

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

Regulations 4(1)(b) and

Substances referred to in regulations 4(1)(b) and 28(1)(b)(iii)

1. Subject to paragraph 2, a substance is listed in this Schedule if it belongs to one of the following families or groups of substances—
 - (a) organohalogen compounds and substances which may form such compounds in the aquatic environment;
 - (b) organophosphorus compounds;
 - (c) organotin compounds;
 - (d) substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment;
 - (e) mercury and its compounds;
 - (f) cadmium and its compounds;
 - (g) mineral oils and hydrocarbons;
 - (h) cyanides.
2. A substance is not listed in this Schedule if it has been determined by SEPA to be inappropriate to be so listed on the basis of a low risk of toxicity, persistence and bioaccumulation.
3. SEPA shall publish any determination it makes under paragraph 2 in such manner as it considers appropriate to bring it to the notice of persons affected by, likely to be affected by, or

interested in the determination and shall make copies of the determination available to the public free of charge.

SCHEDULE 3

Regulation 7

General Binding Rules

PART 1

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>1. The operation of any weir that—</p> <ul style="list-style-type: none"> (a) is not associated with an abstraction; (b) is not capable of being operated to control the water level upstream of the weir; (c) does not result in the creation of a height differential between the upstream and downstream water surfaces of more than one metre; and (d) was constructed before 1st April 2006. 	<ul style="list-style-type: none"> (a) (a) the weir shall 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>2. The abstraction of less than 10 m³ in any one day.</p>	<ul style="list-style-type: none"> (a) (a) there shall be a means of demonstrating that the abstraction is less than 10 m³ 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 m³ in any one day; and (b) water leakage shall 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>3. 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, where such works are—</p> <ul style="list-style-type: none"> (a) not intended for the purpose of abstraction; or 	<ul style="list-style-type: none"> (a) (a) subject to paragraphs (b) and (c), the construction of the well or borehole shall be such as to avoid the entry of water of a different chemical composition into the body of groundwater; (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

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>(b) intended for the abstraction of less than 10 m³ in any one day; or</p> <p>(c) intended for the abstraction of less than 150 m³ in any period of one year, and the purpose of the abstraction is either–</p> <p style="padding-left: 40px;">(i) to test for the yield of the borehole or well or the hydraulic properties of the aquifer; or</p> <p style="padding-left: 40px;">(ii) to sample the water quality.</p> <p>4. The abstraction from a borehole, and any subsequent discharge of the abstracted water, where the total volume of water abstracted is less than 150 m³ in any period of one year and the purpose of the abstraction is either–</p> <p style="padding-left: 40px;">(a) to test the yield of the borehole or well or the hydraulic properties of the aquifer; or</p> <p style="padding-left: 40px;">(b) to sample the water quality.</p> <p>5. The dredging of a river, burn or ditch that–</p> <p style="padding-left: 40px;">(a) has an average width of less than one metre along the stretch to be worked, as measured at the bottom of the channel; and</p> <p style="padding-left: 40px;">(b) has been artificially straightened or canalised along the length which is to be worked.</p>	<p>not result in pollution of the water environment;</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 shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p> <p>(a) (a) the abstraction shall not cause the entry of 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 shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p> <p>(a) (a) 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>(b) any vegetation removed shall not be disposed of into the channel;</p> <p>(c) the bed of the channel adjacent to each bank of the river or burn shall be left undisturbed;</p> <p>(d) all reasonable steps shall 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 shall 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 emergence of the juvenile fish;</p> <p>(f) all reasonable steps shall be taken to avoid increased erosion of the bed or banks of the river, burn or ditch as a result of the works;</p>

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<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>(i) The construction and maintenance of a minor bridge over a river, burn or ditch; or</p> <p>(ii) 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>(g) the works shall not result in the heightening of either bank.</p> <p>(a) (a) vegetation on any bank of the river, burn or ditch shall be removed or modified only to the extent necessary to carry out the works;</p> <p>(b) any vegetation removed shall not be disposed of into the channel;</p> <p>(c) the works shall not prevent the free passage of migratory fish;</p> <p>(d) the works shall 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 shall not extend more than 10 metres along the length of the river, burn or ditch and shall be removed on completion of the works;</p> <p>(f) the works shall 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 emergence of the juvenile fish;</p> <p>(g) all reasonable steps shall 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 shall 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 shall 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) (a) the bed and banks shall not be altered as a result of the works other than in accordance with paragraphs (b) and (d);</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
8. Works to control the erosion of a bank of a river, burn or ditch by revetment.	<ul style="list-style-type: none">(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;(c) any vegetation removed shall not be disposed of into the channel; and(d) as far as reasonably practicable, within 12 months of the commencement of the works, the banks of the river, burn or ditch shall be reinstated at least to their condition prior to the commencement of the works. <ul style="list-style-type: none">(a) (a) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of either bank of the river, burn or ditch;(b) the works shall not result in the destabilisation of the bed of the river, burn or ditch upstream or downstream of the works;(c) vegetation on either 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;(d) any vegetation removed shall not be disposed of into the channel;(e) revetments shall be constructed from one or more of the following: vegetation; geotextiles; wood other than wood treated with preservatives; or non-grouted stone rip-rap;(f) the length of any revetment shall be no more than 10 metres or one channel width, whichever is greater;(g) where wood or stone rip-rap is used for a revetment, the wood or rip-rap shall be placed at the toe of the bank;(h) except for the purpose of repairing an existing revetment no bank protection works shall be undertaken within 5 channel widths or 50 metres (whichever is the greater) of any

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<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>9. Operating any vehicle, plant or equipment for the purposes of undertaking activity 5, 6, 7 or 8.</p>	<p>existing bank protection works on either bank of the river, burn or ditch;</p> <ul style="list-style-type: none"> (i) the works shall not result in the heightening of either bank; (j) the works shall 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 emergence of the juvenile fish; and (k) the revetments shall be maintained in the state of repair required to avoid increased erosion of the banks or destabilisation of the bed. <ul style="list-style-type: none"> (a) (a) any vehicles, plant or other equipment shall only operate in water where it is impracticable for them to operate on dry land; (b) the refuelling of vehicles, plant and other equipment shall be undertaken at least 10 metres from any surface water; (c) any static plant or equipment used within 10 metres of surface water shall 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; (d) any vehicle, plant or other equipment used in or near surface water shall not leak any oil; (e) the washing of vehicles, plant or other equipment shall be undertaken at least 10 metres away from any surface water and water from such washing shall not enter any surface water; (f) vehicles, plant or equipment shall 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.

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>10. Discharge of water run-off from a surface water drainage system to the water environment from construction sites, buildings, roads, yards or any other built developments</p>	<ul style="list-style-type: none"> (a) (a) the discharge shall not result in pollution of the water environment; (b) the discharge shall not contain any trade effluent or sewage, and shall not result in visible discolouration, iridescence, foaming or growth of sewage fungus in the water environment; (c) the discharge shall not result in the destabilisation of the banks or bed of the receiving surface water; (d) the discharge shall not contain any water run-off from any buildings, roads, yards or other built developments, the construction of which is completed after 1st April 2006, or from construction sites operated after 1st April 2006, unless— <ul style="list-style-type: none"> (i) those developments or construction sites are drained by a SUD system or equivalent equipped to avoid pollution of the water environment; (ii) the run-off is from a development that is a single dwelling and its curtilage; or (iii) the discharge is to coastal water; (e) the discharge shall not contain any water run-off from— <ul style="list-style-type: none"> (i) fuel delivery areas and areas where vehicles, plant and equipment are refuelled; (ii) vehicle loading or unloading bays where potentially polluting matter is handled; or (iii) oil and chemical storage, handling and delivery areas; constructed after 1st April 2006; (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, shall be maintained in a good state of repair; and

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<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>11. Discharge into a surface water drainage system.</p>	<p>(g) all reasonable steps shall 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.</p> <p>(a) (a) oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants shall 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 shall not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system; and</p> <p>(c) sewage and trade effluent shall not be discharged into any surface water drainage system.</p>

PART 2

In this Schedule—

“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;

“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;

“oil” means any kind of oil and includes fuel oil, waste oil and hydraulic oil;

“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;

“sewage” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968(1);

“surface water drainage system” means a system, such as a SUD system, that is used to collect and drain surface 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

(1) 1968 c. 47.

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; and

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

SCHEDULE 4

Regulation 15(1)

PART 1

The Groundwater Directive

The Directive

The Act

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003**(2)**.

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**(3)**.

These Regulations

PART 2

Part 2 of the Nature Conservation Act 2004**(4)**

The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1990**(5)**.

The Bathing Waters (Classification) (Scotland) Regulations 1991**(6)**.

The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1992**(7)**.

The Conservation (Natural Habitats &c) Regulations 1994**(8)**.

The Urban Waste Water Treatment (Scotland) Regulations 1994**(9)**.

The Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997**(10)**.

The Surface Waters (Fishlife) (Classification) (Scotland) Regulations 1997**(11)**.

The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1998**(12)**.

The Surface Waters (Dangerous Substances) (Classification) (Scotland) (No. 2) Regulations 1998**(13)**.

The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002**(14)**.

(2) S.I.2003/3245.

(3) S.I. 2004/99.

(4) 2004 asp 6.

(5) S.I. 1990/126, amended by S.I. 1998/1344.

(6) S.I. 1991/1609, amended by S.I. 1996/973.

(7) S.I. 1992/574.

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

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

(10) S.I. 1997/2407.

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

(12) S.I. 1998/250.

(13) S.I. 1998/1344.

(14) S.S.I. 2002/276.

The Designation of Nitrate Vulnerable Zones (Scotland) (No. 2) Regulations 2002⁽¹⁵⁾.
 The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2003⁽¹⁶⁾.
 The Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003⁽¹⁷⁾.

SCHEDULE 5

Regulation 12(a)

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 8, 9 or 11
 - (b) the variation of any authorisation under regulations 20 or 21;
 - (c) the subsistence of an authorisation;
 - (d) the transfer of an authorisation to another person, under regulation 22;
 - (e) the surrender of an authorisation under regulation 24;
 - (f) the determination that information is confidential under regulation 35.
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 make such provision for charges as is 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) shall specify, in relation to any charge prescribed by the scheme, the description of the person who is liable to pay the charge;
 - (b) may provide that it shall be a condition of an authorisation that any charge prescribed is paid in accordance with the scheme;
 - (c) may, where appropriate, provide incentives to secure efficient and sustainable water use.

⁽¹⁵⁾ S.S.I. 2002/546.

⁽¹⁶⁾ S.S.I. 2003/51, amended by S.S.I. 2003/169.

⁽¹⁷⁾ S.S.I. 2003/531.

6. In making a charging scheme SEPA shall 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**(18)** in respect of the functions under—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District Regulations 2003**(19)**);
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**(20)**; 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 shall not make a charging scheme unless the provisions of the scheme have been approved by the Scottish Ministers.

10. Before submitting a proposed charging scheme to the Scottish Ministers for their approval under paragraph 9, SEPA shall, 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. Where any proposed charging scheme has been submitted to the Scottish Ministers for approval under paragraph 9, the Scottish Ministers shall, 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 shall be 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, them.

(18) 1995 c. 25; amended by the Scotland (Consequential Modifications No. 2) Order 1999 (S.I. 1999/1820).

(19) S.I. 2003/3245.

(20) S.I. 2004/99.

SCHEDULE 6

Regulation 27(4)

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 make such examination and investigation 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, shall 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 where 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 27(4) shall 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, where 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 shall only be effected under the authority of a warrant issued in accordance with Part 3 of this Schedule.

20. Where 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 shall, 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.

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

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

PART 4

Evidence

29. In any legal proceedings it shall 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, shall 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, shall be 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 where 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 shall not be 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 27(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 30(5)

Compensation for Grant of Rights

Interpretation**1.** In this Schedule—

“the 1963 Act” means the Land Compensation (Scotland) Act 1963⁽²¹⁾;

“grantor” means a person who has granted or joined in granting any rights pursuant to regulation 30; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to regulation 30.

Period for making an application

2. An application for compensation shall be made to the person referred to in regulation 30(6) or, where regulation 29(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) where 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 shall 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 shall 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 shall be 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;

(21) 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⁽²²⁾ 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) shall, 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) Where 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⁽²³⁾—

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

- (a) where 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) where 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

(22) 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).

(23) 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 shall 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) shall 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 33

Register

1. The register maintained by SEPA under regulation 33 shall contain all particulars of:
 - (a) any application made to SEPA for an authorisation;
 - (b) any notice to the applicant by SEPA under regulation 20 or 26;
 - (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 shall not identify the person who made the representations in question);
 - (e) any authorisation granted, or deemed to be granted, under these Regulations;
 - (f) any authorisation imposed by SEPA;
 - (g) any application made to SEPA for the variation, transfer or surrender of an authorisation;
 - (h) any variation, transfer and surrender of any authorisation granted by SEPA;
 - (i) any suspension or revocation of an authorisation granted by SEPA;
 - (j) any notice issued by SEPA withdrawing or modifying a variation notice, a notice of surrender or a notice of suspension or revocation .
 - (k) any enforcement notice, issued by SEPA;
 - (l) any notice issued by SEPA withdrawing or modifying any enforcement notice;
 - (m) 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;
 - (n) 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;
 - (o) where paragraph (n) applies a statement that representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations);
 - (p) any written notification of the determination by the Scottish Ministers of an appeal and any report accompanying any written notification;

- (q) 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 32(2);
 - (r) in a case where any monitoring information is omitted from the register by virtue of regulation 34, 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;
 - (s) 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 32(2);
 - (t) any direction given to SEPA under any provision of these Regulations; and
 - (u) convictions for offences under these Regulations.
2. Where 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 shall 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 shall be entered in the register.
3. Nothing in paragraph 1 shall 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) shall 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 49

Procedures in connection with appeals to the Scottish Ministers

1. A person who wishes to appeal to the Scottish Ministers under regulation 46 shall give to the Scottish Ministers written notice of the appeal together with the documents specified in paragraph 2 and shall 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 shall send a copy of that notification to SEPA.

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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 46(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 46(h), before the date on which the revocation takes effect;
 - (c) in the case of an appeal under regulation 46(d), (e), (f), or (g), 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 46 (i) or (j), 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 shall, 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 shall—
 - (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 shall, 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 shall 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 47, 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 shall 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. Where the Scottish Ministers cause a hearing to be held under paragraph 10, they shall 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 shall, 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 shall 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 shall 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 shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

18. After the conclusion of a hearing, the appointed person shall make a report to the Scottish Ministers in writing which shall 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⁽²⁴⁾ (which relates to the costs of and holding of local inquiries) shall 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, that is to say:—

- (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;
- (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;

(24) 1973 c. 65.

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

24. The Scottish Ministers shall send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 6 and shall 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 23;
- (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 shall give notice to the appellant of their determination of the appeal and their reasons for that determination, and shall provide the appellant with a copy of any report mentioned in paragraph 18.

27. The Scottish Ministers shall at the same time send–

- (a) a copy of the documents mentioned in paragraph 25 to SEPA and to any persons required under paragraph 3(1)(a) to be notified of the appeal; and
- (b) a copy of their determination of the appeal to any person mentioned in paragraph 6 who made representations to the Scottish Ministers and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

SCHEDULE 10

Regulation 54

Transitional, Savings and Supplemental Provisions

PART 1

Water Environment

1. Where on or before 1st July 2005 a person—
 - (a) holds a consent under section 34 of the Control of Pollution Act 1974(25) which is subject to an annual charge under the Control of Pollution Act 1974 (Fees and Charges) (Scotland) Scheme 2005(26); or
 - (b) has applied for a consent under section 34 of the Control of Pollution Act 1974 but that application has not been determined,

in respect of an activity which is a controlled activity, the provisions of paragraphs 2 to 6 apply.

2. Subject to paragraph 3, the person referred to in paragraph 1 must make an application to SEPA under regulation 12 for an authorisation under regulation 9 within the period beginning on 1st October 2005 and ending on 31st March 2006.

3. Paragraph 2 does not apply where the controlled activity concerned will cease before 1st April 2006.

4. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35 to 36, 46(a) to (e) and (j), 47 to 49, 52 and 53 shall have effect for the purposes of the consideration of an application under paragraph 2.

5. Subject to paragraph 6, an authorisation granted by SEPA in respect of an application under paragraph 2 shall take effect on 1st April 2006.

6. Where—
 - (a) SEPA has not determined an application made under paragraph 2 on or before 31st March 2006; or
 - (b) SEPA has determined that application and the applicant has appealed against that determination,

the consent or activity referred to in paragraph 1 shall, for the purposes of regulation 5, be deemed to be an authorisation granted under regulation 9 subject to the conditions of that consent or in accordance with the description of the activity in the application under paragraph 2, as the case may be, until SEPA has determined the application, or the Scottish Ministers have determined the appeal.

7. The person referred to in paragraph 1 may make an application under paragraph 2 before 30th September 2005, and any application made before 1st July 2005 shall be treated as if made on that date.

8. The provisions of paragraphs 3 to 6 apply to an application under paragraph 7 as they do to an application under paragraph 2.

9. Where a person—

(25) 1974 c. 40; amended by section 168 and Schedule 23 of the Water Act 1989 (c. 15) and Schedule 22 of the Environment Act 1995 (c. 25).

(26) A copy of the Control of Pollution Act 1974 (Fees and Charges)(Scotland) Scheme 2005 is published on SEPA's website and can be found at the following address: www.sepa.org.uk/pdf/charging/legal/copa_2005.pdf. Copies can also be obtained from SEPA Corporate Office, Erskine Court, Castle Business Park, Stirling FK9 4TR.

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- (a) holds a consent under section 34 of the Control of Pollution Act 1974 which is not subject to an annual charge under the Control of Pollution Act 1974 (Fees and Charges) (Scotland) Scheme 2005;
 - (b) holds an authorisation under regulation 18 of the Groundwater Regulations 1998⁽²⁷⁾; or
 - (c) has applied for an authorisation under regulation 18 of the Groundwater Regulations 1998,
- in respect of an activity which is a controlled activity, the provisions of paragraphs 10 to 12 apply.

10. The person referred to in paragraph 9 shall be deemed to have made an application to SEPA on 1st April 2006.

11. –

- (a) Until SEPA has determined the application under paragraph 10; or
- (b) where SEPA has determined the application and the determination has been appealed against, the Scottish Ministers have determined that appeal,

the consent, authorisation or activity in respect of which an application has been made, shall for the purposes of regulation 5, be deemed to be an authorisation granted under regulation 8, subject to the conditions of that consent or authorisation or in accordance with the description of the activity in the application under paragraph 10, as the case may be, with effect from 1st April 2006.

12. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35, 36, 46(a) to (e) and (j), 47 to 49, 52 and 53 shall have effect for the purposes of consideration of an application under paragraph 10.

PART 2

Pollution Control

13. Where on 31st March 2006 a relevant authorisation is in force in respect of an activity which is a controlled activity, the provisions of paragraphs 14 to 17 apply.

14. The relevant authorisations referred to in paragraph 13 shall, for the purposes of regulation 5, be deemed to be an authorisation granted under these Regulations.

15. SEPA shall review all relevant authorisations referred to in paragraph 13 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.

16. When carrying out a review in accordance with paragraph 15, SEPA shall–

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

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

17. The review required under paragraph 15, and the steps required under paragraph 16 shall be completed by 1st April 2010.

(27) S.I. 1998/2746, amended by S.S.I. 2000/323 and 2005/22.

18. Where, on or after 1st April 2006, an application for a relevant authorisation is made, or if made before that date has not been determined, in respect of an activity which is a controlled activity, the provisions of paragraph 19 and 20 apply.

19. SEPA shall, when considering an application referred to in paragraph 18–

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

and shall, if they grant the application, ensure that the relevant authorisation complies with the requirements of these Regulations.

20. Where an application is granted in accordance with paragraph 19, it shall, for the purposes of regulation 5, be deemed to be an authorisation granted under these Regulations.

21. In this Part–

- (a) “authorised activity” means an activity referred to in paragraph 14 or 19, 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**(28)**;
 - (ii) a registration or authorisation under the Radioactive Substances Act 1993**(29)**;
 - (iii) a permit under the Pollution Prevention and Control (Scotland) Regulations 2000**(30)**; and
 - (iv) a waste management licence under the Waste Management Licensing Regulations 1994**(31)**;

PART 3

Abstractions and Impoundments

22. Where a person will be carrying out an activity on or after 1st April 2006 which is a controlled activity referred to in section 20(3)(b) or (c) of the Act and which will not be authorised under regulation 7, the provisions of paragraphs 23 to 26 apply.

23. The person referred to in paragraph 22 must make an application to SEPA for an authorisation under regulation 9 in respect of the activity referred to in that paragraph, within the period beginning on 1st October 2005 and ending on 31st March 2006.

(28) 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).

(29) 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).

(30) 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.

(31) S.I. 1994/1056; amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 634, 916, 972, 973, 1279; 1997/351, 2203, 1998/606, 2746 and S.S.I. 2000/323, 2003/170, 171 and 2005/22.

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24. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35, 36, 46(a) to (e) and (j), 47 to 49, 52 and 54 shall have effect for the purposes of the consideration of an application under paragraph 23.

25. Subject to paragraph 26, an authorisation granted by SEPA in respect of an application under paragraph 23 shall take effect on 1st April 2006.

26. Where—

- (a) SEPA has not determined an application made under paragraph 23 on or before 1st April 2006; or
- (b) SEPA has determined that application and the applicant has appealed against that determination,

the activity referred to in paragraph 22 shall, for the purposes of regulation 5, be deemed to be authorised under these Regulations in accordance with the description of the activity given in the application referred to in paragraph 23, until SEPA has determined the application, or the Scottish Ministers have determined the appeal, as the case may be.