

POLICY NOTE

THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) AMENDMENT REGULATIONS 2013

SSI 2013/176

Introduction

These Regulations are made 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. The instrument is subject to the negative procedure.

Policy Objectives

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR”) provide a regulatory framework for controlling activities which could have an adverse effect on Scotland’s water environment, including abstraction, impoundments, engineering, dredging, surface water drainage, and pollution.

These Regulations amend CAR to enable SEPA to publish details of any application to carry on an activity that it considers is likely to have a significant adverse impact, and to require SEPA to consider any written representations received before the end of a period of 28 days from the date on which the application is advertised.

These Regulations also substitute a new table (containing some changes) for the table in Schedule 3 to CAR. An activity in column 1 of the table is authorised if it is carried out in accordance with the rules in column 2 which correspond to that activity.

The activities and rules set out in the new table are largely the same as before, except that some changes are made to the rules in paragraphs 18 to 23 which relate to the impact of diffuse pollution on the water environment from rural land use and to certain other rules to clarify matters (including, for example, clarifying the parts of the water environment to which they apply). In particular, changes are made to the scope of the activity and rules relating to the storage and use of pesticides in the vicinity of the water environment. Other changes clarify the rules:

- for dredging activities to better inform operators as to how to carry these out,
- for activities involving surface water outfalls but without changing their effect,
- for gravel removal in the vicinity of abstraction points and outfalls to better inform operators as to how to carry out such activities,
- as regards distances, for activities carried out in proximity to the water environment so that these rules align better with the Common Agricultural Policy Schemes (Cross Compliance) (Scotland) Regulations 2011,
- for activities which take place on sloping land, so that where such activities are permitted practical rules apply,

- where a minimum distance applies so other action may be required to prevent run-off from livestock feeding areas entering the water environment, and
- so that the no tillage zone is 2 metres from the top of the bank.

Financial Effects

Any direct costs resulting from these changes to CAR are considered to be minimal. A Business and Regulatory Impact Assessment was not therefore necessary.

Consultation

The Scottish Government consulted on a draft of the proposed rules and on the other proposed changes in accordance with section 21 the Water Environment and Water Services (Scotland) Act 2003.

Some revisions proposed in the public consultation attracted attention from the farming sector, particularly on the diffuse pollution rules. The proposals on application of fertiliser on sloping land in the consultation were misinterpreted by many, including National Farmers Union Scotland (NFUS), as applying to all slopes and not only those in the proximity of the water environment and led to much debate and discussion.

Scottish Government has worked closely with the NFUS on revisions to the draft rules. NFUS is now content that the new rules are not prohibitive to farming and is outcome based. NFUS is committed to working closely with Scottish Government and Scottish Environment Protection Agency (SEPA) to promote compliance. It is anticipated that SEPA will also revise its guidance to take account of the changes.

Scottish Government

May 2013