

SCHEDULE 10

Regulation 54

Transitional, Savings and Supplemental Provisions

PART 1

Water Environment

1. Where on or before 1st July 2005 a person—
 - (a) holds a consent under section 34 of the Control of Pollution Act 1974⁽¹⁾ which is subject to an annual charge under the Control of Pollution Act 1974 (Fees and Charges) (Scotland) Scheme 2005⁽²⁾; or
 - (b) has applied for a consent under section 34 of the Control of Pollution Act 1974 but that application has not been determined,

in respect of an activity which is a controlled activity, the provisions of paragraphs 2 to 6 apply.

2. Subject to paragraph 3, the person referred to in paragraph 1 must make an application to SEPA under regulation 12 for an authorisation under regulation 9 within the period beginning on 1st October 2005 and ending on 31st March 2006.

3. Paragraph 2 does not apply where the controlled activity concerned will cease before 1st April 2006.

4. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35 to 36, 46(a) to (e) and (j), 47 to 49, 52 and 53 shall have effect for the purposes of the consideration of an application under paragraph 2.

5. Subject to paragraph 6, an authorisation granted by SEPA in respect of an application under paragraph 2 shall take effect on 1st April 2006.

6. Where—
 - (a) SEPA has not determined an application made under paragraph 2 on or before 31st March 2006; or
 - (b) SEPA has determined that application and the applicant has appealed against that determination,

the consent or activity referred to in paragraph 1 shall, for the purposes of regulation 5, be deemed to be an authorisation granted under regulation 9 subject to the conditions of that consent or in accordance with the description of the activity in the application under paragraph 2, as the case may be, until SEPA has determined the application, or the Scottish Ministers have determined the appeal.

7. The person referred to in paragraph 1 may make an application under paragraph 2 before 30th September 2005, and any application made before 1st July 2005 shall be treated as if made on that date.

8. The provisions of paragraphs 3 to 6 apply to an application under paragraph 7 as they do to an application under paragraph 2.

9. Where a person—

(1) 1974 c. 40; amended by section 168 and Schedule 23 of the Water Act 1989 (c. 15) and Schedule 22 of the Environment Act 1995 (c. 25).

(2) A copy of the Control of Pollution Act 1974 (Fees and Charges)(Scotland) Scheme 2005 is published on SEPA's website and can be found at the following address: www.sepa.org.uk/pdf/charging/legal/copa_2005.pdf. Copies can also be obtained from SEPA Corporate Office, Erskine Court, Castle Business Park, Stirling FK9 4TR.

- (a) holds a consent under section 34 of the Control of Pollution Act 1974 which is not subject to an annual charge under the Control of Pollution Act 1974 (Fees and Charges) (Scotland) Scheme 2005;
- (b) holds an authorisation under regulation 18 of the Groundwater Regulations 1998⁽³⁾; or
- (c) has applied for an authorisation under regulation 18 of the Groundwater Regulations 1998, in respect of an activity which is a controlled activity, the provisions of paragraphs 10 to 12 apply.

10. The person referred to in paragraph 9 shall be deemed to have made an application to SEPA on 1st April 2006.

11. –

- (a) Until SEPA has determined the application under paragraph 10; or
- (b) where SEPA has determined the application and the determination has been appealed against, the Scottish Ministers have determined that appeal,

the consent, authorisation or activity in respect of which an application has been made, shall for the purposes of regulation 5, be deemed to be an authorisation granted under regulation 8, subject to the conditions of that consent or authorisation or in accordance with the description of the activity in the application under paragraph 10, as the case may be, with effect from 1st April 2006.

12. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35, 36, 46(a) to (e) and (j), 47 to 49, 52 and 53 shall have effect for the purposes of consideration of an application under paragraph 10.

PART 2

Pollution Control

13. Where on 31st March 2006 a relevant authorisation is in force in respect of an activity which is a controlled activity, the provisions of paragraphs 14 to 17 apply.

14. The relevant authorisations referred to in paragraph 13 shall, for the purposes of regulation 5, be deemed to be an authorisation granted under these Regulations.

15. SEPA shall review all relevant authorisations referred to in paragraph 13 in accordance with the relevant provisions of the authorising legislation and where that legislation makes provision for variation or transfer of such an authorisation, it may carry out that review at the same time as such a variation or transfer.

16. When carrying out a review in accordance with paragraph 15, SEPA shall–

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;
- (b) assess what steps may be taken to ensure efficient and sustainable water use;
- (c) apply the requirements of–
 - (i) the legislation referred to in Part 1 of Schedule 4; and
 - (ii) regulation 24(5); and
- (d) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4,

and shall take such steps under the authorising legislation as are necessary to ensure that the relevant authorisations comply with the requirements of these Regulations.

17. The review required under paragraph 15, and the steps required under paragraph 16 shall be completed by 1st April 2010.

(3) S.I.1998/2746, amended by S.S.I. 2000/323 and 2005/22.

18. Where, on or after 1st April 2006, an application for a relevant authorisation is made, or if made before that date has not been determined, in respect of an activity which is a controlled activity, the provisions of paragraph 19 and 20 apply.

19. SEPA shall, when considering an application referred to in paragraph 18–

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;
- (b) assess what steps may be taken to ensure efficient and sustainable water use;
- (c) apply the requirements of–
 - (i) the legislation referred to in Part 1 of Schedule 4; and
 - (ii) regulation 24(5); and
- (d) have regard to the provisions of the legislation referred to in part 2 of Schedule 4,

and shall, if they grant the application, ensure that the relevant authorisation complies with the requirements of these Regulations.

20. Where an application is granted in accordance with paragraph 19, it shall, for the purposes of regulation 5, be deemed to be an authorisation granted under these Regulations.

21. In this Part–

- (a) “authorised activity” means an activity referred to in paragraph 14 or 19, as the case may be;
- (b) “authorising legislation” means the legislation referred to in paragraph (c); and
- (c) “relevant authorisation” means–
 - (i) an authorisation under Part I of the Environmental Protection Act 1990(4);
 - (ii) a registration or authorisation under the Radioactive Substances Act 1993(5);
 - (iii) a permit under the Pollution Prevention and Control (Scotland) Regulations 2000(6); and
 - (iv) a waste management licence under the Waste Management Licensing Regulations 1994(7);

PART 3

Abstractions and Impoundments

22. Where a person will be carrying out an activity on or after 1st April 2006 which is a controlled activity referred to in section 20(3)(b) or (c) of the Act and which will not be authorised under regulation 7, the provisions of paragraphs 23 to 26 apply.

23. The person referred to in paragraph 22 must make an application to SEPA for an authorisation under regulation 9 in respect of the activity referred to in that paragraph, within the period beginning on 1st October 2005 and ending on 31st March 2006.

(4) 1990 c. 43; amended by the Environment Act 1995 (c. 25), the Pollution Prevention and Control Act 1999 (c. 24); the Anti Social Behaviour (Scotland) Act 2004 (asp 8) and the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323).

(5) 1993 c. 12, amended by the Clean Air Act 1993 (c. 11), the Environment Act 1995 (c. 25), the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), the Food Standards Act 1999 (c. 28) and the Statute Law (Repeals Act 2004 (c. 14).

(6) S.S.I. 2000/323; amended by paragraph 7 of Schedule 2 to the Anti Social Behaviour etc. (Scotland) Act 2004 (asp 8), S.S.I. 2002/493, 2003/146, 170, 221, 235 and 411, 2004/26, 110, 112, 512 and 2005/101.

(7) S.I. 1994/1056; amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 634, 916, 972, 973, 1279; 1997/351, 2203, 1998/606, 2746 and S.S.I. 2000/323, 2003/170, 171 and 2005/22.

Status: This is the original version (as it was originally made).

24. Regulations 8 to 10, 12, 14, 15(2) to (5), 19 to 21, 35, 36, 46(a) to (e) and (j), 47 to 49, 52 and 54 shall have effect for the purposes of the consideration of an application under paragraph 23.

25. Subject to paragraph 26, an authorisation granted by SEPA in respect of an application under paragraph 23 shall take effect on 1st April 2006.

26. Where—

- (a) SEPA has not determined an application made under paragraph 23 on or before 1st April 2006; or
- (b) SEPA has determined that application and the applicant has appealed against that determination,

the activity referred to in paragraph 22 shall, for the purposes of regulation 5, be deemed to be authorised under these Regulations in accordance with the description of the activity given in the application referred to in paragraph 23, until SEPA has determined the application, or the Scottish Ministers have determined the appeal, as the case may be.