

## SCHEDULE 10

Regulations 7, 8 and 58

### Transitional and Savings Provisions

## PART 1

### Water Environment

1. If on 31st March 2011 an authorisation under regulation 8 or 9 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005<sup>(1)</sup> (“the 2005 Regulations”) is in force, that authorisation will be treated as an authorisation granted under these Regulations which is subject (unless subsequently varied) to the same conditions, if any, as that authorisation.

2. For the avoidance of doubt, paragraph 1 applies to any authorisation that is treated as an authorisation by virtue of paragraphs 6, 11, 14 or 26 of Schedule 10 to the 2005 Regulations.

3. If on or before 31st March 2011 a person—

- (a) has applied under regulation 12 of the 2005 Regulations for an authorisation under regulations 8 or 9 of the 2005 Regulations;
- (b) has received notice from SEPA under regulation 11 of the 2005 Regulations that SEPA is treating an activity as an activity in respect of which an application has been made;
- (c) has applied under regulation 21 of the 2005 Regulations for a variation of an authorisation under regulations 8 or 9 of the 2005 Regulations;
- (d) has applied under regulation 22 of the 2005 Regulations to transfer an authorisation under regulation 9 of the 2005 Regulations; or
- (e) has applied under regulation 24 of the 2005 Regulations to surrender an authorisation under regulation 9 of the 2005 Regulations;

and that application has not been determined, paragraph 4 applies.

4. Notwithstanding the revocation of the 2005 Regulations by regulation 58, regulations 8 to 10, 12 to 17, and 46 to 49 of the 2005 Regulations continue to have effect in relation to any application referred to in paragraph 3.

5. If an authorisation is granted in respect of an application referred to in paragraph 3, that authorisation will be treated as an authorisation granted under these Regulations.

6. Notwithstanding the revocation of the 2005 Regulations by regulation 58—

- (a) any enforcement notice issued by SEPA in accordance with regulation 28 of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 32 of these Regulations;
- (b) any variation notice issued by SEPA in accordance with regulation 20(2) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 23(3) of these Regulations;
- (c) any authorisation issued by SEPA under regulation 27(1) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 31(4) of these Regulations;
- (d) any notice of suspension or revocation issued by SEPA in accordance with regulation 26(1) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 29(1) of these Regulations;

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(1) [S.S.I. 2005/348](#).

- (e) any application for compensation made by a person in accordance with regulation 30(5) of the 2005 Regulations before 31st March 2011 has effect as if it had been made under regulation 34(5) of these Regulations;
- (f) any court proceedings commenced by SEPA under regulation 31 of the 2005 Regulations before 31st March 2011 will be treated as if they had been commenced under regulation 35 of these Regulations;
- (g) any notice served by the Scottish Ministers or SEPA under regulation 32 of the 2005 Regulations before 31st March 2011 has effect as if it had been served under regulation 36 of these Regulations;
- (h) any application for the determination of commercial confidentiality made by a person in accordance with regulation 35 of the 2005 Regulations before 31st March 2011 has effect as if it had been made under regulation 39 of these Regulations;
- (i) any notice of the registration of commercially confidential information and any notice of determination of commercial confidentiality issued by SEPA in accordance with regulation 36(1) or 36(3) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 40(1) or 40(3) of these Regulations, as appropriate;
- (j) any notice of review and any notice of the determination of a review issued by SEPA under regulation 37(2) or (37(4) of the 2005 Regulations before 31st March 2011 will be treated as if it had been issued under regulation 41(2) or 41(4) of these Regulations, as appropriate;
- (k) any direction issued by the Scottish Ministers under regulation 39 of the 2005 Regulations before 31st March 2011 will be treated as if it had been issued under regulation 43 of these Regulations;
- (l) any order issued by a court under regulation 45 of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 49 of these Regulations;
- (m) any appeal under regulation 46 of the 2005 Regulations, notice of which has been given to the Scottish Ministers in accordance with paragraph 1 of Schedule 9 to the 2005 Regulations before 31st March 2011, will be treated as if it had been commenced under Part VIII of these Regulations;
- (n) any guidance issued by the Scottish Ministers under regulation 52 of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 56 of these Regulations.

## PART 2

### Pollution Control

7. If on 31st March 2011 a relevant authorisation is in force in respect of an activity which is a controlled activity, the provisions of paragraphs 8 to 11 apply.

8. The relevant authorisation referred to in paragraph 7 will be treated as an authorisation granted under these Regulations.

9. SEPA must, insofar as it has not done so under paragraph 15 of Schedule 10 to the 2005 Regulations, review all relevant authorisations referred to in paragraph 7 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.

10. When carrying out a review in accordance with paragraph 9, SEPA must—

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;

- (b) where it considers that the authorised activity has or is likely to have a significant adverse impact on the water environment—
  - (i) assess the indirect effects of that impact on any other aspects of the environment likely to be significantly affected;
  - (ii) consider any likely adverse social and economic effects of that impact and of any indirect environmental effects identified in accordance with sub-paragraph (i); and
  - (iii) consider the likely environmental, social and economic benefits of the activity;
- (c) assess the impact of the authorised activity on the interests of other users of the water environment;
- (d) assess what steps may be taken to ensure efficient and sustainable water use;
- (e) apply the requirements of the legislation referred to in Part 1 of Schedule 4, including, in particular, the provisions of Article 4 of the Directive and Article 6 of the Groundwater Directive 2006; and
- (f) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4,

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

**11.** The review required under paragraph 9, and the steps required under paragraph 10 must be completed by 22nd December 2012.

**12.** Where an application for a relevant authorisation in respect of an activity that is a controlled activity has been made before 31st March 2011 but has not been determined by that date, the provisions of paragraphs 13 and 14 apply.

**13.** SEPA must, when considering an application referred to in paragraph 12—

- (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 to the 2005 Regulations; and
  - (ii) regulation 24(5) of the 2005 Regulations; and
- (d) have regard to the provisions of the legislation referred to in part 2 of Schedule 4 to the 2005 Regulations,

and must, if they grant the application, ensure that the relevant authorisation complies with the requirements of the 2005 Regulations (notwithstanding their repeal by regulation 58 of these Regulations).

**14.** If an application is granted in accordance with paragraph 13, it will be treated, for the purposes of these Regulations, as an authorisation granted under these Regulations.

**15.** If, on or after 31st March 2011, an application for a relevant authorisation is made in respect of an activity which is a controlled activity, the provisions of paragraphs 16 and 17 apply.

**16.** SEPA must, when considering an application referred to in paragraph 15—

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;
- (b) where the application is in respect of an activity that it considers has or is likely to have a significant adverse impact on the water environment—
  - (i) assess the indirect effects of that impact on any other aspects of the environment likely to be significantly affected;

- (ii) consider any likely adverse social and economic effects of that impact and of any indirect environmental effects identified in accordance with sub-paragraph (i); and
  - (iii) consider the likely environmental, social and economic benefits of the activity;
  - (c) assess the impact of the controlled activity on the interests of other users of the water environment;
  - (d) assess what steps may be taken to ensure efficient and sustainable water use;
  - (e) apply the requirements of the legislation referred to in Part 1 of Schedule 4, including, in particular, the provisions of Article 4 of the Directive and Article 6 of the Groundwater Directive 2006; and
  - (f) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4,
- and must, if they grant the application, ensure that the relevant authorisation complies with the requirements of these Regulations.

**17.** If an application is granted in accordance with paragraph 16, it will be treated, for the purposes of these Regulations, as an authorisation granted under these Regulations.

**18.** In this Part—

- (a) “authorised activity” means an activity referred to in paragraph 7, 12 or 15, 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>(2)</sup>;
  - (ii) a registration or authorisation under the Radioactive Substances Act 1993<sup>(3)</sup> (but not an exemption from a requirement for such registration or authorisation);
  - (iii) a permit under the Pollution Prevention and Control (Scotland) Regulations 2000<sup>(4)</sup>; and
  - (iv) a waste management licence under the Waste Management Licensing (Scotland) Regulations 2011.

(2) 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).

(3) 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).

(4) 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.