

2007 No. 219

ENVIRONMENTAL PROTECTION

WATER

**The Water Environment (Controlled Activities) (Scotland)
Amendment Regulations 2007**

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| <i>Made</i> - - - - | <i>7th March 2007</i> |
| <i>Laid before the Scottish Parliament</i> | <i>8th March 2007</i> |
| <i>Coming into force</i> - - | <i>1st April 2007</i> |

The Scottish Ministers in exercise of their powers conferred by section 20, and section 36(2) and (3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, after consulting with the persons specified in section 21(1) of that Act, having published a draft of the proposed general binding rules in accordance with section 21(2), having had regard to the representations received about the proposed rules in accordance with section 21(4) of that Act, and having complied with the requirements of section 21 of that Act, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2007 and shall come into force on 1st April 2007.

Amendment of the Water Environment (Controlled Activities) (Scotland) Regulations 2005

2. In the Water Environment (Controlled Activities) (Scotland) Regulations 2005(b), for Schedule 3 (General Binding Rules) substitute the Schedule 3 contained in the Schedule to these Regulations.

SARAH H BOYACK

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
7th March 2007

(a) 2003 asp 3; section 20 was amended by regulation 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) and schedule 2 was amended by section 66 and paragraph 6 of Schedule 2 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
(b) S.S.I. 2005/348; amended by S.S.I. 2006/553.

SCHEDULE

Regulation 2

NEW SCHEDULE 3 TO THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2005

“SCHEDULE 3

Regulation 7

General Binding Rules

PART 1

| <i>Column 1 Activity</i> | <i>Column 2 Rules</i> |
|---|--|
| <p>1. The operation of any weir that—</p> <p style="margin-left: 40px;">(a) is not capable of being operated to control the water level upstream of the weir;</p> <p style="margin-left: 40px;">(b) does not result in the creation of a height differential between the upstream and downstream water surfaces of more than one metre; and</p> <p style="margin-left: 40px;">(c) was constructed before 1st April 2006.</p> | <p>(a) the weir shall not impede the free passage of salmon and sea trout during periods within which, in the absence of the weir, the flow of the river would be at a level expected to enable migration.</p> |
| <p>2. The abstraction of less than 10 m³ of water in any one day.</p> | <p>(a) there shall be a means of demonstrating that the abstraction is less than 10 m³ in any one day, such as a means of measuring the rate of the abstraction or a means of demonstrating that the maximum volume that could be abstracted cannot exceed 10 m³ in any one day; and</p> <p>(b) water leakage shall be kept to a minimum by ensuring all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a state of good repair.</p> |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
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| <p>3. The construction or extension of any well, borehole or other works by which water may be abstracted, or the installation or modification of any machinery or apparatus by which additional quantities of water may be abstracted, where such works are–</p> <p>(a) not intended for the purpose of abstraction;</p> <p>(b) intended for the abstraction of less than 10 m³ of water in any one day;</p> <p>(c) intended for the abstraction of less than 150 m³ of water in any period of one year, and the purpose of the abstraction is either–</p> <p>(i) to test for the yield of the borehole or well or the hydraulic properties of the aquifer; or</p> <p>(ii) to sample the water quality;</p> <p>or</p> <p>(d) intended to dewater one or more excavations at–</p> <p>(i) a construction site for roads, buildings, pipelines, or other built developments; or</p> <p>(ii) a site at which the maintenance of such developments is being undertaken.</p> | <p>(a) subject to paragraphs (b) and (c), the construction of the well or borehole shall be such as to avoid the entry of pollutants or water of a different chemical composition into the body of groundwater;</p> <p>(b) drilling fluids may be introduced into the well or borehole if necessary to facilitate the drilling of the well or borehole provided this does not result in pollution of the water environment;</p> <p>(c) potable water may be introduced into the well or borehole to test the hydraulic properties of the aquifer; and</p> <p>(d) when the well or borehole is not being used for abstraction, it shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p> |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
|---|---|
| <p>4. The abstraction from a borehole, and any subsequent discharge of the abstracted water, where the total volume of water abstracted is less than 150 m³ in any period of one year and the purpose of the abstraction is either–</p> <p>(a) to test the yield of the borehole or well or the hydraulic properties of the aquifer; or</p> <p>(b) to sample the water quality.</p> | <p>(a) the abstraction shall not cause the entry of pollutants or water of a different chemical composition into the body of groundwater; and</p> <p>(b) when the borehole is not being used for abstraction, it shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p> |
| <p>5. The dredging of a river, burn or ditch that–</p> <p>(a) has an average width of less than one metre along the stretch to be worked, as measured at the bottom of the channel; and</p> <p>(b) has been artificially straightened or canalised along the length which is to be worked.</p> | <p>(a) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(b) any vegetation removed shall not be disposed of into the channel;</p> <p>(c) the bed of the channel adjacent to each bank of the river or burn shall be left undisturbed;</p> <p>(d) all reasonable steps shall be taken to prevent the transport of sediments or other matter disturbed by the works into waters beyond the worked stretch;</p> <p>(e) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the subsequent emergence of the juvenile fish;</p> <p>(f) all reasonable steps shall be taken to avoid increased erosion of the bed or banks of the river, burn or ditch as a result of the works; and</p> <p>(g) the works shall not result in the heightening of either bank.</p> |
| <p>6.</p> <p>(a) The construction and maintenance of a minor bridge over a river, burn or ditch; or</p> | <p>(a) vegetation on any bank of the river, burn or ditch shall be removed or modified only to the extent necessary to carry out the works;</p> |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
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| (b) the construction, maintenance or removal of a temporary bridge over any river, burn or ditch that has a channel width of less than 5 metres. | <p>(b) any vegetation removed shall not be disposed of into the channel;</p> <p>(c) the works shall not prevent the free passage of migratory fish;</p> <p>(d) the works shall not result in the narrowing of the channel width nor the heightening of either bank;</p> <p>(e) if necessary, a temporary culvert may be installed to facilitate the works. The culvert shall not extend more than 10 metres along the length of the river, burn or ditch and shall be removed on completion of the works;</p> <p>(f) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the subsequent emergence of the juvenile fish;</p> <p>(g) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of the bed or banks of the river, burn or ditch;</p> <p>(h) as far as reasonably practicable, within 12 months of the commencement of the works, the bed and banks of the river, burn or ditch shall be reinstated to at least their condition prior to the commencement of the works; and</p> <p>(i) for temporary bridges, as far as reasonably practicable, and within 12 months of the removal of the bridge, the bed and banks shall be reinstated at least to their condition prior to the commencement of the works.</p> |
| 7. The laying of a pipeline or cable by boring beneath the bed and banks of a river, burn or ditch. | <p>(a) the bed and banks shall not be altered as a result of the works other than in accordance with paragraphs (b) and (d);</p> <p>(b) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(c) any vegetation removed shall not be disposed of into the channel; and</p> <p>(d) as far as reasonably practicable, within 12 months of the commencement of the works, the bed and banks of the river, burn or ditch shall be reinstated at least to their condition prior to the commencement of the works.</p> |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
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| <p>8. Works to control the erosion of a bank of a river, burn or ditch by revetment.</p> | <p>(a) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of either bank of the river, burn or ditch;</p> <p>(b) the works shall not result in the destabilisation of the bed of the river, burn or ditch upstream or downstream of the works;</p> <p>(c) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(d) any vegetation removed shall not be disposed of into the channel;</p> <p>(e) revetments shall be constructed from one or more of the following: vegetation; geotextiles; wood other than wood treated with preservatives or non-grouted stone rip-rap;</p> <p>(f) the length of any revetment shall be no more than 10 metres or one channel width, whichever is greater;</p> <p>(g) where wood or stone rip-rap is used for a revetment, the wood or rip-rap shall be placed at the toe of the bank;</p> <p>(h) except for the purpose of repairing an existing revetment, no bank protection works shall be undertaken within 5 channel widths or 50 metres (whichever is the greater) of any existing bank protection works on any bank of the river, burn or ditch;</p> <p>(i) the works shall not result in the heightening of either bank;</p> <p>(j) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the subsequent emergence of the juvenile fish; and</p> <p>(k) the revetments shall be maintained in the state of repair required to avoid increased erosion of the banks or destabilisation of the bed.</p> |
| <p>9. Operating any vehicle, plant or equipment for the purposes of undertaking activity 5, 6, 7, 8, 10, 12, 13 and 14.</p> | <p>(a) any vehicles, plant or other equipment shall only operate in water where it is impracticable for them to operate on dry land;</p> |

| <i>Column 1 Activity</i> | <i>Column 2 Rules</i> |
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| | <ul style="list-style-type: none"> (b) the refuelling of vehicles, plant or other equipment shall be undertaken at least 10 metres from any surface water; (c) any static plant or equipment used within 10 metres of surface water shall be positioned on a suitably sized and maintained impervious drip tray with a capacity equal to 110% of the capacity of the fuel tank which is supplying the tank or equipment; (d) any vehicle, plant or other equipment used in or near surface water shall not leak any oil; (e) the washing of vehicles, plant or other equipment shall be undertaken at least 10 metres away from any surface water and water from such washing shall not enter any surface water; (f) vehicles, plant or other equipment shall not be operated in a river, burn or ditch during periods in which fish are likely to be spawning in the river, burn or ditch nor during the period between any such spawning and the subsequent emergence of the juvenile fish; (g) vehicles, plant or equipment shall not be operated in any part of a river, burn or ditch if there is a reasonable likelihood that, within 50 metres of such an operation, there are freshwater pearl mussels; and (h) during forestry operations the operator shall not operate machinery in watercourses. |
| <p>10. Discharge of water run-off from a surface water drainage system to the water environment from buildings, roads, yards or any other built developments, or construction sites for such developments, or construction sites for such developments, and, if desired, the construction and maintenance of any water outfall in or near to inland surface water which forms, or will form, part of that system.</p> | <ul style="list-style-type: none"> (a) all reasonable steps shall be taken to ensure that the discharge shall not result in pollution of the water environment; (b) the discharge shall not contain any trade effluent or sewage, and shall not result in visible discolouration, iridescence, foaming or growth of sewage fungus in the water environment; (c) the discharge shall not result in the destabilisation of the banks or bed of the receiving surface water; (d) the discharge shall not contain any water run-off from any built developments, the construction of which is completed after 1st April 2007, or from construction sites operated after 1st April 2007, unless– |

| <i>Column 1 Activity</i> | <i>Column 2 Rules</i> |
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| | <ul style="list-style-type: none"> (i) during construction those developments are drained by a SUD system or equivalent systems equipped to avoid pollution of the water environment; (ii) following construction those developments are drained by a SUD system equipped to avoid pollution of the water environment; (iii) the run-off is from a development that is a single dwelling and its curtilage; or (iv) the discharge is to coastal water; <p>(e) the discharge shall not contain any water run-off from–</p> <ul style="list-style-type: none"> (i) fuel delivery areas and areas where vehicles, plant and equipment are refuelled; (ii) vehicle loading or unloading bays where potentially polluting matter is handled; or (iii) oil and chemical storage, handling and delivery areas; <p>constructed after 1st April 2007;</p> <p>(f) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, shall be maintained in a good state of repair;</p> <p>(g) all reasonable steps shall be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system; and</p> <p>(h) the construction or maintenance of the outfall shall not result in pollution of the water environment.</p> |
| <p>11. Discharge into a surface water drainage system.</p> | <p>(a) oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants shall not be disposed of into a surface water drainage system or onto any surface that drains into a surface water drainage system;</p> |

| <i>Column 1 Activity</i> | <i>Column 2 Rules</i> |
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| | <ul style="list-style-type: none"> (b) any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment shall not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system; (c) sewage or trade effluent shall not be discharged into any surface water drainage system; and (d) on construction sites any area of exposed soil from which water drains into a surface water drainage system, and the period of time during which such water drains, shall be the minimum reasonably necessary to facilitate the construction works being undertaken at that site. |
| <p>12. The removal of sediment or any other matter that may have been deposited on the bed of a river, burn or ditch in the area of impounded water upstream of a weir the operation of which is authorised under these Regulations and, if desired, the return of that sediment to the river, burn or ditch from which it was removed.</p> | <ul style="list-style-type: none"> (a) the sediment or other matter shall be removed within 10 metres upstream of the weir; (b) the sediment or other matter removed shall only include sediment or other matter that could reasonably be expected to have been deposited on the bed of the river, burn or ditch within a period of 3 years preceding the date of the removal; (c) the removed sediment shall only be returned to the river, burn or ditch from which it was removed, if: <ul style="list-style-type: none"> (i) it is returned within 10 metres downstream of the weir; (ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish; (iii) all reasonable steps are taken to avoid increased erosion of the bed or banks of the river, burn or ditch; (iv) it is not returned during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the subsequent emergence of the juvenile fish; and (v) no matter other than removed sediment is returned to the river, burn or ditch; (d) the removed sediment and other matter shall not be placed on the bank of any river, burn or ditch; |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
|---|---|
| | <ul style="list-style-type: none"> (e) the return or removal shall not result in pollution of the water environment; (f) vegetation on any bank of the river, burn or ditch shall be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification; and (g) any vegetation removed shall not be disposed of into the channel. |
| <p>13. The removal of accumulations of sediment or other matter from—</p> <ul style="list-style-type: none"> (a) the bed of a river, burn or ditch within 10 metres upstream of the point of entry of that river, burn or ditch into a closed culvert; (b) the bed of a river, burn or ditch within 10 metres downstream of the point of exit of that river, burn or ditch from a closed culvert; or (c) the inside of a closed culvert; <p>and, if desired, any subsequent return of the removed sediment to the river, burn or ditch from which it was removed.</p> | <ul style="list-style-type: none"> (a) the removal or return shall not result in the bed of the river, burn or ditch upstream of the culvert being lower than the upper surface of the base of the culvert where it joins the river burn or ditch; (b) the removal or return shall not result in there being a vertical step between the upper surface of the base of the culvert and the bed of the river burn or ditch into which it discharges; (c) the removal or return shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the subsequent emergence of the juvenile fish; (d) vegetation on any bank of the river, burn or ditch shall be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification; (e) any vegetation removed shall not be disposed of into the channel; (f) removed sediment and other matter shall not be placed on the bank of any river, burn or ditch; (g) the removed sediment shall only be returned to the river, burn or ditch from which it was removed, if: <ul style="list-style-type: none"> (i) it is returned within 15 metres downstream of the culvert; (ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish; (iii) all reasonable steps are taken to avoid increased erosion of the bed or the banks of the river, burn or ditch; and |

| <i>Column 1 Activity</i> | <i>Column 2 Rules</i> |
|---|--|
| | <p>(iv) its return is not likely to increase the risk of flooding;</p> <p>and</p> <p>(h) the activity shall not result in pollution of the water environment.</p> |
| <p>14. The placement of one or more boulders in a river or burn.</p> | <p>(a) no boulder or boulders shall have a length, breadth or height greater than 10% of the channel width;</p> <p>(b) no boulder or boulders shall be placed within 20 metres of any boulder or boulders (whether placed or not), croy, jetty or other in-stream structure occupying more than 10% of the channel width;</p> <p>(c) no boulder or boulders shall be placed in such a way as to extend the width occupied by in-stream structures to greater than 10% of the channel width;</p> <p>(d) no boulder or boulders shall be placed against the banks of a river or burn unless such placement forms part of works authorised under these Regulations to control the erosion of a bank of a river, burn or ditch by revetment;</p> <p>(e) the tops of the boulders shall be submerged except during periods of low flows;</p> <p>(f) the placement shall not be undertaken during periods in which fish are likely to be spawning in the river or burn nor in the period between any such spawning and the subsequent emergence of the juvenile fish;</p> <p>(g) all reasonable steps shall be taken to ensure that the placement shall not result in increased erosion of the bed or banks of the river or burn; and</p> <p>(h) boulders shall be not be placed if there is a reasonable likelihood that, within 50 metres of the intended placement, there are freshwater pearl mussels.</p> |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
|---|--|
| <p>15. The temporary abstraction of groundwater at–</p> <p>(a) a construction site for roads, railways, buildings, pipelines, communication links or other built development; or</p> <p>(b) a site at which the maintenance of such development is being undertaken,</p> <p>by means of–</p> <p>(i) pumping the groundwater directly from any excavation or excavations on the site; or</p> <p>(ii) pumping the groundwater from any wells or boreholes on the site in order to help dewater any other excavation or excavations on the site;</p> <p>and, if desired, the subsequent discharge of the abstracted groundwater to the water environment.</p> | <p>(a) subject to paragraph (b), groundwater may only be abstracted at the site within a period of 180 days beginning with the first day on which groundwater is abstracted at the site;</p> <p>(b) groundwater shall be abstracted at the site on no more than 5 separate days in total in any period of 180 days if any excavation, well or borehole on the site, and from which groundwater is abstracted, is in the following geological strata:</p> <p>(i) unconsolidated sands or gravels;</p> <p>(ii) sandstones; or</p> <p>(iii) any other strata of equivalently high permeability;</p> <p>(c) groundwater shall not be abstracted from any excavations, wells or boreholes that are within 250 metres of a wetland;</p> <p>(d) groundwater shall not be abstracted from any excavations, wells or boreholes that are within 250 metres of an abstraction that is not for the sole purpose of dewatering an excavation;</p> <p>(e) all reasonable steps shall be taken to ensure that the quantity of sediment in the abstracted water is minimised; and</p> <p>(f) if the abstracted groundwater and, where it is pumped directly from an excavation, any precipitation or water run-off that has also collected in the excavation, is discharged to the water environment, it shall be via a surface water drainage system authorised under these Regulations, subject to the consent of the person having operational control of the system.</p> |
| <p>16. The direct discharge of pollutants into groundwater as a result of construction or maintenance works in or on the ground which come into contact with groundwater.</p> | <p>(a) no solid or liquid materials coming into contact with groundwater shall contain substances listed in Schedule 2 to these Regulations;</p> <p>(b) despite paragraph (a), drilling fluids used during the works may come into contact with groundwater if necessary to facilitate any drilling provided this does not result in pollution of the water environment; and</p> <p>(c) no materials coming into contact with groundwater as a result of the works shall cause pollution of the water environment.</p> |

| <i>Column 1</i> <i>Activity</i> | <i>Column 2</i> <i>Rules</i> |
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| 17. The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the abstracted water. | <ul style="list-style-type: none"> (a) the abstracted water shall be returned to the same geological formation from which it was abstracted; (b) subject to rules relating to activity 2 in this Schedule, the volume of water returned shall be the same as the volume abstracted; and (c) the chemical composition of the abstracted water shall not be altered prior to its return to the geological formation. |

PART 2

In this Schedule—

“channel width” means the straight-line distance that is between opposite bank-tops of a river, burn or ditch and which spans the bed of a river, burn or ditch, including any exposed bars and vegetated islands;

“ditch” means an open channel which collects and conveys drainage water from surface or subsurface drainage to the wider surface water environment;

“forestry operations” means operations carried out on land with a tree canopy cover of more than 10 per cent over an area of more than 0.5 hectares;

“minor bridge” means a bridge having no part of its structure within the channel of a river, burn or ditch and constructed for the purpose of supporting a footpath, cycle route or single-track road;

“oil” means any kind of oil and includes fuel oil, waste oil and hydraulic oil;

“revetment” means a modification to a bank of a river, burn or ditch that increases the resistance of the bank to lateral erosion;

“rip-rap” means irregular shaped stones placed along a bank of a river, burn or ditch for the purpose of increasing the resistance of the bank to erosion;

“sewage” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968(a);

“SUD system” has the same meaning as in the Sewerage (Scotland) Act 1968;

“surface water drainage system” means a system, such as a SUD system that is used to collect and drain water run-off from one or more premises and transport it to, and discharge it into, the water environment, and may include, among other things, any surface water sewers and associated inlets, outfalls, gullies, manholes, oil interceptors, silt traps, and attenuation, settlement and treatment facilities;

“temporary bridge” means any bridge which will be removed within a period of 12 months beginning with the date on which its construction commences;

“trade effluent” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968; and

“uncultivated land” means land which has not been ploughed, rotovated or improved by management practices, but excludes land mounded for the purpose of planting riparian woodland);

(a) 1968 c.47.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under Sections 20, 36(2) and 36(3) of, and Schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003 (asp 3) make amendments to the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) (CAR).

Schedule 3 of CAR is revoked and re-enacted to effect changes to the General Binding Rules contained there.

The re-enacted Schedule 3;

- (a) retains, as Rules 1 to 11, the previous General Binding Rules with slight amendments, extending their scope; and
- (b) adds, as Rules 12 to 17, General Binding Rules relating to—
 - (i) the removal of sediment from the beds of rivers, burns or ditches and its return;
 - (ii) the placement of boulders in a river or burn;
 - (iii) the temporary abstraction of ground water; from construction sites, maintenance works, or for the extraction of geothermal energy.

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