of the responsible person is sequestrated, the trustee in bankruptcy;
  - (b) where an executor has been appointed to the responsible person’s estate, the executor;
  - (c) where the responsible person is a company, and—
    - (i) a receiver has been appointed, the receiver;
    - (ii) an administrator has been appointed, the administrator;
    - (iii) a liquidator has been appointed, the liquidator;
- “SEPA” means the Scottish Environment Protection Agency; and
- “water use licence” means an authorisation granted under regulation 9.

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000<sup>(4)</sup> which has been recorded in written form and is capable of being reproduced in that form.

(2) O.J. No. L 327, 22.12.2000, p.1; amended by decision [2455/2001/EC](#) of the European Parliament and of the Council of 20th November 2001 establishing the list of priority substances in the field of water policy and amending Directive [2000/60/EC](#) (O.J. No. L 331, 15.12.2001, p.1).

(3) O.J. L 020, 26.1.80, p.43.

(4) [2000 c. 7](#); amended by the Communications Act [2003 \(c. 21\)](#).

### **Amendment of the Act – controlled activities**

- 3.—(1) Section 20 of the Act is amended as follows.
- (2) In subsection (3), for paragraphs (b), (c) and (d) there is substituted—
- “(b) abstraction of water from the water environment,
  - (c) construction, alteration or operation of impounding works in surface water or wetlands,
  - (d) carrying out building or engineering works, or works other than those referred to in paragraph (c)—
    - (i) in inland water (other than groundwater) or wetlands, or
    - (ii) in the vicinity of inland water or wetlands and having or likely to have a significant adverse effect on the water environment,
  - (da) artificial recharge or augmentation of groundwater,”.
- (3) In subsection (6)—
- (a) for the definition of “abstraction” there is substituted—

““abstraction” means the doing of anything whereby any water is removed or diverted by mechanical means, pipe or any engineering structure or works from any part of the water environment, whether temporarily or permanently, including anything whereby the water is so removed or diverted for the purpose of being transferred to another part of the water environment, and includes—

    - (a) the construction or extension of any well, borehole, water intake or other work by which water may be abstracted, and
    - (b) the installation or modification of any machinery or apparatus by which additional quantities of water may be abstracted by means of a well, borehole, water intake or other work,”; and
  - (b) for the definition of “impounding works” there is substituted—

““impounding works” means in relation to surface water—

    - (a) any dam, weir or other works by which water may be impounded,
    - (b) any works diverting the flow of water in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a),”.

### **Application of the Regulations**

- 4.—(1) Subject to paragraph (2), these Regulations apply to—
- (a) the activities referred to in section 20(3) of the Act;
  - (b) the direct or indirect discharge, and any activity likely to cause a direct or indirect discharge, into groundwater of the substances listed in Schedule 2; and
  - (c) any other activity which directly or indirectly has or is likely to have a significant adverse impact on the water environment.
- (2) These Regulations do not apply to any activity for which a licence is needed under Part II of the Food and Environment Protection Act 1985(5).

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(5) 1985 c. 48; amended by the Statute Law Repeals Act 1993 (c. 50), the Environmental Protection Act 1990 (c. 43), the Petroleum Act 1998 (c. 17) and the Food Standards Act 1999 (c. 28).

**Prohibition**

5. No person shall carry on, or shall cause or permit others to carry on, any controlled activity except insofar as it is—

- (a) authorised under these Regulations; and
- (b) carried on in accordance with that authorisation.

**Duty to use water efficiently**

6. It shall be the duty of any person carrying out a controlled activity authorised under these Regulations to take all reasonable steps to secure efficient and sustainable water use.

## PART II

### Authorisations

**General Binding Rules**

7.—(1) A controlled activity specified in Column 1 of Part 1 of Schedule 3 is authorised under these Regulations if it is carried out in accordance with the rules of general application (“general binding rules”) specified for that activity in Column 2 of that Schedule.

(2) Part 2 of that Schedule has effect for the purposes of the interpretation of the Schedule.

**Registration**

8.—(1) Subject to Part 2 of Schedule 10, SEPA may authorise the carrying on of a controlled activity in accordance with the provisions of this regulation.

(2) SEPA may, in authorising such an activity, impose such conditions as it considers necessary or expedient for the purposes of protection of the water environment.

(3) An authorisation given under this regulation (“registration”) shall be given by registering the particulars specified in paragraph (4) in the register maintained under regulation 33.

(4) The particulars are—

- (a) the activity authorised;
- (b) any conditions imposed under paragraph (2); and
- (c) the date of authorisation.

**Water Use Licence**

9.—(1) Subject to Part 2 of Schedule 10, SEPA may authorise the carrying on of a controlled activity under this regulation subject to the conditions provided for in this regulation.

(2) SEPA shall impose such conditions as it considers necessary or expedient for the purposes of protection of the water environment.

(3) A condition imposed under this regulation may require an applicant to carry out works or do other things in relation to land not within the ownership or control of that applicant.

(4) Where a condition is imposed in accordance with paragraph (3), it shall be the responsibility of the applicant to obtain all consents necessary to allow the condition to be complied with.

(5) When considering whether to grant an authorisation under paragraph (1), and when imposing conditions in respect of a licence under this regulation, SEPA—

- (a) shall have regard to all controlled activities being carried on or likely to be carried on in the area of the water environment likely to be affected by the controlled activity to which the application relates;
  - (b) may have regard to any agreement reached between different persons concerning controlled activities carried on in the relevant area of the water environment.
- (6) SEPA shall only grant an authorisation under this regulation if–
- (a) a person has been identified who will be responsible for securing compliance with the authorisation and the conditions specified in it;
  - (b) it is satisfied that that person will secure such compliance; and
  - (c) it is a condition of that authorisation that that person secures such compliance.
- (7) An authorisation granted under this regulation (“water use licence”) shall specify the date on which it takes effect.

### **Groundwater Directive**

**10.**—(1) When considering an application in respect of a controlled activity which falls within the provisions of the Groundwater Directive, SEPA shall impose such conditions as it considers necessary to ensure compliance with the Groundwater Directive(6).

(2) SEPA is the competent authority for the purposes of Articles 2, 8, 12 and 13 of the Groundwater Directive.

### **Power of SEPA to impose authorisation**

**11.**—(1) If it appears to SEPA that a person is carrying on (or is likely to carry on) a controlled activity–

- (a) which has not been authorised under regulations 8 or 9;
- (b) under regulation 7, but that additional measures are necessary to protect the water environment;
- (c) under regulation 8 but that it should now be authorised under regulation 9;
- (d) under regulation 9 but that it should now be authorised under regulation 8,

SEPA may treat the activity as an activity in respect of which an application has been made, and may, as it thinks fit, grant an authorisation under regulation 8 or 9.

(2) Where SEPA decides to treat an activity as an activity in respect of which an application has been made–

- (a) the charge referred to in regulation 12(a) is payable, and
- (b) the remaining provisions of Part III apply as if such an application had been made.

(3) SEPA shall give notice to the responsible person, if any, or to the operator that it is treating the activity in accordance with paragraph (1).

## PART III

### Applications and Application Procedure

#### Form and content of applications for authorisation

**12.** An application to SEPA for an authorisation to carry on one or more controlled activities shall be made in writing, in such form as SEPA may from time to time require, and shall be accompanied by—

- (a) any charge prescribed in accordance with Schedule 5; and
- (b) such information in such form as SEPA may reasonably require.

#### Advertisement of application

**13.—(1)** Where SEPA receives an application it may, where it considers that the controlled activity has or is likely to have a significant adverse impact on the water environment, require the application to be advertised in accordance with this regulation.

(2) SEPA shall serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served.

(3) SEPA shall specify in a notice under paragraph (2)—

- (a) the form of the advertisement;
- (b) the text to be included in the advertisement;
- (c) the publications or locations in which the advertisement should be placed; and
- (d) the dates between which the advertisement should be placed.

(4) An advertisement under paragraph (2) shall explain that any person affected or likely to be affected by, or having an interest in, the application may make representations to SEPA in writing within 28 days beginning with the date of the advertisement and give the address to which such representations should be sent.

(5) SEPA shall consider all written representations made under paragraph (4).

(6) The requirements of this regulation shall not apply insofar as they would require the advertisement of information which is not to be included in the register maintained under regulation 33 by virtue of regulation 34.

#### Further information etc.

**14.—(1)** SEPA may request such additional information in relation to any application as it reasonably requires.

(2) SEPA may request such additional information within such period as it may specify, or agree with the applicant in writing.

(3) SEPA may carry out such examination and investigation as it considers necessary to allow it to make a determination in respect of the application.

(4) SEPA may require an applicant to nominate a person who shall be responsible for securing compliance with the terms of any authorisation to be granted in accordance with regulation 9, within such period as it may specify.

#### Determination of application

**15.—(1)** Before determining an application SEPA shall—

- (a) assess the risk to the water environment posed by the carrying on of the activity referred to in the application;
  - (b) assess what steps may be taken to ensure efficient and sustainable water use;
  - (c) apply the requirements of—
    - (i) the legislation referred to in Part 1 of Schedule 4, and
    - (ii) regulation 24(5); and
  - (d) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4.
- (2) Where an application is in respect of the carrying on of more than one controlled activity, SEPA may grant or refuse to grant it in relation to any one or more of those activities.
- (3) SEPA shall consider an application and shall either grant or refuse to grant an authorisation to carry on the activity, or, as the case may be, each of the activities referred to in that application, and shall notify the applicant of its decision.
- (4) Where SEPA refuses to grant an application (in whole or in part) it shall, when notifying that refusal, give its reasons for doing so.
- (5) Where SEPA decides to grant an authorisation, it shall, having considered the matters referred to in paragraph (1) and the nature of the impact or likely impact of the activity (whether on its own or in association with other activities) on the water environment, grant it in the form of an authorisation under either—
- (a) regulation 8, or
  - (b) regulation 9.

#### **Time-limits for determining applications**

- 16.**—(1) SEPA shall determine an application—
- (a) for an authorisation under regulation 8, within 30 days; and
  - (b) for an authorisation under regulation 9 within 4 months,
- beginning with the date on which it receives the application; but may determine it within such other period as may be agreed in writing with the applicant.
- (2) For the purposes of calculating the periods mentioned in paragraph (1), SEPA shall disregard any periods—
- (a) beginning with the date on which it serves notice under regulation 13(2) and ending with the date by which any written representations must be made under regulation 13(4); and
  - (b) beginning with the date it requests information under regulation 14(1) and ending with the expiry of the period specified or agreed under regulation 14(2).
- (3) Where SEPA fails to determine the application within the period provided for in paragraph (1) the application shall be deemed to have been refused.
- (4) Where paragraph (3) applies, SEPA shall notify the applicant of that refusal and the reasons for it.

#### **Determinations of applications by the Scottish Ministers**

- 17.**—(1) The Scottish Ministers may direct SEPA to refer to them for their determination—
- (a) applications under these Regulations of any class or description specified in the direction;
  - (b) any particular application, or any part of any particular application,
- and the provisions of this regulation apply to any application referred to the Scottish Ministers for their determination in accordance with this paragraph.

(2) The Scottish Ministers shall consult SEPA before issuing a direction under paragraph (1).

(3) The Scottish Ministers may cause a local inquiry to be held in relation to any such application, and the provisions of subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973<sup>(7)</sup> (power to direct inquiries) apply to inquiries held in accordance with this provision.

(4) The provisions of regulations 13, 14 and 15(1) to (3) apply to the Scottish Ministers in respect of an application referred in accordance with paragraph (1) as they do to SEPA in respect of an application made under regulation 12.

(5) When they have determined an application, the Scottish Ministers shall direct SEPA—

- (a) to grant or refuse to grant an authorisation to carry on the activity, or any of the activities, referred to in the application or in the relevant part of the application, as the case may be;
- (b) where the determination is that an authorisation is to be granted under regulation 8 or 9, to grant that authorisation in accordance with that regulation;
- (c) where the determination is that an authorisation is to be granted subject to conditions, to grant that authorisation, specifying the conditions on which the authorisation is to be granted, and, if appropriate, identifying the responsible person for that authorisation;
- (d) where the determination is to refuse to grant an authorisation, to notify the applicant of that refusal, specifying the reasons for refusal.

## PART IV

### Modification and termination of authorisations

#### Review of authorisations

**18.**—(1) SEPA shall periodically review authorisations granted under regulations 8 and 9, and may do so at any time.

(2) SEPA shall periodically review the provisions of Schedule 3 and shall make recommendations, in writing, to Scottish Ministers as to any changes to that Schedule which it considers necessary or appropriate.

#### Variation of authorisation

**19.**—(1) Whether or not as a result of a review under regulation 18(1), SEPA may vary an authorisation granted under regulation 8 or 9.

(2) A variation under paragraph (1) may include removing, adding or amending any condition of an authorisation.

#### Procedure for variation

**20.**—(1) Regulations 12, 13, 14 and 15(1) apply when SEPA is considering variation of an authorisation under regulation 19 as if the variation proposed by SEPA is an application, and the responsible person or operator, as the case may be, is the applicant.

(2) If SEPA decides to vary an authorisation, it shall serve notice on the applicant specifying—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect which shall not be less than 3 months from the date on which the notice was served.

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(7) 1973 c. 65; amended by the Criminal Procedure (Scotland) Act 1975 (c. 4) and the Housing and Planning Act 1986 (c. 63).

(3) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.

### **Request for variation**

**21.—**(1) A responsible person or operator may apply to SEPA for a variation of an authorisation granted under regulation 8 or 9.

(2) The provisions of regulations 12, 13, 14 and 15(1) apply to an application under paragraph (1) as if it is an application.

(3) SEPA must either grant or refuse to grant (in whole or in part) an application under paragraph (1), and if it refuses to grant the application it must give its reasons for such refusal.

(4) Where SEPA grants an application under paragraph (1), it shall serve notice on the applicant specifying—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect, which shall not (unless agreed by the applicant in writing) be less than 3 months from the date on which the notice was served.

(5) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.

### **Transfer of authorisation**

**22.—**(1) A responsible person may, jointly with another person, apply to transfer an authorisation granted under regulation 9 (in whole or in part) to the other person.

(2) The provisions of regulation 12 and 14(1) to (3) apply to an application under paragraph (1) as if it is an application.

(3) SEPA shall not grant an application under paragraph (1) unless it is satisfied that the person to whom the authorisation is to be transferred will secure compliance with the terms, limitations and conditions specified in the authorisation, or relevant part thereof.

(4) SEPA shall determine an application under this regulation within 2 months beginning with the date on which it receives the application, or such longer period as may be agreed with the applicants in writing.

(5) SEPA shall notify the applicants of its determination and, if it refuses the application, give its reasons for doing so.

(6) Where SEPA fails to determine the application within the period specified in paragraph (4), it shall be deemed to have been granted.

### **Conditions of transferred authorisations**

**23.—**(1) Where an application under regulation 22 is granted, or deemed to have been granted, the following provisions of this regulation apply.

(2) In the case of a transfer of the whole of an authorisation SEPA shall send a copy of the amended authorisation specifying—

- (a) the date on which the transfer is to have effect; and
- (b) the responsible person in respect of the authorisation,

to that responsible person.

(3) In the case of transfer of part of an authorisation, SEPA shall—

- (a) issue a new authorisation in respect of the part to be transferred, which specifies—

- (i) the controlled activities being transferred and any conditions applying to them;
  - (ii) the responsible person for that authorisation; and
  - (iii) the date on which the new authorisation is to have effect,
 to the responsible person for that part; and
- (b) issue an amended authorisation in respect of the part not so transferred which specifies—
  - (i) the controlled activities in relation to that part and any conditions applying to them;
  - (ii) the responsible person for that authorisation; and
  - (iii) the date on which the amended authorisation is to have effect,
 to the responsible person for that part.

### **Surrender of authorisation**

**24.—**(1) This regulation applies where an authorisation granted under regulation 8 or 9 is in force and either—

- (a) it is intended to cease the authorised activity; or
  - (b) the authorised activity has ceased.
- (2) Where paragraph (1) applies and the authorisation is under regulation 8, the operator—
  - (a) where possible, shall notify SEPA of the intention to cease the authorised activity and the date on which it will cease as soon as that information is known to the operator; and
  - (b) shall in any event notify SEPA of the cessation of the activity within 7 days of that cessation.
- (3) Where paragraph (1) applies and the authorisation is under regulation 9, the responsible person shall apply to SEPA to surrender the authorisation or part of it.
- (4) The provisions of regulations 12, 13 and 14(1) to (3) apply to an application under paragraph (3) as if it is an application.
- (5) Before determining an application under paragraph (3) SEPA shall—
  - (a) assess the risk to the water environment posed by the cessation of the activity referred to in paragraph (1); and
  - (b) take account of the steps (if any) that have been taken and identify any steps necessary to—
    - (i) avoid any risk of adverse impact on the water environment resulting from the cessation of the authorised activity; and
    - (ii) leave the relevant part of the water environment affected by the authorised activity in a state which will permit compliance with any relevant requirements of the legislation referred to in Part 1 of Schedule 4.

### **Determination of application for surrender**

**25.—**(1) SEPA shall give notice to the applicant of its determination of an application under regulation 24(3) within 2 months beginning with the date on which SEPA receives the application, or within such longer period as it may agree with the applicant in writing.

(2) The provisions of regulation 16(2) apply in respect of the period mentioned in paragraph (1) as they apply in respect of the periods mentioned in regulation 16(1).

(3) Where SEPA grants an application, the notice given under paragraph (1) shall specify the date on which the authorisation ceases to have effect.

(4) In the case of a partial surrender, if SEPA is of the opinion that it is necessary to vary the authorisation to take account of the surrender, it shall send a notice to the applicant specifying—

- (a) variations to the authorisation consequent on the partial surrender; and
- (b) the date on which the authorisation, as varied, takes effect.

(5) If SEPA has failed to determine the application within the period specified in paragraph (1) the application will be deemed to be granted at the end of that period.

### **Suspension and revocation of authorisation**

**26.**—(1) SEPA may at any time suspend or revoke an authorisation (in whole or in part) by serving a notice on the responsible person or operator, as the case may be.

(2) A notice under paragraph (1) shall specify—

- (a) in the case of a partial suspension or partial revocation, the extent to which the authorisation is being revoked or suspended;
- (b) the date on which the suspension or revocation shall take effect, which shall be at least 28 days after the date on which the notice is served; and
- (c) the reasons for the suspension or revocation .

(3) An authorisation shall cease to have effect (in whole or in part) from the date specified in the notice.

## **PART V**

### **Enforcement and other powers**

#### **Powers and duty to monitor, enforce etc.**

**27.**—(1) It shall be the duty of SEPA to monitor compliance with, and to enforce the provisions of these Regulations.

(2) In the discharge of its duties under paragraph (1) in relation to the Northumbria River Basin District<sup>(8)</sup> and the Solway Tweed River Basin District<sup>(9)</sup>, SEPA shall, as necessary, consult and collaborate with the Environment Agency.

(3) SEPA may secure the carrying out, through such persons as it considers appropriate, of such examination and investigation as it considers necessary for the purpose of discharging its duties under these Regulations.

(4) Any person who appears suitable to SEPA may be authorised in writing by it to exercise, in accordance with the terms of that authorisation, the powers specified in Part 1 of Schedule 6 in accordance with the requirements of Parts 2 and 3 of that Schedule.

(5) The powers referred to in paragraph (4) are to be exercised for the purpose of discharging any of SEPA's functions under—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003<sup>(10)</sup>;

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<sup>(8)</sup> The Northumbria River Basin District was identified by virtue of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. [2003/3245](#)).

<sup>(9)</sup> The Solway Tweed River Basin District was identified by virtue of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. [2004/99](#)).

<sup>(10)</sup> S.I. [2003/3245](#).

(c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(11)</sup>; and

(d) these Regulations.

(6) The provisions of Parts 4 and 5 of Schedule 6 apply in relation to the exercise of the powers referred to in paragraph (4).

### **Enforcement notices**

**28.**—(1) This regulation applies where—

- (a) a person has carried out, is carrying out or is likely to carry out a controlled activity; and
- (b) SEPA is of the opinion that the activity—
  - (i) has contravened, is contravening or is likely to contravene an authorisation granted under these Regulations;
  - (ii) has caused, is causing or is likely to cause significant adverse impacts on the water environment or any part of it; or
  - (iii) has caused, is causing or is likely to cause a direct or indirect discharge into groundwater of any of the substances listed in Schedule 2.

(2) SEPA may serve a notice on the responsible person, or the operator, as the case may be, specifying—

- (a) the activity;
- (b) whether or not that activity was, is or is likely to be in contravention of an authorisation under these Regulations;
- (c) the adverse impacts or the likely adverse impacts on the water environment; or
- (d) the direct or indirect, or likely direct or indirect discharge into groundwater; and
- (e) the steps to be taken by the person responsible or the operator which SEPA considers to be necessary or appropriate to prevent, mitigate or remedy the contravention of the authorisation, the adverse impacts on the water environment or the direct or indirect discharge into groundwater.

(3) The steps referred to in paragraph 2(e) may include cessation of a controlled activity for such period as SEPA considers necessary or appropriate.

(4) SEPA shall revoke a notice served under paragraph (2) where—

- (a) the contravention or likely contravention of an authorisation has ceased and is unlikely to recur, and any remedial mitigating or preventive steps required by SEPA have been carried out;
- (b) the adverse impacts or likely adverse impacts on the water environment have ceased and are unlikely to recur and any remedial mitigating or preventive steps required by SEPA have been carried out;
- (c) the direct or indirect, or likely direct or indirect discharge to groundwater has ceased and is unlikely to recur and any remedial mitigating or preventive steps required by SEPA have been carried out.

(5) SEPA may impose such time limits as it considers appropriate in a notice under paragraph (2) and may describe a time limit by reference to the completion of steps or any other requirement specified in that notice.

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<sup>(11)</sup> S.I. 2004/99.

### **Power of SEPA to carry out works**

**29.**—(1) Where SEPA considers that a notice should be served under regulation 28(2), it shall be entitled to take any steps that would be identified in that notice, or secure that those steps are taken, if—

- (a) it considers it necessary to do so forthwith; or
- (b) it appears to SEPA, after reasonable inquiry, that no person can be found on whom to serve that notice.

(2) Where SEPA has—

- (a) carried out, or secured the carrying out of, any investigation to establish whether or not a notice under regulation 28(2) is necessary, and if necessary, on whom it requires to be served; or
- (b) taken steps, or secured that steps were taken under paragraph (1),

it shall be entitled to recover the costs of doing so from the responsible person or operator who has carried out, is carrying out or is likely to carry out the activity in respect of which the notice is served.

### **Enforcement notices – rights of entry, compensation etc.**

**30.**—(1) A notice under regulation 28(2) may require the responsible person or operator to carry out work in relation to land outwith the ownership or control of that person.

(2) Where paragraph (1) applies, any person whose consent is required before that work may be carried out shall grant, or join in granting such rights in relation to any land as will enable the notice to be complied with.

(3) Where paragraph (1) applies, SEPA shall, before serving a notice under regulation 28(2), insofar as it is reasonably practicable, consult such persons as appear to it to be—

- (a) the owner or occupier of land which will be affected by the notice; and
- (b) any person who might be required under paragraph (2) to grant or join in granting any rights,

in respect of the rights which that owner, occupier, or person, may be required to grant.

(4) A notice shall not be regarded as invalid by reason only of a failure to comply with paragraph (3).

(5) A person who grants, or joins in granting, any rights in accordance with paragraph (2) shall be entitled to apply for compensation, in accordance with Schedule 7, of such amount and in such manner as may be determined under that Schedule.

(6) Compensation payable under paragraph (5) shall be paid by the person on whom notice under regulation 28(2) was served or would have been served but for regulation 29(1).

(7) Where no person can be found by whom compensation should be payable or where a person found liable in compensation has failed to make the payment of it, compensation under this regulation shall be payable by SEPA; and SEPA shall be entitled to recover any payment of compensation made by it under this paragraph from any person on whom notice under regulation 28(2) was served or would have been served but for regulation 29(1).

### **Enforcement by the courts**

**31.** If SEPA is of the opinion that proceedings for an offence under regulation 40(1)(j) would afford an ineffectual remedy against a person who has failed to comply with a requirement of any notice under regulation 28, it may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with that notice.

## PART VI

### Information and Register

#### Power of the Scottish Ministers and SEPA to obtain information

**32.**—(1) The Scottish Ministers may require SEPA, by notice served on it, to furnish such information about the discharge of its functions under these Regulations as the Scottish Ministers may require.

(2) SEPA may serve on any person a notice requiring that person to furnish to SEPA, within a period or at times specified in the notice and in a form so specified, any information so specified which SEPA reasonably considers is necessary for the purpose of any function conferred on SEPA by—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003<sup>(12)</sup>;
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(13)</sup>; and
- (d) these Regulations.

(3) The information which a person may be required to furnish under paragraph (2) shall include information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to obtain for the purposes of complying with the information notice.

(4) Nothing in this regulation authorises the Scottish Ministers or SEPA to require disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

#### Public register of information

**33.**—(1) Subject to paragraph (5) and regulation 34, it shall be the duty of SEPA, to maintain a register containing the particulars described in Schedule 8.

(2) Where, by virtue of regulation 34, information of any description is not included in the register maintained by SEPA under this regulation, a statement shall be entered in the register indicating the existence of information of that description.

(3) It shall be the duty of SEPA—

- (a) to secure that the register maintained by it under this regulation is available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(4) The register maintained by SEPA under this regulation may be kept in any form.

(5) Where the Scottish Ministers exercise functions under regulation 51, they shall send any particulars referred to in Schedule 8 which relate to that exercise of functions to SEPA, and SEPA shall enter those particulars in the register.

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<sup>(12)</sup> S.I. 2003/3245.

<sup>(13)</sup> S.I. 2004/99.

### **Confidential information**

**34.**—(1) Information relating to the affairs of any individual or business which is commercially confidential shall only be included in the register if—

- (a) the individual or the person for the time being carrying on the business has given consent to that inclusion; or
- (b) the information requires to be included in the register in pursuance of a direction under regulation 39.

(2) For the purposes of these Regulations, information is only commercially confidential in relation to the affairs of any individual or business if SEPA has determined that putting it on the register would prejudice to an unreasonable degree the commercial interests of that individual or business.

### **Application for determination of commercial confidentiality**

**35.**—(1) Where information is given to SEPA for the purposes of these Regulations, the person giving it may apply to SEPA to have the information excluded from the register on the ground that it is commercially confidential (as regards that person or another person).

(2) The application under paragraph (1) shall include representations indicating why the applicant considers the information commercially confidential, together with such further information in support of the application as the applicant considers appropriate.

(3) The provisions of regulation 14(1) and (2) shall apply to an application under paragraph (1) as they do to an application.

(4) SEPA shall determine whether the information is or is not commercially confidential and shall give notice of its determination to the applicant within 28 days beginning with the date of the application or within such longer period as may be agreed with the applicant in writing.

(5) The provisions of regulation 16(2)(b) shall apply in respect of the period mentioned in paragraph (4) as they apply in respect of the periods mentioned in regulation 16(1).

(6) If SEPA fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraph (4), the information shall be deemed to be commercially confidential.

### **Procedure relating to information which might be confidential**

**36.**—(1) Where it appears to SEPA that any information that has been obtained by it under or by virtue of any provision of these Regulations and is required to be included in the register, might be commercially confidential, SEPA shall—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register; and
- (b) give that person a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
  - (ii) of making representations to SEPA indicating why the person considers the information to be commercially confidential, together with such further information in support of the objection as the person considers appropriate.

(2) The provisions of regulation 14(1) and (2) shall apply to an objection under paragraph (1) as they do to an application.

(3) SEPA shall determine whether the information is or is not commercially confidential and shall give notice of its determination to the person to whom or whose business it relates.

(4) This regulation does not apply where the information is the subject of an application under regulation 35.

### **Review of determination of commercial confidentiality**

**37.**—(1) SEPA shall periodically review its determinations under this Part that information is commercially confidential, and may do so at any time.

(2) Where SEPA is carrying out a review under paragraph (1), it shall—

- (a) give the person to whom or to whose business the determination relates notice that it is reviewing that determination; and
- (b) give that person a reasonable opportunity of making representations regarding the commercial confidentiality of the information, including an indication of why the person may consider that the information remains commercially confidential, together with such further information in support of those representations as the person considers appropriate.

(3) The provisions of regulation 14(1) and (2) shall apply to representations made under paragraph (2) as they do to an application.

(4) SEPA shall determine whether or not the information remains commercially confidential and shall give notice of its determination to that person.

### **Effect of determination**

**38.** Subject to the provisions of regulation 48(1)(b), where SEPA has determined under this Part that information is not commercially confidential, the information shall not be entered in the register until the end of the period of 21 days beginning with the date on which the determination was notified.

### **Directions to SEPA concerning confidential information**

**39.** The Scottish Ministers may give to SEPA a direction as to specified information, or descriptions of information, which the public interest requires to be included in the register, notwithstanding that the information may be commercially confidential.

## **PART VII**

### **Offences**

#### **Offences**

**40.**—(1) It is an offence for a person to—

- (a) contravene regulation 5;
- (b) fail to comply with or contravene a general binding rule;
- (c) fail to comply with or contravene a registration (including any condition imposed);
- (d) fail to comply with or contravene a water use licence (including any condition imposed);
- (e) obstruct an authorised person in the exercise of that person's powers under regulation 27(4) and Schedule 6;
- (f) fail to comply with any requirement imposed in the exercise of that person's powers under regulation 27(4) and Schedule 6;

- (g) fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the exercise of that person's powers or duties under or by virtue of regulation 27(4) and Schedule 6;
  - (h) prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to regulation 27(4) and Schedule 6;
  - (i) pretend to be a person authorised in accordance with regulation 27(4);
  - (j) fail to comply with the requirements of a notice issued under regulation 28(2);
  - (k) fail to comply with the requirements of an information notice under regulation 32(2);
  - (l) make a statement which that person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
    - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
    - (ii) for the purpose of obtaining an authorisation issued under these Regulations to that or any other person, or the variation, transfer or surrender of an authorisation;
  - (m) intentionally make a false entry in any record required to be kept as a condition of an authorisation;
  - (n) with intent to deceive, forge or use a document issued or authorised to be issued under the condition of an authorisation or required for any purpose under a condition of such an authorisation or to make or have in that person's possession a document so closely resembling any such document so as to be likely to deceive; or
  - (o) cause or permit any other person to commit an offence under sub-paragraphs (a) to (n) above.
- (2) A person guilty of an offence under paragraph (1) shall be liable—
- (a) on summary conviction—
    - (i) to a fine not exceeding £40,000 or to imprisonment for a term not exceeding 6 months, or to both; and
    - (ii) in the case of a continuing offence, to a further fine not exceeding £250 for every day during which the offence is continued after conviction;
  - (b) on conviction on indictment—
    - (i) to a fine or to imprisonment for a term not exceeding 5 years, or to both; and
    - (ii) in the case of a continuing offence to a further fine not exceeding £1,000 for every day during which the offence is continued after conviction.

### **Offences by bodies corporate**

- 41.—**(1) Where an offence under these Regulations is committed by—
- (a) a body corporate (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity;
  - (b) a limited liability partnership and is proved to have been committed with the consent or connivance of, or have been attributable to any neglect on the part of, any member of that partnership or person who was purporting to act as such;

(c) a Scottish partnership (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or have been attributable to neglect on the part of, any partner or a person who was purporting to act as such, that person as well as the body corporate, the limited liability partnership or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate (other than the affairs of a limited liability partnership) are managed by its members, paragraph (1) shall apply in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.

### **Offences – acts or default of third person**

42. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings for the offence are taken against the first-mentioned person.

### **Admissibility of evidence**

43.—(1) Where—

- (a) by virtue of a condition of an authorisation, an entry is required to be made in any record as to the observance of any condition of the authorisation; and
- (b) the entry has not been made,

that fact shall be admissible as evidence that that condition has not been observed.

(2) Information provided or obtained pursuant to or by virtue of a condition of an authorisation including information so provided or obtained, or recorded, by means of any apparatus, shall be admissible in evidence in any proceedings, whether against the person subject to the condition, or any other person.

(3) For the purposes of paragraph (2), apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown, or the authorisation otherwise provides.

### **Defence to principal offences**

44. A person shall not be guilty of an offence under regulation 40(1)(a) to (d), (j) or (o) where the contravention is a result of—

- (a) —
  - (i) an accident which could not reasonably have been foreseen; or
  - (ii) natural causes or force majeure which are exceptional and could not reasonably have been foreseen; and
- (b) —
  - (i) all practicable steps are taken to prevent deterioration of the water environment;
  - (ii) all practicable steps are taken as soon as is reasonably practicable to restore the water environment to its condition prior to the contravention; and
  - (iii) particulars of the contravention are furnished to SEPA as soon as practicable after it occurs.

### **Power of court to order offence to be remedied**

#### **45.—(1) Where—**

- (a) a person is convicted of an offence under regulation 40(1)(a) to (d), (j) or (o) in respect of any controlled activity which has had an adverse impact on the water environment; and
- (b) it appears to the court that it is in the power of that person to mitigate or remedy that adverse impact,

the court may, in addition to, or instead of, imposing any punishment, order that person, within such time as may be fixed by the order of the court, to take such steps as may be specified in that order for remedying those matters.

(2) Before making such an order, the court shall have regard to any representations by SEPA as to the steps required to mitigate or remedy the adverse impact.

(3) The time fixed by an order of the court under paragraph (1) may be extended or further extended by a further order of the court on an application made before the end of the time originally fixed or extended under this paragraph, as the case may be.

(4) As long as an order under this regulation is in force, the convicted person shall not be liable under regulation 40(1) as regards the matters in respect of which steps require to be taken in accordance with that order.

## **PART VIII**

### **Appeals**

#### **Appeals to the Scottish Ministers**

#### **46. The following persons, namely:—**

- (a) a person who has been refused the grant of an authorisation in accordance with regulation 15(3) or is deemed to have been refused the grant of an authorisation in accordance with regulation 16(3);
- (b) a person who has been granted a form of authorisation under regulation 15 which is different from the form of authorisation which that person believes ought to have been granted;
- (c) a person who is aggrieved by the terms and conditions attached to that person's authorisation in accordance with regulation 8 or 9;
- (d) a person who has been served with a variation notice under regulation 20(2) or is aggrieved by the conditions attached to that variation notice;
- (e) a person who has been refused the variation of an authorisation on request under regulation 21;
- (f) a person whose application under regulation 22 for SEPA to effect the transfer of an authorisation has been refused; or who is aggrieved by the conditions attached to that person's authorisation to take account of such a transfer;
- (g) a person whose application to surrender an authorisation under regulation 24(3) has been refused or who is aggrieved by the conditions attached to that authorisation in order to take account of the surrender;
- (h) a person whose authorisation has been suspended or revoked (in whole or in part) under regulation 26;

- (i) a person on whom a notice has been served under regulation 28(2), or who is aggrieved by the terms of that notice; and
- (j) where SEPA has determined that information is not commercially confidential under Part VI, the person to whom, or whose business, that information relates,

may appeal against the decision of SEPA to the Scottish Ministers.

### **Determination of Appeals**

**47.** On determining an appeal against a decision of SEPA referred to in regulation 46, the Scottish Ministers may—

- (a) affirm the decision, or any part of it;
- (b) where the decision was a refusal to—
  - (i) grant an authorisation;
  - (ii) grant a form of authorisation; or
  - (iii) vary any condition of an authorisation,
 direct SEPA to grant the authorisation, the form of authorisation or vary the conditions of the authorisation, as the case may be;
- (c) where the decision was as to the conditions attached to an authorisation, quash or vary all or any of the conditions of the authorisation;
- (d) where the decision was a refusal to effect the transfer of, or accept the surrender of, an authorisation, direct SEPA to effect the transfer or accept the surrender, as the case may be;
- (e) where the decision was to serve a notice under regulation 20(2), 26 or 28(2), either quash or affirm the notice, and if they affirm it, they may do so in its original form or with such modifications as they may think fit;
- (f) where the decision was a determination that information is not commercially confidential, either affirm the determination or quash it,

and where they exercise any of the powers in paragraph (b), (c) or (e) the Scottish Ministers may give directions as to the conditions to be attached to the authorisation or the terms of the notice, as the case may be.

### **Effect of notices etc. during consideration of appeal**

**48.—**(1) Where an appeal is against—

- (a) a notice served under regulation 20(2) the notice shall not take effect until the day following the day on which the appeal is finally determined or withdrawn;
- (b) a determination under Part VI that information is not commercially confidential, the information shall not be entered in the register until the day following the day on which the appeal is finally determined or withdrawn.

(2) Where an appeal relates to—

- (a) the conditions attached to an authorisation under regulation 8 or 9, the bringing of the appeal shall not have the effect of suspending the operation of the conditions;
- (b) a notice under regulation 26 or 28(2), the bringing of the appeal shall not have the effect of suspending the operation of the notice.

### **Appeals – miscellaneous**

**49.**—(1) The provisions of regulation 15(1) apply where the Scottish Ministers, in exercising any of the powers in regulation 47, give directions as to the conditions to be attached to an authorisation under regulation 8 or 9 as they would apply to SEPA when determining the conditions of the authorisation.

(2) Schedule 9, which makes provision for procedures for appeals under regulation 46, has effect.

(3) Section 114 of the Environment Act 1995(**14**) (delegation of reference of appeals) shall apply to this Part and to Schedule 9 as it applies to appeals referred to in that section.

## **PART IX**

### **General**

#### **Application to the Crown**

**50.**—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable under regulation 40 and no proceedings may be taken against the Crown under regulation 40 but the Court of Session may, on an application by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations shall apply to persons in the public service of the Crown as they apply to other persons.

#### **Application to SEPA**

**51.**—(1) In the application of these Regulations to SEPA where it is carrying on, or intends to carry on, a controlled activity, and subject to paragraph (2), any functions conferred on SEPA by these Regulations shall instead be carried out by the Scottish Ministers.

(2) Paragraph (1) does not apply to regulations 12(a), 17, 18(2), 27 to 31, 39, 46 to 49 and 52.

#### **Guidance to SEPA**

**52.** The Scottish Ministers may issue guidance to SEPA with respect to the carrying out of its functions under these Regulations, and SEPA shall have regard to any guidance issued by the Scottish Ministers under this regulation.

#### **Notices**

**53.**—(1) Any notice served or given under these Regulations by the Scottish Ministers or SEPA—

(a) shall be in writing; and

(b) may be withdrawn, varied or revoked by a further notice in writing (whether before or after the notice has come into effect).

(2) Any such notice may be served on or given to a person by leaving it at that person's proper address or by sending it by post to that person at that address.

(3) Any such notice may—

(a) in the case of a body corporate, be served on the secretary or clerk of that body;

- (b) in the case of a partnership, be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purpose of this regulation and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999<sup>(15)</sup> in its application to this regulation, the proper address of any person on or to whom any such notice is to be served or given shall be the last known address of that person, except that—

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a partnership or person having the control or management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside of the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than the proper address of that person within the meaning of paragraph (4) as the one at which that person or someone on behalf of that person will accept notices of the same description as that notice, that address shall be treated for the purposes of this regulation and the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 as the proper address of that person.

#### **Transitional, savings and supplemental provisions**

**54.** The transitional, savings and supplemental provisions contained in Schedule 10 to these Regulations shall have effect.

St Andrew's House, Edinburgh  
7th June 2005

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 2(1)

### Indicative list of the main pollutants

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment.
2. Organophosphorous compounds.
3. Organotin compounds.
4. Substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment.
5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances.
6. Cyanides.
7. Metals and their compounds.
8. Arsenic and its compounds.
9. Biocides and plant protection products.
10. Materials in suspension.
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates).
12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as biochemical oxygen demand (BOD), and chemical oxygen demand (COD) etc.).

## SCHEDULE 2

Regulations 4(1)(b) and

### Substances referred to in regulations 4(1)(b) and 28(1)(b)(iii)

1. Subject to paragraph 2, a substance is listed in this Schedule if it belongs to one of the following families or groups of substances—
  - (a) organohalogen compounds and substances which may form such compounds in the aquatic environment;
  - (b) organophosphorus compounds;
  - (c) organotin compounds;
  - (d) substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment;
  - (e) mercury and its compounds;
  - (f) cadmium and its compounds;
  - (g) mineral oils and hydrocarbons;
  - (h) cyanides.
2. A substance is not listed in this Schedule if it has been determined by SEPA to be inappropriate to be so listed on the basis of a low risk of toxicity, persistence and bioaccumulation.
3. SEPA shall publish any determination it makes under paragraph 2 in such manner as it considers appropriate to bring it to the notice of persons affected by, likely to be affected by, or

interested in the determination and shall make copies of the determination available to the public free of charge.

## SCHEDULE 3

Regulation 7

### General Binding Rules

## PART 1

| <i>Column 1</i><br><i>Activity</i>  | <i>Column 2</i><br><i>Rules</i>  |
|---|--|
| <p><b>1.</b> The operation of any weir that—</p> <ul style="list-style-type: none"> <li>(a) is not associated with an abstraction;</li> <li>(b) is not capable of being operated to control the water level upstream of the weir;</li> <li>(c) does not result in the creation of a height differential between the upstream and downstream water surfaces of more than one metre; and</li> <li>(d) was constructed before 1st April 2006.</li> </ul> <p><b>2.</b> The abstraction of less than 10 m<sup>3</sup> in any one day.</p> <p><b>3.</b> The construction or extension of any well, borehole or other works by which water may be abstracted, or the installation or modification of any machinery or apparatus by which additional quantities of water may be abstracted, where such works are—</p> <ul style="list-style-type: none"> <li>(a) not intended for the purpose of abstraction; or</li> </ul> | <ul style="list-style-type: none"> <li>(a) (a) the weir shall not impede the free passage of salmon and sea trout during periods within which, in the absence of the weir, the flow of the river would be at a level expected to enable migration.</li> <li>(a) (a) there shall be a means of demonstrating that the abstraction is less than 10 m<sup>3</sup> in any one day, such as a means of measuring the rate of the abstraction or a means of demonstrating that the maximum volume that could be abstracted cannot exceed 10 m<sup>3</sup> in any one day; and</li> <li>(b) water leakage shall be kept to a minimum by ensuring all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a state of good repair.</li> <li>(a) (a) subject to paragraphs (b) and (c), the construction of the well or borehole shall be such as to avoid the entry of water of a different chemical composition into the body of groundwater;</li> <li>(b) drilling fluids may be introduced into the well or borehole if necessary to facilitate the drilling of the well or borehole provided this does</li> </ul> |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
|--|---|
| <ul style="list-style-type: none"> <li>(b) intended for the abstraction of less than 10 m<sup>3</sup> in any one day; or</li> <li>(c) intended for the abstraction of less than 150 m<sup>3</sup> in any period of one year, and the purpose of the abstraction is either– <ul style="list-style-type: none"> <li>(i) to test for the yield of the borehole or well or the hydraulic properties of the aquifer; or</li> <li>(ii) to sample the water quality.</li> </ul> </li> </ul> <p>4. The abstraction from a borehole, and any subsequent discharge of the abstracted water, where the total volume of water abstracted is less than 150 m<sup>3</sup> in any period of one year and the purpose of the abstraction is either–</p> <ul style="list-style-type: none"> <li>(a) to test the yield of the borehole or well or the hydraulic properties of the aquifer; or</li> <li>(b) to sample the water quality.</li> </ul> <p>5. The dredging of a river, burn or ditch that–</p> <ul style="list-style-type: none"> <li>(a) has an average width of less than one metre along the stretch to be worked, as measured at the bottom of the channel; and</li> <li>(b) has been artificially straightened or canalised along the length which is to be worked.</li> </ul> | <ul style="list-style-type: none"> <li>not result in pollution of the water environment;</li> <li>(c) potable water may be introduced into the well or borehole to test the hydraulic properties of the aquifer; and</li> <li>(d) when the well or borehole is not being used for abstraction, it shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</li> </ul> <ul style="list-style-type: none"> <li>(a) (a) the abstraction shall not cause the entry of water of a different chemical composition into the body of groundwater; and</li> <li>(b) when the borehole is not being used for abstraction, it shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</li> </ul> <ul style="list-style-type: none"> <li>(a) (a) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</li> <li>(b) any vegetation removed shall not be disposed of into the channel;</li> <li>(c) the bed of the channel adjacent to each bank of the river or burn shall be left undisturbed;</li> <li>(d) all reasonable steps shall be taken to prevent the transport of sediments or other matter disturbed by the works into waters beyond the worked stretch;</li> <li>(e) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the emergence of the juvenile fish;</li> <li>(f) all reasonable steps shall be taken to avoid increased erosion of the bed or banks of the river, burn or ditch as a result of the works;</li> </ul> |

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

| <i>Column 1</i><br><i>Activity</i>  | <i>Column 2</i><br><i>Rules</i>  |
|---|--|
|   | (g) the works shall not result in the heightening of either bank.  |
| (i) The construction and maintenance of a minor bridge over a river, burn or ditch; or  | (a) (a) vegetation on any bank of the river, burn or ditch shall be removed or modified only to the extent necessary to carry out the works;   |
| (ii) the construction, maintenance or removal of a temporary bridge over any river, burn or ditch that has a channel width of less than 5 metres. | (b) any vegetation removed shall not be disposed of into the channel;  |
|   | (c) the works shall not prevent the free passage of migratory fish;  |
|   | (d) the works shall not result in the narrowing of the channel width nor the heightening of either bank;   |
|   | (e) if necessary, a temporary culvert may be installed to facilitate the works. The culvert shall not extend more than 10 metres along the length of the river, burn or ditch and shall be removed on completion of the works;     |
|   | (f) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the emergence of the juvenile fish;                       |
|   | (g) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of the bed or banks of the river, burn or ditch;   |
|   | (h) as far as reasonably practicable, within 12 months of the commencement of the works, the bed and banks of the river, burn or ditch shall be reinstated to at least their condition prior to the commencement of the works; and |
|   | (i) for temporary bridges, as far as reasonably practicable, and within 12 months of the removal of the bridge, the bed and banks shall be reinstated at least to their condition prior to the commencement of the works.          |
| 7. The laying of a pipeline or cable by boring beneath the bed and banks of a river, burn or ditch.   | (a) (a) the bed and banks shall not be altered as a result of the works other than in accordance with paragraphs (b) and (d);  |

| <i>Column 1</i>  | <i>Column 2</i>  |
|--|--|
| <i>Activity</i>  | <i>Rules</i>   |
|  | <ul style="list-style-type: none"> <li>(b) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</li> <li>(c) any vegetation removed shall not be disposed of into the channel; and</li> <li>(d) as far as reasonably practicable, within 12 months of the commencement of the works, the banks of the river, burn or ditch shall be reinstated at least to their condition prior to the commencement of the works.</li> </ul>  |
| <b>8.</b> Works to control the erosion of a bank of a river, burn or ditch by revetment. | <ul style="list-style-type: none"> <li>(a) (a) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of either bank of the river, burn or ditch;</li> <li>(b) the works shall not result in the destabilisation of the bed of the river, burn or ditch upstream or downstream of the works;</li> <li>(c) vegetation on either bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</li> <li>(d) any vegetation removed shall not be disposed of into the channel;</li> <li>(e) revetments shall be constructed from one or more of the following: vegetation; geotextiles; wood other than wood treated with preservatives; or non-grouted stone rip-rap;</li> <li>(f) the length of any revetment shall be no more than 10 metres or one channel width, whichever is greater;</li> <li>(g) where wood or stone rip-rap is used for a revetment, the wood or rip-rap shall be placed at the toe of the bank;</li> <li>(h) except for the purpose of repairing an existing revetment no bank protection works shall be undertaken within 5 channel widths or 50 metres (whichever is the greater) of any</li> </ul> |

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

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>  |
|--|--|
|  | <p>existing bank protection works on either bank of the river, burn or ditch;</p> <p>(i) the works shall not result in the heightening of either bank;</p> <p>(j) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the emergence of the juvenile fish; and</p> <p>(k) the revetments shall be maintained in the state of repair required to avoid increased erosion of the banks or destabilisation of the bed.</p>  |
| <p>9. Operating any vehicle, plant or equipment for the purposes of undertaking activity 5, 6, 7 or 8.</p> | <p>(a) (a) any vehicles, plant or other equipment shall only operate in water where it is impracticable for them to operate on dry land;</p> <p>(b) the refuelling of vehicles, plant and other equipment shall be undertaken at least 10 metres from any surface water;</p> <p>(c) any static plant or equipment used within 10 metres of surface water shall be positioned on a suitably sized and maintained impervious drip tray with a capacity equal to 110 % of the capacity of the fuel tank which is supplying the tank or equipment;</p> <p>(d) any vehicle, plant or other equipment used in or near surface water shall not leak any oil;</p> <p>(e) the washing of vehicles, plant or other equipment shall be undertaken at least 10 metres away from any surface water and water from such washing shall not enter any surface water;</p> <p>(f) vehicles, plant or equipment shall not be operated in a river, burn or ditch during periods in which fish are likely to be spawning in the river, burn or ditch nor during the period between any such spawning and the subsequent emergence of the juvenile fish.</p> |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
|--|---|
| <b>10.</b> Discharge of water run-off from a surface water drainage system to the water environment from construction sites, buildings, roads, yards or any other built developments | <p>(a) (a) the discharge shall not result in pollution of the water environment;</p> <p>(b) the discharge shall not contain any trade effluent or sewage, and shall not result in visible discolouration, iridescence, foaming or growth of sewage fungus in the water environment;</p> <p>(c) the discharge shall not result in the destabilisation of the banks or bed of the receiving surface water;</p> <p>(d) the discharge shall not contain any water run-off from any buildings, roads, yards or other built developments, the construction of which is completed after 1st April 2006, or from construction sites operated after 1st April 2006, unless—</p> <p style="padding-left: 40px;">(i) those developments or construction sites are drained by a SUD system or equivalent equipped to avoid pollution of the water environment;</p> <p style="padding-left: 40px;">(ii) the run-off is from a development that is a single dwelling and its curtilage; or</p> <p style="padding-left: 40px;">(iii) the discharge is to coastal water;</p> <p>(e) the discharge shall not contain any water run-off from—</p> <p style="padding-left: 40px;">(i) fuel delivery areas and areas where vehicles, plant and equipment are refuelled;</p> <p style="padding-left: 40px;">(ii) vehicle loading or unloading bays where potentially polluting matter is handled; or</p> <p style="padding-left: 40px;">(iii) oil and chemical storage, handling and delivery areas; constructed after 1st April 2006;</p> <p>(f) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, shall be maintained in a good state of repair; and</p> |

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

| <i>Column 1</i><br><i>Activity</i>                         | <i>Column 2</i><br><i>Rules</i>   |
|--|---|
|  | (g) all reasonable steps shall be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.   |
| <b>11.</b> Discharge into a surface water drainage system. | <p>(a) (a) oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants shall not be disposed of into a surface water drainage system or onto any surface that drains into a surface water drainage system;</p> <p>(b) any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment shall not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system; and</p> <p>(c) sewage and trade effluent shall not be discharged into any surface water drainage system.</p> |

## PART 2

In this Schedule—

“channel width” means the straight-line distance that is between opposite bank-tops of a river, burn or ditch and which spans the bed of a river, burn or ditch, including any exposed bars and vegetated islands;

“minor bridge” means a bridge having no part of its structure within the channel of a river, burn or ditch and constructed for the purpose of supporting a footpath, cycle route or single-track road;

“oil” means any kind of oil and includes fuel oil, waste oil and hydraulic oil;

“revetment” means a modification to a bank of a river, burn or ditch that increases the resistance of the bank to lateral erosion;

“rip-rap” means irregular shaped stones placed along a bank of a river, burn or ditch for the purpose of increasing the resistance of the bank to erosion;

“sewage” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968<sup>(16)</sup>;

“surface water drainage system” means a system, such as a SUD system, that is used to collect and drain surface water run-off from one or more premises and transport it to, and discharge it into, the water environment, and may include, among other things, any surface water sewers

<sup>(16)</sup> 1968 c. 47.

and associated inlets, outfalls, gullies, manholes, oil interceptors, silt traps, and attenuation, settlement and treatment facilities;

“temporary bridge” means any bridge which will be removed within a period of 12 months beginning with the date on which its construction commences; and

“trade effluent” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968.

## SCHEDULE 4

Regulation 15(1)

### PART 1

The Groundwater Directive

The Directive

The Act

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(17).

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(18).

These Regulations

### PART 2

Part 2 of the Nature Conservation Act 2004(19)

The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1990(20).

The Bathing Waters (Classification) (Scotland) Regulations 1991(21).

The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1992(22).

The Conservation (Natural Habitats &c) Regulations 1994(23).

The Urban Waste Water Treatment (Scotland) Regulations 1994(24).

The Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997(25).

The Surface Waters (Fishlife) (Classification) (Scotland) Regulations 1997(26).

The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1998(27).

The Surface Waters (Dangerous Substances) (Classification) (Scotland) (No. 2) Regulations 1998(28).

The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002(29).

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(17) S.I. 2003/3245.

(18) S.I. 2004/99.

(19) 2004 asp 6.

(20) S.I. 1990/126, amended by S.I. 1998/1344.

(21) S.I. 1991/1609, amended by S.I. 1996/973.

(22) S.I. 1992/574.

(23) S.I. 1994/2716, amended by 2004 asp 6; S.I. 1996/973; S.S.I. 2000/323 and 2004/475.

(24) S.I. 1994/2842, amended by S.I. 1996/973; and S.S.I. 2003/273.

(25) S.I. 1997/2407.

(26) S.I. 1997/2471, amended by S.S.I. 2003/85.

(27) S.I. 1998/250.

(28) S.I. 1998/1344.

(29) S.S.I. 2002/276.

The Designation of Nitrate Vulnerable Zones (Scotland) (No. 2) Regulations 2002<sup>(30)</sup>.

The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003<sup>(31)</sup>.

The Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003<sup>(32)</sup>.

## SCHEDULE 5

Regulation 12(a)

### Charging Scheme

1. In the case of an authorisation under these Regulations, SEPA may require the payment to it of such charges as it may from time to time provide for in a charging scheme made in accordance with this Schedule.

2. Charges may be made in respect of:

- (a) the grant or imposition of an authorisation under regulations 8, 9 or 11
- (b) the variation of any authorisation under regulations 20 or 21;
- (c) the subsistence of an authorisation;
- (d) the transfer of an authorisation to another person, under regulation 22;
- (e) the surrender of an authorisation under regulation 24;
- (f) the determination that information is confidential under regulation 35.

3. A charging scheme may impose:

- (a) a single charge in respect of the whole of any authorisation;
- (b) separate charges in respect of different parts of any such authorisation;
- (c) both such a single charge and such separate charges.

4. A charging scheme may make such provision for charges as is reasonable or necessary to meet the requirements of paragraph 6, and may in particular provide for different charges to be payable according to:

- (a) the description of the authorisation in question;
- (b) the controlled activity in question;
- (c) the scale on which the controlled activity is carried on;
- (d) the description or amount of any substance to which the controlled activity in question relates;
- (e) the number of different controlled activities carried on by the same person.

5. A charging scheme:

- (a) shall specify, in relation to any charge prescribed by the scheme, the description of the person who is liable to pay the charge;
- (b) may provide that it shall be a condition of an authorisation that any charge prescribed is paid in accordance with the scheme;
- (c) may, where appropriate, provide incentives to secure efficient and sustainable water use.

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<sup>(30)</sup> S.S.I. 2002/546.

<sup>(31)</sup> S.S.I. 2003/51, amended by S.S.I. 2003/169.

<sup>(32)</sup> S.S.I. 2003/531.

6. In making a charging scheme SEPA shall secure that the amounts recovered by way of charges prescribed by the charging scheme are, together with any grants paid to SEPA under section 47 of the Environment Act 1995<sup>(33)</sup> in respect of the functions under—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District Regulations 2003<sup>(34)</sup>);
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(35)</sup>; and
- (d) these Regulations,

the amounts which, taking one year with another need to be recovered by SEPA to meet the costs and expenses which it incurs in carrying out, or having others carry out, those functions.

7. Without prejudice to paragraph 5(b), if it appears to SEPA that any charges due and payable to it in respect of an authorisation have not been paid, it may suspend or revoke the authorisation (in whole or in part).

8. A charging scheme may:

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
- (b) provide for the times at which and the manner in which, the charges prescribed by the scheme are to be paid;
- (c) revoke or amend any previous charging scheme;
- (d) contain incidental, consequential or transitional provision for the purposes of the scheme.

9. SEPA shall not make a charging scheme unless the provisions of the scheme have been approved by the Scottish Ministers.

10. Before submitting a proposed charging scheme to the Scottish Ministers for their approval under paragraph 9, SEPA shall, in such manner as it considers appropriate for bringing it to the attention of persons affected or likely to be affected by, or having an interest in, the scheme, publish a notice—

- (a) setting out its proposals; and
- (b) specifying the period within which representations or objections with respect to its proposals may be made to the Scottish Ministers.

11. Where any proposed charging scheme has been submitted to the Scottish Ministers for approval under paragraph 9, the Scottish Ministers shall, in determining whether or not to approve the scheme or to approve it subject to modifications—

- (a) consider any representations or objections duly made to them and not withdrawn; and
- (b) have regard to the matters specified in this Schedule.

12. It shall be the duty of SEPA to take such steps as it considers appropriate for bringing the provisions of the charging scheme made by it which is for the time being in force to the attention of persons affected or likely to be affected by, or having an interest in, them.

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<sup>(33)</sup> 1995 c. 25; amended by the Scotland (Consequential Modifications No. 2) Order 1999 (S.I. 1999/1820).

<sup>(34)</sup> S.I. 2003/3245.

<sup>(35)</sup> S.I. 2004/99.

## SCHEDULE 6

Regulation 27(4)

## PART 1

## Powers

1. To enter at any reasonable time (or, in an emergency, at any time) any premises which that person has reason to believe it is necessary to enter.

2. On entering any premises by virtue of paragraph 1, to take—

- (a) any other person duly authorised by SEPA and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of that person's duty, a constable; and
- (b) any equipment or materials required for any purpose for which the power of entry is being exercised.

3. To make such examination and investigation as may in the circumstances be necessary.

4. As regards any premises which that person has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph 3.

5. To take such measurements and photographs and make such recordings as that person considers necessary for the purpose of any examination or investigation under paragraph 3.

6. To obtain and to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which that person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises.

7. To monitor—

- (a) the water environment or any part of it; or
- (b) the carrying on of controlled activities.

8. To take steps for the measurement and recording of precipitation.

9. To install and maintain gauges, or other apparatus and works connected therewith, for any of the purposes mentioned in paragraphs 7 and 8.

10. To take such steps as may be necessary in order to obtain any information required for any of the purposes mentioned in paragraphs 7 or 8.

11. In the case of any article or substance found in or on any premises which that person has power to enter, being an article or substance which appears to that person to have, or be likely to have, a significant adverse impact on the water environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary).

12. In the case of any such article or substance as is mentioned in paragraph 11, to take possession of it and detain it for so long as is necessary for all or any of the following purposes namely:

- (a) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which that person has power to do under that paragraph;
- (b) to ensure that it is not tampered with before examination of it is completed;
- (c) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to a variation notice, revocation or suspension notice or enforcement notice under these Regulations.

**13.—**(1) Subject to sub paragraph (2), to require any person whom he has reasonable cause to believe has any information relevant to any examination or investigation under paragraph 3 to answer such questions as the authorised person thinks fit to ask.

(2) The person referred to in sub paragraph (1) may only be required to answer such questions in the absence of persons other than—

- (a) a person nominated by that person to be present; and
- (b) any person whom the authorised person may allow to be present.

**14.** To require the production of, or where the information is recorded electronically, the furnishing of extracts from, any records which are—

- (a) required to be kept under these Regulations ; or
- (b) necessary for that person to see for the purposes of an examination or investigation under paragraph 3,

and to inspect and take copies of, or of any entry in, the records.

**15.** To require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred by this regulation.

**16.** To carry out borings or other works on any premises and to install, keep or maintain monitoring or other apparatus there.

## PART 2

### Procedures etc.

**17.** Any person authorised by SEPA under regulation 27(4) shall produce evidence of that person's authorisation before that person exercises any powers conferred by that authorisation.

**18.** Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this paragraph shall only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
- (b) either—
  - (i) with the consent of a person who is in occupation of those premises; or
  - (ii) under the authority of a warrant by virtue of Part 3 to this Schedule.

**19.** Except in an emergency, where an authorised person proposes to enter any premises and—

- (a) entry has been refused and that person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) that person apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this regulation shall only be effected under the authority of a warrant issued in accordance with Part 3 of this Schedule.

**20.** Where an authorised person proposes to exercise the power conferred by paragraph 11 in the case of an article or substance found on any premises, that person shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

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

**21.** Before exercising the power conferred by paragraph 11 in the case of any article or substance, an authorised person shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
- (b) such other persons,

as appear to that authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which that person proposes to do or cause to be done under the power.

**22.** No answer given by a person in pursuance of a requirement imposed under paragraph 13 shall be admissible in evidence against that person in any criminal proceedings.

**23.** Nothing in this schedule shall be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

**24.** A person who enters any premises in the exercise of any power conferred by these Regulations must leave the premises as effectually secured against unauthorised entry as that person found them.

## PART 3

### Issue of warrants

**25.** If a sheriff or justice of the peace is satisfied that—

- (a) there are reasonable grounds for the exercise in relation to any premises of a power under Part 1 of this Schedule; and
- (b) one or more of the conditions specified in paragraph 26 is fulfilled in relation to those premises,

the sheriff or justice of the peace may by warrant authorise SEPA to designate a person to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

**26.** The conditions mentioned in paragraph 25 are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises, and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

**27.** In a case where paragraph 25 applies, a justice of the peace or sheriff shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless that person is also satisfied that the notice required by paragraph 18 has been given and that the period of that notice has expired.

**28.** Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

## PART 4

### Evidence

**29.** In any legal proceedings it shall be presumed until the contrary is shown, that any sample—

- (a) taken by virtue of the powers under this Schedule at a gauge, measuring station or other place provided in compliance with a condition imposed in an authorisation, is a sample, taken in accordance with those powers, of what was passing to the water environment at the place and the time recorded;
- (b) taken in exercise of the powers under this Schedule in circumstances that an authorised person has agreed with the operator or responsible person the time when, and the points at which, samples are to be taken, is a sample taken under that agreement and in accordance with those powers, of what was passing to the water environment at the place and time recorded.

**30.** Subject to paragraph 22, information obtained in consequence of the exercise of a power under this Schedule, with or without the consent of any person, shall be admissible in evidence against that or any other person.

**31.** Without prejudice to the generality of paragraph 30, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a power under this Schedule with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

## PART 5

### Compensation

**32.—(1)** SEPA must compensate any person who has sustained loss or damage by reason of—

- (a) the exercise by an authorised person of the powers in paragraphs 1, 2 or 16; or
- (b) the failure of an authorised person to perform the duty imposed by paragraph 24,

unless the damage is attributable to the fault of the person who sustained it.

(2) SEPA must compensate any person for damage or destruction of an article or substance in exercise of powers under paragraph 11 where that article or substance was found not to have a significant adverse impact on the water environment.

(3) Any dispute as to a person's entitlement to compensation under paragraph (1) or (2), or as to the amount of such compensation, is to be determined by a single arbiter appointed by agreement between SEPA and the person claiming damage, or in default of agreement, by the President of the Lands Tribunal for Scotland.

(4) An authorised person shall not be liable in any civil or criminal proceedings for anything done in purported exercise of any of the powers conferred on that person in accordance with regulation 27(4) if the court is satisfied that it was done in good faith and that there were reasonable grounds for doing it.

## SCHEDULE 7

Regulation 30(5)

## Compensation for Grant of Rights

**Interpretation****1. In this Schedule—**

“the 1963 Act” means the Land Compensation (Scotland) Act 1963<sup>(36)</sup>;

“grantor” means a person who has granted or joined in granting any rights pursuant to regulation 30; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to regulation 30.

**Period for making an application**

**2.** An application for compensation shall be made to the person referred to in regulation 30(6) or, where regulation 29(1)(b) applies and no person has been found, to SEPA, within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates:—

- (a) 12 months after the date of the grant of those rights;
- (b) where there is an appeal against the works notice which imposed the requirements in relation to which the rights in question were granted, 12 months after the date of the final determination or abandonment of the appeal; or
- (c) 6 months after the date on which the rights were first exercised.

**Form of application**

**3.—(1)** An application for compensation shall be made in writing and delivered or sent by pre paid post to the last known address for correspondence of the person liable.

(2) The application shall contain, or be accompanied by—

- (a) a description of the grant of rights in respect of which the grantor is applying for compensation, and of any relevant plans;
- (b) a description of the grantor’s relevant interest in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4, indicating how the amount applied for under each sub-paragraph has been calculated.

**Loss and damage for which compensation payable**

**4.** Compensation shall be payable under this Schedule for loss and damage of the following descriptions:—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;

(36) 1963 c. 51; amended by the New Towns Act 1966 (c. 44); the Town and Country Planning (Scotland) Act 1969 (c. 30); the Tribunals and Enquiries Act 1971 (c. 62); the Town and Country Planning (Scotland) Act 1972 (c. 52); the Statute Law (Repeals) Act 1974 (c. 22); the Interpretation Act 1978 (c. 30); the Local Government, Planning and Land Act 1980 (c. 65); the Housing (Scotland) Act 1987 (c. 26); the Statute Law (Repeals) Act 1989 (c. 43); the Planning and Compensation Act 1991 (c. 34); the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11); and the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5).

- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the rights or the exercise of them;
  - (ii) does not consist of depreciation in the value of that interest; and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947<sup>(37)</sup> in pursuance of a notice to treat served on the date on which the rights were granted;
- (c) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is attributable to the grant of the rights or the exercise of them; and
- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the rights and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal under paragraph 6).

#### **Basis on which compensation assessed**

5.—(1) The rules set out in section 12 of the 1963 Act (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of paragraph 4 as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which compensation is to be assessed is subject to a standard security within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970<sup>(38)</sup>—

- (a) the compensation shall be assessed as if the interest were not subject to that security;
- (b) no compensation shall be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security); and
- (c) any compensation which is payable in respect of the interest which is subject to the security shall be paid (subject to the maximum sum due thereunder) to the creditor in that security or, if there is more than one creditor, to the first ranking creditor and shall, in either case, be applied by that person as if it were proceeds of sale.

#### **Payment of compensation and determination of disputes**

6.—(1) Amounts of compensation determined under this Schedule shall be payable—

- (a) where the person to whom the rights were granted and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) where the person to whom the rights were granted and the grantor or such a creditor agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; or

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<sup>(37)</sup> 1947 c. 42; as amended by the Statute Law Revision Act 1950 (c. 6); the Statute Law Revision Act 1953 (c. 5); the Tribunals and Inquiries Act 1958 (c. 66); the War Damage Act 1964 (c. 25); the Land Compensation (Scotland) Act 1973 (c. 56); the Criminal Procedure (Scotland) Act 1975 (c. 21); the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23); the Gas Act 1986 (c. 44); the Electricity Act 1989 (c. 29); the National Health Service and Community Care Act 1990 (c. 19); the Coal Industry Act 1994 (c. 21); the Postal Services Act 2000 (c. 26); the Land Reform (Scotland) Act 2003 (asp 2) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

<sup>(38)</sup> 1970 c. 35.

- (c) in any other case, subject to any direction of the Lands Tribunal for Scotland as soon as reasonably practicable after the amount of the compensation has been finally determined.
- (2) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal for Scotland.
- (3) In relation to the determination of any such questions, sections 9 and 11 of the 1963 Act (procedures on reference to the Lands Tribunal and expenses) shall apply as if—
  - (a) the reference in section 9(1) of the 1963 Act to section 8 were a reference to sub paragraph (1) above; and
  - (b) references in section 11 of the 1963 Act to the acquiring authority were references to the person to whom the rights were granted.

## SCHEDULE 8

Regulation 33

### Register

1. The register maintained by SEPA under regulation 33 shall contain all particulars of:
  - (a) any application made to SEPA for an authorisation;
  - (b) any notice to the applicant by SEPA under regulation 20 or 26;
  - (c) any advertisement published pursuant to regulation 13 and any representations made by any person in response to such an advertisement, other than representations which the person who made them requested should not be placed in the register;
  - (d) in a case where any such representations are omitted from the register at the request of the person who made them, a statement by SEPA that representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations in question);
  - (e) any authorisation granted, or deemed to be granted, under these Regulations;
  - (f) any authorisation imposed by SEPA;
  - (g) any application made to SEPA for the variation, transfer or surrender of an authorisation;
  - (h) any variation, transfer and surrender of any authorisation granted by SEPA;
  - (i) any suspension or revocation of an authorisation granted by SEPA;
  - (j) any notice issued by SEPA withdrawing or modifying a variation notice, a notice of surrender or a notice of suspension or revocation .
  - (k) any enforcement notice, issued by SEPA;
  - (l) any notice issued by SEPA withdrawing or modifying any enforcement notice;
  - (m) any notice of appeal against a decision by SEPA or a notice served by it and of the documents relating to the appeal mentioned in paragraph 2(a), (d) and (e) of Schedule 9;
  - (n) any representations made by any person in response to a notice given under paragraph 6 of Schedule 9, except where the person making the representation has requested that the representation be omitted from the register;
  - (o) where paragraph (n) applies a statement that representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations);
  - (p) any written notification of the determination by the Scottish Ministers of an appeal and any report accompanying any written notification;

- (q) any monitoring information relating to the carrying on, or the causing or permitting of the carrying on, of a controlled activity under an authorisation granted by SEPA which has been obtained by it as a result of its own monitoring or furnished to it in writing by virtue of a condition of the authorisation or under regulation 32(2);
  - (r) in a case where any monitoring information is omitted from the register by virtue of regulation 34, a statement by SEPA, based on the monitoring information from time to time obtained by or furnished to it, indicating whether or not there has been compliance with any relevant condition of the authorisation;
  - (s) any other information furnished in compliance with a condition of the authorisation, a variation notice, enforcement notice, suspension notice or works notice, or by virtue of regulation 32(2);
  - (t) any direction given to SEPA under any provision of these Regulations; and
  - (u) convictions for offences under these Regulations.
2. Where an application is withdrawn by the applicant at any time before it is determined, all particulars relating to that application which are already in the register shall be removed from the register not less than two months and not more than three months after the date of withdrawal of the application, and no further particulars relating to that application shall be entered in the register.
3. Nothing in paragraph 1 shall require SEPA to keep in the register maintained by it—
- (a) monitoring information relating to a particular controlled activity 6 years after that information was entered in the register; or
  - (b) information relating to a controlled activity which has been superseded by new information relating to that controlled activity 6 years after that new information was entered in the register.
4. Paragraph 3(a) shall not apply to any aggregated monitoring data relating to specific impacts or classes of impacts on the water environment from controlled activities generally or from any class of controlled activities.

## SCHEDULE 9

Regulation 49

### Procedures in connection with appeals to the Scottish Ministers

1. A person who wishes to appeal to the Scottish Ministers under regulation 46 shall give to the Scottish Ministers written notice of the appeal together with the documents specified in paragraph 2 and shall at the same time send to SEPA a copy of that notice together with copies of the documents specified in paragraph 2(a) and (f).
2. The documents mentioned in paragraph 1 are—
- (a) a statement of the grounds of appeal;
  - (b) a copy of any relevant application;
  - (c) a copy of any relevant authorisation;
  - (d) a copy of any relevant correspondence between the appellant and SEPA;
  - (e) a copy of any decision or notice which is the subject matter of the appeal; and
  - (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.
3. An appellant may withdraw an appeal by notifying the Scottish Ministers in writing, and shall send a copy of that notification to SEPA.

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

4. Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given—
  - (a) in the case of an appeal under regulation 46(a), (b) or (c), before the expiry of the period of three months beginning with the date of the decision or deemed decision which is the subject matter of the appeal;
  - (b) in the case of an appeal under regulation 46(h), before the date on which the revocation takes effect;
  - (c) in the case of an appeal under regulation 46(d), (e), (f), or (g), before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;
  - (d) in the case of an appeal under regulation 46 (i) or (j), before the expiry of 21 days beginning with the date of the notice which is the subject matter of the appeal.
5. The Scottish Ministers may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in paragraph 4(a), (c), or (d).
6. Subject to paragraph 9, SEPA shall, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to—
  - (a) any person who made representations to SEPA with respect to the subject matter of the appeal; and
  - (b) any person who appears to SEPA to be affected or likely to be affected by, or have an interest in, the subject matter of the appeal.
7. A notice under paragraph 6 shall—
  - (a) state that the notice of appeal has been given;
  - (b) state the name of the appellant and the address of the site where the controlled activity is being carried on;
  - (c) describe the application or authorisation to which the appeal relates; and
  - (d) state that representations with respect to the appeal may be made to the Scottish Ministers in writing by any recipient of the notice within a period of 21 days beginning with the date of the notice and that copies of any representations so made will be furnished to the appellant and to SEPA;
  - (e) explain that any such representations made by any person will be entered in a public register unless that person requests in writing that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request;
  - (f) state that if a hearing is to be held wholly or partly in public, a person mentioned in paragraph 6(a) or (b) who makes representations with respect to the appeal will be notified of the date of the hearing.
8. SEPA shall, within 14 days of sending a notice under paragraph 6—
  - (a) notify the Scottish Ministers of the persons to whom and the date on which the notice was sent; and
  - (b) indicate whether it wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.
9. In the event of an appeal being withdrawn, SEPA shall give notice of the withdrawal to every person to whom notice was given under paragraph 6.

## Hearing procedure

**10.** Before determining an appeal under regulation 47, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them (“the appointed person”) and they shall do so in any case where a request is made by the appellant or SEPA to be so heard.

**11.** A hearing held under paragraph 10 may, if the appointed person so decides, be held wholly, or held to any extent, in private.

**12.** Where the Scottish Ministers cause a hearing to be held under paragraph 10, they shall give the appellant and SEPA at least 28 days' written notice (or such shorter period of notice as they may agree with the appellant and SEPA) of the date, time and place fixed for the holding of the hearing.

**13.** In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers shall, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice mentioned in paragraph 12 in a newspaper circulating in the locality in which the controlled activity is carried on or is to be carried on;
- (b) serve a copy of that notice on every person mentioned in paragraph 6 who has made representations to the Scottish Ministers.

**14.** The Scottish Ministers may vary the date fixed for the holding of any hearing and paragraphs 12 and 13 shall apply to the variation of a date as they applied to the date originally fixed.

**15.** The Scottish Ministers may also vary the time or place for the holding of a hearing and shall give such notice of any such variation as appears to them to be reasonable.

**16.** The persons entitled to be heard at any hearing are the appellant and SEPA.

**17.** Nothing in paragraph 16 shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

**18.** After the conclusion of a hearing, the appointed person shall make a report to the Scottish Ministers in writing which shall include the conclusions and recommendations of that person or the reasons for not making any recommendation.

**19.** Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973<sup>(39)</sup> (which relates to the costs of and holding of local inquiries) shall apply to hearings held under this paragraph by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say:—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc.) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses) for the references to the Minister of references to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;

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(39) 1973 c. 65.

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

- (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
- (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)–
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
  - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
  - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses) for the reference to the Minister, the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

### **Procedure for written representations**

**20.** Where the appeal is to be disposed of on the basis of written representations, SEPA shall submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents mentioned in paragraph 2(a) and (f).

**21.** The appellant shall make any further representations by way of reply to any representations made from SEPA not later than 28 days after the date of submission of those representations by SEPA under paragraph 20.

**22.** Any representations made by the appellant or SEPA shall bear the date on which they are submitted to the Scottish Ministers.

**23.** When SEPA or the appellant submits any representations to the Scottish Ministers they shall at the same time send a copy of them to the other party.

**24.** The Scottish Ministers shall send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 6 and shall allow the appellant and SEPA a period of not less than 14 days in which to make representations on them.

**25.** The Scottish Ministers may in a particular case–

- (a) set later time limits than those mentioned in paragraphs 20, 21 and 23;
- (b) require exchanges of representations between the parties in addition to those mentioned in paragraphs 20 and 21.

### **Determination and publication of appeal**

**26.** The Scottish Ministers shall give notice to the appellant of their determination of the appeal and their reasons for that determination, and shall provide the appellant with a copy of any report mentioned in paragraph 18.

**27.** The Scottish Ministers shall at the same time send–

- (a) a copy of the documents mentioned in paragraph 25 to SEPA and to any persons required under paragraph 3(1)(a) to be notified of the appeal; and
- (b) a copy of their determination of the appeal to any person mentioned in paragraph 6 who made representations to the Scottish Ministers and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

## SCHEDULE 10

Regulation 54

### Transitional, Savings and Supplemental Provisions

## PART 1

### Water Environment

**1.** Where on or before 1st July 2005 a person—

- (a) holds a consent under section 34 of the Control of Pollution Act 1974<sup>(40)</sup> which is subject to an annual charge under the Control of Pollution Act 1974 (Fees and Charges) (Scotland) Scheme 2005<sup>(41)</sup>; or
- (b) has applied for a consent under section 34 of the Control of Pollution Act 1974 but that application has not been determined,

in respect of an activity which is a controlled activity, the provisions of paragraphs 2 to 6 apply.

**2.** Subject to paragraph 3, the person referred to in paragraph 1 must make an application to SEPA under regulation 12 for an authorisation under regulation 9 within the period beginning on 1st October 2005 and ending on 31st March 2006.

**3.** Paragraph 2 does not apply where the controlled activity concerned will cease before 1st April 2006.

**4.** Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35 to 36, 46(a) to (e) and (j), 47 to 49, 52 and 53 shall have effect for the purposes of the consideration of an application under paragraph 2.

**5.** Subject to paragraph 6, an authorisation granted by SEPA in respect of an application under paragraph 2 shall take effect on 1st April 2006.

**6.** Where—

- (a) SEPA has not determined an application made under paragraph 2 on or before 31st March 2006; or
- (b) SEPA has determined that application and the applicant has appealed against that determination,

the consent or activity referred to in paragraph 1 shall, for the purposes of regulation 5, be deemed to be an authorisation granted under regulation 9 subject to the conditions of that consent or in accordance with the description of the activity in the application under paragraph 2, as the case may be, until SEPA has determined the application, or the Scottish Ministers have determined the appeal.

**7.** The person referred to in paragraph 1 may make an application under paragraph 2 before 30th September 2005, and any application made before 1st July 2005 shall be treated as if made on that date.

**8.** The provisions of paragraphs 3 to 6 apply to an application under paragraph 7 as they do to an application under paragraph 2.

**9.** Where a person—

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<sup>(40)</sup> 1974 c. 40; amended by section 168 and Schedule 23 of the Water Act 1989 (c. 15) and Schedule 22 of the Environment Act 1995 (c. 25).

<sup>(41)</sup> A copy of the Control of Pollution Act 1974 (Fees and Charges)(Scotland) Scheme 2005 is published on SEPA's website and can be found at the following address: [www.sepa.org.uk/pdf/charging/legal/copa\\_2005.pdf](http://www.sepa.org.uk/pdf/charging/legal/copa_2005.pdf). Copies can also be obtained from SEPA Corporate Office, Erskine Court, Castle Business Park, Stirling FK9 4TR.

- (a) holds a consent under section 34 of the Control of Pollution Act 1974 which is not subject to an annual charge under the Control of Pollution Act 1974 (Fees and Charges) (Scotland) Scheme 2005;
  - (b) holds an authorisation under regulation 18 of the Groundwater Regulations 1998<sup>(42)</sup>; or
  - (c) has applied for an authorisation under regulation 18 of the Groundwater Regulations 1998,
- in respect of an activity which is a controlled activity, the provisions of paragraphs 10 to 12 apply.

**10.** The person referred to in paragraph 9 shall be deemed to have made an application to SEPA on 1st April 2006.

**11.** –

- (a) Until SEPA has determined the application under paragraph 10; or
- (b) where SEPA has determined the application and the determination has been appealed against, the Scottish Ministers have determined that appeal,

the consent, authorisation or activity in respect of which an application has been made, shall for the purposes of regulation 5, be deemed to be an authorisation granted under regulation 8, subject to the conditions of that consent or authorisation or in accordance with the description of the activity in the application under paragraph 10, as the case may be, with effect from 1st April 2006.

**12.** Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35, 36, 46(a) to (e) and (j), 47 to 49, 52 and 53 shall have effect for the purposes of consideration of an application under paragraph 10.

## PART 2

### Pollution Control

**13.** Where on 31st March 2006 a relevant authorisation is in force in respect of an activity which is a controlled activity, the provisions of paragraphs 14 to 17 apply.

**14.** The relevant authorisations referred to in paragraph 13 shall, for the purposes of regulation 5, be deemed to be an authorisation granted under these Regulations.

**15.** SEPA shall review all relevant authorisations referred to in paragraph 13 in accordance with the relevant provisions of the authorising legislation and where that legislation makes provision for variation or transfer of such an authorisation, it may carry out that review at the same time as such a variation or transfer.

**16.** When carrying out a review in accordance with paragraph 15, SEPA shall–

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;
- (b) assess what steps may be taken to ensure efficient and sustainable water use;
- (c) apply the requirements of–
  - (i) the legislation referred to in Part 1 of Schedule 4; and
  - (ii) regulation 24(5); and
- (d) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4,

and shall take such steps under the authorising legislation as are necessary to ensure that the relevant authorisations comply with the requirements of these Regulations.

**17.** The review required under paragraph 15, and the steps required under paragraph 16 shall be completed by 1st April 2010.

<sup>(42)</sup> S.I. 1998/2746, amended by S.S.I. 2000/323 and 2005/22.

**18.** Where, on or after 1st April 2006, an application for a relevant authorisation is made, or if made before that date has not been determined, in respect of an activity which is a controlled activity, the provisions of paragraph 19 and 20 apply.

**19.** SEPA shall, when considering an application referred to in paragraph 18—

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;
- (b) assess what steps may be taken to ensure efficient and sustainable water use;
- (c) apply the requirements of—
  - (i) the legislation referred to in Part 1 of Schedule 4; and
  - (ii) regulation 24(5); and
- (d) have regard to the provisions of the legislation referred to in part 2 of Schedule 4,

and shall, if they grant the application, ensure that the relevant authorisation complies with the requirements of these Regulations.

**20.** Where an application is granted in accordance with paragraph 19, it shall, for the purposes of regulation 5, be deemed to be an authorisation granted under these Regulations.

**21.** In this Part—

- (a) “authorised activity” means an activity referred to in paragraph 14 or 19, as the case may be;
- (b) “authorising legislation” means the legislation referred to in paragraph (c); and
- (c) “relevant authorisation” means—
  - (i) an authorisation under Part I of the Environmental Protection Act 1990<sup>(43)</sup>;
  - (ii) a registration or authorisation under the Radioactive Substances Act 1993<sup>(44)</sup>;
  - (iii) a permit under the Pollution Prevention and Control (Scotland) Regulations 2000<sup>(45)</sup>; and
  - (iv) a waste management licence under the Waste Management Licensing Regulations 1994<sup>(46)</sup>;

## PART 3

### Abstractions and Impoundments

**22.** Where a person will be carrying out an activity on or after 1st April 2006 which is a controlled activity referred to in section 20(3)(b) or (c) of the Act and which will not be authorised under regulation 7, the provisions of paragraphs 23 to 26 apply.

**23.** The person referred to in paragraph 22 must make an application to SEPA for an authorisation under regulation 9 in respect of the activity referred to in that paragraph, within the period beginning on 1st October 2005 and ending on 31st March 2006.

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<sup>(43)</sup> 1990 c. 43; amended by the Environment Act 1995 (c. 25), the Pollution Prevention and Control Act 1999 (c. 24); the Anti Social Behaviour (Scotland) Act 2004 (asp 8) and the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323).

<sup>(44)</sup> 1993 c. 12, amended by the Clean Air Act 1993 (c. 11), the Environment Act 1995 (c. 25), the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), the Food Standards Act 1999 (c. 28) and the Statute Law (Repeals) Act 2004 (c. 14).

<sup>(45)</sup> S.S.I. 2000/323; amended by paragraph 7 of Schedule 2 to the Anti Social Behaviour etc. (Scotland) Act 2004 (asp 8), S.S.I. 2002/493, 2003/146, 170, 221, 235 and 411, 2004/26, 110, 112, 512 and 2005/101.

<sup>(46)</sup> S.I. 1994/1056; amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 634, 916, 972, 973, 1279; 1997/351, 2203, 1998/606, 2746 and S.S.I. 2000/323, 2003/170, 171 and 2005/22.

24. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35, 36, 46(a) to (e) and (j), 47 to 49, 52 and 54 shall have effect for the purposes of the consideration of an application under paragraph 23.

25. Subject to paragraph 26, an authorisation granted by SEPA in respect of an application under paragraph 23 shall take effect on 1st April 2006.

26. Where—

- (a) SEPA has not determined an application made under paragraph 23 on or before 1st April 2006; or
- (b) SEPA has determined that application and the applicant has appealed against that determination,

the activity referred to in paragraph 22 shall, for the purposes of regulation 5, be deemed to be authorised under these Regulations in accordance with the description of the activity given in the application referred to in paragraph 23, until SEPA has determined the application, or the Scottish Ministers have determined the appeal, as the case may be.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 20 and 25 of, and schedule 2 to, the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#) (“the Act”). The Act transposed European Parliament and Council Directive [2000/60/EEC](#) establishing a framework for Community action in the field of water policy (O.J. No. L 327, 22.12.2000, p.1) (“the Directive”). These Regulations provide the mechanism by which most of the measures required under Article 11(3) (other than those required by Article 11(3)(b)) of the Directive will be taken. They also make provision to meet the requirements of Article 23 of the Directive in respect of those measures. Regard has been had to the requirements of Article 4, in particular Article 4.6, and to the terms of Article 14.1 of the Directive.

Part I of the Regulations sets out the scope of the Regulations and the main objectives to be achieved. Regulation 2 and Schedule 1 sets out definitions of expressions used in the Regulations. Words and expressions used in the Regulations and not defined in regulation 2 take the meaning given in the Act (see in particular sections 1(2), 3, 20(3) and (6), and 28). Regulation 3 amends the definition of controlled activities in section 20(3) of the Act, and amends the definitions of “abstraction” and “impounding works” for the purposes of that definition. Regulation 4 sets out the application of the Regulations. Regulation 4(1) and schedule 2 sets out the category of activities to which the Regulations apply – the “controlled activities”. Regulation 5 prohibits the carrying out of any controlled activity unless authorised under the Regulations. Regulation 6 makes provision for a duty to secure efficient and sustainable water use.

Part II of the Regulations describes the authorisations which are given under them and which are necessary to avoid breach of the prohibition in regulation 5. Regulation 7 makes provision for the carrying out of particular activities in accordance with general binding rules. The activities and the rules are specified in Schedule 3. Regulation 8 makes provision for the regulation of activities which are not considered to be likely to have significant adverse impact on the water environment, to be authorised in accordance with a registration, to which conditions may be attached. Regulation 9, which applies where an authorisation under regulations 7 or 8 is inappropriate, may authorise the carrying on of an activity, also subject to any conditions which are necessary or expedient for the

purposes of the protection of the water environment. The matters which require to be taken into account in setting conditions under regulation 8 or 9 are set out in regulation 15. Regulation 10 makes specific provision to ensure that any activities authorised are fully compliant with Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances (O.J. L 20, 26.1.80, p.43). Regulation 11 gives the Scottish Environment Protection Agency (“SEPA”) powers to impose an authorisation where it considers an unauthorised activity is being carried out in contravention of regulation 5, or an activity regulated under regulation 7 requires additional measures to protect the water environment, or where an existing authorisation under regulation 8 would be more appropriately authorised under regulation 9, or vice versa.

Part III of the Regulations makes provision for applications and their determination. Regulation 12 makes provision for an application to SEPA to be in such form as SEPA may require from time to time. An application requires to be accompanied by a charge prescribed in accordance with schedule 5, and such information as SEPA may require. Regulation 13 makes provision for advertisement of applications where the activity has, or is likely to have, an adverse impact on the water environment. Regulation 14 makes provision for SEPA to request additional information. Regulation 15 sets out the requirements that SEPA must comply with when determining an application. This includes assessing the risk to the water environment posed by the activity concerned and applying the requirements of the legislation set out in Part I of Schedule 4. Regulation 16 makes provision for the time limits within which SEPA must deal with applications and for periods that may be disregarded in calculating those time limits. Regulation 17 makes provision for Scottish Ministers to direct SEPA to refer to them for their determination, any application or applications under these Regulations. Discretion is given to Ministers as to whether or not to hold a local inquiry into an application and provision is made for the determination of the application by Scottish Ministers to be implemented by SEPA.

Part IV of the Regulations makes provision for the modification and termination of authorisations. Regulation 18 requires SEPA to periodically review the authorisations it grants under regulations 8 and 9, and to make recommendations to Scottish Ministers regarding any changes that may be necessary to Schedule 3 (general binding rules). Regulation 19 gives power to SEPA to review any authorisation under regulations 8 or 9 and regulation 20 makes provision for the procedure to be followed in such a variation. Regulation 21 makes provision for the responsible person or operator in respect of an authorisation to apply for a variation of it, and makes provision for the procedure to be followed in such cases. Regulation 22 makes provision for transfer of an authorisation and regulation 23 makes provision for conditions to be attached to such transfers. Regulation 24 makes provision in respect of the surrender of authorisations and regulation 25 makes provision for the determination of a surrender application in relation to authorisations under Regulation 9. Regulation 26 makes provision for revocation or suspension of an authorisation.

Part V makes provision for enforcement of the Regulations. Regulation 27 places a duty on SEPA to monitor compliance with and enforce the provisions of the Regulations. It requires SEPA to consult and collaborate with the Environment Agency in respect of the discharge of their functions under the Regulations in the Solway Tweed River Basin District and the Northumbria River Basin District. Regulation 27 also gives SEPA power to have other persons carry out examination and investigation on its behalf for the purposes of discharging its duties under the Regulations, and the power to authorise persons to exercise the powers specified in Part I of Schedule 6 in accordance with the requirements of Parts II and III of that Schedule. Parts IV and V of Schedule 6 make provision for the evidential status of certain matters dealt with in accordance with Schedule 6 and for compensation in certain circumstances. Regulation 28 gives SEPA the power to issue enforcement notices to ensure compliance with the Regulations and to remedy or prevent significant adverse impacts on the water environment or any part of it. SEPA may issue a notice requiring the responsible person or operator to carry out steps, within such time limits as it may consider appropriate, and those steps may include cessation of the controlled activity for a specified period. Regulation 29 gives the SEPA the power to itself carry out steps that could be required in an enforcement notice and to be entitled to recover the cost of doing so from the responsible person or operator. Regulation

30 deals with the circumstances in which an enforcement notice requires a responsible person or operator to carry out work on land outwith the ownership or control of that person. In particular, it makes provision for the payment of compensation in certain circumstances and Schedule 7 makes provision for application for and assessment of the level of compensation. Regulation 31 makes provision for SEPA to take proceedings in any court of jurisdiction against a person who has failed to comply with the requirements of an enforcement notice where it considers prosecution for such failure would not afford an effectual remedy.

Part VI of the Regulations make provision for obtaining information and for the maintenance of a public register of information in respect of the Regulations. Regulation 32 gives Scottish Ministers power to obtain information from SEPA, and for SEPA to obtain information from other persons. Regulation 33 requires SEPA to maintain a register of the particulars specified in Schedule 8. SEPA has a duty to make the register available at all reasonable times for inspection by the public, free of charge. Regulations 34 to 39 make provision in respect of confidential information. Regulation 34 defines confidential information; regulation 35 makes provision for a person giving information to have it determined commercially confidential; regulation 36 makes provision for SEPA itself to determine that information is commercially confidential; regulation 37 enables SEPA to periodically review its determinations of commercial confidentiality and regulation 38 makes provision in relation to information that has been determined not to be commercially confidential. Regulation 39 allows Scottish Ministers to give SEPA directions that particular information or descriptions of information are to be included in the register.

Part VII makes provision in relation to offences. Regulation 40(1) specifies the actions or inactions which are created as offences under the Regulations. Regulation 40(2) makes provision for penalties on conviction. Regulation 41 makes provision in respect of the commission of offences by bodies corporate. Regulation 42 makes provision for when the commission of an offence by one person is due to the act or default of another person. Regulation 43 makes provision as to the admissibility of evidence in specified circumstances. Regulation 44 specifies defences to the offences set out in Regulation 40(1). Regulation 45 makes provision for the court, in addition to, or instead of, imposing a punishment, to order the convicted person to carry out steps to remedy the adverse impact on the water environment resulting from the commission of the offence.

Part VIII makes provision for appeals. Regulation 46 specifies the circumstances in which appeals may be made to Scottish Ministers. Regulation 47 makes provision as to the decisions Scottish Ministers may make and the action to be taken to implement those decisions. Regulation 48 makes provision for the continuation or the suspension of the effect of the decision appealed against. Regulation 49 makes miscellaneous provisions in respect of appeals, gives effect to Schedule 9 in respect of appeal procedures and applies section 114 of the Environment Act 1995 to appeals under the Regulations.

Part IX makes various general provisions. Regulation 50 applies the Regulations to the Crown. Regulation 51 makes provision for the application of the Regulations to SEPA. Regulation 52 makes provision for Scottish Ministers to issue guidance to SEPA. Regulation 53 makes provision in respect of all notices served under the Regulations. Regulation 54 introduces the supplementary and transitional and savings provisions contained in Schedule 10 to the Regulations. These make provisions for the transfer of authorisations under the Control of Pollution Act 1974 to the new regime; for the interaction between existing pollution control regimes and this regime and for applications in respect of abstractions and impoundments to be made between 1st October 2005 and 31st March 2006.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from Water Division, Victoria Quay, Leith, EH6 6QQ.