

**2015 No. 211**

**ENVIRONMENTAL PROTECTION**

**WATER**

**The Water Environment (River Basin Management Planning etc.) (Miscellaneous Amendments) (Scotland) Regulations 2015**

*Made* - - - - 26th May 2015

*Laid before the Scottish Parliament* 28th May 2015

*Coming into force in accordance with regulation 1(2) and (3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 8(5), 9(4) to (6), 10(2)(b), 19(1) and 36(2) and (3) of the Water Environment and Water Services (Scotland) Act 2003(a) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Scottish Ministers that it is expedient for the references in regulation 3(c) to Regulation (EC) No 1107/2009 of the European Parliament and of the Council(c) and to Regulation (EU) No 528/2012 of the European Parliament and of the Council(d) to be references to each instrument as amended from time to time.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Water Environment (River Basin Management Planning etc.) (Miscellaneous Amendments) (Scotland) Regulations 2015.

(2) Subject to paragraph (3), these Regulations come into force on 14th September 2015.

(3) Regulation 7 comes into force on 15th September 2015.

(4) In these Regulations, “the 2013 Regulations” means the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013(e).

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(a) 2003 asp 3; section 9 was amended by section 54(4) of the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7).  
(b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. Paragraph 1A was inserted by section 28 of the 2006 Act and amended by the 2008 Act, Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.  
(c) OJ L 309, 24.11.2009, p.1, as amended by Council Regulation (EU) No 518/2013 (OJ L 158, 10.6.2013, p.72) and Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ L 189, 27.6.2014, p.1).  
(d) OJ L 167, 27.6.2012, p.1, as amended by Commission Delegated Regulation (EU) No 736/2013 (OJ L 204, 31.7.2013, p.25), Commission Delegated Regulation (EU) No 837/2013 (OJ L 234, 3.9.2013, p.1) and Regulation (EU) No 334/2014 of the European Parliament and of the Council (OJ L 103, 5.4.2014, p.22).  
(e) S.S.I. 2013/323.

## **Amendment of Parts 1 and 2 (river basin management planning etc.) of the 2013 Regulations**

### **2. In the 2013 Regulations—**

- (a) in regulation 2(1) (interpretation), for the definition of “the Water Framework Directive” substitute—

““the Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(a) as last amended by Commission Directive 2014/101/EU(b).”;
- (b) in regulation 3(1) (setting of environmental objectives), after “5 to 10” insert “and 17”;  
and
- (c) in regulation 12(1)(b)(iii) (content of monitoring programme), for “Directive” substitute “Water Framework Directive”.

## **Amendment of Part 3 (measures in relation to surface water) of the 2013 Regulations**

### **3. In the 2013 Regulations—**

- (a) for regulation 16 (interpretation of Part 3) together with its cross heading, substitute—

#### **“Interpretation of Part 3**

##### **16.—(1) In this Part—**

“biota taxon” means a particular aquatic taxon within the taxonomic rank ‘sub-phylum’, ‘class’ or their equivalent;

“Directive 2009/90/EC” means Commission Directive 2009/90/EC laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status(c);

“EQS” means environmental quality standards or, where the context so requires, environmental quality standard;

“existing obligations” means the obligations (on environmental quality standards in the field of water policy) under Directive 2008/105/EC of the European Parliament and of the Council(d) (“the original Directive”) before it was amended by Directive 2013/39/EU of the European Parliament and of the Council(e) including, in particular, the achievement of good surface water chemical status in relation to the substances and the associated EQS listed in the original Directive;

“limit of detection” means the output signal or concentration value above which it can be affirmed, with a stated level of confidence that a sample is different from a blank sample containing no determinand of interest;

“limit of quantification” means a stated multiple of the limit of detection at a concentration of the determinand that can reasonably be determined with an acceptable level of accuracy and precision;

“matrix” means a compartment of the aquatic environment, namely water, sediment or biota;

“Part A” means Part A of Annex I to the Priority Substances Directive (as read with the definitions and notes contained in that Part);

“Part B” means Part B of Annex I to the Priority Substances Directive;

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(a) OJ L 327, 22.12.2000, p.1, as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p.1), Directive 2008/32/EC (OJ L 81, 20.3.2008, p.60), Directive 2008/105/EC (OJ L 348, 24.12.2008, p.84), Directive 2009/31/EC (OJ L 140, 5.6.2009, p.114), Directive 2013/39/EU (OJ L 226, 24.8.2013, p.1) and Commission Directive 2014/101/EU (OJ L 311, 31.10.2014, p.32).

(b) OJ L 311, 31.10.2014, p.32.

(c) OJ L 201, 1.8.2009, p.36.

(d) OJ L 348, 24.12.2008, p.84.

(e) OJ L 226, 24.8.2013, p.1.

“the Priority Substances Directive” means Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy<sup>(a)</sup> as amended by Directive 2013/39/EU of the European Parliament and of the Council<sup>(b)</sup>; and

“watch list” means the watch list of substances established under Article 8b(1) and (2) of the Priority Substances Directive.

(2) For the purposes of this Part, the limit of quantification may be calculated using an appropriate standard or sample, and may be obtained from the lowest calibration point on the calibration curve, excluding the blank.”;

- (b) for regulation 17 (environmental quality standards for bodies of surface water) together with its cross heading, substitute—

**“Environmental quality standards for bodies of surface water**

**17.**—(1) Subject to paragraph (2), SEPA must, for each body of surface water within a river basin district, apply the EQS in Part A in accordance with the requirements in Part B.

(2) Without prejudice to existing obligations, SEPA must—

- (a) from 22nd December 2015, apply the EQS in Part A for the substances numbered (2), (5), (15), (20), (22), (23) and (28) (in column (1) of the table in that Part) with the aim of achieving good surface water chemical status in relation to those substances by 22nd December 2021 by means of the programme of measures included in the river basin management plan (or an update of it); and
- (b) from 22nd December 2018, apply the EQS in Part A for the substances numbered (34) to (45) (in column (1) of the table in that Part) with the aim of achieving good surface water chemical status in relation to those substances by 22nd December 2027 and preventing deterioration in the chemical status of each body of surface water in relation to those substances.

(3) The objectives set under section 9(1)(a)(i) of the Act must, subject to the application of regulations 5 to 10 and without prejudice to any other objectives that are required to be set under that section, aim to achieve the obligations in paragraph (2).

(4) For the purposes of paragraph (3), references in regulations 5 to 9 to an objective set pursuant to regulation 3(1) are to be construed as an objective set pursuant to paragraph (3).

(5) For the purposes of paragraph (2)(b), SEPA must—

- (a) by 22nd December 2018, establish a supplementary monitoring programme and a preliminary programme of measures covering those substances;
- (b) by 22nd December 2021, establish a full programme of measures covering those substances (“the full programme”); and
- (c) as soon as possible after 22nd December 2021, and not later than 22nd December 2024, implement and make fully operational the full programme.

(6) SEPA must apply—

- (a) the biota EQS in Part A for the substances numbered (5), (15), (16), (17), (21), (28), (34), (35), (37), (43) and (44) (in column (1) of the table in that Part); and
- (b) the water EQS in Part A for the other substances numbered (in that column).

(7) SEPA may in relation to one or more categories of surface water, apply—

- (a) an EQS for a matrix other than that specified in paragraph (6); or
- (b) where relevant, an EQS for a biota taxon other than that specified in Part A.

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(a) OJ L 348, 24.12.2008, p.84.

(b) OJ L 226, 24.8.2013, p.1.

- (8) Where SEPA makes use of the option in paragraph (7), it must—
- (a) apply the EQS for the substances in question; or
  - (b) if there is no EQS for the matrix or biota taxon in question, establish an EQS for that matrix or biota taxon that offers at least the same level of protection as the corresponding EQS for those substances in relation to other matrix and biota taxon.
- (9) SEPA may use the option in paragraph (7) only where—
- (a) the method of analysis used for the chosen matrix or biota taxon fulfils the minimum performance criteria in Article 4 of Directive 2009/90/EC; or
  - (b) if the method does not fulfil those criteria for any matrix, SEPA ensures—
    - (i) that the method of analysis performs at least as well as that available for the matrix specified in paragraph (6) for the relevant substance; and
    - (ii) that monitoring is carried out using best available techniques not entailing excessive costs.
- (10) Where a biota or sediment EQS for a substance in Part A is being applied and a potential risk to, or via, the water environment from acute exposure to the substance has been identified as a result of measured or estimated environmental concentrations or emissions of that substance, SEPA must—
- (a) additionally apply any MAC-EQS in Part A for that substance; and
  - (b) carry out monitoring in relevant bodies of surface water for that substance.
- (11) Any measured result for the substance being monitored must not be considered by SEPA for the purposes of assessing the chemical status of a body of surface water where—
- (a) pursuant to Article 5 of Directive 2009/90/EC, the calculated mean value of a measurement, when carried out using the best available technique not entailing excessive costs, is referred to as ‘less than limit of quantification’; and
  - (b) the limit of quantification of that technique is above the EQS for the substance.
- (12) For substances for which an EQS for sediment or biota is applied, SEPA must, subject to paragraph (13), monitor the substance in the relevant matrix at least once every year, unless technical knowledge and expert judgment justify a different interval.
- (13) SEPA may monitor the substances numbered (5), (21), (28), (30), (35), (37), (43) and (44) (in column (1) of the table in Part A) less intensively than is required by paragraph (12) and Annex V to the Water Framework Directive provided that the monitoring—
- (a) is representative and a statistically robust baseline is available regarding the presence of those substances in the aquatic environment; and
  - (b) takes place for each of the substances at least once every 3 years (unless technical knowledge and expert judgment justify a different interval).
- (14) SEPA must include the following information in the river basin management plan (or the next update of it)—
- (a) a table presenting the limits of quantification of the methods of analysis applied, and information on the performance of those methods in relation to the minimum performance criteria in Article 4 of Directive 2009/90/EC;
  - (b) for the substances for which the option in paragraph (7) is used—
    - (i) the reasons and basis for using that option;
    - (ii) where relevant, the alternative EQS established, evidence that those EQS would offer at least the same level of protection as the EQS in Part A, including the data and methodology used to derive the EQS, and the categories of surface water to which they would apply; and
    - (iii) for comparison with the information referred to in sub-paragraph (a), the limits of quantification of the methods of analysis for matrices specified in

Part A, including information on the performance of the methods in relation to the minimum performance criteria in Article 4 of Directive 2009/90/EC; and

- (c) justification for the frequency of monitoring applied in accordance with paragraph (12) (as read with paragraph (13)), if monitoring intervals are longer than one year.

(15) SEPA must ensure—

- (a) that the river basin management plan (or the next update of it) contains the results and impact of the measures taken to prevent chemical pollution of surface water; and
- (b) so far as it can, that the interim report describing progress in implementing each programme of measures in accordance with Article 15(3) of the Water Framework Directive is provided through a central portal which is accessible to the public electronically in accordance with Article 7(1) of Directive 2003/4/EC of the European Parliament and of the Council<sup>(a)</sup>.

(16) SEPA must—

- (a) arrange for the long-term trend analysis of concentrations of the priority substances listed in Part A that tend to accumulate in sediment or biota (giving particular consideration to the substances numbered (2), (5), (6), (7), (12), (15), (16), (17), (18), (20), (21), (26), (28), (30), (34), (35), (36), (37), (43) and (44) in column (1) of the table in that Part) on the basis of the monitoring of surface water status carried out in accordance with section 8 (monitoring) of the Act;
- (b) take measures aimed at ensuring, subject to Article 4 of the Water Framework Directive, that such concentrations do not significantly increase in sediment or relevant biota;
- (c) determine the frequency of monitoring in sediment and biota so as to provide sufficient data for reliable long-term trend analysis of each priority substance; and
- (d) ensure that monitoring for each priority substance takes place at least once every 3 years, unless technical knowledge and expert judgment justify a different interval.”

- (c) in Part 3, after regulation 19 (register of emissions, discharges and losses), insert—

### “Coordination

**19A.**—(1) Where the results of a report under Article 7a(2) of the Priority Substances Directive show that additional measures at the EU or member State level may be necessary in order to facilitate compliance with the Water Framework Directive in relation to a particular substance approved pursuant to Regulation (EC) No 1107/2009 of the European Parliament and of the Council<sup>(b)</sup> as amended from time to time or Regulation (EU) No 528/2012 of the European Parliament and of the Council<sup>(c)</sup> as amended from time to time, the Scottish Ministers must take the steps necessary to apply—

- (a) Article 21 or 44 of Regulation (EC) No 1107/2009; or
- (b) Article 15 or 48 of Regulation (EU) No 528/2012,

as appropriate, to that substance or to products containing that substance.

(2) In applying the provisions of the Regulations referred to in paragraph (1), the Scottish Ministers must take into account any risk evaluations and socio-economic or cost-benefit analyses required under those Regulations, including as regards the availability of alternatives.

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(a) OJ L 41, 14.2.2003, p.26.

(b) OJ L 309, 24.11.2009, p.1, as amended by Council Regulation (EU) No 518/2013 (OJ L 158, 10.6.2013, p.72) and Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ L 189, 27.6.2014, p.1).

(c) OJ L 167, 27.6.2012, p.1, as amended by Commission Delegated Regulation (EU) No 736/2013 (OJ L 204, 31.7.2013, p.25), Commission Delegated Regulation (EU) No 837/2013 (OJ L 234, 3.9.2013, p.1) and Regulation (EU) No 334/2014 of the European Parliament and of the Council (OJ L 103, 5.4.2014, p.22).

## Watch list

**19B.**—(1) SEPA must monitor each substance in the watch list at selected representative monitoring stations for a period of at least 12 months (“the monitoring period”).

(2) For each substance in the watch list as first established by Commission Implementing Decision (EU) 2015/495(a), the monitoring period must begin on 14th September 2015.

(3) For any substance added to the watch list after it was first established, the monitoring period must begin within 6 months of the date on which the substance was added to the list.

(4) SEPA must select at least two representative monitoring stations.

(5) In selecting representative monitoring stations, and the monitoring frequency and timing for each substance, SEPA must—

- (a) take into account the use patterns and possible occurrence of the substance; and
- (b) ensure that monitoring is carried out at each station at least once per year.

(6) SEPA may decide not to monitor a substance under paragraphs (1) to (5) if—

- (a) it has sufficient, comparable, representative and recent monitoring data for the substance from existing monitoring programmes or studies; and
- (b) the monitoring was carried out in accordance with a methodology that satisfies any guidelines developed under Article 8b(5) of the Priority Substances Directive.”.

## Amendment of Part 4 (measures in relation to groundwater) of the 2013 Regulations

**4.** In the 2013 Regulations—

(a) in regulation 20, for the definition of “Groundwater Directive” substitute—

““the Groundwater Directive” means Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(b) as amended by Commission Directive 2014/80/EU(c);”;

(b) in regulation 21(4)(c), omit “a summary of”.

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

**5.** In the Water Environment (Controlled Activities) (Scotland) Regulations 2011(d)—

(a) in regulation 2(1) (interpretation)—

(i) for the definition of “the Directive” substitute—

““the Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(e) as last amended by Commission Directive 2014/101/EU(f);”;

(ii) for the definition of “the Groundwater Directive 2006” substitute—

““the Groundwater Directive” means Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(g) as amended by Commission Directive 2014/80/EU(h);”;

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(a) OJ L 78, 24.3.2015, p.40.

(b) OJ L 372, 27.12.2006, p.19.

(c) OJ L 182, 21.6.2014, p.52.

(d) S.S.I. 2011/209, as amended by S.S.I. 2012/360, S.S.I. 2013/176 and S.S.I. 2013/323.

(e) OJ L 327, 22.12.2000, p.1, as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p.1), Directive 2008/32/EC (OJ L 81, 20.3.2008, p.60), Directive 2008/105/EC (OJ L 348, 24.12.2008, p.84), Directive 2009/31/EC (OJ L 140, 5.6.2009, p.114), Directive 2013/39/EU (OJ L 226, 24.8.2013, p.1) and Commission Directive 2014/101/EU (OJ L 311, 31.10.2014, p.32).

(f) OJ L 311, 31.10.2014, p.32.

(g) OJ L 372, 27.12.2006, p.19.

(h) OJ L 182, 21.6.2014, p.52.

- (iii) for the definition of “the Priority Substances Directive” substitute—  
““the Priority Substances Directive” means Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy(a) as amended by Directive 2013/39/EU of the European Parliament and of the Council(b);”;
- (b) in regulation 15(1)(e) (determination of application)—
  - (i) for “the Directive” substitute “the Water Framework Directive”; and
  - (ii) omit “2006”;
- (c) in Schedule 4 (relevant legislation), in Part 1—
  - (i) for “The Directive” substitute “The Water Framework Directive”; and
  - (ii) omit “2006”;
- (d) in Schedule 8 (register), in paragraph 1(x) omit “2006”; and
- (e) in Schedule 10 (transitional and savings provisions), in paragraphs 10(e) and 16(e)—
  - (i) for “the Directive” substitute “the Water Framework Directive”; and
  - (ii) omit “2006”.

### **Savings**

6. Until the date on which a revised environmental quality standard for a substance in Part A of Annex I to Directive 2008/105/EC of the European Parliament and of the Council(c) is required to be applied by virtue of the amendments made to the 2013 Regulations by regulation 3(b) of these Regulations, regulation 17(1) of the 2013 Regulations as in force immediately before 14th September 2015 continues to apply in so far as it requires SEPA to apply a different corresponding standard for that substance.

### **Revocation**

7. The Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009(d) are revoked.

*AILEEN McLEOD*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
26th May 2015

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(a) OJ L 348, 24.12.2008, p.84.  
(b) OJ L 226, 24.8.2013, p.1.  
(c) OJ L 348, 24.12.2008, p.84, as amended by OJ L 226, 24.8.2013, p.1.  
(d) S.S.I. 2009/420, as amended by S.S.I. 2011/209 and S.S.I. 2015/XXX.

## EXPLANATORY NOTE

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

These Regulations amend the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013 (“the 2013 Regulations”) and the Water Environment (Controlled Activities) (Scotland) Regulations 2011 to further protect the water environment.

Regulation 2 amends Parts 1 and 2 of the 2013 Regulations to take account of amendments made to Directive 2000/60/EC (“the Water Framework Directive”) as last amended by Commission Directive 2014/101/EU.

Regulation 3 amends Part 3 of the 2013 Regulations to take account of amendments made to Directive 2008/105/EC (“the Priority Substances Directive”) by Directive 2013/39/EU.

Regulation 4 amends Part 4 of the 2013 Regulations to take account of amendments made to Directive 2006/118/EC (“the Groundwater Directive”) by Commission Directive 2014/80/EU.

Regulation 5 amends the Water Environment (Controlled Activities) (Scotland) Regulations 2011 to take account of the amendments made to the Water Framework Directive, the Priority Substances Directive and the Groundwater Directive including by, in particular, Directive 2013/39/EU, Commission Directive 2014/80/EU and Commission Directive 2014/101/EU.

Regulation 6 ensures that existing environmental quality standards for priority substances continue to apply until those standards in the 2013 Regulations are revised by virtue of these Regulations.

Regulation 7 revokes the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009.

The powers in section 2(2) of the European Communities Act 1972 are exercised so far as may be necessary (to supplement the other powers cited) for the purposes of implementing, or enabling the implementation of, obligations created or arising by or under the Water Framework Directive (as last amended), the Priority Substances Directive (as amended) and the Groundwater Directive (as amended), and for the purposes of dealing with matters arising out of or related to any such obligations. In particular, the powers are cited to enable provision to be made in regulation 5 to amend the 2013 Regulations and in regulation 7 to revoke the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009.

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