Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
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Water Environment and Water Services (Scotland) Act 2003

2003 asp 3

PART 1

PROTECTION OF THE WATER ENVIRONMENT

CHAPTER 1

PURPOSE, GENERAL DUTIES AND DEFINITIONS

1 General purpose of Part 1

(1) The purpose of this Part is to make provision for or in connection with protection of the water environment, including making provision, and enabling provision to be made, for or in connection with implementing Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water policy (referred to in this Part as "the Directive").

(2) In this Part "protection of the water environment" includes, in particular—

(a) preventing further deterioration of, and protecting and enhancing, the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on those aquatic ecosystems,

(b) promoting sustainable water use based on the long-term protection of available water resources,

(c) aiming at enhancing protection and improvement of the aquatic environment through, amongst other things, specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing out of discharges, emissions and losses of the priority hazardous substances,

(d) ensuring the progressive reduction of pollution of groundwater and preventing further pollution of it, and

(e) contributing to mitigating the effects of floods and droughts,

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with a view to contributing to the achievement of the aims specified in subsection (3).

(3) Those aims are—

(a) the provision of a sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

(b) a significant reduction in pollution of groundwater,

(c) the protection of territorial and other marine waters, and

(d) achieving the objectives of international agreements, including those which aim to prevent and eliminate pollution of the marine environment, in relation to which measures are adopted under paragraph 1 of Article 16 of the Directive in pursuance of a proposal under paragraph 3 of that Article.

Commencement Information

I1 S. 1 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

2 The general duties

(1) The Scottish Ministers and SEPA must exercise their functions under the relevant enactments so as to secure compliance with the requirements of the Directive.

(2) The responsible authorities must exercise their designated functions so as to secure compliance with the requirements of the Directive.

(3) Subsection (4) applies to—

(a) the Scottish Ministers in exercising their functions, and SEPA in exercising its functions, under the relevant enactments in pursuance of subsection (1),

(b) the responsible authorities in exercising their designated functions in pursuance of subsection (2).

(4) The Scottish Ministers, SEPA and the responsible authorities must—

(a) have regard to the social and economic impact of such exercise of those functions,

(b) so far as is consistent with the purposes of the relevant enactment or designated function in question—

(i) promote sustainable flood management, and

(ii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions.

(5) Without prejudice to subsections (1) to (4), the Scottish Ministers and every public body and office-holder must, in exercising any functions, have regard to the desirability of protecting the water environment.

(6) The Scottish Ministers may give directions (whether general or specific) and guidance to—

(a) SEPA, in relation to the exercise of its functions under the relevant enactments,

(b) the responsible authorities, in relation to the exercise of their designated functions;

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and SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

(7) Directions under subsection (6) may include provision for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

(8) In this section—

"the relevant enactments" means this Part and such other enactments as the Scottish Ministers may by order specify,

"responsible authorities" means such public bodies and office-holders, or public bodies and office-holders of such descriptions, as the Scottish Ministers may by order designate for the purposes of this Part; and "designated functions", in relation to a responsible authority, means such of the authority's functions relating to the water environment as are specified in relation to the authority in an order made by the Scottish Ministers (whether or not the order designating the authority as a responsible authority).

Commencement Information

I2 S. 2 in force at 15.12.2003 by S.S.I. 2003/562 , **art. 2(a)**

3 The water environment: definitions

(1) The following provisions have effect for the interpretation of this Part.

(2) "The water environment" means all surface water, groundwater and wetlands.

(3) "Surface water" means inland water (other than groundwater), transitional water and coastal water.

(4) "Groundwater" means water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

(5) "Wetland" means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water and which is directly dependent, with regard to its water needs, on a body of groundwater or a body of surface water.

(6) "Inland water" means—

(a) all standing or flowing water on the surface of the land (other than transitional water), and

(b) all groundwater,

within the landward limits of coastal water.

(7) "Transitional water" means water (other than groundwater) in the vicinity of river mouths which is partly saline in character as a result of its proximity to coastal water but which is substantially influenced by freshwater flows.

(8) "Coastal water" means water (other than groundwater) within the area extending landward from the 3 mile limit up to the limit of the highest tide or, where appropriate, the seaward limits of any bodies of transitional water, but does not include any water beyond the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland.

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(9) "The 3 mile limit" means the limit consisting of a line every point of which is at a distance of 3 miles on the seaward side from the nearest point of the baseline from which the breadth of the territorial sea of the United Kingdom adjacent to Scotland is measured; and "miles" means international nautical miles of 1,852 metres.

(10) Nothing in this Part applies to any water contained in—

(a) artificial swimming pools,

(b) mains or other pipes belonging to Scottish Water or which are used by Scottish Water or any other person for the purpose only of providing a supply of water to any premises,

(c) water treatment works,

(d) sewers and drains which drain into sewers,

(e) sewage treatment works,

(f) artificially created systems for the treatment of pollutants.

(11) The Scottish Ministers—

(a) must deposit with SEPA maps showing what appear to them to be the landward and seaward limits of every body of transitional water,

(b) may, if they consider it appropriate to do so, deposit with SEPA maps showing the landward and seaward limits of coastal water,

(c) may, if they consider it appropriate to do so by reason of any change of what appears to them to be any of the limits referred to in paragraphs (a) and (b), deposit a map showing the revised limits.

(12) SEPA must make the maps deposited with it under subsection (11) available, at all reasonable times, for public inspection free of charge.

(13) In subsection (8), "the seaward limits of any bodies of transitional water" means the places for the time being shown as such in the latest map deposited under subsection (11).

Commencement Information

I3 S. 3 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

CHAPTER 2

RIVER BASIN MANAGEMENT PLANNING

River basin districts

4 Establishment of river basin districts

(1) The Scottish Ministers must by order designate one or more river basin districts for the purposes of this Part.

(2) A river basin district is an area, identified in the order, comprising one or more river basins together with any relevant bodies of groundwater and bodies of coastal water which are to form part of that river basin district in accordance with subsection (3).

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(3) A relevant body of groundwater or body of coastal water is to form part of the nearest river basin district or, if it appears to the Scottish Ministers that another river basin district is more appropriate, that district.

(4) An order under subsection (1) (a "designation order") must identify each river basin district by reference to a map prepared for the purposes of the order and laid before the Scottish Parliament.

(5) The Scottish Ministers must send to SEPA a copy of—
  (a) a designation order, and
  (b) the map prepared in pursuance of subsection (4).

(6) SEPA must make the copies of the designation order and map available, at all reasonable times, for public inspection free of charge.

(7) In this section "relevant body of groundwater" means a body of groundwater which does not fully follow any particular river basin.

Commencement Information
I4 S. 4 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

5 Characterisation of river basin districts

(1) SEPA must, by 22nd December 2004, carry out a characterisation of each river basin district.

(2) In this section "characterisation", in relation to a river basin district, means—
  (a) an analysis of the characteristics of the water environment,
  (b) a review of the impact of human activity on the status of the water environment, and
  (c) an economic analysis of water use.

(3) SEPA must review and, where necessary, update each characterisation carried out under subsection (1) by 22nd December 2013 and by the end of each period of 6 years thereafter.

(4) A characterisation under subsection (1) and a review under subsection (3) must be carried out in accordance with the technical specifications set out in Annexes II and III to the Directive.

(5) The Scottish Ministers may by regulations make further provision as to the characterisations and reviews to be carried out under this section, including provision as to—
  (a) the criteria by reference to which characterisations and reviews are to be carried out, including criteria for designating bodies of surface water as artificial or heavily modified,
  (b) the methods and procedures to be followed in carrying out characterisations and reviews.

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Commencement Information
I5 S. 5 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

6 Bodies of water used for the abstraction of drinking water

(1) The Scottish Ministers must by order identify any bodies of water within each river basin district which—
- (a) are used for the abstraction of water intended for human consumption and either—
  - (i) provide more than 10 cubic metres of such water per day, or
  - (ii) serve more than 50 persons, or
- (b) are intended to be used as mentioned in paragraph (a).

(2) An order under subsection (1) may identify the bodies of water by reference to a map prepared for the purposes of the order and laid before the Parliament.

(3) The Scottish Ministers must send to SEPA a copy of—
- (a) an order made under subsection (1), and
- (b) any map prepared in pursuance of subsection (2).

Commencement Information
I6 S. 6 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

7 Register of protected areas

(1) SEPA must, for each river basin district—
- (a) by 22nd December 2004 prepare, and
- (b) thereafter maintain,

a register of the protected areas lying (whether wholly or partly) within the district in accordance with regulations made by the Scottish Ministers.

(2) Such regulations may, in particular, make provision as to—
- (a) the form and manner in which the register is to be prepared and maintained,
- (b) the information which the register is to contain.

(3) In this section, “protected areas” means—
- (a) any bodies of water identified under section 6, and
- (b) the areas and bodies of water falling within subsection (4).

(4) The areas and bodies of water falling within this subsection are those for the time being designated or otherwise identified as requiring special protection under any Community instrument providing for the protection of surface water and groundwater or for the conservation of habitats or species directly depending on water, or any enactment implementing such a Community instrument, including, in particular—
- (a) areas designated for the protection of economically significant aquatic species,
- (b) bodies of water designated as recreational waters,

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(c) nutrient-sensitive areas, and

(d) areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in the protection of the habitats or species.

(5) The Scottish Ministers may by regulations make such further provision for identifying, or enabling the identification of, the areas and bodies of water falling within subsection (4) as they consider necessary or expedient, including provision for identifying any of those areas or bodies of water by reference to—

(a) such Community instruments, or enactments implementing such instruments, as are specified in the regulations,

(b) such other criteria as may be specified in the regulations.

(6) SEPA must make the register available, at all reasonable times, for public inspection free of charge.

Commencement Information

I7 S. 7 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(a)**

VALID FROM 01/06/2005

8 Monitoring

(1) SEPA must, in relation to each river basin district—

(a) carry out, or secure the carrying out of, monitoring of the status of the water environment and relevant territorial water adjacent to the district, and

(b) analyse, or secure the analysis of, the information obtained under paragraph (a).

(2) SEPA must prepare a programme for monitoring (whether by SEPA or other persons) the status of the water environment and relevant territorial water (a "monitoring programme").

(3) Monitoring in accordance with the monitoring programme must be commenced by 22nd December 2006.

(4) Subsection (3) is subject to any provision made in regulations by virtue of subsection (5)(d).

(5) The Scottish Ministers may by regulations make provision—

(a) as to the nature and method of monitoring and analysis to be carried out (whether by SEPA or by other persons) for the purpose of subsection (1)(a),

(b) requiring persons other than SEPA to carry out such monitoring and analysis,

(c) as to the times at or by which, and the circumstances in which, such monitoring and analysis is to be carried out,

(d) for monitoring in accordance with the monitoring programme to be commenced in relation to such protected areas (within the meaning of section 7(3)) or descriptions of protected area as are specified in the regulations by such date (other than that specified in subsection (3)) as is specified in or determined under the regulations,

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(e) as to the provision to SEPA of information resulting from such monitoring and analysis carried out by persons other than SEPA,

(f) as to the form and content of a monitoring programme,

(g) as to consultation and other procedure in connection with the preparation of a monitoring programme.

(6) The Scottish Ministers may issue guidance to SEPA or any other person on any matter in relation to which they have power to make regulations under subsection (5); and SEPA or, as the case may be, that person must have regard to the guidance.

(7) Subsection (6) is without prejudice to section 2(6).

(8) In this section "relevant territorial water" means so much of the territorial sea of the United Kingdom adjacent to Scotland as is not coastal water or transitional water.

VALID FROM 01/06/2005

9 Environmental objectives and programmes of measures

(1) For the purposes of the river basin management plan for a river basin district SEPA must—

(a) set environmental objectives for each body of water in the district, and

(b) prepare a programme of measures to be applied to achieve those objectives.

(2) In setting environmental objectives and preparing a programme of measures under this section, SEPA must take account of the characterisation of the river basin district concerned (and any review of it) carried out under section 5.

(3) Environmental objectives may be set so as to apply with modifications in relation to particular descriptions of bodies of water or in particular circumstances.

(4) The Scottish Ministers may by regulations make further provision as to the setting of environmental objectives and the preparation of programmes of measures under this section.

(5) Regulations under subsection (4) making provision as to the setting of environmental objectives under this section may, in particular, include provision as to—

(a) the types of environmental objective which may be set for particular descriptions of body of water,

(b) the date by which and the criteria by reference to which such objectives are to be set,

(c) the methods and procedures to be followed in setting such objectives,

(d) the dates by which such objectives are to be achieved,

(e) particular descriptions of bodies of water in relation to which, or particular circumstances in which, such objectives are to apply with modifications.

(6) Regulations under subsection (4) making provision as to the preparation of programmes of measures under this section may, in particular, include provision as to—

(a) the types of measures which must or may be included in such a programme,

(b) the date by which such a programme is to be prepared,

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(c) the methods and procedures to be followed in preparing such a programme.

(7) In this section, "environmental objectives" means the objectives required to comply with Article 4 of the Directive together with any objectives required to comply with paragraphs 2 and 3 of Article 7 of the Directive.

VALID FROM 01/06/2005

River basin management plans

10 River basin management plans

(1) SEPA must, by such date as the Scottish Ministers may direct, prepare and submit to them a river basin management plan for each river basin district in respect of such period as they may direct.

(2) A river basin management plan must include—
(a) the matters specified in Part 1 of schedule 1, and
(b) such other matters as the Scottish Ministers may by regulations specify.

(3) A river basin management plan—
(a) must (without prejudice to subsection (2)(b)) contain or be accompanied by such maps, diagrams, illustrations and descriptive matter as the Scottish Ministers may direct, and
(b) may contain or be accompanied by such other maps, diagrams, illustrations and descriptive matter as SEPA thinks appropriate for the purpose of explaining or illustrating any matter in the plan.

(4) Any such maps, diagrams, illustrations and descriptive matter are to be treated as forming part of the plan; and references to such a plan are to be construed accordingly.

11 River basin management plans: publicity and consultation

(1) Not less than 3 years before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a statement setting out—
(a) the steps under this section, and any other consultation measures, which it is to take in connection with the preparation of the plan, and
(b) the dates on or by which those steps and measures are to be taken.

(2) Not less than 2 years before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a summary of the significant water management issues which it considers arise in relation to the river basin district in question.

(3) Not less than one year before the beginning of the period to which a river basin management plan is to relate, SEPA must publish a draft of the plan.

(4) Publication of a statement under subsection (1), a summary under subsection (2) and a draft plan under subsection (3) is to be in such manner as SEPA thinks fit.

(5) On publishing a statement, a summary or a draft plan SEPA must—
(a) publicise—

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(i) that fact,

(ii) the arrangements for making copies of the statement, summary or draft plan available for public inspection in pursuance of paragraph (b), and

(iii) the opportunity to make representations about the statement, summary or draft plan under subsection (7),

(b) make copies of the statement, summary or draft plan available for public inspection free of charge for such period, which must be at least 6 months beginning with the date of its publication, as SEPA may determine,

(c) consult the persons specified in subsection (6),

(d) take such steps as it thinks fit for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.

(6) The persons referred to in subsection (5)(c) are—

(a) Scottish Natural Heritage,

(b) Scottish Water,

(c) every responsible authority which has functions exercisable in or in relation to the river basin district in question,

(d) every local authority any part of whose area is within the river basin district,

(e) every district salmon fishery board any part of whose salmon fishery district is within the river basin district,

(f) where any part of the river basin district has been designated as a National Park, the National Park authority for that National Park,

(g) such persons as appear to SEPA to be representative of the interests of those carrying on any business which relies upon the water environment within the river basin district,

(h) such persons as appear to SEPA to have an interest in the protection of the water environment within the river basin district,

(i) such persons as appear to SEPA to have an interest in the promotion of sustainable flood management,

(j) such other persons as SEPA thinks fit.

(7) Any person who wishes to make representations to SEPA about a statement, summary or draft plan may do so within the period determined under subsection (5)(b).

(8) In preparing the draft river basin management plan SEPA must take into account—

(a) any views on the statement or summary relating to the plan expressed by those consulted under subsection (5)(c), and

(b) any representations about the statement or summary,

which are received by SEPA within the period determined under subsection (5)(b).

(9) In preparing the river basin management plan for submission to the Scottish Ministers SEPA must take into account—

(a) any views on the draft plan expressed by those consulted under subsection (5)(c), and

(b) any representations about the draft plan,

which are received by SEPA within the period determined under subsection (5)(b).

(10) Where SEPA is required under this section or section 12 or 13 to publicise any matter in connection with a river basin management plan, it—

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(a) must do so by means of a notice published in—
(i) at least one newspaper circulating throughout Scotland, and
(ii) such local newspapers circulating in the river basin district in question, or any part of it, as it thinks fit, and
(b) may further publicise the matter by such electronic or other means as it thinks fit.

VALID FROM 14/12/2007

12 River basin management plans: submission for approval

(1) As soon as a river basin management plan is submitted to the Scottish Ministers, SEPA must—
(a) publicise—
(i) that fact, and
(ii) the arrangements for making copies of the plan available for public inspection in pursuance of paragraph (b), and
(b) make copies of the plan available for public inspection free of charge.

(2) A river basin management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement—
(a) of the action taken by SEPA to comply with subsections (3) and (so far as relating to the draft plan) (4) to (6) of section 11,
(b) containing a summary of the views and representations referred to in subsection (9) of that section and of any adjustments made to the plan in light of those views and representations.

(3) If the Scottish Ministers, having considered the statement, are of the opinion that further action should be taken by SEPA in relation to the plan under subsections (3) to (6) of section 11, they may return the plan to SEPA and direct it—
(a) to take such further action under those subsections as they may specify, and
(b) to resubmit the plan with such modifications, if any, as SEPA considers appropriate by such time (if any) as the direction may specify.

(4) Where the Scottish Ministers return the plan to SEPA under subsection (3), they must state their reasons for doing so.

(5) This section applies, with the necessary modifications, in relation to a river basin management plan resubmitted to the Scottish Ministers in pursuance of subsection (3)(b) as it applies to the plan as originally submitted.

VALID FROM 14/12/2007

13 River basin management plans: approval

(1) After considering a river basin management plan submitted to them under section 10(1) or in pursuance of section 12(3)(b) or subsection (4) of this section, the Scottish Ministers may—
(a) approve it (in whole or in part and with or without modifications), or

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(b) reject it.

(2) Before determining whether or not to approve a plan, the Scottish Ministers may request such further information and carry out such other investigations and consultation as they think fit.

(3) The Scottish Ministers must state their reasons for their determination under subsection (1) in relation to a plan.

(4) Where the Scottish Ministers reject a plan, they must return the plan to SEPA and direct it to resubmit the plan with—
(a) such modifications (if any) as the direction may specify, and
(b) any further modifications which SEPA considers appropriate,
by such time (if any) as the direction may specify.

(5) Where the Scottish Ministers approve a plan, SEPA must—
(a) publish the approved plan in such manner as it thinks fit,
(b) make copies of it available for public inspection,
(c) make copies of it available for sale at a reasonable price, and
(d) publicise—
(i) the publication of the approved plan, and
(ii) the arrangements for making copies of it available for public inspection in pursuance of paragraph (b).

VALID FROM 14/12/2007

14 River basin management plans: review

(1) SEPA must, no later than 6 years (or such lesser period as the Scottish Ministers may direct) from the date on which a river basin management plan was approved under section 13, review and update the plan.

(2) Following such a review SEPA must, by such date as the Scottish Ministers may direct, prepare and submit to the Scottish Ministers a revised river basin management plan for the river basin district in question in respect of such period as the Scottish Ministers may direct.

(3) The revised plan must include (in addition to the matters required to be included by section 10) the matters specified in Part 2 of schedule 1.

(4) Sections 10(2) to (4), 11 to 13 and 17(3) apply in relation to the preparation, submission and approval of a revised river basin management plan.

15 Sub-basin plans

(1) For the purpose of supplementing the river basin management plan for a river basin district—
(a) SEPA must—
(i) divide the district into such geographical areas as it thinks fit, and

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(ii) prepare, for each of those areas, a plan in relation to water management within the area,

(b) SEPA or a responsible authority may, if it thinks fit, prepare a plan in relation to a particular aspect of water management within the district.

(2) A plan prepared under subsection (1)(b) may, for example, relate to—

(a) a particular description of body of water,

(b) a particular catchment or geographical area (whether or not an area determined in pursuance of subsection (1)(a)),

(c) a particular matter relating to the water environment,

(d) a particular description of user of water resources.

(3) A plan prepared under subsection (1)(a) or (b) is referred to in this Part as a "sub-basin plan".

(4) A sub-basin plan must not be inconsistent with anything in the river basin management plan which it supplements.

(5) A sub-basin plan prepared under subsection (1)(b), so far as applying to an area determined in pursuance of subsection (1)(a), must not be inconsistent with the sub-basin plan prepared for that area under subsection (1)(a).

(6) SEPA or, as the case may be, the responsible authority must consult such of the persons specified or referred to in section 11(6)(a) to (j) as it thinks fit about a proposed sub-basin plan and must take into account any views expressed by those consulted.

(7) For the purposes of subsection (6) as it applies to a responsible authority, the references in section 11(6)(g) to (j) to SEPA are to be read as if they were references to that responsible authority.

VALID FROM 14/12/2007

16 Duty to have regard to river basin management plans and sub-basin plans

The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a river basin district, have regard to—

(a) the river basin management plan for that district as approved under section 13,

(b) so far as the exercise of the functions affects an area of the district determined in pursuance of section 15(1)(a), the sub-basin plan prepared for that area, and

(c) so far as relevant, any sub-basin plan prepared under section 15(1)(b) for the purpose of supplementing the river basin management plan for the district.

17 River Basin District Advisory Groups

(1) Each river basin district is to have one or more River Basin District Advisory Groups.

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The function of each Advisory Group is to advise SEPA on any matter which—
  (a) relates to the preparation of river basin management plans for the district, and
  (b) is within the remit of the Group.

(3) SEPA must, in preparing a river basin management plan, have regard to any advice given by an Advisory Group.

(4) The number of Advisory Groups, and their remits, membership and procedure, are to be such as SEPA may determine.

(5) SEPA may determine the remit of an Advisory Group for any river basin district by reference to one or more of the following, namely—
  (a) a particular sub-basin plan,
  (b) a particular geographical area,
  (c) any other particular aspect of water management within the district.

(6) In determining the number of Advisory Groups for any river basin district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of the persons specified or referred to in section 11(6)(a) to (h).

(7) SEPA may pay to members of an Advisory Group such expenses and allowances as it may determine.

General

18 Power to obtain information and documents etc.

(1) The Scottish Ministers and any responsible authority must, on being requested to do so by SEPA, provide SEPA with—
  (a) such information in their or, as the case may be, its possession or under their or its control, and
  (b) such assistance,

  as SEPA may reasonably seek in connection with the exercise of any of SEPA's functions under this Chapter.

(2) SEPA may serve a notice on any other person requiring the person—
  (a) to provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or
  (b) to produce to SEPA, or to a person authorised by it, such documents,

  as it may reasonably require in connection with the exercise of any of its functions under this Chapter.

(3) The information or documents required to be provided or produced in pursuance of a notice under subsection (2) must be specified or described in the notice.

(4) A notice under subsection (2) may require information to be provided or documents to be produced—
  (a) at or by a time and at a place specified in the notice,
  (b) in circumstances specified in the notice, or
  (c) from time to time, in accordance with criteria specified in the notice.

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (2) cannot agree with SEPA on whether information is, or documents are, being sought or required reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

(6) Nothing in this section authorises SEPA to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

(7) References in this section to documents are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

(8) Where by virtue of subsection (2) documents are produced to any person, that person may take copies of or make extracts from them.

(9) A person who—
- (a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under subsection (2), or
- (b) intentionally alters, suppresses or destroys a document which that person has been required by such a notice to produce,

is guilty of an offence.

(10) A person guilty of an offence under subsection (9) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

Commencement Information
I8 S. 18 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(b)**

VALID FROM 14/12/2007

19 General regulation-making power

(1) The Scottish Ministers may by regulations make provision as to—
- (a) the form and content of river basin management plans and sub-basin plans,
- (b) the matters to be taken into account in preparing such plans,
- (c) the procedures to be followed in connection with their preparation, submission, approval, review and modification.

(2) Such regulations may, in particular—
- (a) provide for the notice to be given of, or the publicity to be given to—
  - (i) matters to be included or proposed to be included in any such plan,
  - (ii) the approval of any such plan,
  - (iii) any other procedural step,

  and for publicity to be given to the procedures referred to in subsection (1)(c),

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) make provision for documents and information relating to matters included in the plan to be made available to the public,

(c) make provision as to the making and consideration of representations with respect to any such plan,

(d) require or authorise—

(i) in relation to a river basin management plan, SEPA,

(ii) in relation to a sub-basin plan, SEPA or the responsible authority,

to consult, or consider the views of, other persons before taking any particular procedural step.

(3) This section is without prejudice to sections 10 to 15 and 17.

CHAPTER 3

MEASURES FOR PROTECTION OF THE WATER ENVIRONMENT

20 Regulation of controlled activities

(1) The Scottish Ministers may by regulations make such provision for or in connection with regulating any activity (a "controlled activity") as they consider necessary or expedient for the purposes of protection of the water environment.

(2) Such regulations may, in particular—

(a) make provision for or in connection with regulating the activities specified in subsection (3),

(b) otherwise make such provision for or in connection with the basic measures and supplementary measures mentioned in paragraph 2 of Article 11 of the Directive as the Scottish Ministers consider necessary or expedient for the purpose of facilitating the achievement of the environmental objectives set out in river basin management plans.

(3) The activities referred to in subsection (2)(a) are—

(a) activities liable to cause pollution of the water environment,

(b) abstraction of water from bodies of surface water or groundwater,

(c) the construction, alteration or operation of impounding works in bodies of surface water,

(d) building, engineering or other works in, or in the vicinity of, any body of inland surface water,

(e) activities connected with any of the activities specified in paragraphs (a) to (d).

(4) The provision which may be made in regulations under this section includes provision for any of the purposes specified in Part 1 of schedule 2.

(5) Part 2 of that schedule has effect for supplementing Part 1.

(6) In subsection (3)—

"abstraction", in relation to a body of surface water or groundwater, means the doing of anything whereby any water is removed by mechanical means from that body of water, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another body of water within the water environment,

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"impounding works", in relation to a body of surface water, means—

(a) any dam, weir or other works in the body of water by which water may be impounded,

(b) any works diverting the flow of water in the body of water in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a),

"pollution", in relation to the water environment, means the direct or indirect introduction, as a result of human activity, of substances or heat into the water environment, or any part of it, which may give rise to any harm; and "harm" means—

(a) harm to the health of human beings or other living organisms,

(b) harm to the quality of the water environment, including—

(i) harm to the quality of the water environment taken as a whole,

(ii) other impairment of, or interference with, the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,

(c) offence to the senses of human beings,

(d) damage to property, or

(e) impairment of, or interference with, amenities or other legitimate uses of the water environment.

(7) This section is without prejudice to section 22.

Commencement Information

I9 S. 20 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(c)**

21 Controlled activities regulations: procedure

(1) Before making any regulations under section 20, the Scottish Ministers must consult—

(a) SEPA,

(b) every responsible authority,

(c) such persons appearing them to be representative of the interests of local government, industry, agriculture, fisheries and small businesses respectively as they think fit, and

(d) such other persons as they think fit.

(2) Before making any regulations under that section specifying rules as mentioned in paragraph 3(2) of schedule 2 (general binding rules), the Scottish Ministers must, in addition to consulting as required by subsection (1)—

(a) publish a draft of the proposed rules, and publicise the opportunity to make representations about them under subsection (3), in such manner as they think fit, and

(b) make copies of the proposed rules available for public inspection for such period, which must be at least 28 days, as they may determine.

(3) Any person who wishes to make representations about the proposed rules to the Scottish Ministers may do so within the period determined under subsection (2)(b).

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The Scottish Ministers must, in making the regulations specifying the rules, have regard to any representations on the proposed rules received by them within that period.

Commencement Information

I10 S. 21 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(c)**

VALID FROM 10/07/2008

22 Remedial and restoration measures

(1) The Scottish Ministers may by regulations make such provision for or in connection with remedial or restoration measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans.

(2) In this section "remedial or restoration measures" means the carrying out of any operations or works, or the taking of any other action, in relation to any land or body of water with a view to—

(a) remedying or mitigating the effects of any pollution (as defined in section 20(6)) of the water environment,

(b) improving or restoring the characteristics of any body of water.

(3) Regulations under this section may, in particular, make provision—

(a) conferring on SEPA or any responsible authority power to undertake, or arrange for the undertaking of, remedial or restoration measures,

(b) for determining which other persons (if any) are the appropriate persons to bear responsibility for remedial or restoration measures and conferring on SEPA or any responsible authority power—

(i) to serve notices requiring such persons to undertake remedial or restoration measures, or

(ii) to undertake, or arrange for the undertaking of, such measures at the expense of such persons.

VALID FROM 21/09/2013

23 Fixing of charges for water services

(1) The Scottish Ministers may by regulations make such provision for or in connection with the fixing of charges for the provision of water services as they consider necessary or expedient for the purposes of protection of the water environment.

(2) Regulations under subsection (1) may, in particular, make provision for securing that, in the fixing of such charges, account is taken of such principles, objectives or other matters as are specified in the regulations.

(3) Before making any regulations under subsection (1), the Scottish Ministers must consult such persons as they think fit.

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In this section, "water services" means services which provide, for households, public institutions or any economic activity—

(a) abstraction (as defined in section 20(6)), impoundment, storage, treatment and distribution of surface water or groundwater,

(b) waste-water collection and treatment facilities which subsequently discharge into surface water.

VALID FROM 06/02/2007

24 Planning permission: fish farming

(1) The Town and Country Planning (Scotland) Act 1997 (c. 8) is amended as follows.

(2) In section 26 (meaning of "development")—

(a) in subsection (6)—

(i) for "tank" in the first and second places where it occurs substitute " equipment ",

(ii) after "waters" in the first place where it occurs insert " , transitional water or coastal water ",

(iii) before the definition of "fish farming" insert—

""coastal water" has the meaning given by section 3(8) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);

"equipment" includes any tank, cage or other structure, or long-line, for use in fish farming;",

(iv) the definition of "tank" is repealed,

(v) at the end insert—

""transitional water" has the meaning given by section 3(7) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);",

(b) after subsection (6) insert—

"(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of "equipment" and "fish farming" in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), "modifications" includes amendments and repeals."

(3) In section 40 (assessment of environmental effects), after subsection (3) insert—

"(4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.

Status: *Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In subsection (4), "water environment" has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3)."

(4) In section 275 (regulations and orders)—

(a) in subsection (4), after "26(2)(f)" insert " and (6A) ",

(b) after subsection (5) insert—

"(5A) No order made under section 26(6A) is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament."

(5) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of or in connection with the application of the Town and Country Planning (Scotland) Act 1997 (c. 8), by virtue of this section, to operations in transitional water or coastal water.

(6) An order under subsection (5) may, in particular, make provision for any planning authority specified in the order to be the planning authority for the purposes of the application of that Act, by virtue of this section, to operations in such areas of transitional water or coastal water as the order may specify in relation to the authority, despite those operations relating to land outwith the district of the authority.

(7) Before making an order under subsection (5) the Scottish Ministers must consult—

(a) every planning authority,

(b) SEPA,

(c) such other persons as they think fit.

CHAPTER 4

SUPPLEMENTARY

VALID FROM 20/05/2005

25 Power to give effect to Community obligations etc.

(1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

(2) In this section "related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

26 Annual report on implementation of Directive

The Scottish Ministers must, as soon as practicable after the end of each calendar year, lay before the Parliament a report summarising—

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Changes to legislation: *Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) action taken during the year by the Scottish Ministers, SEPA and the responsible authorities for securing compliance with the requirements of the Directive in accordance with this Part, and

(b) progress made during the year towards achieving the environmental objectives set from time to time under section 9.

Commencement Information

I11 S. 26 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(d)**

27 Availability of documents for public inspection

Where, under this Part, any order, map, plan, register or other document is to be made available for public inspection, it—

(a) must be made available—

(i) in print, and

(ii) electronically, and

(b) may be made available by such other means, or in such other formats, as the person required to make it available thinks fit for the purpose of encouraging the inspection of it by members of the public.

Commencement Information

I12 S. 27 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(d)**

28 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

"body of groundwater" means a distinct volume of groundwater within one or more aquifers; and "aquifer" means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater,

"body of inland surface water" means a body of surface water which is also inland water,

"body of surface water" means a discrete and significant element of surface water such as a loch, a stream, river, canal or other watercourse, part of a loch, stream, river, canal or other watercourse, a body of transitional water or a stretch of coastal water,

"body of water" means a body of groundwater or a body of surface water,

"coastal water" has the meaning given in section 3,

"controlled activity" is to be construed in accordance with section 20,

"the Directive" has the meaning given in section 1,

"groundwater" has the meaning given in section 3,

"inland water" has the meaning given in section 3,

"loch" means a body of standing inland surface water,

"protection of the water environment" has the meaning given in section 1,

"responsible authority" is to be construed in accordance with section 2,

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"river basin" means an area of land from which all surface run-off water flows through a connected sequence of streams, rivers or other watercourses or lochs into the sea at a single river mouth, estuary or delta and includes any body of transitional water in the vicinity of that river mouth, estuary or delta,

"river basin district" means an area designated as such by an order under section 4(1),

"river basin management plan" means such a plan approved by the Scottish Ministers under section 13 (including that section as applied by section 14(4)),

"SEPA" means the Scottish Environment Protection Agency,

"sub-basin plan" has the meaning given in section 15,

"surface water" has the meaning given in section 3,

"the territorial sea of the United Kingdom adjacent to Scotland" has the same meaning as it has for the purposes of the Scotland Act 1998 (c. 46),

"transitional water" has the meaning given in section 3,

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices and passages through which water flows and includes artificial watercourses and underground watercourses,

"the water environment" has the meaning given in section 3.

(2) In this Part, any reference to any loch or any river or other watercourse includes a reference to the bottom, channel or bed of any loch, river or, as the case may be, other watercourse which is for the time being dry.

(3) Any word or expression used in both this Part and the Directive and not otherwise defined in this Part has the same meaning for the purposes of this Part as it has for the purposes of the Directive.

Commencement Information

I13 S. 28 in force at 15.12.2003 by S.S.I. 2003/562, **art. 2(d)**

Status:
Point in time view as at 15/12/2003. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
Water Environment and Water Services (Scotland) Act 2003, Part 1 is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.