
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Water Environment (Controlled Activities) (Scotland) Regulations 2011

PART I

General

Citation and commencement

1.—(1) These Regulations may be cited as the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

(2) These Regulations come into force on 31st March 2011.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Water Environment and Water Services (Scotland) Act 2003;

“an application” means an application made in accordance with regulation 11 or, if regulation 18(1) applies, an application made in accordance with regulation 18(4);

“authorisation” means an authorisation under regulation 6, 7 or 8;

“category 1 or 2 responder” means a person or body listed in Schedule 1 to the Civil Contingencies Act 2004 (category 1 and 2 responders)(1);

“controlled activity” is any activity referred to in regulation 3(1);

“the 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 as amended(2);

“the EIA Directive” means Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment(3);

“the Groundwater Directive 1980” means Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances(4);

“the Groundwater Directive 2006” means Directive [2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(5);

“general binding rules” has the meaning given in regulation 6;

(1) [2004 c.36](#).

(2) O.J. No. L 327, 22.12.2000, p.1; amended by decision [2455/2001/EC](#) of the European Parliament and of the Council of 20th November 2001 establishing the list of priority substances in the field of water policy and amending Directive [2000/60/EC](#) (O.J. No. L 331, 15.12.2001, p.1).

(3) O.J. No. L 175, 5.7.1985, p.40; amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.1997, p5), by Directive [2003/35/EC](#) of the European Parliament and the Council (O.J. No. L 156, 25.6.2003, p 17), and by Directive [2009/31/EC](#) of the European Parliament and the Council (O.J. No. L 140, 5.6.2009, p 114).

(4) O.J. L 020, 26.1.1980, p.43.

(5) O.J. L 372, 27.12.2006, p.19.

- “hazardous substance” means a substance identified in accordance with Schedule 2;
- “land” includes land covered by water, and any works, plant or fixed machinery, building or other structure in, on or over land;
- “operator” means, in relation to a controlled activity, any person who carries on or has control over the carrying on of that activity;
- “person” includes a body corporate, limited liability partnership and Scottish partnership;
- “pollutant” means any substance or heat liable to cause pollution, including those listed in Schedule 1, and for the purposes of this definition “substance” includes bacteria and other pathogens;
- “premises” includes any land, vehicle, vessel or mobile plant;
- “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⁽⁶⁾;
- “the register” means the register maintained by SEPA under regulation 37;
- “registration” means an authorisation granted under regulation 7;
- “responsible authority” has the meaning given to it by section 2 of the Act (the general duties);
- “responsible person” means the person who is responsible for securing compliance with the terms of a water use licence and has been identified as such by SEPA in accordance with regulation 8(6), and includes—
- (a) if the responsible person has been adjudged bankrupt or the estate of the responsible person is sequestrated, the trustee in bankruptcy;
 - (b) if an executor has been appointed to the responsible person’s estate, the executor;
 - (c) if the responsible person is a company, and—
 - (i) a receiver has been appointed, the receiver;
 - (ii) an administrator has been appointed, the administrator;
 - (iii) a liquidator has been appointed, the liquidator;
- “SEPA” means the Scottish Environment Protection Agency; and
- “water use licence” means an authorisation granted under regulation 8.

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000 (general interpretation)⁽⁷⁾ which has been recorded in written form and is capable of being reproduced in that form.

Application of the Regulations

- 3.—(1) Subject to paragraph (2), these Regulations apply to—
- (a) activities liable to cause pollution of the water environment;
 - (b) abstraction of water from the water environment;
 - (c) construction, alteration or operation of impounding works in surface water or wetlands;
 - (d) carrying out building or engineering works, or works other than those referred to in paragraph (c)—
 - (i) in inland water (other than groundwater) or wetlands; or

(6) O.J. L 348, 24.12.2008, p.84.

(7) [2000 c.7](#); amended by the Communications Act [2003 \(c.21\)](#).

- (ii) in the vicinity of inland water or wetlands and having or likely to have a significant adverse impact on the water environment;
- (e) artificial recharge or augmentation of groundwater;
- (f) the direct or indirect discharge, and any activity likely to cause a direct or indirect discharge, into groundwater of any hazardous substance or other pollutant; and
- (g) any other activity which directly or indirectly has or is likely to have a significant adverse impact on the water environment.

(2) These Regulations do not apply to any activity for which a licence is needed under Part II of the Food and Environment Protection Act 1985⁽⁸⁾ or Part 4 of the Marine Licensing (Scotland) Act 2010⁽⁹⁾.

Prohibition

4. No person shall carry on, or shall cause or permit others to carry on, any controlled activity except insofar as it is—

- (a) authorised under these Regulations; and
- (b) carried on in accordance with that authorisation.

Duty to use water efficiently

5. It is the duty of any person carrying out a controlled activity authorised under these Regulations to take all reasonable steps to secure efficient and sustainable water use.

⁽⁸⁾ 1985 c.48; amended by the Statute Law Repeals Act 1993 (c.50), the Environmental Protection Act 1990 (c.43), the Petroleum Act 1998 (c.17) and the Food Standards Act 1999 (c.28).

⁽⁹⁾ 2010 asp 5.