

**2013 No. 176**

**ENVIRONMENTAL PROTECTION**

**WATER**

**The Water Environment (Controlled Activities) (Scotland)  
Amendment Regulations 2013**

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| <i>Made</i> - - - -                        | <i>28th May 2013</i> |
| <i>Laid before the Scottish Parliament</i> | <i>30th May 2013</i> |
| <i>Coming into force</i> - -               | <i>1st July 2013</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20 and 36(2) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003(a) (“the Act”) and of all other powers enabling them to do so.

In accordance with section 21(1) of the Act, they have consulted the persons required.

In accordance with section 21(2), they have published a draft of the proposed general binding rules, publicised the opportunity to make representations, and made copies of the rules available for public inspection.

In accordance with section 21(4), they have had regard to the representations received.

**Citation and commencement**

1. These Regulations may be cited as the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2013 and come into force on 1st July 2013.

**Amendment of the Water Environment (Controlled Activities) (Scotland) Regulations 2011**

2.—(1) The Water Environment (Controlled Activities) (Scotland) Regulations 2011(b) are amended as follows.

(2) In regulation 3(2), omit “Licensing”.

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(a) 2003 asp 3. Section 20 was amended by regulation 3 of S.S.I. 2005/348. Other amendments are not relevant.  
(b) S.S.I. 2011/209.

- (3) In regulation 13—
- (a) for paragraph (1) substitute—
- “(1) If SEPA receives an application it may, if it considers that the controlled activity has or is likely to have a significant adverse impact on the water environment or the interests of other users of the water environment—
- (a) publish such details of the application as it considers appropriate on its website; and
- (b) require the application to be advertised in accordance with this regulation.”; and
- (b) for paragraph (5) substitute—
- “(5) SEPA must consider all written representations made in connection with an application advertised under this regulation which are received—
- (a) on or after the date on which the application is received by SEPA; and
- (b) before the expiry of the period of 28 days beginning with the date of the advertisement.”.
- (4) In Schedule 3—
- (a) in Part 1, for the table substitute the table in the Schedule to these Regulations; and
- (b) in Part 2, after the definition of “application” insert—
- ““buffer zone” means an area of land, where no storage or application of fertiliser or pesticide takes place, which intercepts (or would intercept) run-off from the storage or application of fertiliser or pesticide to prevent it from entering the water environment;”.

*PAUL WHEELHOUSE*  
Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
28th May 2013

## SCHEDULE

Regulation 2(4)

| <i>“Column 1<br/>Activity</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Column 2<br/>Rules</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <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>(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 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>(d) intended to dewater one or more excavations at—</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 any 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> <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> |

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| <ul style="list-style-type: none"> <li>(i) a construction site for roads, buildings, pipelines, or other built developments; or</li> <li>(ii) a site at which the maintenance of such developments is being undertaken; or</li> <li>(e) intended for the purpose of undertaking activity 17.</li> </ul>                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>4.</b> 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> <ul style="list-style-type: none"> <li>(a) to test the yield of the borehole or well or the hydraulic properties of the aquifer; or</li> <li>(b) to sample the water quality.</li> </ul> | <ul style="list-style-type: none"> <li>(a) The abstraction must not cause the entry of pollutants or water of a different chemical composition into any body of groundwater; and</li> <li>(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.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>5.</b> The dredging of a river, burn or ditch that—</p> <ul style="list-style-type: none"> <li>(a) has an average width of less than one metre along the stretch to be worked, as measured across the bed between the base of one bank and the other; and</li> <li>(b) has been artificially straightened or canalised along the length which is to be worked.</li> </ul>                                                                 | <ul style="list-style-type: none"> <li>(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;</li> <li>(b) any vegetation removed must not be disposed of into the channel;</li> <li>(c) the activity must not result in the widening of the river, burn or ditch;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> <li>(g) the bed of the worked stretch must be graded at a shallow angle to tie in with the bed level upstream and downstream and there must be no steps or sudden changes in the angle of the bed slope; and</li> <li>(h) the removed sediment must not be left on the banks such that its placement heightens the banks.</li> </ul> |

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| <p><b>6. The construction and maintenance—</b></p> <ul style="list-style-type: none"> <li>(a) of a minor bridge over a river, burn or ditch;</li> <li>(b) of, or removal of, a temporary bridge over any river, burn or ditch that has a channel width of less than 5 metres; or</li> <li>(c) of a surface water drainage system outfall which discharges into a river, burn or ditch.</li> </ul> | <ul style="list-style-type: none"> <li>(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;</li> <li>(b) any vegetation removed must not be disposed of into the channel;</li> <li>(c) the works must not prevent the free passage of migratory fish;</li> <li>(d) the works must not result in the narrowing of the channel width nor the heightening of either bank;</li> <li>(e) where the activity requires any work in the wetted part of the channel, 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;</li> <li>(f) if necessary, a temporary culvert may be installed to facilitate the works but the culvert must not extend more than 10 metres along the length of the river, burn or ditch and must be removed on completion of the works;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> <li>(j) the activity must not result in pollution of the water environment; and</li> <li>(k) any outfall and associated works must be designed and constructed to be no larger than is necessary for the proper operation of the outfall, and in any case must not extend more than 20 metres along the length of the river, burn or ditch.</li> </ul> |
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| <p><b>7.</b> The laying of a pipeline or cable by boring beneath the bed and banks of a river, burn or ditch.</p> | <ul style="list-style-type: none"> <li>(a) The bed and banks must not be altered as a result of the works other than in accordance with paragraphs (b) and (d);</li> <li>(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;</li> <li>(c) any vegetation removed must not be disposed of into the channel; and</li> <li>(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.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>8.</b> Works to control the erosion of a bank of a river, burn or ditch by revetment.</p>                   | <ul style="list-style-type: none"> <li>(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;</li> <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> </ul> |

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|                                                                                                                                   | <ul style="list-style-type: none"> <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. Operating any vehicle, plant or equipment for the purposes of undertaking activity 5, 6, 7, 8, 10, 12, 13 or 14.</b></p> | <ul style="list-style-type: none"> <li>(a) Any vehicles, plant or other equipment must only operate in water where it is impracticable for them to operate on dry land;</li> <li>(b) the refuelling of vehicles, plant or other equipment must be undertaken at least 10 metres from any surface water;</li> <li>(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;</li> <li>(d) any vehicle, plant or other equipment used in or near surface water must not leak any oil;</li> <li>(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;</li> <li>(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;</li> <li>(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 are freshwater pearl mussels; and</li> <li>(h) during forestry operations the operator must not operate machinery in watercourses.</li> </ul> |

**10.** 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.

- (a) All reasonable steps must be taken to ensure that the discharge must not result in pollution of the water environment;
- (b) the discharge must not contain any trade effluent or sewage, and must not result in visible discolouration, iridescence, foaming or growth of sewage fungus in the water environment;
- (c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water;
- (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—
  - (i) during construction those developments are drained by a SUD system or equivalent systems equipped to avoid pollution of the water environment;
  - (ii) following construction those developments are drained by a SUD system equipped to avoid pollution of the water environment;
  - (iii) the run-off is from a development that is a single dwelling and its curtilage; or
  - (iv) the discharge is to coastal water;
- (e) the discharge must not contain any water run-off from—
  - (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 2007;
- (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;

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|                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>(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</li> <li>(h) the construction or maintenance of the outfall must not result in pollution of the water environment.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>11.</b> Discharge into a surface water drainage system.</p>                                                                                                                                                                                                                                                                                | <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(c) sewage or trade effluent must not be discharged into any surface water drainage system; and</li> <li>(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.</li> </ul> |
| <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> | <ul style="list-style-type: none"> <li>(a) The sediment or other matter must be removed within 10 metres upstream of the weir;</li> <li>(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;</li> <li>(c) the removed sediment must only be returned to the river, burn or ditch from which it was removed, if— <ul style="list-style-type: none"> <li>(i) it is returned within 10 metres downstream of the weir;</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                     |

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| <p><b>13.</b> For the purpose of ensuring the proper functioning of a closed culvert, abstraction or discharge pipe, 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;</li> <li>(c) the inside of a closed culvert; or</li> <li>(d) the bed of a river, burn or ditch within 5 metres of— <ul style="list-style-type: none"> <li>(i) an outfall for a surface water drainage system that discharges water run-off from buildings, roads, yards, any other built developments, or construction sites for such developments;</li> </ul> </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> <li>(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;</li> <li>(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</li> </ul>                                                                                                                                                                                                                      |

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| <p>(ii) an outfall for a sewage or trade effluent discharge; or</p> <p>(iii) an inlet for a water abstraction,</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>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) subject to paragraph (h), the removed sediment must, where possible, be returned to the river, burn or ditch from which it was removed; and</p> <p>(h) the removed sediment must only be returned to the river, burn or ditch from which it was removed, if—</p> <p>(i) it is returned as close to the location of its removal as is practicable;</p> <p>(ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish;</p> <p>(iii) all reasonable steps are taken to avoid increased erosion of the bed or the banks of the river, burn or ditch; and</p> <p>(iv) 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) The placed boulder or boulders must not occupy more than 10% of the channel width;</p> <p>(b) the boulder or boulders must not be placed within 20 metres of any other 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 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 or burn by revetment;</p> <p>(e) the tops of the boulders must be submerged except during periods of low flows;</p>                                                                                                             |

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| <p><b>15.</b> The temporary abstraction of groundwater at—</p> <ul style="list-style-type: none"> <li>(a) a construction site for roads, railways, buildings, pipelines, communication links or other built development; or</li> <li>(b) a site at which the maintenance of such a development is being undertaken,</li> </ul> <p>by means of—</p> <ul style="list-style-type: none"> <li>(i) pumping the groundwater directly from any excavation or excavations on the site; or</li> <li>(ii) pumping the groundwater from any wells or boreholes on the site in order to help dewater any other excavation or excavations on the site,</li> </ul> <p>and, if desired, the subsequent discharge of the abstracted groundwater to the water environment.</p> | <ul style="list-style-type: none"> <li>(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;</li> <li>(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— <ul style="list-style-type: none"> <li>(i) unconsolidated sands or gravels;</li> <li>(ii) sandstones; or</li> <li>(iii) any other strata of equivalently high permeability;</li> </ul> </li> <li>(c) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of a wetland;</li> <li>(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;</li> <li>(e) all reasonable steps must be taken to ensure that the quantity of sediment in the abstracted water is minimised; and</li> <li>(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 discharged via a surface water drainage system authorised under these Regulations subject to the consent of the person having operational control of the system.</li> </ul> |

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| <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>                                                                                                                                                                     | <ul style="list-style-type: none"> <li>(a) No solid or liquid materials coming into contact with groundwater may contain any hazardous substance;</li> <li>(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</li> <li>(c) no materials coming into contact with groundwater as a result of the works may cause pollution of the water environment.</li> </ul>                                                                                                                                                                                                                                                                    |
| <p><b>17.</b> The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the abstracted water.</p>                                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>(a) The abstracted water must be returned to the same geological formation from which it was abstracted;</li> <li>(b) any volume of water may be abstracted but the volume of water abstracted and not returned must not exceed 10 m<sup>3</sup> per day;</li> <li>(c) the chemical composition of the abstracted water must not be altered prior to its return to the geological formation;</li> <li>(d) there must be a means of demonstrating that the net abstraction is not more than 10 m<sup>3</sup> in any one day; and</li> <li>(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.</li> </ul> |
| <p><b>18.</b> The storage and application of fertiliser other than if it is regulated by—</p> <ul style="list-style-type: none"> <li>(a) the Sludge (Use in Agriculture) Regulations 1989(a);</li> <li>(b) a waste management licence in terms of section 35 (waste management licence: general) of the Environmental Protection Act 1990(b);</li> </ul> | <ul style="list-style-type: none"> <li>(a) No fertiliser may be stored on land that— <ul style="list-style-type: none"> <li>(i) is within 10 metres of any river, burn, ditch, wetland, loch, transitional water or coastal water;</li> <li>(ii) is within 50 metres of any spring that supplies water for human</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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

(b) 1990 c. 43; section 35 has been relevantly amended by section 120 of, and paragraph 66 of Schedule 22 to, the Environment Act 1995 (c. 25), S.S.I. 2000/323 and S.S.I. 2011/226. For a definition of 'waste' see section 75 of the Environmental Protection Act 1990 (c. 43) as amended by section 120 of, and paragraph 88 of Schedule 22 to, the Environment Act 1995 and S.S.I. 2011/226.

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| <ul style="list-style-type: none"> <li>(c) the registration of a registered exemption, under the Waste Management Licensing (Scotland) Regulations 2011<sup>(a)</sup>; or</li> <li>(d) the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003<sup>(b)</sup>.</li> </ul> | <ul style="list-style-type: none"> <li>consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;</li> <li>(iii) is waterlogged;</li> <li>(iv) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except if the fertiliser is stored in an impermeable container; or</li> <li>(v) is sloping, unless the fertiliser is inorganic or it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;</li> <li>(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;</li> <li>(c) no organic fertiliser may be applied to land that— <ul style="list-style-type: none"> <li>(i) is within 10 metres of any river, burn, ditch, wetland, loch, transitional water or coastal water;</li> <li>(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;</li> <li>(iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations;</li> <li>(iv) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow; or</li> </ul> </li> </ul> |
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<sup>(a)</sup> S.S.I. 2011/228 as amended by S.I. 2011/1043 and S.S.I. 2012/148 and 360.

<sup>(b)</sup> S.S.I. 2003/531, as amended by S.S.I. 2006/133 and S.S.I. 2008/54.

- (v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;
- (d) no inorganic fertiliser may be applied to land that—
  - (i) is within 2 metres of any river, burn, ditch, wetland, loch, transitional water or coastal water;
  - (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;
  - (iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations;
  - (iv) is frozen, waterlogged, or covered with snow; or
  - (v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;
- (e) fertilisers must not be applied to land in excess of the nutrient needs of the crop;
- (f) any equipment used to apply fertiliser must be maintained in a good state of repair; and
- (g) fertiliser must be applied on land in such a way and at such times that the risk of pollution to any river, burn, ditch, wetland, loch, transitional water or coastal water is minimised.

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| <p><b>19. Keeping of livestock.</b></p> | <ul style="list-style-type: none"> <li>(a) Significant erosion or poaching of any land that is within 5 metres of any river, burn, ditch, wetland, loch, transitional water or coastal water must be prevented;</li> <li>(b) livestock must be prevented from entering any land that is within 5 metres of a 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; and</li> <li>(c) livestock feeders must be positioned— <ul style="list-style-type: none"> <li>(i) so that run-off from areas around the feeders does not enter any river, burn, ditch, wetland, loch, transitional water or coastal water; and</li> <li>(ii) in any case, no closer than 10 metres to any river, burn, ditch, wetland, loch, transitional water or coastal water.</li> </ul> </li> </ul>                                                                              |
| <p><b>20. Cultivation of land.</b></p>  | <ul style="list-style-type: none"> <li>(a) No land may be cultivated for crops that is— <ul style="list-style-type: none"> <li>(i) within 2 metres of any river, burn, ditch, wetland or loch, as measured from the top of the bank, or within 2 metres of any transitional water or coastal water, as measured from the shoreline;</li> <li>(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</li> <li>(iii) waterlogged;</li> </ul> </li> <li>(b) moling of land must not be carried out on land sloping to any river, burn, ditch, wetland, loch, transitional water or coastal water with an overall gradient in excess of 4.5°; and</li> <li>(c) land must be cultivated in a way that minimises the risk of pollution to any river, burn, ditch, wetland, loch, transitional water or coastal water.</li> </ul> |

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| <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> | <ul style="list-style-type: none"> <li>(a) Water must be discharged in a way which minimises the risk of pollution of any river, burn, ditch, wetland, loch, transitional water or coastal water; and</li> <li>(b) no discharge from drainage may result in the destabilisation of the banks or bed of the receiving river, burn, ditch, wetland, loch, transitional water or coastal water.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>22.</b> Construction and maintenance of waterbound roads and tracks.</p>                                                                                                                                                     | <p>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 storage and application of pesticide.</p>                                                                                                                                                                        | <ul style="list-style-type: none"> <li>(a) The preparation of pesticide for application and the filling, cleaning or maintenance of pesticide sprayers— <ul style="list-style-type: none"> <li>(i) must be undertaken in a manner which prevents any spillages, run-off or washings from entering any river, burn, ditch, wetland, loch, transitional water or coastal water; and</li> <li>(ii) must not be undertaken within 10 metres of any river, burn, ditch, wetland, loch, transitional water, coastal water or any opening into a surface water drainage system;</li> </ul> </li> <li>(b) pesticide spraying equipment must be maintained in a good state of repair, such that there is no leakage of pesticide from any part of the equipment and the sprayer is calibrated to accurately deliver the required application rate;</li> <li>(c) pesticide sprayers must not be filled with water taken from any river, burn, ditch, wetland or loch unless— <ul style="list-style-type: none"> <li>(i) a device preventing back siphoning is fitted to the system; or</li> <li>(ii) the water is first placed in an intermediate container;</li> </ul> </li> <li>(d) pesticide-treated plants must not be stored or soaked in any river, burn, ditch, wetland or loch;</li> <li>(e) pesticide must be applied in accordance with the terms and instructions of the relevant product approval;</li> </ul> |

- (f) pesticide must not be applied in, onto or over ground or allowed to drift onto or over ground—
  - (i) that is frozen, snow covered or waterlogged, except where the application in, onto or over waterlogged ground is necessary for the purpose of controlling fungal disease and all precautions are taken to minimise the risk of pesticide entering any river, burn, ditch, wetland, loch, transitional water or coastal water;
  - (ii) that is within 1 metre of any river, burn, ditch, wetland or loch, as measured from the top of the bank, or within 1 metre of any transitional water or coastal water as measured from the shoreline;
  - (iii) that is sloping, unless it is ensured that any run-off of pesticide is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;
  - (iv) that is within 50 metres of any spring that supplies water for human consumption;
  - (v) that is within 50 metres of any well or borehole unless the well or borehole is capped in such a way as to prevent the ingress of the pesticide;
  - (vi) that has an impermeable surface which drains directly into a surface water drainage system, unless measures are taken to minimise the risk of pesticides entering the drainage system; or
  - (vii) along roads, railway lines, permeable surfaces or other infrastructure, unless measures are taken to minimise the risk of pollution of any river, burn, ditch, wetland, loch, transitional water, coastal water or surface water drainage system;

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|                                                       | <p>(g) application of pesticide must be carried out in such a way, and at such times, that the risk of pollution of any river, burn, ditch, wetland, loch, transitional water or coastal water is minimised and, in particular, pesticide must not be applied—</p> <ul style="list-style-type: none"> <li>(i) during rainfall; or</li> <li>(ii) during conditions when there is a risk that spray will drift or be blown outwith the target area; and</li> </ul> <p>(h) pesticide, including any used packaging that has been stored in contact with pesticide, must not be stored—</p> <ul style="list-style-type: none"> <li>(i) within 10 metres of any river, burn, ditch, wetland, loch, transitional water or coastal water;</li> <li>(ii) within 50 metres of any spring that supplies water for human consumption;</li> <li>(iii) within 50 metres of any well or borehole unless the well or borehole is capped in such a way as to prevent the ingress of any pesticide; or</li> <li>(iv) on an impermeable surface draining to a surface water drainage system,</li> </ul> <p>except that rules (h)(i), (ii) and (iii) do not apply where the pesticide or used packaging is stored in such a way that any leakage or spillage and any exposed pesticide on used packaging cannot reach any river, burn, ditch, wetland, loch, transitional water, coastal water or any opening into a surface water drainage system, including by being transported in rainwater runoff.</p> |
| <p><b>24. Operating sheep dipping facilities.</b></p> | <ul style="list-style-type: none"> <li>(a) Sheep must be prevented from having access to any river, burn, ditch, wetland, loch, transitional water or coastal water while there is a risk of transfer of sheep dip fluid from its fleece to such places;</li> <li>(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, burn, ditch, wetland, loch, transitional water, coastal water, well, spring or borehole;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

- (c) sheep dipping facilities must not discharge underground and must not leak or overflow;
- (d) sheep dipping facilities must not be filled with water taken from the water environment unless—
  - (i) a device preventing back siphoning is fitted to the system; or
  - (ii) the water is first placed in an intermediate container; and
- (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.”

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“the principal Regulations”).

Regulation 2(3)(a) amends regulation 13(1) of the principal Regulations to require SEPA to publish details of any application for an authorisation to carry on an activity that it considers is likely to have a significant adverse impact on the water environment or the interests of its users.

Regulation 2(3)(b) amends regulation 13(5) of the principal Regulations to require SEPA to also consider any written representation made in connection with an application advertised under regulation 13 which is received on or after the date on which it received the application (and before the expiry of the period of 28 days beginning with the date of the advertisement).

Regulation 2(4)(a) substitutes a new table for the table in Part 1 of Schedule 3 (general binding rules) to the principal Regulations. Column 1 of the new table specifies activities that are authorised under the principal Regulations if they are carried out in accordance with the corresponding rules in column 2. The new table contains the following changes—

- rules 3(a) and 4(a) refer more generally to any body of groundwater;
- activity 5(a) and rule 5(c) and renumbered (h) revised to improve clarity; rule 5(g) is new;
- activity 6 extends to the construction and maintenance of any surface water drainage system outfall which discharges into a river, burn or ditch; old rule 6(f) becomes rule 6(e) and applies only to work in the wetted part of the channel; rules 6(j) and (k) are new;
- activity 10 omits reference to the construction and maintenance of outfalls;
- activity 13 extends to the removal of accumulations from the bed of a river, burn or ditch within 5 metres of certain outfalls and inlets; but the activity is restricted to the purpose of ensuring the proper functioning of a closed culvert, abstraction or discharge pipe;
- new rule 13(g) requires that sediment must, where possible be returned to the river, burn or ditch from which it was removed; old rule 13(g) becomes rule 13(h) and requires any such sediment to be returned as close to the location of its removal as is practicable;
- rules 18(a)(i) and (c)(i) refer more specifically to land within 10 metres of any river, burn, ditch, wetland, loch, transitional water or coastal water, and rule 18(d)(i) refers more specifically to land within 2 metres of such places; rules 18(a)(iv), (c)(iii) (renumbered) and (d)(iii) refer to soil depths of 40 centimetres; rules 18(a)(v), (c)(v) and (d)(v) are new;
- rule 19(c) provides that livestock feeders must be positioned at least 10 metres from any river, burn, ditch, wetland, loch, transitional water or coastal water, and so that run-off does not enter any such place;
- rule 20(a)(i) identifies more specifically land which must not be cultivated; rule 20(b) identifies more specifically land in which moling must not be carried out;
- activity 23 extends to the storage of pesticide; rule 23(a) extends to the filling of pesticide sprayers and requires that relevant activities are undertaken in a way which prevents any spillages, run-off or washings from entering any river, burn, ditch, wetland, loch, transitional water or coastal water; rule 23(a)(ii) is new and prohibits such activities within 10 metres of these places or any opening into a surface water drainage system; rule 23(b) provides that equipment must be maintained so that there is no leakage of pesticide and so that the application rate is properly calibrated; rule 23(c) refers more specifically to any river, burn, ditch, wetland or loch and rule 23(d) extends to the storage of pesticide-treated plants in such places; rules 23(e) to (h) are new; and
- rules 18(g), 19(a), 20(c), 21(a) and (b), 24(a) and (b) refer more specifically to any river, burn, ditch, wetland, loch, transitional water or coastal water.

Regulation 2(4)(b) defines “buffer zone” for the purposes of the rules in Schedule 3 to the principal Regulations; and regulation 2(2) corrects a reference to the Marine (Scotland) Act 2010.

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