

POLICY NOTE

THE WATER ENVIRONMENT (MISCELLANEOUS) (SCOTLAND) REGULATIONS 2017

SSI 2017/389

1. The above instrument was made in exercise of the powers conferred by section 20 and 36(2) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003, and section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

2. The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR”) (as amended) 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, with the aim of protecting, and restoring, the water environment. These Regulations amend CAR, primarily to improve clarity and to introduce some new rules which apply to the carrying out of certain activities authorised under CAR.

Consultation

3. Between 8 December 2016 and 2 February 2017 the Scottish Government, in accordance with section 21 of the Water Environment and Water Services (Scotland) Act 2003, consulted on a draft set of proposed amendments to CAR .

4. There were 20 responses to the consultation. The responses were from a number of sources including: individuals, businesses, NGOs, and sector trade associations. Generally the respondents were content with the majority of the proposed amendments.

5. The comments in response were taken into consideration and a number of rules redrafted. These amendments and a full list of those consulted, and who agreed to the release of this information, is attached to the consultation report published on the Scottish Government website.

Key Amendments

6. The Regulations make amendments to the table in Schedule 3 (General Binding Rules) to CAR. An activity in column 1 of the table is authorised, without having to apply to SEPA for authorisation through registration or licence, if it is carried out in accordance with the rules in column 2 which correspond to that activity. Where a change has been made to an activity or to the corresponding rules, for clarity the whole of the activity and rules have been reproduced, but the change may only be a small part of that activity or rule.

7. The activities and rules set out in the new table are largely the same as before. Changes are made in relation to activities 3,9,10,11,12,15,17,18,19,20,23 and 24, to clarify matters and introduce some new rules where impacts have been identified.

8. The amendments in relation to activities 3-17 are mostly in clarification. In particular to activity 10, which has been amended to set out in greater detail where the drainage of water-run off from construction sites, which have potential to introduce large volumes of sediment into the water environment, is authorised.

9. The amendments in relation to activities 18 - 24, which are measures to control diffuse pollution, contain some points of clarification but also introduce new rules to better control risk of pollution which has potential to impact on protected waters such as bathing waters and shellfish waters. New rules have also been introduced to control the storage of liquid fertilisers, sewage sludge and digestate from anaerobic digestion plants, which are becoming more readily available. Additional protection is also given to raw water supplies, including private water supplies.

10. Four new activities and associated rules, 25-28, have been introduced.

11. Activity 25 allows land managers to carry out certain bank protection measures without contacting SEPA for authorisation.

12. Activity 26-28 relate to the storage of oil. They consolidate the provisions of the Water Environment(Oil Storage)(Scotland) Regulations 2006 (the “2006 Regulations”) into CAR, and extend the application of those provisions, so that rules apply to the storage in depots for the onward distribution of oil. Some of these sites contain storage tanks over 50 years old, and they were not previously subject to the requirements of the 2006 Regulations.

13. Parts III and IV of Regulations make minor amendments to The Water Environment (Controlled Activities)(Scotland)Regulations 2011, The Water Environment (River Basin Management Planning: Further Provision)(Scotland)Regulations 2013, and revoke The Water Environment(Oil Storage)(Scotland)Regulations 2006.

14. Regulation 8 in Part IV relies on the power in section 2(2) of the European Communities Act 1972 to amend the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013, to fully transpose Article 11(6) of Directive 2000/60 of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

Financial Effects

15. Overall these changes are points of clarification or consolidation, or are deregulatory in nature. No registration or licence fees are due if the General Binding Rules are complied with.

16. The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government, charities, voluntary bodies or any person carrying out the activity.

Scottish Government
Environment and Forestry Directorate

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