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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**The Water Environment (Controlled Activities) (Scotland) Regulations 2011**

**PART V**

**Enforcement and other powers**

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

**31.**—(1) It is 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>(1)</sup> and the Solway Tweed River Basin District<sup>(2)</sup>, SEPA must, 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>(3)</sup>;
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(4)</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**

**32.**—(1) This regulation applies if—

- (a) a person has carried out, is carrying out or is likely to carry out a controlled activity; and

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(1) 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).

(2) 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).

(3) S.I. 2003/3245.

(4) S.I. 2004/99.

- (b) SEPA is of the opinion that the activity—
  - (i) has contravened, is contravening or is likely to contravene an authorisation 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 hazardous substance or any other pollutant.
- (2) SEPA may serve a notice on the responsible person or the operator, as the case may be, specifying—
  - (a) the activity;
  - (b) if SEPA is of the opinion that the activity has contravened, is contravening, or is likely to contravene an authorisation under these Regulations, the matters constituting the contravention or likely contravention;
  - (c) if SEPA is of the opinion that the activity has caused, is causing, or is likely to cause a significant adverse impact on the water environment, the nature of that adverse impact;
  - (d) if SEPA is of the opinion that the activity has caused, is causing, or is likely to cause a direct or indirect discharge into groundwater of any hazardous substance or any other pollutant, details of that direct or indirect discharge; 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 must revoke a notice served under paragraph (2) if—
  - (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.

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

- 33.**—(1) If SEPA considers that a notice should be served under regulation 32(2), it is 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) If SEPA has—

- (a) carried out, or secured the carrying out of, any investigation to establish whether or not a notice under regulation 32(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 is 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.**

**34.**—(1) A notice under regulation 32(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) If paragraph (1) applies, any person whose consent is required before that work may be carried out must grant, or join in granting such rights in relation to any land as will enable the notice to be complied with.

(3) If paragraph (1) applies, SEPA must, before serving a notice under regulation 32(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 will 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) is 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) must be paid by the person on whom notice under regulation 32(2) was served or would have been served but for regulation 33(1).

(7) If no person can be found by whom compensation should be payable or if a person found liable in compensation has failed to make the payment of it, compensation under this regulation will be payable by SEPA; and SEPA is entitled to recover any payment of compensation made by it under this paragraph from any person on whom notice under regulation 32(2) was served or would have been served but for regulation 33(1).

**Enforcement by the courts**

**35.** If SEPA is of the opinion that proceedings for an offence under regulation 44(1)(j) would afford an ineffectual remedy against a person who has failed to comply with a requirement of any notice under regulation 32, it may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with that notice.