
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 20 and 25 of, and schedule 2 to, the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#) (“the Act”). The Act transposed European Parliament and Council Directive [2000/60/EEC](#) establishing a framework for Community action in the field of water policy (O.J. No. L 327, 22.12.2000, p.1) (“the Directive”). These Regulations provide the mechanism by which most of the measures required under Article 11(3) (other than those required by Article 11(3)(b)) of the Directive will be taken. They also make provision to meet the requirements of Article 23 of the Directive in respect of those measures. Regard has been had to the requirements of Article 4, in particular Article 4.6, and to the terms of Article 14.1 of the Directive.

Part I of the Regulations sets out the scope of the Regulations and the main objectives to be achieved. Regulation 2 and Schedule 1 sets out definitions of expressions used in the Regulations. Words and expressions used in the Regulations and not defined in regulation 2 take the meaning given in the Act (see in particular sections 1(2), 3, 20(3) and (6), and 28). Regulation 3 amends the definition of controlled activities in section 20(3) of the Act, and amends the definitions of “abstraction” and “impounding works” for the purposes of that definition. Regulation 4 sets out the application of the Regulations. Regulation 4(1) and schedule 2 sets out the category of activities to which the Regulations apply – the “controlled activities”. Regulation 5 prohibits the carrying out of any controlled activity unless authorised under the Regulations. Regulation 6 makes provision for a duty to secure efficient and sustainable water use.

Part II of the Regulations describes the authorisations which are given under them and which are necessary to avoid breach of the prohibition in regulation 5. Regulation 7 makes provision for the carrying out of particular activities in accordance with general binding rules. The activities and the rules are specified in Schedule 3. Regulation 8 makes provision for the regulation of activities which are not considered to be likely to have significant adverse impact on the water environment, to be authorised in accordance with a registration, to which conditions may be attached. Regulation 9, which applies where an authorisation under regulations 7 or 8 is inappropriate, may authorise the carrying on of an activity, also subject to any conditions which are necessary or expedient for the purposes of the protection of the water environment. The matters which require to be taken into account in setting conditions under regulation 8 or 9 are set out in regulation 15. Regulation 10 makes specific provision to ensure that any activities authorised are fully compliant with Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances (O.J. L 20, 26.1.80, p.43). Regulation 11 gives the Scottish Environment Protection Agency (“SEPA”) powers to impose an authorisation where it considers an unauthorised activity is being carried out in contravention of regulation 5, or an activity regulated under regulation 7 requires additional measures to protect the water environment, or where an existing authorisation under regulation 8 would be more appropriately authorised under regulation 9, or vice versa.

Part III of the Regulations makes provision for applications and their determination. Regulation 12 makes provision for an application to SEPA to be in such form as SEPA may require from time to time. An application requires to be accompanied by a charge prescribed in accordance with schedule 5, and such information as SEPA may require. Regulation 13 makes provision for advertisement of applications where the activity has, or is likely to have, an adverse impact on the water environment. Regulation 14 makes provision for SEPA to request additional information. Regulation 15 sets out the requirements that SEPA must comply with when determining an application. This includes assessing the risk to the water environment posed by the activity concerned and applying the requirements of the legislation set out in Part I of Schedule 4. Regulation 16 makes provision for the

time limits within which SEPA must deal with applications and for periods that may be disregarded in calculating those time limits. Regulation 17 makes provision for Scottish Ministers to direct SEPA to refer to them for their determination, any application or applications under these Regulations. Discretion is given to Ministers as to whether or not to hold a local inquiry into an application and provision is made for the determination of the application by Scottish Ministers to be implemented by SEPA.

Part IV of the Regulations makes provision for the modification and termination of authorisations. Regulation 18 requires SEPA to periodically review the authorisations it grants under regulations 8 and 9, and to make recommendations to Scottish Ministers regarding any changes that may be necessary to Schedule 3 (general binding rules). Regulation 19 gives power to SEPA to review any authorisation under regulations 8 or 9 and regulation 20 makes provision for the procedure to be followed in such a variation. Regulation 21 makes provision for the responsible person or operator in respect of an authorisation to apply for a variation of it, and makes provision for the procedure to be followed in such cases. Regulation 22 makes provision for transfer of an authorisation and regulation 23 makes provision for conditions to be attached to such transfers. Regulation 24 makes provision in respect of the surrender of authorisations and regulation 25 makes provision for the determination of a surrender application in relation to authorisations under Regulation 9. Regulation 26 makes provision for revocation or suspension of an authorisation.

Part V makes provision for enforcement of the Regulations. Regulation 27 places a duty on SEPA to monitor compliance with and enforce the provisions of the Regulations. It requires SEPA to consult and collaborate with the Environment Agency in respect of the discharge of their functions under the Regulations in the Solway Tweed River Basin District and the Northumbria River Basin District. Regulation 27 also gives SEPA power to have other persons carry out examination and investigation on its behalf for the purposes of discharging its duties under the Regulations, and the power to authorise persons to exercise the powers specified in Part I of Schedule 6 in accordance with the requirements of Parts II and III of that Schedule. Parts IV and V of Schedule 6 make provision for the evidential status of certain matters dealt with in accordance with Schedule 6 and for compensation in certain circumstances. Regulation 28 gives SEPA the power to issue enforcement notices to ensure compliance with the Regulations and to remedy or prevent significant adverse impacts on the water environment or any part of it. SEPA may issue a notice requiring the responsible person or operator to carry out steps, within such time limits as it may consider appropriate, and those steps may include cessation of the controlled activity for a specified period. Regulation 29 gives the SEPA the power to itself carry out steps that could be required in an enforcement notice and to be entitled to recover the cost of doing so from the responsible person or operator. Regulation 30 deals with the circumstances in which an enforcement notice requires a responsible person or operator to carry out work on land outwith the ownership or control of that person. In particular, it makes provision for the payment of compensation in certain circumstances and Schedule 7 makes provision for application for and assessment of the level of compensation. Regulation 31 makes provision for SEPA to take proceedings in any court of jurisdiction against a person who has failed to comply with the requirements of an enforcement notice where it considers prosecution for such failure would not afford an effectual remedy.

Part VI of the Regulations make provision for obtaining information and for the maintenance of a public register of information in respect of the Regulations. Regulation 32 gives Scottish Ministers power to obtain information from SEPA, and for SEPA to obtain information from other persons. Regulation 33 requires SEPA to maintain a register of the particulars specified in Schedule 8. SEPA has a duty is to make the register available at all reasonable times for inspection by the public, free of charge. Regulations 34 to 39 make provision in respect of confidential information. Regulation 34 defines confidential information; regulation 35 makes provision for a person giving information to have it determined commercially confidential; regulation 36 makes provision for SEPA itself to determine that information is commercially confidential; regulation 37 enables SEPA to periodically review its determinations of commercial confidentiality and regulation 38 makes provision in relation to information that has been determined not to be commercially confidential.

Regulation 39 allows Scottish Ministers to give SEPA directions that particular information or descriptions of information are to be included in the register.

Part VII makes provision in relation to offences. Regulation 40(1) specifies the actions or inactions which are created as offences under the Regulations. Regulation 40(2) makes provision for penalties on conviction. Regulation 41 makes provision in respect of the commission of offences by bodies corporate. Regulation 42 makes provision for when the commission of an offence by one person is due to the act or default of another person. Regulation 43 makes provision as to the admissibility of evidence in specified circumstances. Regulation 44 specifies defences to the offences set out in Regulation 40(1). Regulation 45 makes provision for the court, in addition to, or instead of, imposing a punishment, to order the convicted person to carry out steps to remedy the adverse impact on the water environment resulting from the commission of the offence.

Part VIII makes provision for appeals. Regulation 46 specifies the circumstances in which appeals may be made to Scottish Ministers. Regulation 47 makes provision as to the decisions Scottish Ministers may make and the action to be taken to implement those decisions. Regulation 48 makes provision for the continuation or the suspension of the effect of the decision appealed against. Regulation 49 makes miscellaneous provisions in respect of appeals, gives effect to Schedule 9 in respect of appeal procedures and applies section 114 of the Environment Act 1995 to appeals under the Regulations.

Part IX makes various general provisions. Regulation 50 applies the Regulations to the Crown. Regulation 51 makes provision for the application of the Regulations to SEPA. Regulation 52 makes provision for Scottish Ministers to issue guidance to SEPA. Regulation 53 makes provision in respect of all notices served under the Regulations. Regulation 54 introduces the supplementary and transitional and savings provisions contained in Schedule 10 to the Regulations. These make provisions for the transfer of authorisations under the Control of Pollution Act 1974 to the new regime; for the interaction between existing pollution control regimes and this regime and for applications in respect of abstractions and impoundments to be made between 1st October 2005 and 31st March 2006.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from Water Division, Victoria Quay, Leith, EH6 6QQ.