

EXECUTIVE NOTE

DRAFT SSI: THE WATER ENVIRONMENT (GROUNDWATER AND PRIORITY SUBSTANCES) (SCOTLAND) REGULATIONS 2009

The above Regulations are made in exercise of the powers in sections 20, 25 and 36(2) and (3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003 (“the Act”).

These Regulations amend the Act and the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”). These Regulations are subject to the affirmative resolution procedure.

Policy Objective

The purpose of these Regulations is to complete the transposition into Scots law of two daughter Directives of the Water Framework Directive (2000/60/EC): the Groundwater Directive 2006 (2006/118/EC) and the Priority Substances Directive 2008 (2008/105/EC).

These Regulations modify the Act and amend the 2005 Regulations. The principal modifications and amendments are as follows:

- the responsible authorities, in particular the Scottish Environment Protection Agency (“SEPA”), in exercising their functions under the Act and the Regulations, must take account of and seek to secure compliance with the two daughter Directives;
- a definition of hazardous substances, requiring SEPA to identify substances giving rise to concern, is inserted through a replacement Schedule 2;
- Schedule 4, which lists the legislation required to be applied by SEPA in its decision-making process under the 2005 Regulations, is updated to include the two daughter Directives and certain other legislative changes since the 2005 Regulations were made.

Background

The Groundwater Directive 2006 builds on and clarifies the requirements for groundwater protection set out in the Water Framework Directive. It is additional to the Groundwater Directive 1980 (80/68/EEC), which remains in force until 22 December 2013.

The Groundwater Directive 2006 sets out the criteria for assessing the chemical status of groundwater bodies and for identifying upward pollution trends that may need to be reversed. It requires programmes of measures to prevent inputs of any hazardous substances into groundwater, and it requires limits on non-hazardous pollutants so that they do not cause deterioration or significant upward trends in the concentrations of pollutants in groundwater.

The Priority Substances Directive 2008 requires Member States to apply environmental standards for the defined priority substances and certain other pollutants. The standards

apply to surface waters as well as to groundwater. The standards will be implemented through directions from the Scottish Ministers to SEPA.

The Regulations are designed to complete the legislative process begun by the Act and the 2005 Regulations, providing for a cohesive legislative framework implementing the Water Framework Directive and both daughter Directives.

Consultation

The Scottish Government's proposals to complete the transposition of the two daughter Directives were set out in a consultation paper issued to stakeholders on 20 March 2009. Ten responses were received, and they have been taken into account in revision of the draft Statutory Instrument.

Financial effects

The Regulations provide clarification on the process of control of inputs of substances to groundwater and of certain substances (priority substances) to any part of the water environment. The process is managed by SEPA.

A Regulatory Impact Assessment on the implementation of the Water Framework Directive was carried out in 2008, and its costing took account of the estimated costs to the Scottish Government, SEPA, local authorities or business from domestic legislation and associated Directions to implement the two daughter Directives. As a result, no Regulatory Impact Assessment is needed for the completion of the transposition of the two daughter Directives.

Water Air Soils and Flooding Division
October 2009

TRANSPOSITION NOTE

Setting out the transposition of Directive 2006/118/EC of the European Parliament and of the Council on the Protection of Groundwater against pollution and deterioration ("the Groundwater Directive 2006") and of Directive 2008/105/EC of the European

Parliament and of the Council on Environmental Quality Standards in the Field of Water Policy (“the Priority Substances Directive”) insofar as transposed by the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009 (“the current regulations”).

THE GROUNDWATER DIRECTIVE 2006

The Groundwater Directive 2006 establishes specific measures as provided for in Article 17(1) and (2) of Directive 2000/60/EC (“the Water Framework Directive”) in order to prevent and control groundwater pollution. These measures include in particular:

- (a) criteria for the assessment of good groundwater status; and
- (b) criteria for the identification and reversal of significant and sustained upward trends in concentrations of pollutants and for the definition of starting points for trend reversals.

The Groundwater Directive 2006 also complements the provisions preventing or limiting inputs of pollutants into groundwater already contained in the Water Framework Directive, and aims to prevent the deterioration of the status of all bodies of groundwater.

The Groundwater Directive 2006, insofar as it deals with the assessment of groundwater chemical status and the identification of significant and sustained upward trends in concentrations of pollutants, is to be partly implemented through the Scotland River Basin District (Water Typology, Environmental Standards and Groundwater Threshold Values) (Scotland) Directions 2009 (“the Standards Directions 2009”) and the Scotland River Basin District (Classification of Water Bodies) Directions 2009 (“the Classification Directions 2009”), both of which are shortly to be issued by the Scottish Ministers to the Scottish Environment Protection Agency (“SEPA”) in exercise of the powers conferred by section 40(1) and (2) of the Environment Act 1995 and section 2(6) of the Water Environment and Water Services (Scotland) Act 2003 (“WEWS”).

The table below indicates how the provisions of the Groundwater Directive 2006, insofar as dealt with by the current regulations, are transposed.

Article	Objective	Implementation
Article 1	Purposes.	No implementation required.
Article 2	Definitions.	No implementation required.
Article 3	Requires Member States to use the groundwater quality standards stipulated in Annex I of the Directive and the threshold values established in accordance with Annex II of the Directive.	The Standards Directions 2009 and the Classification Directions 2009.
Article 4	Requires Member States to use the specified procedure for assessing groundwater chemical status.	The Standards Directions 2009 and the Classification Directions 2009.

Article 5	Requires Member States to identify significant and sustained upwards trends in concentrations of pollutants found in groundwater.	The Standards Directions 2009 and the Classification Directions 2009.
Article 6	Requires Member States to ensure that the programme of measures established in accordance with Article 11 of the Water Framework Directive includes (a) all measures necessary to prevent inputs into groundwater of any hazardous substances, and (b) all measures necessary to limit inputs into groundwater of non-hazardous pollutants so as to ensure that such inputs do not cause deterioration or sustained upwards trends in the concentrations of pollutants in groundwater.	<p>Regulation 3 of the current regulations modifies section 2(1) and (2) of WEWS so as to require the Scottish Ministers, SEPA, and the responsible authorities to exercise their functions so as to secure compliance with the Groundwater Directive 2006.</p> <p>Regulation 4 of the current regulations amends the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“CAR”) as follows:</p> <p>(a) Regulation 4(1)(b) is amended to include reference to any hazardous substance or any other pollutant.</p> <p>(b) Regulation 10 is amended to include a requirement that SEPA shall, when considering applications for controlled activities impose such conditions as it considers necessary to ensure compliance with the Groundwater Directive 2006.</p> <p>(c) Regulation 28 is amended to allow SEPA to issue an enforcement notice where, in addition to the hazardous substances listed in Schedule 2, any other pollutant is discharged into groundwater.</p> <p>(d) Schedule 2 is substituted with a revised Schedule 2 that requires SEPA to identify hazardous substances and to publish and maintain a list of the substances so identified.</p> <p>(e) Schedule 4 is substituted with a revised Schedule 4 that includes the Groundwater Directive 2006 among the legislation that SEPA must apply when determining applications under regulation 15 of CAR.</p>

		(f) Schedule 8 is amended to add to the information that must be recorded on the register that SEPA must maintain under regulation 33 of CAR any exemptions granted in accordance with Article 6(3) of the Groundwater Directive 2006.
Article 7	Requirement that any new authorisation procedure pursuant to Directive 80/68/EEC shall take into account the requirements set out in Articles 3, 4 and 5 of the Groundwater Directive 2006 in the period to 22 December 2013.	Regulation 4 of the current regulations amends Regulation 10 to provide that, in considering applications made before 22 December 2013 and that fall within Directive 80/68/EEC, SEPA shall impose such conditions as are necessary to ensure compliance with the Groundwater Directive 2006.
Article 8	Technical adaptations	No implementation required.
Article 9	Committee procedure	No implementation required.
Article 10	Review	No implementation required.
Article 11	Evaluation	No implementation required.
Article 12	Transposition by Member States	The current regulations.
Article 13	Entry into Force	No implementation required.
Article 14	Addressees	No implementation required.

THE PRIORITY SUBSTANCES DIRECTIVE

The Priority Substances Directive lays down environmental quality standards (EQS) for priority substances and certain other pollutants as provided for in Article 16 of the Water Framework Directive, with the aim of achieving good surface water chemical status and in accordance with the provisions and objectives of Article 4 of the Water Framework Directive.

The Priority Substances Directive, insofar as it deals with the application of environmental quality standards and long-term trend analysis, is to be partly implemented through the Scotland River Basin District (Water Typology, Environmental Standards and Groundwater Threshold Values) (Scotland) Directions 2009 and the Scotland River Basin District (Classification of Water Bodies) Directions 2009, both of which are shortly to be issued by the Scottish Ministers to SEPA in exercise of the powers conferred by section 40(1) and (2) of the Environment Act 1995 and section 2(6) of WEWS.

The table below indicates how the provisions of the Priority Substances Directive dealt with by the current regulations are transposed.

Article	Objective	Implementation
Article 1	Subject Matter	No implementation required.
Article 2	Definitions	No implementation required.
Article 3	Requires Member States to apply the Environmental Quality Standards (“EQS”) laid down in Annex I to bodies of surface water, to arrange for the long-term trend analysis of concentrations of those priority substances listed in Annex I and to take measures to ensure that such concentrations do not significantly increase.	<p>The Standards Directions 2009 and the Classification Directions 2009.</p> <p>Regulation 3 of the current regulations modifies section 2(1) and (2) of WEWS so as to require the Scottish Ministers, SEPA, and the responsible authorities to exercise their functions so as to secure compliance with the Priority Substances Directive.</p> <p>Regulation 4 of the current regulations amends CAR by substituting the existing Schedule 4 with a new Schedule 4 that includes the Priority Substances Directive among the legislation that SEPA must apply when determining applications under regulation 15 of CAR.</p>
Article 4	Optional designation of mixing zones.	No provision required.
Article 5	Member States to establish an inventory of emissions, discharges and losses of all priority substances and pollutants listed in Part A of Annex I for each River Basin District and communicate the inventories to the Commission.	No provision required.
Article 6	Member States to provide the Commission with a summary of the measures taken in relation to transboundary pollution in the relevant River Basin Management Plan in accordance with the	<p>WEWS provides for River Basin Management Planning.</p> <p>Regulation 3 of the current regulations modifies section 2(1) and (2) of WEWS so as to require the</p>

	reporting requirements under Article 15(1) of the Water Framework Directive.	Scottish Ministers, SEPA, and the responsible authorities to exercise their functions so as to secure compliance with the Priority Substances Directive.
Articles 7 to 12	No obligations on Member States.	No implementation required.
Article 13	Transposition by Member States.	The current regulations.
Article 14	Entry into force.	No implementation required.
Article 15	Addressees.	No implementation required.