

EXECUTIVE NOTE

THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2011

SSI 2011/XXX

The above instrument is made in exercise of the powers conferred by section 20 of the Water Environment and Water Services (Scotland) Act 2003 ('WEWS'). The instrument is subject to affirmative resolution procedure.

Policy Objectives

1. These Regulations consolidate the provisions originally introduced via The Water Environment (Controlled Activities) (Scotland) Regulations 2005. Several amending instruments have subsequently been introduced; and a further suite of amendments is now being introduced, to introduce emergency provisions and improve transparency and effectiveness. This is likely to be the last major suite of policy amendments for the foreseeable future; thus it is considered a suitable time to produce a consolidated version of the Regulations.

Background

2. On 23 October 2000 the Water Framework Directive was adopted (Directive 2000/60/EC establishing a framework for Community action in the field of water policy). It came into force on 22 December 2000, and was transposed in Scotland by primary legislation, by way of WEWS in 2003. Section 20 of WEWS allows the Scottish Ministers to introduce controls over activities as considered necessary for the protection of the water environment; and as required by Articles 10, 11 and 23 of the EC Water Framework Directive, in order to facilitate the achievement of the environmental objectives set out in river basin management plans. The first such plans were published in December 2009.

3. The 2005 Regulations introduced a framework of flexible, proportionate and risk-based controls over abstraction, impoundment and building, engineering and other works that impact on the physical quality of aquatic habitats.

4. Amending regulations were later introduced, reflecting continuing policy developments in line with the Scottish Government's better regulation agenda, as follows:

- The Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006 (SSI 2006/553)
- The Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2007 (SSI 2007/219)
- The Water Environment (Diffuse Pollution) (Scotland) Regulations 2008 (SSI 2008/54)
- The Bathing Waters (Scotland) Regulations 2008 (SSI 2008/170)
- The Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009 (SSI 2009/420)
- The Management of Extractive Waste (Scotland) Regulations 2010 (SSI 2010/60)

5. The latest suite of amendments introduces provisions with the following aims:
- Clarifying and improving how SEPA consults with other relevant public authorities at an early stage in the licensing process;
 - Improving the range and quality of the environmental information made available to the public, both before and after SEPA makes its determination;
 - Clarifying what assessments SEPA must make before determining an application relating to an activity likely to have a significant adverse impact on the water environment or on the interests of other users of the water environment;
 - Clarifying and improving a number of existing procedural aspects of CAR in the interests of transparency and effectiveness;
 - Clarifying the defence provisions of CAR to support the work of our emergency services;
 - Introducing fast-track procedures for authorising controlled activities and varying or suspending existing authorisations to help secure appropriate and timely action in certain emergency situations.
6. Given the number of amendments over recent years, and the expectation that this is likely to be the last major suite of policy amendments for the foreseeable future, this is considered a useful opportunity to produce a consolidated version of the Regulations.

Consultation

7. We consulted on our proposals for these amending provisions in October 2010. The responses we received welcomed the aims of the proposed amendments, and offered further useful points for consideration. These have been addressed, either in the Regulations themselves, or in the accompanying Policy Statement.

Policy Statement

8. The policy intent will be set out in an updated CAR Policy Statement. This document will outline in considerable detail the principles behind the Regulations and SEPA's role in the implementation process. A further Policy Statement specifically on the new emergency provisions is currently under development.

Business and Regulatory Impact Assessment

9. An RIA was prepared to accompany the 2005 Regulations, and this noted that the full costs of compliance with WFD requirements would only emerge once environmental objectives were set later on in the River Basin Management Planning process. The Plans were published in 2009, and a full Impact Assessment was prepared at that time. A further IA will be prepared in line with revisions to the Plans in 2015.

10. This latest suite of amendments introduces simplified measures, the key purpose of which is to improve transparency and effectiveness, and thus reduce burdens on operators.

Responses to the consultation agree with these principles, and given the nature of the amendments no specific BRIA has been prepared at this time.

Environmental Quality Division
January 2011