
STATUTORY INSTRUMENTS

1993 No. 1156 (S.173)

WATER SUPPLY, SCOTLAND

The Control of Pollution (Discharges by Islands Councils) (Scotland) Regulations 1993

<i>Made</i>	- - - -	<i>31st March 1993</i>
<i>Laid before Parliament</i>		<i>28th April 1993</i>
<i>Coming into force</i>	- -	<i>19th May 1993</i>

The Secretary of State, in exercise of the powers conferred on him by sections 36(1)(a), 55, 104(1)(a) and 105(1) of the Control of Pollution Act 1974⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations may be cited as the Control of Pollution (Discharges by Islands Councils) (Scotland) Regulations 1993, shall come into force on 19th May 1993 and shall extend to Scotland only.

Interpretation

2. In these Regulations “the Act” means the Control of Pollution Act 1974 and references to sections are references to sections of the Act.

Consents for discharges by islands councils

3. Any consent required for the purposes of Part II of the Act in relation to discharges by an islands council in its area shall be given by the Secretary of State and, accordingly, the provisions of that Part shall have effect in relation to cases in which such consent is required subject to the modifications specified in Schedule 1 to these Regulations.

Modifications

4. Schedule 2 to these Regulations reproduces those provisions of Part II of the Act which are modified in accordance with the modifications set out in Schedule 1 hereto.

(1) 1974 c. 40; sections 36 and 55 were substituted, and section 104(1) amended, by the Water Act 1989 (c. 15), Schedule 23, paragraphs 4, 6 and 7 respectively; section 105(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made.

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Forms of notice

5. Notice of an application for consent in pursuance of section 34 of the Act, as modified by regulation 3 above and paragraph 1 of Schedule 1 hereto, and notice of an instrument of consent served in pursuance of section 34(3) of the Act, as so modified, shall be in the forms respectively prescribed in Schedule 3 hereto.

Revocation

6. The Control of Pollution (Discharges by Authorities) Regulations 1984((2)) are hereby revoked.

St. Andrew's House,
Edinburgh
31st March 1993

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulation 3

MODIFICATIONS OF PART II OF THE ACT

In relation to discharges by an islands council in its area the provisions of Part II of the Act shall have effect subject to the following modifications:–

- (1) section 34 shall apply as if–
 - (a) for sub-sections (1) and (2) there were substituted the following sub-sections:–

“(1) An application to the Secretary of State for consent in pursuance of this section for discharges of any effluent or other matter shall be accompanied by a map showing the location of every discharge in relation to which consent is sought and shall be accompanied or supplemented by all such other information as the Secretary of State may reasonably require; and the Secretary of State may if he thinks fit treat an application for consent for discharges at two or more places as separate applications for consent for discharges at each of those places.

(2) The Secretary of State may give the consent applied for, either unconditionally or subject to conditions, or may refuse it.”;
 - (b) in subsection (3) for the words preceding “an instrument” there were substituted the words “If it appears to the Secretary of State that an islands council has, without his consent, caused or permitted matter to be discharged in its area in contravention of section 32(1) of the Act and that a similar contravention by that council is likely, the Secretary of State may, if he thinks fit, serve on that council” and for the word “its” (where it second appears) there were substituted the word “his”;
 - (c) in subsection (4) for the word “authority” (where it first appears and in paragraph (f)) there were substituted the words “Secretary of State”, for the word “its” were substituted the word “his” and for the words “the authority” (where it second appears) there were substituted the word “he”.
 - (d) for subsection (5) there were substituted the following subsection:–

“(5) Before determining any such application for consent, the Secretary of State–

 - (a) may, if he thinks fit; or
 - (b) shall, if he has received representations in response to a notice which the council was required by section 36(1)(a) of this Act to publish and if a request to be heard is made to him by the council within ten weeks after the publication of the notice in the Edinburgh Gazette in accordance with the said section 36(1)(a),

cause a local inquiry to be held in respect of the application in pursuance of section 96 of this Act or afford the council and any person who made such representations an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.”;
- (2) section 35 shall be omitted;
- (3) section 36 shall apply as if–
 - (a) in subsection (1)–
 - (i) for the words preceding paragraph (a) there were substituted the words “Where the Secretary of State receives an application for consent from an islands council in pursuance of section 34 of this Act or serves an instrument on an islands council in pursuance of subsection (3) of that section, the council shall be under a duty–”;
 - (ii) in paragraph (a)(ii) for the word “authority” (in both places where it appears) there were substituted the word “council”; and
 - (iii) paragraphs (b) and (c) were omitted;

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- (b) in subsection (2) the words “local authority” means a regional or district council, and” were omitted;
- (c) for subsections (3), (4), (5), (6) and (7) there were substituted the following subsections:–
 - “(3) The Secretary of State shall consider any written representations relating to the application or instrument which are made to him by any person within the period of six weeks beginning with the date on which the notice of the application or instrument is published in the Edinburgh Gazette.
 - (4) An islands council shall be entitled to disregard the provisions of subsection (1) of this section if the Secretary of State so directs.
 - (5) The Secretary of State shall inform any person who has made written representations to him about an application by an islands council of his determination.”;
- (4) section 37 shall apply as if–
 - (a) in subsection (1)–
 - (i) for the words preceding “by a notice” there were substituted the words “The Secretary of State shall review from time to time any consent given under section 34 of this Act and the conditions, if any, to which the consent is subject and may,”; and
 - (ii) for the word “person” there were substituted the word “council”;
 - (b) in subsection (2)–
 - (i) the words “Subject to the following section,” were omitted; and
 - (ii) for all the words following “or otherwise,” there were substituted the words “by notice at any time do anything mentioned in subsection (1) above.”;
- (5) sections 38 and 39 shall be omitted;
- (6) section 40 shall apply as if–
 - (a) subsections (1), (2) and (3) were omitted;
 - (b) in subsection (4)–
 - (i) for the words “a river purification authority” and “the authority” (where they first appear) there were substituted the words “the Secretary of State” and for the words “the authority” (wherever they otherwise appear) there were substituted the word “he”; and
 - (ii) paragraph (c) were omitted; and
 - (c) subsection (5) were omitted;
- (7) section 42 shall apply as if–
 - (a) in subsections (1) and (2)–
 - (i) for the words “a person who” there were substituted the words “an islands council which”;
 - (ii) for the words “that person” there were substituted the words “that council”; and
 - (b) in subsection (1) for the words “a river purification authority” there were substituted the words “the Secretary of State”; and
- (8) section 53 shall be omitted.

SCHEDULE 2

Regulation 4

PROVISIONS OF PART II OF THE ACT AS MODIFIED

Consents of discharges

34.—(1) An application to the Secretary of State for consent in pursuance of this section for discharges of any effluent or other matter shall be accompanied by a map showing the location of every discharge in relation to which consent is sought and shall be accompanied or supplemented by all such other information as the Secretary of State may reasonably require; and the Secretary of State may if he thinks fit treat an application for consent for discharges at two or more places as separate applications for consent for discharges at each of those places.

(2) The Secretary of State may give the consent applied for, either unconditionally or subject to conditions, or refuse it.

(3) If it appears to the Secretary of State that an islands council has, without his consent, caused or permitted matter to be discharged in its area in contravention of section 32(1) of the Act and that a similar contravention by that council is likely, the Secretary of State may, if he thinks fit, serve on that council an instrument in writing giving his consent, subject to conditions specified in the instrument, for discharges of a kind so specified; but consent given in pursuance of this subsection shall not relate to any discharge which occurred before the instrument giving the consent was served on the recipient of the instrument.

(4) The conditions subject to which the Secretary of State may give his consent in pursuance of this section shall be such reasonable conditions as he thinks fit; and without prejudice to the generality of the preceding provisions of this subsection those conditions may include reasonable conditions—

- (a) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
- (b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the period during which the discharges may be made;
- (c) as to the provision of facilities for taking samples of the matter discharged and in particular as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;
- (d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
- (e) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and in particular of records of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent;
- (f) as to the making of returns and the giving of other information to the Secretary of State about the nature, origin, composition, temperature, volume and rate of the discharges; and
- (g) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;

and it is hereby declared that consent may be given in pursuance of this section subject to different conditions in respect of different periods.

(5) Before determining any such application for consent, the Secretary of State—

- (a) may, if he thinks fit; or

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- (b) shall, if he has received representations in response to a notice which the council was required by section 36(1)(a) of this Act to publish and if a request to be heard is made to him by the council within ten weeks after the publication of the notice in the Edinburgh Gazette in accordance with the said section 36(1)(a),

cause a local inquiry to be held in respect of the application in pursuance of section 96 of this Act or afford the council and any person who made such representations an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.

35. —

36.—(1) Where the Secretary of State receives an application for consent from an islands council in pursuance of section 34 of this Act or serves an instrument on an islands council in pursuance of subsection (3) of that section, the council shall be under a duty—

- (a) to publish in the prescribed form notice of the application or instrument in two successive weeks in a newspaper or newspapers circulating in—
 - (i) the area or areas in which the places are situated at which it is proposed in the application that the discharges should be made or, as the case may be, at which discharges are the subject of consent given by the instrument, and
 - (ii) the area or areas appearing to the council to be in the vicinity of any controlled waters which the council considers likely to be affected by the discharges.

and, not earlier than the day following that on which the first publication of the notice is completed in all relevant areas in pursuance of the preceding provisions of this paragraph, to publish such a notice in the Edinburgh Gazette.

(b) —

(c) —

(2) For the purposes of subsection (1) above, any place at sea at which it is proposed in an application that a discharge should be made shall be treated as situated at the point on land nearest to that place.

(3) The Secretary of State shall consider any written representations relating to the application or instrument which are made to him by any person within the period of six weeks beginning with the date on which the notice of the application or instrument is published in the Edinburgh Gazette.

(4) An islands council shall be entitled to disregard the provisions of subsection (1) of this section if the Secretary of State so directs.

(5) The Secretary of State shall inform any person who has made written representations to him about an application by an islands council of his determination.

37.—(1) The Secretary of State shall review from time to time any consent given under section 34 of this Act and the conditions if any, to which the consent is subject and may, by a notice served on the council making a discharge in pursuance of the consent, revoke the consent if it is reasonable to do so or make reasonable modifications of the said conditions or, in the case of an unconditional consent, provide that it shall be subject to reasonable conditions specified in the notice.

(2) The Secretary of State may—

- (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;
- (b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or
- (c) in consequence of any representations made to him or otherwise,

by notice at any time do anything mentioned in subsection (1) above.

38. —

39. —

40.—(1)

(2) —

(3) —

(4) Where an application for consent in pursuance of section 34 of this Act in respect of any discharge is duly made to the Secretary of State before the relevant day and the discharge in question is not such as is mentioned in section 32(3)(a) of this Act and is substantially a continuation of a previous discharge which during the year ending with the 30th April 1974 was lawfully made without such consent as is so mentioned (any reduction of the temperature, volume or rate of the discharge as compared with that of the previous discharge being disregarded), the Secretary of State shall be deemed to have given unconditionally the consent applied for—

- (a) until he actually gives the consent unconditionally; or
- (b) if he decides to refuse consent or to give it subject to conditions, until the expiration of the period of three months beginning with the date when he serves on the applicant notice of the decision.

(c) —

(5) —

(6) In this section “the relevant day” means 31st January 1985.

42.—(1) If an islands council which proposes to make or has made an application to the Secretary of State for any consent in pursuance of section 34 of this Act (hereafter in this subsection referred to as “the relevant application”)—

- (a) applies to the Secretary of State within a prescribed period for a certificate providing that section 36(1) of this Act and paragraphs (b) to (d) of subsection (1) of the preceding section shall not apply to the relevant application or to any consent given or conditions imposed in consequence of the relevant application or to any sample of effluent taken from a discharge for which consent is given in consequence of the relevant application or to information produced by analysis of such a sample; and

- (b) satisfies the Secretary of State that it would—

- (i) prejudice to an unreasonable degree some private interest by disclosing information about a trade secret, or

- (ii) be contrary to the public interest,

if a certificate were not issued in pursuance of his application to the Secretary of State,

the Secretary of State may issue a certificate to that council providing that section 36(1) of this Act and those paragraphs shall not apply to such of the things mentioned in paragraph (a) of this subsection as are specified in the certificate.

(2) If an islands council which is making or proposes to make a discharge which is the subject of a consent given in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965—

- (a) applies to the Secretary of State for a certificate providing that subsection (1)(c) or (d) of the preceding section shall not apply to the consent or any conditions to which the consent is subject or any sample of effluent taken from a discharge to which the consent relates or any information produced by analysis of such a sample; and

- (b) satisfies the Secretary of State as mentioned in paragraph (b) of the preceding subsection,

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the Secretary of State may issue a certificate to that council providing that the said subsection (1) (c) or (d) shall not apply to such of the things mentioned in paragraph (a) of this subsection as are specified in the certificate.

53. —

SCHEDULE 3

Regulation 5

FORMS OF NOTICE

CONTROL OF POLLUTION ACT 1974, SECTION 36(1)(a) NOTICE OF APPLICATION FOR CONSENT FOR DISCHARGE UNDER SECTION 34(1)

Notice is hereby given that an application has been made to the Secretary of State by (a) for consent to discharge (b) of (c) to (d) at (e) from (f)

Any person who wishes to make representations about the application should do so in writing to the Secretary of State (g) by (h) quoting (i)

A copy of the application may be inspected free of charge at (j) at all reasonable hours.

Signed

*On behalf of

Date

*Delete where inappropriate

- (a) Insert name of Islands Council.
(b) Insert maximum quantity of the matter which it is proposed to discharge on any one day.
(c) Insert nature of matter to be discharged (for example sewage effluent, trade effluent etc.).
(d) Insert name or description of waters (for example, river or tributary thereof, whether tidal or non tidal, estuarial, coastal or underground) or land into or on to which matter is proposed to be discharged.
(e) Specify (by reference to identifiable geographical features or to Ordnance Map national grid co-ordinates, followed by name of district) the place at which it is proposed to make the discharge.
(f) Insert address of the premises from which the discharge will be made.
(g) Insert address to which representations should be made.
(h) Insert the date six weeks after the date on which the notice is published in the Edinburgh Gazette.
(i) Insert reference number and/or letters of application.
(j) Insert the address of the appropriate Islands Council office.

CONTROL OF POLLUTION ACT 1974, SECTION 36(1)(a) NOTICE OF SERVICE OF INSTRUMENT IN PURSUANCE OF SECTION 34(3)

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Notice is hereby given that on (a).....
the Secretary of State served on (b)..... an instrument giving
consent ~~*[subject to the undernoted conditions]~~ to discharge
(c)
of (d)
to (e)
at (f) from (g)

~~*[The conditions subject to which consent is given are—
.....
.....
.....
.....
.....~~

Any person who wishes to make representations about the instrument should do so in writing to the
Secretary of State (h)..... by (i)..... quoting (j)

A copy of the instrument may be inspected free of charge at (k).....at all reasonable
hours.

Signed
*On behalf of
Date

*Delete where appropriate

- (a) Insert date of service of instrument.
- (b) Insert name of Islands Council causing or permitting matter to be discharged.
- (c) Insert maximum quantity of matter specified in instrument which may be discharged in any one day.
- (d) Insert nature of matter specified in instrument.
- (e) Insert name or description of waters (for example, river or tributary thereof, whether tidal or non-tidal, estuarial, coastal or underground) into which, or land on to which, matter is consented to be discharged.
- (f) Specify (by reference to identifiable geographical features or to Ordnance Map national grid co-ordinates, followed by name of district) the place at which the discharge is consented to be made.
- (g) Insert address of premises from which the discharge is consented to be made.
- (h) Insert address to which representations should be made.
- (i) Insert the date six weeks after the date on which the notice is published in the Edinburgh Gazette.
- (j) Insert a reference number or letter.
- (k) Insert the address of the appropriate Islands Council office.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

In pursuance of section 55 of the Control of Pollution Act 1974, these Regulations provide for consents required by islands councils in Scotland for the purposes of Part II of the Act (pollution of water) to be given by the Secretary of State. They also prescribe the modifications subject to which the relevant provisions of Part II are to have effect in relation to discharges by islands councils and the forms of notice to be used in connection therewith. Schedule 3 to the Regulations reproduces those provisions as modified.

These Regulations supersede for Scotland the Control of Pollution (Discharges by Authorities) Regulations 1984 which are revoked.