

## 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

Regulation 2(1)

### Hazardous Substances

1. SEPA must identify—
  - (a) substances or groups of substances which are toxic, persistent and liable to bio-accumulate, and other substances or groups of substances which give rise to an equivalent level of concern; and
  - (b) substances or groups of substances which are entering, or liable to enter groundwater.
2. In identifying the substances referred to in paragraph 1, SEPA must take particular account of hazardous substances belonging to the families or groups of pollutants referred to in paragraphs 1 to 6 of Schedule 1 as well as substances belonging to the families or groups of pollutants referred to in paragraphs 7 to 9 of that Schedule, if those are considered to be hazardous.
3. SEPA must publish and maintain a list of the substances identified in accordance with paragraph 1.
4. The list must be published in a manner SEPA considers appropriate to bring it to the notice of persons affected by, likely to be affected by, or interested in the identified substances and SEPA must make copies of the list and a consolidated list available to the public free of charge.

## SCHEDULE 3

Regulations 6 and 21(2)

## General binding rules

## PART 1

| <i>Column 1</i>  | <i>Column 2</i>  |
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| <i>Activity</i>  | <i>Rules</i>   |
| <p><b>1.</b> The operation of any weir that—</p> <p>(a) is not capable of being operated to control the water level upstream of the weir;</p> <p>(b) does not result in the creation of a height differential between the upstream and downstream water surfaces of more than one metre; and</p> <p>(c) was constructed before 1st April 2006.</p> | <p>The weir must 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.</p>  |
| <p><b>2.</b> The abstraction of less than 10 m<sup>3</sup> of water in any one day.</p>  | <p>(a) There must 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</p> <p>(b) water leakage must 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.</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, if such works are—</p> <p>(a) not intended for the purpose of abstraction;</p>                      | <p>(a) Subject to paragraphs (b) and (c), the construction of the well or borehole must be such as to avoid the entry of pollutants or water of a different chemical composition into the body of groundwater;</p> <p>(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 not result in pollution of the water environment;</p>   |

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| <i>Activity</i>   | <i>Rules</i>   |
| <p>(b) intended for the abstraction of less than 10 m<sup>3</sup> of water in any one day;</p> <p>(c) intended for the abstraction of less than 150 m<sup>3</sup> of water in any period of one year, and the purpose of the abstraction is either—</p> <p>(i) to test for the yield of the borehole or well or the hydraulic properties of the aquifer; or</p> <p>(ii) to sample the water quality;</p> <p>(d) intended to dewater one or more excavations at—</p> <p>(i) a construction site for roads, buildings, pipelines, or other built developments; or</p> <p>(ii) a site at which the maintenance of such developments is being undertaken;</p> <p>or</p> <p>(e) intended for the purpose of undertaking activity 17.</p> | <p>(c) potable water may be introduced into the well or borehole to test the hydraulic properties of the aquifer; and</p> <p>(d) when the well or borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p>                |
| <p>4. The abstraction from a borehole, and any subsequent discharge of the abstracted water, if 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> <p>(a) to test the yield of the borehole or well or the hydraulic properties of the aquifer; or</p> <p>(b) to sample the water quality.</p>   | <p>(a) The abstraction must not cause the entry of pollutants or water of a different chemical composition into the body of groundwater; and</p> <p>(b) when the borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p> |
| <p>5. The dredging of a river, burn or ditch that—</p> <p>(a) has an average width of less than one metre along the stretch to</p>  | <p>(a) Vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot</p>  |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
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| <p>be worked, as measured at the bottom of the channel; and</p> <p>(b) has been artificially straightened or canalised along the length which is to be worked.</p>   | <p>reasonably be carried out without such removal or modification;</p> <p>(b) any vegetation removed must not be disposed of into the channel;</p> <p>(c) the bed of the channel adjacent to each bank of the river or burn must be left undisturbed</p> <p>(d) all reasonable steps must be taken to prevent the transport of sediments or other matter disturbed by the works into waters beyond the worked stretch;</p> <p>(e) the works must 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 subsequent emergence of the juvenile fish;</p> <p>(f) all reasonable steps must be taken to avoid increased erosion of the bed or banks of the river, burn or ditch as a result of the works; and</p> <p>(g) the works must not result in the heightening of either bank.</p> |
| <p><b>6.</b></p> <p>(a) The construction and maintenance of a minor bridge over a river, burn or ditch; or</p> <p>(b) 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.</p> | <p>(a) Vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent necessary to carry out the works;</p> <p>(b) any vegetation removed must not be disposed of into the channel;</p> <p>(c) the works must not prevent the free passage of migratory fish;</p> <p>(d) the works must not result in the narrowing of the channel width nor the heightening of either bank;</p> <p>(e) if necessary, a temporary culvert may be installed to facilitate the works. The culvert must not extend more than 10 metres along the length of the river,</p>   |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
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|  | <p>burn or ditch and shall be removed on completion of the works;</p> <p>(f) the works must 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 subsequent emergence of the juvenile fish;</p> <p>(g) all reasonable steps must be taken to ensure that the works do not result in increased erosion of the bed or banks of the river, burn or ditch;</p> <p>(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 must be reinstated to at least their condition prior to the commencement of the works; and</p> <p>(i) for temporary bridges, as far as reasonably practicable, and within 12 months of the removal of the bridge, the bed and banks must be reinstated at least to their condition prior to the commencement of the works.</p> |
| <p>7. The laying of a pipeline or cable by boring beneath the bed and banks of a river, burn or ditch.</p> | <p>(a) The bed and banks must not be altered as a result of the works other than in accordance with paragraphs (b) and (d);</p> <p>(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;</p> <p>(c) any vegetation removed must not be disposed of into the channel; and</p> <p>(d) as far as reasonably practicable, within 12 months of the commencement of the works, the bed and banks of the river, burn or ditch must be reinstated at least to their condition prior to the commencement of the works.</p>  |
| <p>8. Works to control the erosion of a bank of a river, burn or ditch by revetment.</p>                   | <p>(a) All reasonable steps must be taken to ensure that the works do not result in increased erosion of either bank of the river, burn or ditch;</p>   |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
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|  | <ul style="list-style-type: none"> <li>(b) the works must 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 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>(d) any vegetation removed must not be disposed of into the channel;</li> <li>(e) revetments must 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 must be no more than 10 metres or one channel width, whichever is greater;</li> <li>(g) if wood or stone rip-rap is used for a revetment, the wood or rip-rap must be placed at the toe of the bank;</li> <li>(h) except for the purpose of repairing an existing revetment, no bank protection works must be undertaken within 5 channel widths or 50 metres (whichever is the greater) of any existing bank protection works on any bank of the river, burn or ditch;</li> <li>(i) the works must not result in the heightening of either bank;</li> <li>(j) the works must 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 subsequent emergence of the juvenile fish; and</li> <li>(k) the revetments must be maintained in the state of repair required to avoid increased erosion of the banks or destabilisation of the bed.</li> </ul> |
| <p><b>9.</b> Operating any vehicle, plant or equipment for the purposes of</p> | <p>(a) Any vehicles, plant or other equipment must only operate in water where it is</p>  |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>  |
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| <p>undertaking activity 5, 6, 7, 8, 10, 12, 13, and 14.</p>  | <p>impracticable for them to operate on dry land;</p> <p>(b) the refuelling of vehicles, plant or other equipment must 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 must 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 must not leak any oil;</p> <p>(e) the washing of vehicles, plant or other equipment must be undertaken at least 10 metres away from any surface water and water from such washing must not enter any surface water;</p> <p>(f) vehicles, plant or other equipment must 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> <p>(g) vehicles, plant or equipment must not be operated in any part of a river, burn or ditch if there is a reasonable likelihood that, within 50 metres of such an operation, there</p> <p>are freshwater pearl mussels; and</p> <p>(h) during forestry operations the operator must not operate machinery in watercourses.</p> |
| <p><b>10.</b> Discharge of water run-off from a surface water drainage system to the water environment from buildings, roads, yards or any other built developments, or construction sites for such developments, and, if desired, the construction and maintenance of any water outfall in or</p> | <p>(a) All reasonable steps must be taken to ensure that the discharge must not result in pollution of the water environment;</p> <p>(b) the discharge must not contain any trade effluent or sewage, and must not result in visible discolouration, iridescence,</p>  |

| <i>Column 1</i><br><i>Activity</i>  | <i>Column 2</i><br><i>Rules</i>  |
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| <p>near to inland surface water which forms, or will form, part of that system.</p> | <p>foaming or growth of sewage fungus in the water environment;</p> <p>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water;</p> <p>(d) the discharge must not contain any water run-off from any built developments, the construction of which is completed after 1st April 2007, or from construction sites operated after 1st April 2007, unless—</p> <ul style="list-style-type: none"> <li>(i) during construction those developments are drained by a SUD system or equivalent systems equipped to avoid pollution of the water environment;</li> <li>(ii) following construction those developments are drained by a SUD system equipped to avoid pollution of the water environment;</li> <li>(iii) the run-off is from a development that is a single dwelling and its curtilage; or</li> <li>(iv) the discharge is to coastal water;</li> </ul> <p>(e) the discharge must not contain any water run-off from—</p> <ul style="list-style-type: none"> <li>(i) fuel delivery areas and areas where vehicles, plant and equipment are refuelled;</li> <li>(ii) vehicle loading or unloading bays where potentially polluting matter is handled; or</li> <li>(iii) oil and chemical storage, handling and delivery areas; constructed after 1st April 2007;</li> </ul> <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, must be maintained in a good state of repair;</p> |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
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|  | <p>(g) all reasonable steps must 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; and</p> <p>(h) the construction or maintenance of the outfall must not result in pollution of the water environment.</p>  |
| <p><b>11.</b> Discharge into a surface water drainage system.</p>  | <p>(a) Oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants must 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 must not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system;</p> <p>(c) sewage or trade effluent must not be discharged into any surface water drainage system; and</p> <p>(d) on construction sites any area of exposed soil from which water drains into a surface water drainage system, and the period of time during which such water drains, must be the minimum reasonably necessary to facilitate the construction works being undertaken at that site.</p> |
| <p><b>12.</b> The removal of sediment or any other matter that may have been deposited on the bed of a river, burn or ditch in the area of impounded water upstream of a weir the operation of which is authorised under these Regulations and the return of that sediment if desired to the river, burn or ditch from which it was removed.</p> | <p>(a) The sediment or other matter must be removed within 10 metres upstream of the weir;</p> <p>(b) the sediment or other matter removed must only include sediment or other matter that could reasonably be expected to have been deposited on the bed of the river, burn or ditch within a period of 3 years preceding the date of the removal;</p> <p>(c) the removed sediment must only be returned to the river, burn or ditch from which it was removed, if:</p>  |

| <i>Column 1</i><br><i>Activity</i>  | <i>Column 2</i><br><i>Rules</i>   |
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|   | <ul style="list-style-type: none"> <li>(i) it is returned within 10 metres downstream of the weir;</li> <li>(ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish;</li> <li>(iii) all reasonable steps are taken to avoid increased erosion of the bed or banks of the river, burn or ditch;</li> <li>(iv) it is not returned 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 subsequent emergence of the juvenile fish; and</li> <li>(v) no matter other than removed sediment is returned to the river, burn or ditch;</li> <li>(d) the removed sediment and other matter must not be placed on the bank of any river, burn or ditch;</li> <li>(e) the return or removal must not result in pollution of the water environment;</li> <li>(f) vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification; and</li> <li>(g) any vegetation removed must not be disposed of into the channel.</li> </ul> |
| <p><b>13.</b> The removal of accumulations of sediment or other matter from:</p> <ul style="list-style-type: none"> <li>(a) the bed of a river, burn or ditch within 10 metres upstream of the point of entry of that river, burn or ditch into a closed culvert;</li> <li>(b) the bed of a river, burn or ditch within 10 metres downstream of the point of exit of that river, burn or ditch from a closed culvert; or</li> </ul> | <ul style="list-style-type: none"> <li>(a) The removal or return must not result in the bed of the river, burn or ditch upstream of the culvert being lower than the upper surface of the base of the culvert where it joins the river burn or ditch;</li> <li>(b) the removal or return must not result in there being a vertical step between the upper surface of the base of the culvert and the bed of the river burn or ditch into which it discharges;</li> </ul>  |

| <i>Column 1</i>   | <i>Column 2</i>  |
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| <p>(c) the inside of a closed culvert;</p> <p>and, if desired, any subsequent return of the removed sediment to the river, burn or ditch from which it was removed.</p> | <p>(c) the removal or return must 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 subsequent emergence of the juvenile fish;</p> <p>(d) vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(e) any vegetation removed must not be disposed of into the channel;</p> <p>(f) removed sediment and other matter must not be placed on the bank of any river, burn or ditch;</p> <p>(g) the removed sediment must only be returned to the river, burn or ditch from which it was removed, if:</p> <ul style="list-style-type: none"> <li>(i) it is returned within 15 metres downstream of the culvert;</li> <li>(ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish;</li> <li>(iii) all reasonable steps are taken to avoid increased erosion of the bed or the banks of the river, burn or ditch; and</li> <li>(iv) its return is not likely to increase the risk of flooding; and</li> </ul> <p>(h) the activity must not result in pollution of the water environment.</p> |
| <p><b>14.</b> The placement of one or more boulders in a river or burn.</p>   | <p>(a) No boulder or boulders must have a length, breadth or height greater than 10% of the channel width;</p> <p>(b) no boulder or boulders must be placed within 20 metres of any boulder or boulders (whether placed or not), croy, jetty or other in stream structure occupying more than 10% of the channel width;</p> <p>(c) no boulder or boulders must be placed in such a way as to extend the width occupied</p>   |

| <i>Column 1</i><br><i>Activity</i>  | <i>Column 2</i><br><i>Rules</i>  |
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|   | <p>by in stream structures to greater than 10% of the channel width;</p> <p>(d) no boulder or boulders must be placed against the banks of a river or burn unless such placement forms part of works authorised under these Regulations to control the erosion of a bank of a river, burn or ditch by revetment;</p> <p>(e) the tops of the boulders must be submerged except during periods of low flows;</p> <p>(f) the placement must not be undertaken during periods in which fish are likely to be spawning in the river or burn nor in the period between any such spawning and the subsequent emergence of the juvenile fish;</p> <p>(g) all reasonable steps must be taken to ensure that the placement does not result in increased erosion of the bed or banks of the river or burn; and</p> <p>(h) boulders must not be placed if there is a reasonable likelihood that, within 50 metres of the intended placement, there are freshwater pearl mussels.</p> |
| <p><b>15.</b> The temporary abstraction of groundwater at:</p> <p>(a) a construction site for roads, railways, buildings, pipelines, communication links or other built development; or</p> <p>(b) a site at which the maintenance of such development is being undertaken;</p> <p>by means of:</p> <p>(i) pumping the groundwater directly from any excavation or excavations on the site; or</p> <p>(ii) pumping the groundwater from any wells or boreholes on the site in order to help dewater any other</p> | <p>(a) Subject to paragraph (b), groundwater may only be abstracted at the site within a period of 180 days beginning with the first day on which groundwater is abstracted at the site;</p> <p>(b) groundwater must be abstracted at the site on no more than 5 separate days in total in any period of 180 days if any excavation, well or borehole on the site, and from which groundwater is abstracted, is in the following geological strata:</p> <p>(i) unconsolidated sands or gravels;</p> <p>(ii) sandstones; or</p> <p>(iii) any other strata of equivalently high permeability;</p> <p>(c) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of a wetland;</p>  |

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| <p>excavation or excavations on the site;</p> <p>and, if desired, the subsequent discharge of the abstracted groundwater if desired to the water environment.</p>                    | <p>(d) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of an abstraction that is not for the sole purpose of dewatering an excavation;</p> <p>(e) all reasonable steps must be taken to ensure that the quantity of sediment in the abstracted water is minimised; and</p> <p>(f) if the abstracted groundwater and, if it is pumped directly from an excavation, any precipitation or water run-off that has also collected in the excavation, is discharged to the water environment; it must be via a surface water drainage system authorised under these Regulations, subject to the consent of the person having operational control of the system.</p> |
| <p><b>16.</b> The direct discharge of pollutants into groundwater as a result of construction or maintenance works in or on the ground which come into contact with groundwater.</p> | <p>(a) No solid or liquid materials coming into contact with groundwater may contain any hazardous substance;</p> <p>(b) despite paragraph (a), drilling fluids used during the works may come into contact with groundwater if necessary to facilitate any drilling provided this does not result in pollution of the water environment; and</p> <p>(c) no materials coming into contact with groundwater as a result of the works may cause pollution of the water environment.</p>  |
| <p><b>17.</b> The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the abstracted water.</p>                                    | <p>(a) The abstracted water must be returned to the same geological formation from which it was abstracted;</p> <p>(b) any volume of water may be abstracted but the volume of water abstracted and not returned must not exceed 10m<sup>3</sup> per day;</p> <p>(c) the chemical composition of the abstracted water must not be altered prior to its return to the geological formation;</p>   |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
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|  | <p>(d) there must be a means of demonstrating that the net abstraction is not more than 10m<sup>3</sup> in any one day; and</p> <p>(e) water leakage must be kept to a minimum by ensuring that all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a good state of repair.</p>   |
| <p><b>18.</b> The storage and application of fertiliser other than if it is regulated by:</p> <p>(a) the Sludge (Use in Agriculture) Regulations 1989(1);</p> <p>(b) a waste management licence in terms of section 35 of the Environmental Protection Act 1990 (waste management licence: general)(2);</p> <p>(c) the registration of a registered exemption, under the Waste Management Licensing (Scotland) Regulations 2011; or</p> <p>(d) the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(3).</p> | <p>(a) No fertiliser may be stored on land that—</p> <p>(i) is within 10 metres of any surface water or wetland;</p> <p>(ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;</p> <p>(iii) is waterlogged; or</p> <p>(iv) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except if the fertiliser is stored in an impermeable container;</p> <p>(b) paragraph (a) does not apply if such storage is in a building which is constructed and maintained to such a standard as is necessary to prevent run off or seepage of fertiliser from the building;</p> <p>(c) no organic fertiliser may be applied to land that—</p> <p>(i) is within 2 metres of any drainage ditch or within 5 metres of any other surface water or wetland;</p> <p>(ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole</p> |

(1) S.I. 1989/1263; relevant amending instruments are S.I. 1990/880, S.I. 1996/973 and S.S.I. 2000/62.

(2) 1990 c.43; section 35 was amended by the Environment Act 1995 (c.25), section 120 and Schedule 22, paragraph 66, and by S.S.I. 2000/323, Schedule 10, Part 1, paragraph 3(4). For a definition of 'waste' see section 75 of the Environmental Protection Act 1990 as amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 88.

(3) S.S.I. 2003/531; amended by S.S.I. 2006/133.

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|   | <p>that is not capped in such a way so as to prevent the ingress of water;</p> <p>(iii) is sloping with an overall gradient in excess of 15°, or 25° on uncultivated land designated for forestry;</p> <p>(iv) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations; or</p> <p>(v) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow;</p> <p>(d) no inorganic fertiliser may be applied to land that—</p> <p>(i) is within 2 metres of any surface water or wetland;</p> <p>(ii) is within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;</p> <p>(iii) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations; or</p> <p>(iv) is frozen, waterlogged, or covered with snow;</p> <p>(e) fertilisers must not be applied to land in excess of the nutrient needs of the crop;</p> <p>(f) any equipment used to apply fertiliser must be maintained in a good state of repair; and</p> <p>(g) fertiliser must be applied on land in such a way and at such times that the risk of pollution to the water environment is minimised.</p> |
| <p><b>19.</b> Keeping of livestock.</p> | <p>(a) Significant erosion or poaching of any land that is within 5 metres of surface water or wetland must be prevented;</p> <p>(b) livestock must be prevented from entering any land that is within 5 metres of a spring that supplies water for human consumption</p>  |

| <i>Column 1</i><br><i>Activity</i>   | <i>Column 2</i><br><i>Rules</i>   |
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|  | <p>or any well or borehole that is not capped in such a way so as to prevent the ingress of water; and</p> <p>(c) livestock feeders must not be positioned within 10 metres of any surface water or wetland.</p>  |
| <p><b>20.</b> Cultivation of land.</p>   | <p>(a) No land may be cultivated for crops that is—</p> <p>(i) within 2 metres of any surface water or wetland;</p> <p>(ii) within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water; or</p> <p>(iii) waterlogged;</p> <p>(b) moling of land must not be permitted on slopes with an overall gradient in excess of 4.5°; and</p> <p>(c) land must be cultivated in a way that minimises the risk of pollution to the water environment.</p> |
| <p><b>21.</b> Without prejudice to the operation of activity 10 and the rules related to it, the discharge of water run-off via a surface water drainage system to the water environment as a result of rural land activities.</p> | <p>(a) Water must be discharged in a way which minimises the risk of pollution to the water environment; and</p> <p>(b) no discharge from drainage may result in the destabilisation of the banks or bed of the receiving surface water.</p>  |
| <p><b>22.</b> Construction and maintenance of waterbound roads and tracks.</p>   | <p>(a) No material that will or will be likely to result in metallic, sulphide rich or strongly acidic polluted water run off from such roads or tracks may be used in the carrying out of the activity.</p>  |
| <p><b>23.</b> The application of pesticide.</p>  | <p>(a) The preparation of pesticide for application and the cleaning or maintenance of pesticide sprayers must be undertaken in conditions such that any spillages, run-off or washings will be prevented from entering the water environment;</p> <p>(b) pesticide spraying equipment must be maintained in a good state of repair;</p>  |

| <i>Column 1</i><br><i>Activity</i>                    | <i>Column 2</i><br><i>Rules</i>   |
|---|---|
|   | <p>(c) pesticide sprayers must not be filled with water taken from the water environment unless—</p> <p>(i) a device preventing back siphoning is fitted to the system; or</p> <p>(ii) the water is first placed in an intermediate container; and</p> <p>(d) pesticide-treated plants must not be soaked in any part of the water environment.</p>   |
| <p><b>24.</b> Operating sheep dipping facilities.</p> | <p>(a) Sheep must be prevented from having access to the water environment while there is a risk of transfer of sheep dip fluid from its fleece to the water environment;</p> <p>(b) no mobile sheep dipping facility, or part of any sheep dipping facility constructed after 1st April 2008 may be located within 50 metres of any river, ditch, pond, freshwater loch, wetland, well, spring or borehole;</p> <p>(c) sheep dipping facilities must not discharge underground and must not leak or overflow;</p> <p>(d) sheep dipping facilities must not be filled with water taken from the water environment unless—</p> <p>(i) a device preventing back siphoning is fitted to the system; or</p> <p>(ii) the water is first placed in an intermediate container; and</p> <p>(e) without prejudice to the continued requirement to obtain specific authorisation for the disposal of sheep dip under these Regulations, sheep dip facilities must be emptied within 24 hours following completion of dipping.</p> |

## PART 2

In this Schedule—

“application” means the spreading, spraying, incorporating or injecting into or onto land;

“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;

- “crop” includes any plant grown for a commercial purpose;
- “cultivation” includes the preparation of land prior to planting, and the harvesting of any crop;
- “ditch” means an open channel which collects and conveys drainage water from surface or subsurface drainage to the wider surface water environment;
- “farm yard manure” means a mixture of bedding material and animal excreta in solid form arising from the housing of livestock (excepting such arising from the keeping of birds for the production of food);
- “fertiliser” means any substance containing nutrients which is utilised on land to enhance plant growth, but excludes forestry brush;
- “forest” means land of an area of more than 0.5 hectares—
- (a) with a tree canopy cover of more than 20 percent;
  - (b) which is planted with trees, which trees collectively have the capacity to provide a tree canopy cover of more than 20 percent; or
  - (c) which meets all of the following criteria:
    - (i) it was used in the last 5 years as land described in paragraph (a);
    - (ii) it is to remain fallow of trees for a maximum of 4 consecutive years; and
    - (iii) when replanted with trees it will be replanted as land described in paragraph (b);
- “forestry operations” means operations carried out on land with a tree canopy cover of more than 10 per cent over an area of more than 0.5 hectares;
- “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;
- “moling” means a cultivation method if an implement is used to open a conduit within the soil along which water may flow;
- “oil” means any kind of oil and includes fuel oil, waste oil and hydraulic oil;
- “pesticide” has the same meaning as in section 16 of the Food and Environment Protection Act 1985 (control of pesticides etc.)(4);
- “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;
- “rural land use activities” means agricultural, forestry or leisure activity;
- “sewage” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968 (interpretation)(5);
- “SUD system” has the same meaning as in the Sewerage (Scotland) Act 1968;
- “surface water drainage system” means a system, such as a SUD system that is used to collect and drain 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 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;

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(4) 1985 c.48.

(5) 1968 c.47.

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

“uncultivated land” means land which has not been ploughed, rotovated or improved by management practices, but excludes land mounded for the purpose of planting riparian woodland);

“water for human consumption” means water that may be ingested by humans, used in the preparation of food or drink, or used in the cleaning of materials involved in the storage or consumption of food or drink;

“waterbound road” means a road constructed of coarse stone and fine aggregate to form a tightly bound semi-impervious surface; and

“waterlogged” means soil which is at water retaining capacity, except in a forest where it means where water is visible on the soil surface.

#### SCHEDULE 4

Regulations 15(1) and 27(5), paragraphs 10, 13 and 16 of Schedule 10

#### Relevant legislation

### PART 1

These Regulations

The Act

The Directive

The Groundwater Directive 1980

The Groundwater Directive 2006

The Priority Substances Directive

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(6)

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(7)

### PART 2

Part 2 of the Nature Conservation (Scotland) Act 2004(8)

The Conservation (Natural Habitats &c) Regulations 1994(9)

The Urban Waste Water Treatment (Scotland) Regulations 1994(10)

The Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997(11)

The Surface Waters (Fishlife) (Classification) (Scotland) Regulations 1997(12)

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(6) S.I. 2003/3245.

(7) S.I. 2004/99.

(8) 2004 asp 6.

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

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

(11) S.I. 1997/2407.

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

The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002(13)  
The Designation of Nitrate Vulnerable Zones (Scotland) (No. 2) Regulations 2002(14)  
The Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003(15)  
The Bathing Waters (Scotland) Regulations 2008(16)  
The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008(17)  
The Management of Extractive Waste (Scotland) Regulations 2010(18)

## SCHEDULE 5

Regulations 11(1)(a) and 18(4)(b)

### 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 7, 8 or 10;
- (b) the variation of any authorisation under regulations 18, 23 or 24;
- (c) the subsistence of an authorisation;
- (d) the transfer of an authorisation to another person, under regulation 25;
- (e) the surrender of an authorisation under regulation 27;
- (f) the determination that information is confidential under regulation 39.

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 provide for charges as are 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) must specify, in relation to any charge prescribed by the scheme, the description of the person who is liable to pay the charge;

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(13) [S.S.I. 2002/276](#).

(14) [S.S.I. 2002/546](#).

(15) [S.S.I. 2003/531](#).

(16) [S.S.I. 2008/170](#).

(17) [S.S.I. 2008/298](#).

(18) [S.S.I. 2010/60](#).

(b) may provide that it must be a condition of an authorisation that any charge prescribed is paid in accordance with the scheme;

(c) may, if appropriate, provide incentives to secure efficient and sustainable water use.

**6.** In making a charging scheme SEPA must 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>(19)</sup> in respect of the functions under—

(a) the Act;

(b) the Water Environment (Water Framework Directive) (Northumbria River Basin District Regulations 2003<sup>(20)</sup>);

(c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(21)</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 must not make a charging scheme unless the provisions of the scheme are approved by the Scottish Ministers.

**10.** Before submitting a proposed charging scheme to the Scottish Ministers for their approval under paragraph 9, SEPA must, 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.** If any proposed charging scheme is submitted to the Scottish Ministers for approval under paragraph 9, the Scottish Ministers must, 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 is 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 the provisions.

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<sup>(19)</sup> 1995 c.25; amended by the [Scotland \(Consequential Modifications No. 2\) Order 1999 \(S.I. 1999/1820\)](#).

<sup>(20)</sup> S.I. 2003/3245.

<sup>(21)</sup> S.I. 2004/99.

## SCHEDULE 6

Regulation 31(4) and (6)

### Enforcement and other powers

## 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 examine and investigate 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, must 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 if 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 31(4) must 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, if 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 may only be effected under the authority of a warrant issued in accordance with Part 3 of this Schedule.

**20.** If 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 must, 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.

**21.** Before exercising the power conferred by paragraph 11 in the case of any article or substance, an authorised person must 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 will be admissible in evidence against that person in any criminal proceedings.

**23.** Nothing in this schedule will 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 must 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 will continue in force until the purposes for which the warrant was issued have been fulfilled.

## PART 4

### Evidence

**29.** In any legal proceedings it will 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, will 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, is 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 if 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 is not 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 31(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 34(5)

## Compensation for grant of rights

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

“the 1963 Act” means the Land Compensation (Scotland) Act 1963<sup>(22)</sup>;

“grantor” means a person who has granted or joined in granting any rights pursuant to regulation 34; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to regulation 34.

**Period for making an application**

**2.** An application for compensation must be made to the person referred to in regulation 34(6) or, if regulation 33(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) if 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 must 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 must 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 is 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;

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(22) 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>(23)</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) 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) If 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>(24)</sup>—

- (a) the compensation will be assessed as if the interest were not subject to that security;
- (b) no compensation will 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 must 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 must, 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 is payable—

- (a) if 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) if 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>(23)</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>(24)</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 must 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) 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 37

## Register

1. The register maintained by SEPA under regulation 37 must contain all particulars of:
  - (a) any application made to SEPA for an authorisation;
  - (b) any notice to the applicant by SEPA under regulation 13(2), 14(1) or 16(2);
  - (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 must not identify the person who made the representations in question);
  - (e) any representations made by any public authority under regulation 12(2);
  - (f) any authorisation granted, or deemed to be granted, under these Regulations;
  - (g) in the case of an application in respect of a controlled activity that SEPA considered likely to have a significant adverse impact on the water environment, the main reasons for the grant or refusal of the application, the matters considered in determining the application, and details of any mitigation measures to be taken;
  - (h) any authorisation imposed by SEPA;
  - (i) any application made to SEPA for the variation, transfer or surrender of an authorisation;
  - (j) any variation, transfer and surrender of, or cessation of activity permitted under, any authorisation granted by SEPA;
  - (k) any suspension or revocation of an authorisation granted by SEPA;
  - (l) any notice issued by SEPA withdrawing or modifying a variation notice, a notice of surrender or a notice of suspension or revocation;
  - (m) any enforcement notice, issued by SEPA;
  - (n) any notice issued by SEPA withdrawing or modifying any enforcement notice;
  - (o) 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;
  - (p) 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;

- (q) where paragraph (n) applies a statement that representations have been made which have been the subject of such a request (but such statement must not identify the person who made the representations);
  - (r) any written notification of the determination by the Scottish Ministers of an appeal and any report accompanying any written notification;
  - (s) 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 36(2);
  - (t) in a case where any monitoring information is omitted from the register by virtue of regulation 38, 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;
  - (u) 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 36(2);
  - (v) any direction given to SEPA under any provision of these Regulations;
  - (w) convictions for offences under these Regulations;
  - (x) any exemptions granted by SEPA in accordance with Article 6(3) of the Groundwater Directive 2006; and
  - (y) any emissions, discharges or losses of any of the priority substances or pollutants listed in Part A of Annex I to the Priority Substances Directive.
2. If 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 must 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 may be entered in the register.
3. Nothing in paragraph 1 will 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) does 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 53

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

1. A person who wishes to appeal to the Scottish Ministers under regulation 50 must give to the Scottish Ministers written notice of the appeal together with the documents specified in paragraph 2 and must 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 must send a copy of that notification to SEPA.
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 50(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 50(i), before the date on which the suspension or revocation takes effect;
  - (c) in the case of an appeal under regulation 50(d), (e), (f), (g), or (h), 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 50(j) or (k), 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 must, 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 must—
- (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 must, 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 must 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 51, 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 must 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. If the Scottish Ministers cause a hearing to be held under paragraph 10, they must 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 must, 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 must 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 must 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 prevents the appointed person from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

18. After the conclusion of a hearing, the appointed person must make a report to the Scottish Ministers in writing which must 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(25) (which relates to the costs of and holding of local inquiries) 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—

- (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;

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(25) 1973 c.65.

- (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;
  - (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 must 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 must 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 must 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 must at the same time send a copy of them to the other party.

**24.** The Scottish Ministers must send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 6 and must 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 24;
- (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 must give notice to the appellant of their determination of the appeal and their reasons for that determination, and must provide the appellant with a copy of any report mentioned in paragraph 18.

27. The Scottish Ministers must at the same time send a copy of the notice of the determination of the appeal, their reasons for that determination and a copy of any report mentioned in paragraph 18 to SEPA and to any person who made representations to the Scottish Ministers during the appeal.

## 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>(26)</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;

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(26) S.S.I. 2005/348.

- (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;
- (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>(27)</sup>;
  - (ii) a registration or authorisation under the Radioactive Substances Act 1993<sup>(28)</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>(29)</sup>; and
  - (iv) a waste management licence under the Waste Management Licensing (Scotland) Regulations 2011.

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(27) 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).

(28) 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).

(29) 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.

## SCHEDULE 11

Regulation 58

### Amendments

#### **Amendments to the Town and Country Planning (Scotland) Act 1997**

1. In section 26 of the Town and Country Planning (Scotland) Act 1997<sup>(30)</sup> (meaning of “development”) in subsection (2A)—

- (a) omit “irrigation or”; and
- (b) at the end insert “, but does not include the carrying out of irrigation work”.

#### **Amendments to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

2. In Schedule 1, Part 6 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992<sup>(31)</sup>, in paragraph (1) of Class 18A (water management)—

- (a) omit “irrigation or”; and
- (b) at the end insert “, but not including the carrying out of irrigation work”.

#### **Amendment to the Environmental Impact Assessment (Scotland) Regulations 1999**

3. In column 1 of the table in Schedule 2 to the Environmental Impact Assessment (Scotland) Regulations 1999<sup>(32)</sup> at “1. Agriculture and aquaculture”, in entry (b) for “irrigation and land drainage projects” substitute “drainage projects, but excluding irrigation projects”.

4. In column 2 of the table referred to in paragraph 3, at “1. Agriculture and aquaculture” omit—

- (a) entries (i) and (ii); and
- (b) the words “and for the purposes of this entry, “agricultural land” and “agricultural unit” have the same meaning as in Part 6 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992”,

and replace with “The area of the works exceeds one hectare”.

#### **Savings Provision**

5. Nothing in paragraphs 1 to 4 will affect the continued operation of any of the provisions amended by them, as such provisions relate to—

- (a) any application lodged with, or received by, a planning authority or the Scottish Ministers prior to the commencement of these Regulations, or any appeal in relation to such an application;
- (b) any matter in relation to which an enforcement notice has been issued prior to the commencement of these Regulations; or,
- (c) the completion of any permitted development begun before the commencement date of these Regulations.

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<sup>(30)</sup> 1997 c.8.

<sup>(31)</sup> S.I. 1992/223.

<sup>(32)</sup> S.S.I. 1999/1.