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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 348**

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

**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.

**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>(1)</sup>;

“the Groundwater Directive” means Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances<sup>(2)</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;

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(1) 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).

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

“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>(3)</sup> which has been recorded in written form and is capable of being reproduced in that form.

### **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—

(3) 2000 c. 7; amended by the Communications Act 2003 (c. 21).

- (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(4).

### **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.

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(4) 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).