

**2011 No. 209**

**ENVIRONMENTAL PROTECTION**

**WATER**

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

*Made* - - - - *15th March 2011*

*Coming into force* - - *31st March 2011*

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20, 36(2) and (3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003<sup>(a)</sup> (“the Act”) and section 2(2) of the European Communities Act 1972<sup>(b)</sup> and of all other powers enabling them to do so.

In accordance with subsection (1) of section 21 of the Act, they have consulted with the persons specified in that subsection.

In accordance with subsection (2) of that section, they have published a draft of the proposed general binding rules and have had regard to the representations received about the proposed rules in accordance with subsection (4) of that section.

The Scottish Ministers have complied with the other requirements of section 21 of the Act.

In accordance with section 36(6) of the Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

## 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)<sup>(c)</sup>;

“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<sup>(d)</sup>;

“the EIA Directive” means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment<sup>(e)</sup>;

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(a) 2003 asp 3; amended by section 66 and para 6 of Schedule 2 to the Anti Social Behaviour etc. (Scotland) Act 2004 (asp 8).

(b) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) 2004 c.36.

(d) 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).

(e) 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).

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

“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(b);

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

“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(c);

“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)(d) 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;

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

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

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

(d) 2000 c.7; amended by the Communications Act 2003 (c.21).

- (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
  - (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(a) or Part 4 of the Marine Licensing (Scotland) Act 2010(b).

### **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.

## **PART II**

### **Authorisations**

#### **General binding rules**

6.—(1) A controlled activity specified in column 1 of Part 1 of Schedule 3 is authorised under these Regulations if it is carried out in accordance with the rules of general application (“general binding rules”) specified for that activity in column 2 of that Schedule.

(2) Part 2 of that Schedule has effect for the purposes of the interpretation of the Schedule.

#### **Registration**

7.—(1) Subject to Part 2 of Schedule 10, SEPA may authorise the carrying on of a controlled activity in accordance with the provisions of this regulation.

(2) SEPA may, in authorising such an activity, impose such conditions as it considers necessary or expedient for the purposes of protection of the water environment.

(3) An authorisation given under this regulation (“registration”) must be given by registering the particulars specified in paragraph (4) in the register maintained under regulation 37.

(4) The particulars are—

- (a) the activity authorised;

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(a) 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).

(b) 2010 asp 5.

- (b) any conditions imposed under paragraph (2); and
- (c) the date of authorisation.

### **Water use licence**

**8.**—(1) Subject to Part 2 of Schedule 10, SEPA may authorise the carrying on of a controlled activity under this regulation subject to the conditions provided for in this regulation.

(2) SEPA must impose such conditions as it considers necessary or expedient for the purposes of protection of the water environment.

(3) A condition imposed under this regulation may require an applicant to carry out works or do other things in relation to land not within the ownership or control of that applicant.

(4) If a condition is imposed in accordance with paragraph (3), it is the responsibility of the applicant to obtain all consents necessary to allow the condition to be complied with.

(5) When considering whether to grant an authorisation under paragraph (1), and when imposing conditions in respect of a licence under this regulation, SEPA—

- (a) must have regard to all controlled activities being carried on or likely to be carried on in the area of the water environment likely to be affected by the controlled activity to which the application relates;
- (b) may have regard to any agreement reached between different persons concerning controlled activities carried on in the relevant area of the water environment.

(6) SEPA may only grant an authorisation under this regulation if—

- (a) a person has been identified who will be responsible for securing compliance with the authorisation and the conditions specified in it;
- (b) it is satisfied that that person will secure such compliance; and
- (c) it is a condition of that authorisation that that person secures such compliance.

(7) An authorisation granted under this regulation (“water use licence”) must specify the date on which it takes effect.

### **Groundwater Directive**

**9.**—(1) When considering an application in respect of a controlled activity which—

- (a) is made on or after 25th November 2009 but before 22nd December 2013; and
- (b) falls within the provisions of the Groundwater Directive 1980,

SEPA must impose such conditions as it considers necessary to ensure compliance with the Groundwater Directive 1980 as read with the Groundwater Directive 2006.

(2) Subject to paragraph (1), when considering an application in respect of a controlled activity which falls within the provisions of the Groundwater Directive 2006, SEPA must impose such conditions as it considers necessary to ensure compliance with the Groundwater Directive 2006.

(3) SEPA is the competent authority for the purposes of Articles 2, 8, 12 and 13 of the Groundwater Directive 1980 and Article 6 of the Groundwater Directive 2006.

### **Power of SEPA to impose authorisation**

**10.**—(1) If it appears to SEPA that a person is carrying on (or is likely to carry on) a controlled activity—

- (a) which has not been authorised under regulations 7 or 8;
- (b) authorised under regulation 6, but that additional measures are necessary to protect the water environment;
- (c) authorised under regulation 7 but that it should be authorised under regulation 8;
- (d) authorised under regulation 8 but that it should be authorised under regulation 7,

SEPA may treat the activity as an activity in respect of which an application has been made, and may, as it thinks fit, grant an authorisation under regulation 7 or 8.

(2) If SEPA decides to treat an activity as an activity in respect of which an application has been made—

- (a) the charge referred to in regulation 11(1)(a) is payable, and
- (b) the remaining provisions of Part III apply as if such an application had been made.

(3) SEPA must give notice to the responsible person, if any, or to the operator that it is treating the activity in accordance with paragraph (1).

## PART III

### Applications and Application Procedure

#### **Form and content of applications for authorisation**

**11.**—(1) An application to SEPA for an authorisation to carry on one or more controlled activities must be made in writing, in such form as SEPA may from time to time require, and must be accompanied by—

- (a) any charge prescribed in accordance with Schedule 5; and
- (b) such information in such form as SEPA may reasonably require.

(2) If SEPA considers that the controlled activity is likely to have a significant adverse impact on the water environment, SEPA shall, subject to paragraph (3), require that the application be accompanied by the following information:

- (a) a description of the controlled activity comprising information on its siting, design and size;
- (b) a description of the measures envisaged in order to mitigate and, if possible, remedy significant adverse impacts on the water environment;
- (c) the data reasonably required by SEPA to identify and assess the main impacts which the controlled activity is likely to have on the water environment;
- (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for the choice made, taking into account the environmental effects;
- (e) a non technical summary of the information provided under sub-paragraphs (a) to (d); and
- (f) such other information specified in Annex IV of the EIA Directive as SEPA considers relevant to determination of the application.

(3) SEPA must only require an application to be accompanied by the information referred to in paragraph (2) insofar as SEPA considers that information—

- (a) reasonably necessary to determine the application; and
- (b) reasonably capable of being compiled by the applicant having regard, among other factors, to current knowledge and methods of assessment.

(4) Before making an application, the applicant may request that SEPA provide an opinion on what information must accompany the application and SEPA must, subject to paragraphs (6) and (7), provide such an opinion to the applicant if so requested.

(5) A request for an opinion under paragraph (4) must be accompanied by—

- (a) information sufficient to identify the location of the controlled activity;
- (b) a brief description of the nature and purpose of the controlled activity and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(6) Upon receiving a request under paragraph (4) for an opinion, SEPA may, if it considers that it has not been provided with sufficient information to provide an opinion, notify the applicant in writing of the points on which further information is required.

(7) If the applicant fails to provide the further information requested by SEPA under paragraph (6), SEPA is not obliged to provide an opinion under paragraph (4).

(8) If SEPA considers that the controlled activity is likely to have a significant adverse impact on the water environment, SEPA must, in preparing its opinion under paragraph (4), consult with the applicant and any public authorities which in SEPA's opinion are likely, by virtue of their specific environmental responsibilities, to have an interest in the application.

(9) SEPA must, upon request, make available to the public a statement of the reasons for its assessment of whether or not the controlled activity in respect of which authorisation has been applied for is likely to have a significant adverse impact on the water environment and must inform the applicant that it has done so.

### **Consultation with public authorities**

**12.**—(1) If SEPA receives an application in respect of a controlled activity that it considers likely to have a significant adverse effect on the water environment or on the interests of other users of the water environment, it must consult any public authorities as appear to it to have an interest in the application.

(2) The public authorities referred to in paragraph (1) may provide information or make representations in writing to SEPA within 21 days (or such other period as they may agree with SEPA) beginning with the date when they were consulted.

(3) SEPA must consider all information provided or representations made under paragraph (2).

(4) SEPA must ensure that, during the 28-day period referred to in regulation 13(4), any information provided or written representations made under paragraph (2) is made available to the public.

### **Advertisement of application**

**13.**—(1) If SEPA receives an application it may, if it considers that the controlled activity has or is likely to have a significant adverse impact on the water environment or the interests of other users of the water environment, require the application to be advertised in accordance with this regulation.

(2) SEPA must serve notice requiring the applicant to advertise the application, and to send SEPA a copy of any such advertisement, within 28 days beginning with the date on which the notice was served.

(3) SEPA must specify in a notice under paragraph (2)—

- (a) the form of the advertisement;
- (b) the text to be included in the advertisement;
- (c) the publications or locations in which the advertisement should be placed; and
- (d) the dates between which the advertisement should be placed.

(4) An advertisement under paragraph (2) must, as a minimum—

- (a) describe the application, the assessment procedure, and the potential determinations of the application by SEPA;
- (b) state whether further information is available and, if so, how that information may be obtained or accessed;
- (c) explain that any person affected or likely to be affected by, or having an interest in, the application may make representations to SEPA in writing within 28 days beginning with the date of the advertisement; and
- (d) give the address to which such representations should be sent.

(5) SEPA must consider all written representations made under paragraph (4).

(6) The requirements of this regulation do not apply insofar as they would require the advertisement of information which, by virtue of regulation 38, is not to be included in the register maintained under regulation 37.

#### **Further information etc.**

**14.**—(1) SEPA may request such additional information in relation to any application as it reasonably requires.

(2) SEPA may request such additional information within such period as it may specify, or agree in writing with the applicant, or as the case may be, person making representations under regulation 13(4) or public authority providing information or making representations under regulation 12(2).

(3) SEPA may carry out such examination and investigation as it considers necessary to allow it to make a determination in respect of the application.

(4) SEPA may require an applicant to nominate a person who will be responsible for securing compliance with the terms of any authorisation to be granted in accordance with regulation 8, within such period as it may specify.

(5) If, under this regulation, SEPA obtains further information in relation to an application, it must consider, in light of that further information, whether the controlled activity is likely to have a significant adverse impact on the water environment and, if it considers it likely to do so, regulation 11(2) applies.

#### **Determination of application**

**15.**—(1) Before determining an application SEPA must—

- (a) assess the risk to the water environment posed by the carrying on of the activity referred to in the application;
- (b) if the application is in respect of an activity that it considers has or is likely to have a significant adverse impact on the water environment—
  - (i) assess the indirect effects of that impact on any other aspects of the environment likely to be significantly affected;
  - (ii) consider any likely adverse social and economic effects of that impact and of any indirect environmental effects identified in accordance with sub-paragraph (i); and
  - (iii) consider the likely environmental, social and economic benefits of the activity;
- (c) assess the impact of the controlled activity on the interests of other users of the water environment;
- (d) assess what steps may be taken to ensure efficient and sustainable water use;
- (e) apply the requirements of the legislation referred to in Part 1 of Schedule 4, including, in particular, the provisions of Article 4 of the Directive and Article 6 of the Groundwater Directive 2006; and
- (f) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4.

(2) If an application is in respect of the carrying on of more than one controlled activity, SEPA may grant or refuse to grant it in relation to any one or more of those activities.

(3) Subject to regulation 16, SEPA must consider an application and must either grant or refuse to grant an authorisation to carry on the activity, or, as the case may be, each of the activities referred to in that application, and shall notify the applicant of its decision.

(4) If SEPA refuses to grant an application (in whole or in part) it must, when notifying the applicant of that refusal, give its reasons for doing so.

(5) If SEPA decides to grant an authorisation, it must, having considered the matters referred to in paragraph (1), grant it in the form of an authorisation under either—

- (a) regulation 7; or
- (b) regulation 8.

(6) If SEPA determines an application in respect of a controlled activity that SEPA considers likely to have a significant adverse impact on the water environment, SEPA must make available to the public—

- (a) its decision;
- (b) the main reasons for it;
- (c) the matters considered in making it; and
- (d) if the application is granted, details of any measures which will be taken to mitigate the significant adverse impact.

### **Consideration of third party representations**

16.—(1) This regulation applies to an application (or matter treated as an application in accordance with these Regulations) which SEPA proposes to determine under regulation 15(3), 23(2), 24(3) or 27(3) in respect of which a third party representation has been made.

(2) Before it determines an application to which this regulation applies SEPA must—

- (a) serve notice of its proposed determination on any person who has made a third party representation in respect of the application specifying that that person may, within the period of 21 days beginning with the date of service of the notice, notify the Scottish Ministers in writing that that person objects to SEPA's proposed determination; and
- (b) send a copy of the notice served under sub-paragraph (a) to the applicant (or any person who is treated by these Regulations as the applicant in respect of the application).

(3) SEPA must not determine the application during the period specified in paragraph (2)(a).

(4) Any person notifying the Scottish Ministers of an objection under paragraph (2)(a) must send a copy of that notification to SEPA within the period specified in that paragraph.

(5) If the Scottish Ministers receive notification under paragraph (2)(a) and SEPA receive a copy of that notification under paragraph (4), SEPA must not determine the application to which the notification relates until either—

- (a) SEPA has received written notice from the Scottish Ministers confirming that they do not intend to direct SEPA to refer the application to them for their determination under regulation 20(1)(b); or
- (b) no such notice has been received from the Scottish Ministers and a period of 63 days beginning with the date of the service of the notice given by SEPA under paragraph (2)(a) has expired.

(6) In this regulation “third party representation” means a written representation in respect of an application made to SEPA under regulation 12(2) or 13(4)(c).

### **Time limits for determining applications**

17.—(1) SEPA must determine an application—

- (a) for an authorisation under regulation 7, within 30 days; and
- (b) for an authorisation under regulation 8 within 4 months,

beginning with the date on which it receives the application; but may determine it within such other period as may be agreed in writing with the applicant.

(2) For the purposes of calculating the periods mentioned in paragraph (1), SEPA must disregard any periods—

- (a) beginning with the date on which it serves notice under regulation 13(2) and ending with the last date by which any written representations must be made under regulation 13(4);
- (b) beginning with the date it requests information under regulation 14(1) and ending with the date it receives the information requested or the date of the expiry of the period specified or agreed under regulation 14(2), whichever is the earlier; and
- (c) in excess of 35 days during which it is prohibited from making a determination by virtue of regulation 16.

(3) The application will be treated as if it were refused at the end of the period provided for in paragraph (1) if—

- (a) SEPA fails to determine the application within the period provided for in paragraph (1); and
- (b) the applicant notifies SEPA in writing that the applicant wishes the failure to be treated as a refusal.

### **Accelerated determination of applications, variations and suspensions**

**18.**—(1) This regulation applies if SEPA considers that, by reason of an emergency—

- (a) an application for an authorisation requires to be determined within a shorter period of time than the procedures provided in regulations 11 to 17 permit;
- (b) the variation of an authorisation (whether proposed by SEPA under regulation 22 or applied for by a responsible person or operator under regulation 24) requires to be determined within a shorter period of time than the procedures provided in regulations 23 and 24 permit; or
- (c) an authorisation requires to be suspended (whether in whole or in part) within a shorter period of time than the procedures provided in regulation 29 permit.

(2) If this regulation applies, regulations 11, 12, 13, 15(3), (4) and (5), 16, 17, 23, 24(2), (3) and (4), and 29(2)(b) do not apply.

(3) If this regulation applies, regulations 14, 15(1) and (6), and 20 apply to any variation proposed by SEPA under regulation 22 or applied for by a responsible person or operator under regulation 24 as if it were an application and the responsible person or operator, as the case may be, were the applicant.

(4) If this regulation applies, an application—

- (a) must be made in such form and must be accompanied by such information as SEPA may from time to time require (and, if SEPA so determines, need not be in writing);
- (b) must be subject to such charges as SEPA may prescribe in accordance with Schedule 5.

(5) SEPA must determine whether to grant or refuse (in whole or in part) an application to which this regulation applies within such time period as it considers appropriate in all the circumstances.

(6) When determining an application to which this regulation applies, SEPA must comply with regulation 15(1) only insofar as it is reasonably practicable for it to do so.

(7) If SEPA decides to grant the variation of an authorisation under this regulation (whether or not proposed by SEPA under regulation 22), it must notify the responsible person or operator (as the case may be) of—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect.

(8) In this Part, “emergency” has, subject to paragraph (9), the same meaning as it does in section 1 of the Civil Contingencies Act 2004(a);

(9) The Scottish Ministers may direct that a specified event or situation, or class of event or situation, is to be treated as an “emergency” for the purposes of this regulation, regulation 19(1), or regulation 20(6).

### **Directions to SEPA regarding accelerated applications, variations and suspensions**

**19.**—(1) If, by reason of an emergency, the Scottish Ministers consider that an application requires to be determined within a particular timescale or in a particular manner, the Scottish Ministers may direct SEPA to—

- (a) determine an application or a specified class of applications within a particular timescale, in a particular manner, and subject to such conditions (if any) as the Scottish Ministers may specify;
- (b) vary an authorisation or a specified class of authorisations within a particular timescale, in a particular manner, and subject to such conditions (if any) as the Scottish Ministers may specify; or
- (c) suspend an authorisation or a specified class of authorisations within a particular timescale, on such notice, and for such period as they may specify in the direction.

(2) If the Scottish Ministers issue a direction under paragraph (1), regulations 11 to 17, 23, 24 and 29(2)(b) only apply insofar as the Scottish Ministers direct.

(3) Before giving a direction under paragraph (1), the Scottish Ministers must—

- (a) consider the matters referred to in regulation 15(1); and
- (b) consult—
  - (i) SEPA;
  - (ii) any responsible authorities that the Scottish Ministers consider are likely to be affected by the direction; and
  - (iii) such other persons as they think fit.

### **Determinations of applications by the Scottish Ministers**

**20.**—(1) The Scottish Ministers may direct SEPA to refer to them for their determination—

- (a) applications under these Regulations of any class or description specified in the direction;
- (b) any particular application, or any part of any particular application,

and the provisions of this regulation apply to any application referred to the Scottish Ministers for their determination in accordance with this paragraph; and in this regulation references to “application” or “applications” includes reference to any matter which is treated as an application in accordance with these Regulations.

(2) The Scottish Ministers must consult SEPA before issuing a direction under paragraph (1).

(3) The Scottish Ministers may cause a local inquiry to be held in relation to any such application, and the provisions of subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973(b) (power to direct inquiries) apply to inquiries held in accordance with this provision.

(4) The provisions of regulations 12, 13, 14 and 15(1) to (3) apply to the Scottish Ministers in respect of an application referred in accordance with paragraph (1) as they do to SEPA in respect of an application made under regulation 11.

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(a) 2004 c.36.

(b) 1973 c.65; amended by the Criminal Procedure (Scotland) Act 1975 (c.4) and the Housing and Planning Act 1986 (c.63).

(5) When they have made a determination under this regulation, the Scottish Ministers must direct SEPA—

(a) to grant or refuse to grant an application for—

- (i) an authorisation to carry on the activity, or any of the activities referred to in the application or the relevant part of the application;
- (ii) a variation of the authorisation or part of the application for it made under regulation 24;
- (iii) a surrender of the authorisation or part of it,

or to vary or not to vary an authorisation under regulation 23(1), as the case may be; and

(b) if the determination is—

- (i) that an authorisation is to be granted under regulation 7 or 8, to grant that authorisation in accordance with that regulation;
- (ii) that an authorisation is to be varied under regulation 22, to vary that authorisation in accordance with that regulation and regulation 23 or 24, as the case may be;
- (iii) that an authorisation is to be surrendered under regulations 27 and 28, to grant that surrender in accordance with those regulations;
- (iv) that an authorisation or a partial surrender of an authorisation is to be granted subject to conditions, to grant that authorisation or partial surrender, specifying the conditions on which that authorisation or partial surrender is to be granted, and, if appropriate, to identify the person responsible for it;
- (v) to refuse to grant an application for authorisation, variation or surrender, or not to vary an authorisation under regulation 23(1), to notify the applicant of that refusal or determination not to vary as the case may be, specifying the reasons for that determination.

(6) If, by reason of an emergency, the Scottish Ministers consider that an application they have directed SEPA to refer to them under paragraph (1) requires to be determined urgently, the Scottish Ministers may—

- (a) dispense with consultation with public authorities as would otherwise be required by regulation 12;
- (b) dispense with advertisement of the application as would otherwise be required by regulation 13;
- (c) determine the application within such timescale as they consider appropriate.

## PART IV

### Modification and termination of authorisations

#### **Review of authorisations**

**21.**—(1) SEPA must periodically review authorisations granted under regulations 7 and 8, and may do so at any time.

(2) SEPA must periodically review the provisions of Schedule 3 and must make recommendations, in writing, to the Scottish Ministers as to any changes to that Schedule which it considers necessary or appropriate.

#### **Variation of authorisation**

**22.**—(1) Whether or not as a result of a review under regulation 21(1), SEPA may vary an authorisation granted under regulation 7 or 8.

(2) A variation under paragraph (1) may include removing, adding or amending any condition of an authorisation.

### **Procedure for variation**

**23.**—(1) Regulations 11, 12, 13, 14, 15(1) and 15(6) apply when SEPA is considering variation of an authorisation under regulation 22 as if the variation proposed by SEPA is an application, and the responsible person or operator, as the case may be, is the applicant.

(2) Subject to regulation 16, SEPA must determine whether—

- (a) to grant; or
- (b) not to grant,

the variation of an authorisation under paragraph (1).

(3) If SEPA determines to grant the variation of an authorisation under paragraph (1), it must serve notice on the applicant specifying—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect which must not be less than 3 months from the date on which the notice was served.

(4) If SEPA determines not to grant the variation of an authorisation which it has proposed under paragraph (1) it must give reasons for that determination to the applicant.

(5) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.

(6) If SEPA issues a notice under regulation 13(2) requiring the responsible person or operator to advertise the variation of an authorisation proposed by SEPA under this regulation, and that person fails to comply with that notice, SEPA may advertise the proposed variation, and is entitled to recover the costs it reasonably incurs in doing so from that person.

### **Request for variation**

**24.**—(1) A responsible person or operator may apply to SEPA for a variation of an authorisation granted under regulation 7 or 8.

(2) The provisions of regulations 11, 12, 13, 14, 15(1), 15(6) and 17 apply to an application under paragraph (1) as if it were an application.

(3) Subject to regulation 16, SEPA must either grant or refuse to grant (in whole or in part) an application under paragraph (1), and if it refuses to grant the application it must give its reasons for such refusal.

(4) If SEPA grants an application under paragraph (1), it must serve notice on the applicant specifying—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect, which must not (unless agreed by the applicant in writing) be less than 3 months from the date on which the notice was served.

(5) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.

### **Transfer of authorisation**

**25.**—(1) A responsible person may jointly with another person apply to transfer an authorisation granted under regulation 8 (in whole or in part) to the other person.

(2) The provisions of regulation 11 and 14(1) to (3) apply to an application under paragraph (1) as if it were an application.

(3) SEPA must not grant an application under paragraph (1) unless it is satisfied that the person to whom the authorisation is to be transferred will secure compliance with the terms, limitations and conditions specified in the authorisation, or relevant part thereof.

(4) SEPA must determine an application under this regulation within 2 months beginning with the date on which it receives the application, or such longer period as may be agreed with the applicant in writing.

(5) SEPA must notify the applicant of its determination and, if it refuses the application, give its reasons for doing so.

(6) If SEPA fails to determine the application within the period specified in paragraph (4), it will be treated as having been granted.

### **Conditions of transferred authorisations**

**26.**—(1) If an application under regulation 25 is granted, or treated as having been granted, the following provisions of this regulation apply.

(2) In the case of a transfer of the whole of an authorisation SEPA must send a copy of the amended authorisation specifying—

- (a) the date on which the transfer is to have effect; and
- (b) the responsible person in respect of the authorisation,

to that responsible person.

(3) In the case of transfer of part of an authorisation, SEPA must—

- (a) issue a new authorisation in respect of the part to be transferred, which specifies—
  - (i) the controlled activities being transferred and any conditions applying to them;
  - (ii) the responsible person for that authorisation; and
  - (iii) the date on which the new authorisation is to have effect,

to the responsible person for that part; and

- (b) issue an amended authorisation in respect of the part not so transferred which specifies—
  - (i) the controlled activities in relation to that part and any conditions applying to them;
  - (ii) the responsible person for that authorisation; and
  - (iii) the date on which the amended authorisation is to have effect,

to the responsible person for that part.

### **Surrender of authorisation**

**27.**—(1) This regulation applies if an authorisation granted under regulation 7 or 8 is in force and either—

- (a) it is intended to cease the authorised activity; or
- (b) the authorised activity has ceased.

(2) Where paragraph (1) applies and the authorisation is under regulation 7, the operator—

- (a) where possible, must notify SEPA of the intention to cease the authorised activity and the date on which it will cease as soon as that information is known to the operator; and
- (b) must in any event notify SEPA of the cessation of the activity within 7 days of that cessation.

(3) Where paragraph (1) applies and the authorisation is under regulation 8, the responsible person shall apply to SEPA to surrender the authorisation or part of it, and SEPA must grant or refuse that application for surrender.

(4) The provisions of regulations 11, 13 and 14(1) to (3) apply to an application under paragraph (3) as if it were an application.

(5) Before determining whether to grant or refuse an application under paragraph (3) SEPA must—

- (a) assess the risk to the water environment posed by the cessation of the activity referred to in paragraph (1); and

- (b) take account of the steps (if any) that have been taken and identify any steps necessary to—
  - (i) avoid any risk of adverse impact on the water environment resulting from the cessation of the authorised activity; and
  - (ii) leave the relevant part of the water environment affected by the authorised activity in a state which will permit compliance with any relevant requirements of the legislation referred to in Part 1 of Schedule 4.

### **Determination of application for surrender**

**28.**—(1) Subject to regulation 16, SEPA must give notice to the applicant of its determination of an application under regulation 27(3) within 2 months beginning with the date on which SEPA receives the application, or within such longer period as it may agree with the applicant in writing.

(2) The provisions of regulation 17(2) apply in respect of the period mentioned in paragraph (1) as they apply in respect of the periods mentioned in regulation 17(1).

(3) If SEPA grants an application under regulation 27(3), the notice given under paragraph (1) must—

- (a) if SEPA has identified necessary steps in accordance with regulation 27(5)(b), specify those steps, require the responsible person to take those steps, and provide that the authorisation ceases to have effect on the date SEPA confirms to the applicant in writing that those steps have been completed to its satisfaction; and
- (b) in any other case, specify the date on which the authorisation ceases to have effect.

(4) In the case of a partial surrender, if SEPA is of the opinion that it is necessary to vary the authorisation to take account of the surrender, it must send a notice to the applicant specifying—

- (a) variations to the authorisation consequent on the partial surrender; and
- (b) the date on which the authorisation, as varied, takes effect.

(5) If SEPA has failed to determine the application within the period specified in paragraph (1) the application will be treated as being granted at the end of that period, and the authorisation ceases to have effect at the end of that period.

### **Suspension and revocation of authorisation**

**29.**—(1) SEPA may at any time suspend or revoke an authorisation (in whole or in part) by serving a notice on the responsible person or operator, as the case may be.

(2) A notice under paragraph (1) must specify—

- (a) in the case of a partial suspension or partial revocation, the extent to which the authorisation is being revoked or suspended;
- (b) the date on which the suspension or revocation takes effect, which must be at least 28 days after the date on which the notice is served; and
- (c) the reasons for the suspension or revocation,

(3) An authorisation ceases to have effect (in whole or in part) from the date specified in the notice under paragraph (1).

(4) SEPA may at any time lift the suspension of an authorisation under paragraph (1) (in whole or in part) by serving a notice on the responsible person or operator, as the case may be.

(5) A notice under paragraph (4) must specify—

- (a) in the case of a partial lifting of the suspension, the extent to which the authorisation remains suspended;
- (b) the date on which the lifting of the suspension or partial lifting of the suspension takes effect; and
- (c) the reasons for the lifting or partial lifting of the suspension.

(6) An authorisation has effect (in whole or in part) from the date specified in the notice under paragraph (4).

### **Consolidated authorisations**

**30.** If there is more than one authorisation applying to controlled activities which are carried on by the same responsible person or operator, SEPA may replace those authorisations with a consolidated authorisation subject to the same conditions as the authorisations being replaced.

## **PART V**

### **Enforcement and other powers**

#### **Powers and duty to monitor, enforce etc.**

**31.**—(1) It is the duty of SEPA to monitor compliance with, and to enforce the provisions of, these Regulations.

(2) In the discharge of its duties under paragraph (1) in relation to the Northumbria River Basin District<sup>(a)</sup> and the Solway Tweed River Basin District<sup>(b)</sup>, SEPA must, as necessary, consult and collaborate with the Environment Agency.

(3) SEPA may secure the carrying out, through such persons as it considers appropriate, of such examination and investigation as it considers necessary for the purpose of discharging its duties under these Regulations.

(4) Any person who appears suitable to SEPA may be authorised in writing by it to exercise, in accordance with the terms of that authorisation, the powers specified in Part 1 of Schedule 6 in accordance with the requirements of Parts 2 and 3 of that Schedule.

(5) The powers referred to in paragraph (4) are to be exercised for the purpose of discharging any of SEPA's functions under—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003<sup>(c)</sup>;
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(d)</sup>; and
- (d) these Regulations.

(6) The provisions of Parts 4 and 5 of Schedule 6 apply in relation to the exercise of the powers referred to in paragraph (4).

#### **Enforcement notices**

**32.**—(1) This regulation applies if—

- (a) a person has carried out, is carrying out or is likely to carry out a controlled activity; and
- (b) SEPA is of the opinion that the activity—
  - (i) has contravened, is contravening or is likely to contravene an authorisation under these Regulations;

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(a) The Northumbria River Basin District was identified by virtue of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245).  
(b) The Solway Tweed River Basin District was identified by virtue of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99).  
(c) S.I. 2003/3245.  
(d) S.I. 2004/99.

- (ii) has caused, is causing or is likely to cause significant adverse impacts on the water environment or any part of it; or
- (iii) has caused, is causing or is likely to cause a direct or indirect discharge into groundwater of any hazardous substance or any other pollutant.

(2) SEPA may serve a notice on the responsible person or the operator, as the case may be, specifying—

- (a) the activity;
- (b) if SEPA is of the opinion that the activity has contravened, is contravening, or is likely to contravene an authorisation under these Regulations, the matters constituting the contravention or likely contravention;
- (c) if SEPA is of the opinion that the activity has caused, is causing, or is likely to cause a significant adverse impact on the water environment, the nature of that adverse impact;
- (d) if SEPA is of the opinion that the activity has caused, is causing, or is likely to cause a direct or indirect discharge into groundwater of any hazardous substance or any other pollutant, details of that direct or indirect discharge; and
- (e) the steps to be taken by the person responsible or the operator which SEPA considers to be necessary or appropriate to prevent, mitigate or remedy the contravention of the authorisation, the adverse impacts on the water environment or the direct or indirect discharge into groundwater.

(3) The steps referred to in paragraph (2)(e) may include cessation of a controlled activity for such period as SEPA considers necessary or appropriate.

(4) SEPA must revoke a notice served under paragraph (2) if—

- (a) the contravention or likely contravention of an authorisation has ceased and is unlikely to recur, and any remedial mitigating or preventive steps required by SEPA have been carried out;
- (b) the adverse impacts or likely adverse impacts on the water environment have ceased and are unlikely to recur and any remedial mitigating or preventive steps required by SEPA have been carried out;
- (c) the direct or indirect, or likely direct or indirect discharge to groundwater has ceased and is unlikely to recur and any remedial mitigating or preventive steps required by SEPA have been carried out.

(5) SEPA may impose such time limits as it considers appropriate in a notice under paragraph (2) and may describe a time limit by reference to the completion of steps or any other requirement specified in that notice.

### **Power of SEPA to carry out works**

**33.**—(1) If SEPA considers that a notice should be served under regulation 32(2), it is entitled to take any steps that would be identified in that notice, or secure that those steps are taken, if—

- (a) it considers it necessary to do so forthwith; or
- (b) it appears to SEPA, after reasonable inquiry, that no person can be found on whom to serve that notice.

(2) If SEPA has—

- (a) carried out, or secured the carrying out of, any investigation to establish whether or not a notice under regulation 32(2) is necessary, and if necessary, on whom it requires to be served; or
- (b) taken steps, or secured that steps were taken under paragraph (1),

it is entitled to recover the costs of doing so from the responsible person or operator who has carried out, is carrying out or is likely to carry out the activity in respect of which the notice is served.

### **Enforcement notices — rights of entry, compensation etc.**

34.—(1) A notice under regulation 32(2) may require the responsible person or operator to carry out work in relation to land outwith the ownership or control of that person.

(2) If paragraph (1) applies, any person whose consent is required before that work may be carried out must grant, or join in granting such rights in relation to any land as will enable the notice to be complied with.

(3) If paragraph (1) applies, SEPA must, before serving a notice under regulation 32(2), insofar as it is reasonably practicable, consult such persons as appear to it to be—

- (a) the owner or occupier of land which will be affected by the notice; and
- (b) any person who might be required under paragraph (2) to grant or join in granting any rights,

in respect of the rights which that owner, occupier, or person, may be required to grant.

(4) A notice will not be regarded as invalid by reason only of a failure to comply with paragraph (3).

(5) A person who grants, or joins in granting, any rights in accordance with paragraph (2) is entitled to apply for compensation, in accordance with Schedule 7, of such amount and in such manner as may be determined under that Schedule.

(6) Compensation payable under paragraph (5) must be paid by the person on whom notice under regulation 32(2) was served or would have been served but for regulation 33(1).

(7) If no person can be found by whom compensation should be payable or if a person found liable in compensation has failed to make the payment of it, compensation under this regulation will be payable by SEPA; and SEPA is entitled to recover any payment of compensation made by it under this paragraph from any person on whom notice under regulation 32(2) was served or would have been served but for regulation 33(1).

### **Enforcement by the courts**

35. If SEPA is of the opinion that proceedings for an offence under regulation 44(1)(j) would afford an ineffectual remedy against a person who has failed to comply with a requirement of any notice under regulation 32, it may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with that notice.

## **PART VI**

### **Information and Register**

#### **Power of the Scottish Ministers and SEPA to obtain information**

36.—(1) The Scottish Ministers may require SEPA, by notice served on it, to furnish such information about the discharge of its functions under these Regulations as the Scottish Ministers may require.

(2) SEPA may serve on any person a notice requiring that person to furnish to SEPA, within a period or at times specified in the notice and in a form so specified, any information so specified which SEPA reasonably considers is necessary for the purpose of any function conferred on SEPA by—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(a);

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(a) S.I. 2003/3245.

- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004<sup>(a)</sup>; and
- (d) these Regulations.

(3) The information which a person may be required to furnish under paragraph (2) must include information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to obtain for the purposes of complying with the information notice.

(4) Nothing in this regulation authorises the Scottish Ministers or SEPA to require disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

### **Public register of information**

37.—(1) Subject to paragraph (5) and regulation 38, it is the duty of SEPA to maintain a register containing the particulars described in Schedule 8.

(2) If, by virtue of regulation 38, information of any description is not included in the register maintained by SEPA under this regulation, a statement must be entered in the register indicating the existence of information of that description.

(3) It is the duty of SEPA—

- (a) to secure that the register maintained by it under this regulation is available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(4) The register maintained by SEPA under this regulation may be kept in any form.

(5) If the Scottish Ministers exercise functions under regulation 55, they must send any particulars referred to in Schedule 8 which relate to that exercise of functions to SEPA, and SEPA must enter those particulars in the register.

### **Confidential information**

38.—(1) Information relating to the affairs of any individual or business which is commercially confidential may only be included in the register if—

- (a) the individual or the person for the time being carrying on the business gives consent to that inclusion; or
- (b) the information requires to be included in the register in pursuance of a direction under regulation 43.

(2) For the purposes of these Regulations, information is only commercially confidential in relation to the affairs of any individual or business if SEPA has determined that putting it on the register would prejudice to an unreasonable degree the commercial interests of that individual or business.

### **Application for determination of commercial confidentiality**

39.—(1) If information is given to SEPA for the purposes of these Regulations, the person giving it may apply to SEPA to have the information excluded from the register on the ground that it is commercially confidential (as regards that person or another person).

(2) The application under paragraph (1) must include representations indicating why the applicant considers the information commercially confidential, together with such further information in support of the application as the applicant considers appropriate.

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(a) S.I. 2004/99.

(3) The provisions of regulation 14(1) and (2) apply to an application under paragraph (1) as they do to an application.

(4) SEPA must determine whether the information is or is not commercially confidential and must give notice of its determination to the applicant within 28 days beginning with the date of the application or within such longer period as may be agreed with the applicant in writing.

(5) The provisions of regulation 17(2)(b) apply in respect of the period mentioned in paragraph (4) as they apply in respect of the periods mentioned in regulation 17(1).

(6) If SEPA fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraph (4), the information will be treated as commercially confidential.

#### **Procedure relating to information which might be confidential**

**40.**—(1) If it appears to SEPA that any information that has been obtained by it under or by virtue of any provision of these Regulations and is required to be included in the register, might be commercially confidential, SEPA must—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register; and
- (b) give that person a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
  - (ii) of making representations to SEPA indicating why the person considers the information to be commercially confidential, together with such further information in support of the objection as the person considers appropriate.

(2) The provisions of regulation 14(1) and (2) apply to an objection under paragraph (1) as they do to an application.

(3) SEPA must determine whether the information is or is not commercially confidential and must give notice of its determination to the person to whom or whose business it relates.

(4) This regulation does not apply if the information is the subject of an application under regulation 39.

#### **Review of determination of commercial confidentiality**

**41.**—(1) SEPA must periodically review its determinations under this Part that information is commercially confidential, and may do so at any time.

(2) If SEPA is carrying out a review under paragraph (1), it must—

- (a) give the person to whom or to whose business the determination relates notice that it is reviewing that determination; and
- (b) give that person a reasonable opportunity of making representations regarding the commercial confidentiality of the information, including an indication of why the person may consider that the information remains commercially confidential, together with such further information in support of those representations as the person considers appropriate.

(3) The provisions of regulation 14(1) and (2) apply to representations made under paragraph (2) as they do to an application.

(4) SEPA must determine whether or not the information remains commercially confidential and must give notice of its determination to that person.

#### **Effect of determination**

**42.** Subject to the provisions of regulation 52(1)(b), if SEPA has determined under this Part that information is not commercially confidential, the information must not be entered in the register

until the end of the period of 21 days beginning with the date on which the determination was notified.

### **Directions to SEPA concerning confidential information**

43. The Scottish Ministers may give to SEPA a direction as to specified information, or descriptions of information, which the public interest requires to be included in the register, notwithstanding that the information may be commercially confidential.

## **PART VII**

### **Offences**

#### **Offences**

- 44.—(1) It is an offence for a person to—
- (a) contravene regulation 4;
  - (b) fail to comply with or contravene a general binding rule;
  - (c) fail to comply with or contravene a registration (including any condition imposed);
  - (d) fail to comply with or contravene a water use licence (including any condition imposed);
  - (e) obstruct an authorised person in the exercise of that person's powers under regulation 31(4) and Schedule 6;
  - (f) fail to comply with any requirement imposed in the exercise of that person's powers under regulation 31(4) and Schedule 6;
  - (g) fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the exercise of that person's powers or duties under or by virtue of regulation 31(4) and Schedule 6;
  - (h) prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to regulation 31(4) and Schedule 6;
  - (i) pretend to be a person authorised in accordance with regulation 31(4);
  - (j) fail to comply with the requirements of a notice issued under regulation 32(2);
  - (k) fail to comply with the requirements of an information notice under regulation 36(2);
  - (l) make a statement which that person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, if the statement is made—
    - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
    - (ii) for the purpose of obtaining an authorisation issued under these Regulations to that or any other person, or the variation, transfer or surrender of an authorisation;
  - (m) intentionally make a false entry in any record required to be kept as a condition of an authorisation;
  - (n) with intent to deceive, forge or use a document issued or authorised to be issued under the condition of an authorisation or required for any purpose under a condition of such an authorisation or to make or have in that person's possession a document so closely resembling any such document so as to be likely to deceive; or
  - (o) cause or permit any other person to commit an offence under sub-paragraphs (a) to (n) above.

- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction—
    - (i) to a fine not exceeding £40,000 or to imprisonment for a term not exceeding 12 months, or to both; and
    - (ii) in the case of a continuing offence, to a further fine not exceeding £250 for every day during which the offence is continued after conviction;
  - (b) on conviction on indictment—
    - (i) to a fine or to imprisonment for a term not exceeding 5 years, or to both; and
    - (ii) in the case of a continuing offence to a further fine not exceeding £1,000 for every day during which the offence is continued after conviction.

### **Offences by bodies corporate**

- 45.**—(1) If an offence under these Regulations is committed by—
- (a) a body corporate (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity;
  - (b) a limited liability partnership and is proved to have been committed with the consent or connivance of, or have been attributable to any neglect on the part of, any member of that partnership or person who was purporting to act as such;
  - (c) a Scottish partnership (other than a limited liability partnership) and is proved to have been committed with the consent or connivance of, or have been attributable to neglect on the part of, any partner or a person who was purporting to act as such,

that person as well as the body corporate, the limited liability partnership or the partnership, as the case may be, is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate (other than the affairs of a limited liability partnership) are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.

### **Offences — acts or default of third person**

**46.** If the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings for the offence are taken against the first-mentioned person.

### **Admissibility of evidence**

- 47.**—(1) It is admissible as evidence that that condition has not been observed if—
- (a) by virtue of a condition of an authorisation, an entry is required to be made in any record as to the observance of any condition of the authorisation; and
  - (b) the entry has not been made.

(2) Information provided or obtained pursuant to or by virtue of a condition of an authorisation including information so provided, obtained or recorded, by means of any apparatus, will be admissible in evidence in any proceedings, whether against the person subject to the condition, or any other person.

(3) For the purposes of paragraph (2), apparatus will be presumed in any proceedings to register or record accurately, unless the contrary is shown, or the authorisation otherwise provides.

### **Defence to principal offences**

- 48.** A person will not be guilty of an offence under regulation 44(1)(a) to (d), (j) or (o) if—
- (a) the contravention is a result of—
    - (i) an accident which could not reasonably have been foreseen;
    - (ii) natural causes or *force majeure* which are exceptional or could not reasonably have been foreseen; or
    - (iii) an act or omission by a category 1 or 2 responder that is reasonably necessary to protect people, property or the environment from imminent risk of serious harm;
  - (b) all practicable steps are taken to prevent deterioration of the water environment—
  - (c) all practicable steps are taken as soon as is reasonably practicable to restore the water environment to its condition prior to the contravention; and
  - (d) particulars of the contravention are furnished to SEPA as soon as practicable after it occurs.

### **Power of court to order offence to be remedied**

- 49.—(1)** If—
- (a) a person is convicted of an offence under regulation 44(1)(a) to (d), (j) or (o) in respect of any controlled activity which has had an adverse impact on the water environment; and
  - (b) it appears to the court that it is in the power of that person to mitigate or remedy that adverse impact,

the court may, in addition to, or instead of, imposing any punishment, order that person, within such time as may be fixed by the order of the court, to take such steps as may be specified in that order for remedying those matters.

(2) Before making such an order, the court must have regard to any representations by SEPA as to the steps required to mitigate or remedy the adverse impact.

(3) The time fixed by an order of the court under paragraph (1) may be extended or further extended by a further order of the court on an application made before the end of the time originally fixed or extended under this paragraph, as the case may be.

(4) As long as an order under this regulation is in force, the convicted person will not be liable under regulation 44(1) as regards the matters in respect of which steps require to be taken in accordance with that order.

## **PART VIII**

### **Appeals**

#### **Appeals to the Scottish Ministers**

- 50.** The following persons may appeal to the Scottish Ministers against the decision of SEPA—
- (a) a person who has been refused the grant of an authorisation in accordance with regulation 15(3) or is deemed to have been refused the grant of an authorisation in accordance with regulation 17(3);
  - (b) a person who has been granted a form of authorisation under regulation 15 which is different from the form of authorisation which that person believes ought to have been granted;
  - (c) a person who is aggrieved by the terms and conditions attached to that person's authorisation in accordance with regulation 7 or 8;

- (d) a person who has been served with a variation notice under regulation 23(3) or is aggrieved by the conditions attached to that variation notice;
- (e) a person who has been refused the variation (in whole or in part) of an authorisation on request under regulation 24;
- (f) a person who has been granted the variation of an authorisation on request under regulation 24 but is aggrieved by the removal, addition or amendment of any condition pursuant to that variation;
- (g) a person whose application under regulation 25 for SEPA to effect the transfer of an authorisation has been refused; or who is aggrieved by the conditions attached to that person's authorisation to take account of such a transfer;
- (h) a person whose application to surrender an authorisation under regulation 27(3) has been refused or who is aggrieved by the conditions attached to that authorisation in order to take account of the surrender;
- (i) a person whose authorisation has been suspended or revoked (in whole or in part) under regulation 29;
- (j) a person on whom a notice has been served under regulation 32(2), or who is aggrieved by the terms of that notice; and
- (k) if SEPA has determined that information is not commercially confidential under Part VI, the person to whom, or whose business, that information relates.

### **Determination of appeals**

**51.** On determining an appeal against a decision of SEPA referred to in regulation 50, the Scottish Ministers may—

- (a) affirm the decision, or any part of it;
- (b) if the decision was a refusal to—
  - (i) grant an authorisation;
  - (ii) grant a form of authorisation; or
  - (iii) vary any condition of an authorisation,

direct SEPA to grant the authorisation or the form of authorisation or vary the conditions of the authorisation, as the case may be;

- (c) if the decision was as to the conditions attached to an authorisation, quash or vary all or any of the conditions of the authorisation;
- (d) if the decision was a refusal to effect the transfer of, or accept the surrender of, an authorisation, direct SEPA to effect the transfer or accept the surrender, as the case may be;
- (e) if the decision was to serve a notice under regulation 23(3), 29 or 32(2), either quash or affirm the notice, and if they affirm it, they may do so in its original form or with such modifications as they may think fit;
- (f) if the decision was a determination that information is not commercially confidential, either affirm the determination or quash it,

and if exercising any of the powers in paragraph (b), (c) or (e) the Scottish Ministers may give directions as to the conditions to be attached to the authorisation or the terms of the notice, as the case may be.

### **Effect of notices etc. during consideration of appeal**

**52.**—(1) If an appeal is against—

- (a) a notice served under regulation 23(3), the notice will not take effect until the day following the day on which the appeal is finally determined or withdrawn;

- (b) a determination under Part VI that information is not commercially confidential, the information shall not be entered in the register until the day following the day on which the appeal is finally determined or withdrawn.
- (2) If an appeal relates to—
- (a) the conditions attached to an authorisation under regulation 7 or 8, the bringing of the appeal shall not have the effect of suspending the operation of the conditions;
  - (b) a notice under regulation 29 or 32(2), the bringing of the appeal will not have the effect of suspending the operation of the notice.

### **Appeals – miscellaneous**

**53.**—(1) The provisions of regulation 15(1) apply if the Scottish Ministers, in exercising any of the powers in regulation 51, give directions as to the conditions to be attached to an authorisation under regulation 7 or 8 as they would apply to SEPA when determining the conditions of the authorisation.

(2) Schedule 9, which makes provision for procedures for appeals under regulation 50, has effect.

(3) Section 114 of the Environment Act 1995(a) (delegation of reference of appeals) applies to this Part and to Schedule 9 as it applies to appeals referred to in that section.

## **PART IX**

### **General**

#### **Application to the Crown**

**54.**—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations will make the Crown criminally liable under regulation 44 and no proceedings may be taken against the Crown under regulation 44 but the Court of Session may, on an application by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to other persons.

#### **Application to SEPA**

**55.**—(1) In the application of these Regulations to SEPA if it is carrying on, or intends to carry on, a controlled activity, and subject to paragraph (2), any functions conferred on SEPA by these Regulations must instead be carried out by the Scottish Ministers.

(2) Paragraph (1) does not apply to regulations 11(1)(a), 20, 21(2), 31 to 35, 43, 50 to 53 and 56.

#### **Guidance to SEPA**

**56.** The Scottish Ministers may issue guidance to SEPA with respect to the carrying out of its functions under these Regulations, and SEPA must have regard to any guidance issued by the Scottish Ministers under this regulation.

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(a) 1995 c.25, amended by the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323).

## Notices

**57.**—(1) Any notice served or given under these Regulations by the Scottish Ministers or SEPA—

- (a) must be in writing; and
- (b) may be withdrawn, varied or revoked by a further notice in writing (whether before or after the notice has come into effect).

(2) Any notice may be served on or given to a person by leaving it at that person's proper address or by sending it by post to that person at that address.

(3) Any such notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purpose of this regulation the proper address of a person will be construed in accordance with section 26(4) of the Interpretation and Legislative Reform (Scotland) Act 2010(a).

## Revocations, transitional and savings provisions, and amendments

**58.**—(1) Subject to paragraph (2), the following enactments are revoked—

- (a) the Water Environment (Controlled Activities) (Scotland) Regulations 2005(b) (“the 2005 Regulations”);
- (b) the Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006(c);
- (c) the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2007(d);
- (d) regulation 2 of, and the Schedule to, the Water Environment (Diffuse Pollution) (Scotland) Regulations 2008(e);
- (e) regulation 4 of, and Schedules 1 and 2 to, the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009(f).

(2) Schedule 10, which makes transitional and savings provisions in relation to the revocation of the 2005 Regulations, has effect.

(3) Schedule 11, which makes minor amendments and savings provisions consequential on the provisions of these Regulations, has effect.

*R CUNNINGHAM*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
15th March 2011

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- (a) asp 10.
  - (b) S.S.I 2005/348.
  - (c) S.S.I. 2006/553.
  - (d) S.S.I. 2007/219.
  - (e) S.S.I. 2008/54.
  - (f) S.S.I. 2009/420.

## SCHEDULE 1

Regulation 2(1)

### Indicative list of the main pollutants

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment.
2. Organophosphorous compounds.
3. Organotin compounds.
4. Substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment.
5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances.
6. Cyanides.
7. Metals and their compounds.
8. Arsenic and its compounds.
9. Biocides and plant protection products.
10. Materials in suspension.
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates).
12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as biochemical oxygen demand (BOD), and chemical oxygen demand (COD) etc.).

## SCHEDULE 2

Regulation 2(1)

### Hazardous Substances

1. SEPA must identify—

- (a) substances or groups of substances which are toxic, persistent and liable to bio-accumulate, and other substances or groups of substances which give rise to an equivalent level of concern; and
- (b) substances or groups of substances which are entering, or liable to enter groundwater.

2. In identifying the substances referred to in paragraph 1, SEPA must take particular account of hazardous substances belonging to the families or groups of pollutants referred to in paragraphs 1 to 6 of Schedule 1 as well as substances belonging to the families or groups of pollutants referred to in paragraphs 7 to 9 of that Schedule, if those are considered to be hazardous.

3. SEPA must publish and maintain a list of the substances identified in accordance with paragraph 1.

4. The list must be published in a manner SEPA considers appropriate to bring it to the notice of persons affected by, likely to be affected by, or interested in the identified substances and SEPA must make copies of the list and a consolidated list available to the public free of charge.

SCHEDULE 3

Regulations 6 and 21(2)

General binding rules

PART 1

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p><b>1.</b> The operation of any weir that—</p> <p>(a) is not capable of being operated to control the water level upstream of the weir;</p> <p>(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>(c) was constructed before 1st April 2006.</p>	<p>The weir must 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><b>2.</b> The abstraction of less than 10 m<sup>3</sup> of water in any one day.</p>	<p>(a) There must be a means of demonstrating that the abstraction is less than 10 m<sup>3</sup> 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 m<sup>3</sup> in any one day; and</p> <p>(b) water leakage must 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>
<p><b>3.</b> 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, if such works are—</p> <p>(a) not intended for the purpose of abstraction;</p>	<p>(a) Subject to paragraphs (b) and (c), the construction of the well or borehole must 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>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>(b) intended for the abstraction of less than 10 m<sup>3</sup> of water in any one day;</p> <p>(c) intended for the abstraction of less than 150 m<sup>3</sup> 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>(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>or</p> <p>(e) intended for the purpose of undertaking activity 17.</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 must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.</p>
<p><b>4.</b> The abstraction from a borehole, and any subsequent discharge of the abstracted water, if the total volume of water abstracted is less than 150 m<sup>3</sup> 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 must 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 must 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><b>5.</b> 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 must not be disposed of into the channel;</p> <p>(c) the bed of the channel adjacent to each bank of the river or burn must be left undisturbed</p> <p>(d) all reasonable steps must 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 must 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 must 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 must not result in the heightening of either bank.</p>
<p><b>6.</b></p> <p>(a) The construction and maintenance of a minor bridge over a river, burn or ditch; or</p> <p>(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>	<p>(a) Vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent necessary to carry out the works;</p> <p>(b) any vegetation removed must not be disposed of into the channel;</p> <p>(c) the works must not prevent the free passage of migratory fish;</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<p>(d) the works must 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 must 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 must 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 must 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 must 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 must be reinstated at least to their condition prior to the commencement of the works.</p>
<p>7. The laying of a pipeline or cable by boring beneath the bed and banks of a river, burn or ditch.</p>	<p>(a) The bed and banks must 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 must 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 must be reinstated at least to</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	their condition prior to the commencement of the works.
<p><b>8.</b> Works to control the erosion of a bank of a river, burn or ditch by revetment.</p>	<p>(a) All reasonable steps must 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 must 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 must not be disposed of into the channel;</p> <p>(e) revetments must 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 must be no more than 10 metres or one channel width, whichever is greater;</p> <p>(g) if wood or stone rip-rap is used for a revetment, the wood or rip-rap must be placed at the toe of the bank;</p> <p>(h) except for the purpose of repairing an existing revetment, no bank protection works must 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 must not result in the heightening of either bank;</p> <p>(j) the works must 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>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	(k) the revetments must be maintained in the state of repair required to avoid increased erosion of the banks or destabilisation of the bed.
<p><b>9.</b> 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 must only operate in water where it is impracticable for them to operate on dry land;</p> <p>(b) the refuelling of vehicles, plant or other equipment must be undertaken at least 10 metres from any surface water;</p> <p>(c) any static plant or equipment used within 10 metres of surface water must 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;</p> <p>(d) any vehicle, plant or other equipment used in or near surface water must not leak any oil;</p> <p>(e) the washing of vehicles, plant or other equipment must be undertaken at least 10 metres away from any surface water and water from such washing must not enter any surface water;</p> <p>(f) vehicles, plant or other equipment must 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;</p> <p>(g) vehicles, plant or equipment must 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</p> <p>(h) during forestry operations the operator must not operate machinery in watercourses.</p>
<p><b>10.</b> Discharge of water run-off from a surface water drainage system to the water environment from buildings,</p>	<p>(a) All reasonable steps must be taken to ensure that the discharge must not result in pollution of the water environment;</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
<p>roads, yards or any other built 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>	<p>(b) the discharge must not contain any trade effluent or sewage, and must not result in visible discolouration, iridescence, foaming or growth of sewage fungus in the water environment;</p> <p>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water;</p> <p>(d) the discharge must 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—</p> <p>(i) during construction those developments are drained by a SUD system or equivalent systems equipped to avoid pollution of the water environment;</p> <p>(ii) following construction those developments are drained by a SUD system equipped to avoid pollution of the water environment;</p> <p>(iii) the run-off is from a development that is a single dwelling and its curtilage; or</p> <p>(iv) the discharge is to coastal water;</p> <p>(e) the discharge must not contain any water run-off from—</p> <p>(i) fuel delivery areas and areas where vehicles, plant and equipment are refuelled;</p> <p>(ii) vehicle loading or unloading bays where potentially polluting matter is handled; or</p> <p>(iii) oil and chemical storage, handling and delivery areas;</p> <p>constructed after 1st April 2007;</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<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, must be maintained in a good state of repair;</p> <p>(g) all reasonable steps must 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 must not result in pollution of the water environment.</p>
<p><b>11.</b> Discharge into a surface water drainage system.</p>	<p>(a) Oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants must not be disposed of into a surface water drainage system or onto any surface that drains into a surface water drainage system;</p> <p>(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 must not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system;</p> <p>(c) sewage or trade effluent must not be discharged into any surface water drainage system; and</p> <p>(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, must be the minimum reasonably necessary to facilitate the construction works being undertaken at that site.</p>
<p><b>12.</b> 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 the return of that sediment if desired to the river, burn or ditch from which it was removed.</p>	<p>(a) The sediment or other matter must be removed within 10 metres upstream of the weir;</p> <p>(b) the sediment or other matter removed must 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</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<p>the date of the removal;</p> <p>(c) the removed sediment must only be returned to the river, burn or ditch from which it was removed, if:</p> <p>(i) it is returned within 10 metres downstream of the weir;</p> <p>(ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish;</p> <p>(iii) all reasonable steps are taken to avoid increased erosion of the bed or banks of the river, burn or ditch;</p> <p>(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</p> <p>(v) no matter other than removed sediment is returned to the river, burn or ditch;</p> <p>(d) the removed sediment and other matter must not be placed on the bank of any river, burn or ditch;</p> <p>(e) the return or removal must not result in pollution of the water environment;</p> <p>(f) vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification; and</p> <p>(g) any vegetation removed must not be disposed of into the channel.</p>
<p><b>13.</b> The removal of accumulations of sediment or other matter from:</p> <p>(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;</p>	<p>(a) The removal or return must 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;</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>(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</p> <p>(c) the inside of a closed culvert;</p> <p>and, if desired, any subsequent return of the removed sediment to the river, burn or ditch from which it was removed.</p>	<p>(b) the removal or return must 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;</p> <p>(c) the removal or return must 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>(d) vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(e) any vegetation removed must not be disposed of into the channel;</p> <p>(f) removed sediment and other matter must not be placed on the bank of any river, burn or ditch;</p> <p>(g) the removed sediment must only be returned to the river, burn or ditch from which it was removed, if:</p> <ul style="list-style-type: none"> <li>(i) it is returned within 15 metres downstream of the culvert;</li> <li>(ii) it does not result in an accumulation of sediment likely to impede the free passage of migratory fish;</li> <li>(iii) all reasonable steps are taken to avoid increased erosion of the bed or the banks of the river, burn or ditch; and</li> <li>(iv) its return is not likely to increase the risk of flooding; and</li> </ul> <p>(h) the activity must not result in pollution of the water environment.</p>
<p><b>14.</b> The placement of one or more boulders in a river or burn.</p>	<p>(a) No boulder or boulders must have a length, breadth or height greater than 10% of the channel width;</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<ul style="list-style-type: none"> <li>(b) no boulder or boulders must 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;</li> <li>(c) no boulder or boulders must be placed in such a way as to extend the width occupied by in stream structures to greater than 10% of the channel width;</li> <li>(d) no boulder or boulders must 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;</li> <li>(e) the tops of the boulders must be submerged except during periods of low flows;</li> <li>(f) the placement must 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;</li> <li>(g) all reasonable steps must be taken to ensure that the placement does not result in increased erosion of the bed or banks of the river or burn; and</li> <li>(h) boulders must not be placed if there is a reasonable likelihood that, within 50 metres of the intended placement, there are freshwater pearl mussels.</li> </ul>
<p>15. The temporary abstraction of groundwater at:</p> <ul style="list-style-type: none"> <li>(a) a construction site for roads, railways, buildings, pipelines, communication links or other built development; or</li> <li>(b) a site at which the maintenance of such development is being undertaken;</li> </ul> <p>by means of:</p> <ul style="list-style-type: none"> <li>(i) pumping the groundwater directly from any excavation or</li> </ul>	<ul style="list-style-type: none"> <li>(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;</li> <li>(b) groundwater must 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: <ul style="list-style-type: none"> <li>(i) unconsolidated sands or gravels;</li> <li>(ii) sandstones; or</li> </ul> </li> </ul>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>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 if desired to the water environment.</p>	<p>(iii) any other strata of equivalently high permeability;</p> <p>(c) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of a wetland;</p> <p>(d) groundwater must 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 must be taken to ensure that the quantity of sediment in the abstracted water is minimised; and</p> <p>(f) if the abstracted groundwater and, if 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 must 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><b>16.</b> 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 may contain any hazardous substance;</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 may cause pollution of the water environment.</p>
<p><b>17.</b> The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the abstracted water.</p>	<p>(a) The abstracted water must be returned to the same geological formation from which it was abstracted;</p> <p>(b) any volume of water may be abstracted but the volume of water abstracted and not returned must not exceed 10m<sup>3</sup> per day;</p> <p>(c) the chemical composition of the abstracted water must not be altered prior to its return to the geological formation;</p>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<p>(d) there must be a means of demonstrating that the net abstraction is not more than 10m<sup>3</sup> in any one day; and</p> <p>(e) water leakage must be kept to a minimum by ensuring that all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a good state of repair.</p>
<p><b>18.</b> The storage and application of fertiliser other than if it is regulated by:</p> <p>(a) the Sludge (Use in Agriculture) Regulations 1989<b>(a)</b>;</p> <p>(b) a waste management licence in terms of section 35 of the Environmental Protection Act 1990 (waste management licence: general)<b>(b)</b>;</p> <p>(c) the registration of a registered exemption, under the Waste Management Licensing (Scotland) Regulations 2011; or</p> <p>(d) the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003<b>(c)</b>.</p>	<p>(a) No fertiliser may be stored on land that—</p> <p>(i) is within 10 metres of any surface water or wetland;</p> <p>(ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;</p> <p>(iii) is waterlogged; or</p> <p>(iv) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except if the fertiliser is stored in an impermeable container;</p> <p>(b) paragraph (a) does not apply if such storage is in a building which is constructed and maintained to such a standard as is necessary to prevent run off or seepage of fertiliser from the building;</p> <p>(c) no organic fertiliser may be applied to land that—</p> <p>(i) is within 2 metres of any drainage ditch or within 5 metres of any other surface water or wetland;</p>

(a) S.I. 1989/1263; relevant amending instruments are S.I. 1990/880, S.I. 1996/973 and S.S.I. 2000/62.

(b) 1990 c.43; section 35 was amended by the Environment Act 1995 (c.25), section 120 and Schedule 22, paragraph 66, and by S.S.I. 2000/323, Schedule 10, Part 1, paragraph 3(4). For a definition of 'waste' see section 75 of the Environmental Protection Act 1990 as amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 88.

(c) S.S.I. 2003/531; amended by S.S.I. 2006/133.

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<ul style="list-style-type: none"> <li>(ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;</li> <li>(iii) is sloping with an overall gradient in excess of 15°, or 25° on uncultivated land designated for forestry;</li> <li>(iv) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations; or</li> <li>(v) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow;</li> </ul> <p>(d) no inorganic fertiliser may be applied to land that—</p> <ul style="list-style-type: none"> <li>(i) is within 2 metres of any surface water or wetland;</li> <li>(ii) is within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water;</li> <li>(iii) has an average soil depth of less than 30 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations; or</li> <li>(iv) is frozen, waterlogged, or covered with snow;</li> </ul> <p>(e) fertilisers must not be applied to land in excess of the nutrient needs of the crop;</p> <p>(f) any equipment used to apply fertiliser must be maintained in a good state of repair; and</p> <p>(g) fertiliser must be applied on land in such a way and at such times that the risk of pollution to the water environment is minimised.</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<b>19.</b> Keeping of livestock.	<ul style="list-style-type: none"> <li>(a) Significant erosion or poaching of any land that is within 5 metres of surface water or wetland must be prevented;</li> <li>(b) livestock must be prevented from entering any land that is within 5 metres of a spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water; and</li> <li>(c) livestock feeders must not be positioned within 10 metres of any surface water or wetland.</li> </ul>
<b>20.</b> Cultivation of land.	<ul style="list-style-type: none"> <li>(a) No land may be cultivated for crops that is— <ul style="list-style-type: none"> <li>(i) within 2 metres of any surface water or wetland;</li> <li>(ii) within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water; or</li> <li>(iii) waterlogged;</li> </ul> </li> <li>(b) moling of land must not be permitted on slopes with an overall gradient in excess of 4.5°; and</li> <li>(c) land must be cultivated in a way that minimises the risk of pollution to the water environment.</li> </ul>
<b>21.</b> Without prejudice to the operation of activity 10 and the rules related to it, the discharge of water run-off via a surface water drainage system to the water environment as a result of rural land activities.	<ul style="list-style-type: none"> <li>(a) Water must be discharged in a way which minimises the risk of pollution to the water environment; and</li> <li>(b) no discharge from drainage may result in the destabilisation of the banks or bed of the receiving surface water.</li> </ul>
<b>22.</b> Construction and maintenance of waterbound roads and tracks.	<ul style="list-style-type: none"> <li>(a) No material that will or will be likely to result in metallic, sulphide rich or strongly acidic polluted water run off from such roads or tracks may be used in the carrying out of the activity.</li> </ul>
<b>23.</b> The application of pesticide.	<ul style="list-style-type: none"> <li>(a) The preparation of pesticide for application and the cleaning or maintenance of pesticide sprayers must be undertaken in</li> </ul>

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<p>conditions such that any spillages, run-off or washings will be prevented from entering the water environment;</p> <p>(b) pesticide spraying equipment must be maintained in a good state of repair;</p> <p>(c) pesticide sprayers must not be filled with water taken from the water environment unless—</p> <p>(i) a device preventing back siphoning is fitted to the system; or</p> <p>(ii) the water is first placed in an intermediate container; and</p> <p>(d) pesticide-treated plants must not be soaked in any part of the water environment.</p>
<p><b>24.</b> Operating sheep dipping facilities.</p>	<p>(a) Sheep must be prevented from having access to the water environment while there is a risk of transfer of sheep dip fluid from its fleece to the water environment;</p> <p>(b) no mobile sheep dipping facility, or part of any sheep dipping facility constructed after 1st April 2008 may be located within 50 metres of any river, ditch, pond, freshwater loch, wetland, well, spring or borehole;</p> <p>(c) sheep dipping facilities must not discharge underground and must not leak or overspill;</p> <p>(d) sheep dipping facilities must not be filled with water taken from the water environment unless—</p> <p>(i) a device preventing back siphoning is fitted to the system; or</p> <p>(ii) the water is first placed in an intermediate container; and</p> <p>(e) without prejudice to the continued requirement to obtain specific authorisation for the disposal of sheep dip under these Regulations, sheep dip facilities must be emptied within 24 hours following completion of dipping.</p>

## PART 2

In this Schedule—

“application” means the spreading, spraying, incorporating or injecting into or onto land;

“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;

“crop” includes any plant grown for a commercial purpose;

“cultivation” includes the preparation of land prior to planting, and the harvesting of any crop;

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

“farm yard manure” means a mixture of bedding material and animal excreta in solid form arising from the housing of livestock (excepting such arising from the keeping of birds for the production of food);

“fertiliser” means any substance containing nutrients which is utilised on land to enhance plant growth, but excludes forestry brash;

“forest” means land of an area of more than 0.5 hectares—

- (a) with a tree canopy cover of more than 20 percent;
- (b) which is planted with trees, which trees collectively have the capacity to provide a tree canopy cover of more than 20 percent; or
- (c) which meets all of the following criteria:
  - (i) it was used in the last 5 years as land described in paragraph (a);
  - (ii) it is to remain fallow of trees for a maximum of 4 consecutive years; and
  - (iii) when replanted with trees it will be replanted as land described in paragraph (b);

“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;

“moling” means a cultivation method if an implement is used to open a conduit within the soil along which water may flow;

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

“pesticide” has the same meaning as in section 16 of the Food and Environment Protection Act 1985 (control of pesticides etc.)(a);

“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;

“rural land use activities” means agricultural, forestry or leisure activity;

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

“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

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(a) 1985 c.48.

(b) 1968 c.47.

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;

“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);

“water for human consumption” means water that may be ingested by humans, used in the preparation of food or drink, or used in the cleaning of materials involved in the storage or consumption of food or drink;

“waterbound road” means a road constructed of coarse stone and fine aggregate to form a tightly bound semi-impervious surface; and

“waterlogged” means soil which is at water retaining capacity, except in a forest where it means where water is visible on the soil surface.

## SCHEDULE 4

Regulations 15(1) and 27(5),  
paragraphs 10, 13 and 16 of  
Schedule 10

### Relevant legislation

#### PART 1

These Regulations

The Act

The Directive

The Groundwater Directive 1980

The Groundwater Directive 2006

The Priority Substances Directive

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003**(a)**

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**(b)**

#### PART 2

Part 2 of the Nature Conservation (Scotland) Act 2004**(c)**

The Conservation (Natural Habitats &c) Regulations 1994**(d)**

The Urban Waste Water Treatment (Scotland) Regulations 1994**(e)**

The Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997**(f)**

The Surface Waters (Fishlife) (Classification) (Scotland) Regulations 1997**(g)**

The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002**(h)**

The Designation of Nitrate Vulnerable Zones (Scotland) (No. 2) Regulations 2002**(i)**

The Control of Pollution (Silage Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003**(j)**

The Bathing Waters (Scotland) Regulations 2008**(k)**

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**(a)** S.I. 2003/3245.

**(b)** S.I. 2004/99.

**(c)** 2004 asp 6.

**(d)** S.I. 1994/2716, amended by 2004 asp 6; S.I. 1996/973; S.S.I. 2000/323 and 2004/475.

**(e)** S.I. 1994/2842, amended by S.I. 1996/973; and S.S.I. 2003/273.

**(f)** S.I. 1997/2407.

**(g)** S.I. 1997/2471, amended by S.S.I. 2003/85.

**(h)** S.S.I. 2002/276.

**(i)** S.S.I. 2002/546.

**(j)** S.S.I. 2003/531.

**(k)** S.S.I. 2008/170.

The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008**(a)**

The Management of Extractive Waste (Scotland) Regulations 2010**(b)**

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**(a)** S.S.I. 2008/298.  
**(b)** S.S.I. 2010/60.

**SCHEDULE 5**      Regulations 11(1)(a) and 18(4)(b)  
**Charging Scheme**

**1.** In the case of an authorisation under these Regulations, SEPA may require the payment to it of such charges as it may from time to time provide for in a charging scheme made in accordance with this Schedule.

**2.** Charges may be made in respect of:

- (a) the grant or imposition of an authorisation under regulations 7, 8 or 10;
- (b) the variation of any authorisation under regulations 18, 23 or 24;
- (c) the subsistence of an authorisation;
- (d) the transfer of an authorisation to another person, under regulation 25;
- (e) the surrender of an authorisation under regulation 27;
- (f) the determination that information is confidential under regulation 39.

**3.** A charging scheme may impose:

- (a) a single charge in respect of the whole of any authorisation;
- (b) separate charges in respect of different parts of any such authorisation;
- (c) both such a single charge and such separate charges.

**4.** A charging scheme may provide for charges as are reasonable or necessary to meet the requirements of paragraph 6, and may in particular provide for different charges to be payable according to:

- (a) the description of the authorisation in question;
- (b) the controlled activity in question;
- (c) the scale on which the controlled activity is carried on;
- (d) the description or amount of any substance to which the controlled activity in question relates;
- (e) the number of different controlled activities carried on by the same person.

**5.** A charging scheme:

- (a) must specify, in relation to any charge prescribed by the scheme, the description of the person who is liable to pay the charge;
- (b) may provide that it must be a condition of an authorisation that any charge prescribed is paid in accordance with the scheme;
- (c) may, if appropriate, provide incentives to secure efficient and sustainable water use.

**6.** In making a charging scheme SEPA must secure that the amounts recovered by way of charges prescribed by the charging scheme are, together with any grants paid to SEPA under section 47 of the Environment Act 1995(a) in respect of the functions under—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District Regulations 2003(b));
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(c); and

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(a) 1995 c.25; amended by the Scotland (Consequential Modifications No. 2) Order 1999 (S.I. 1999/1820).  
(b) S.I. 2003/3245.  
(c) S.I. 2004/99.

(d) these Regulations,

the amounts which, taking one year with another need to be recovered by SEPA to meet the costs and expenses which it incurs in carrying out, or having others carry out, those functions.

7. Without prejudice to paragraph 5(b), if it appears to SEPA that any charges due and payable to it in respect of an authorisation have not been paid, it may suspend or revoke the authorisation (in whole or in part).

8. A charging scheme may:

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
- (b) provide for the times at which and the manner in which, the charges prescribed by the scheme are to be paid;
- (c) revoke or amend any previous charging scheme;
- (d) contain incidental, consequential or transitional provision for the purposes of the scheme.

9. SEPA must not make a charging scheme unless the provisions of the scheme are approved by the Scottish Ministers.

10. Before submitting a proposed charging scheme to the Scottish Ministers for their approval under paragraph 9, SEPA must, in such manner as it considers appropriate for bringing it to the attention of persons affected or likely to be affected by, or having an interest in, the scheme, publish a notice—

- (a) setting out its proposals; and
- (b) specifying the period within which representations or objections with respect to its proposals may be made to the Scottish Ministers.

11. If any proposed charging scheme is submitted to the Scottish Ministers for approval under paragraph 9, the Scottish Ministers must, in determining whether or not to approve the scheme or to approve it subject to modifications—

- (a) consider any representations or objections duly made to them and not withdrawn; and
- (b) have regard to the matters specified in this Schedule.

12. It is the duty of SEPA to take such steps as it considers appropriate for bringing the provisions of the charging scheme made by it which is for the time being in force to the attention of persons affected or likely to be affected by, or having an interest in the provisions.

## SCHEDULE 6

Regulation 31(4) and (6)

### Enforcement and other powers

#### PART 1

##### Powers

1. To enter at any reasonable time (or, in an emergency, at any time) any premises which that person has reason to believe it is necessary to enter.
2. On entering any premises by virtue of paragraph 1, to take—
  - (a) any other person duly authorised by SEPA and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of that person's duty, a constable; and
  - (b) any equipment or materials required for any purpose for which the power of entry is being exercised.
3. To examine and investigate as may in the circumstances be necessary.
4. As regards any premises which that person has power to enter, to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph 3.
5. To take such measurements and photographs and make such recordings as that person considers necessary for the purpose of any examination or investigation under paragraph 3.
6. To obtain and to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which that person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises.
7. To monitor—
  - (a) the water environment or any part of it; or
  - (b) the carrying on of controlled activities.
8. To take steps for the measurement and recording of precipitation.
9. To install and maintain gauges, or other apparatus and works connected therewith, for any of the purposes mentioned in paragraphs 7 and 8.
10. To take such steps as may be necessary in order to obtain any information required for any of the purposes mentioned in paragraphs 7 or 8.
11. In the case of any article or substance found in or on any premises which that person has power to enter, being an article or substance which appears to that person to have, or be likely to have, a significant adverse impact on the water environment, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary).
12. In the case of any such article or substance as is mentioned in paragraph 11, to take possession of it and detain it for so long as is necessary for all or any of the following purposes namely:
  - (a) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which that person has power to do under that paragraph;
  - (b) to ensure that it is not tampered with before examination of it is completed;

- (c) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to a variation notice, revocation or suspension notice or enforcement notice under these Regulations.

**13.**—(1) Subject to sub paragraph (2), to require any person whom he has reasonable cause to believe has any information relevant to any examination or investigation under paragraph 3 to answer such questions as the authorised person thinks fit to ask.

(2) The person referred to in sub paragraph (1) may only be required to answer such questions in the absence of persons other than—

- (a) a person nominated by that person to be present; and
- (b) any person whom the authorised person may allow to be present.

**14.** To require the production of, or if the information is recorded electronically, the furnishing of extracts from, any records which are—

- (a) required to be kept under these Regulations ; or
- (b) necessary for that person to see for the purposes of an examination or investigation under paragraph 3,

and to inspect and take copies of, or of any entry in, the records.

**15.** To require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred by this regulation.

**16.** To carry out borings or other works on any premises and to install, keep or maintain monitoring or other apparatus there.

## PART 2

### Procedures etc.

**17.** Any person authorised by SEPA under regulation 31(4) must produce evidence of that person's authorisation before that person exercises any powers conferred by that authorisation.

**18.** Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this paragraph shall only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
- (b) either—
  - (i) with the consent of a person who is in occupation of those premises; or
  - (ii) under the authority of a warrant by virtue of Part 3 to this Schedule.

**19.** Except in an emergency, if an authorised person proposes to enter any premises and—

- (a) entry has been refused and that person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) that person apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this regulation may only be effected under the authority of a warrant issued in accordance with Part 3 of this Schedule.

**20.** If an authorised person proposes to exercise the power conferred by paragraph 11 in the case of an article or substance found on any premises, that person must, if so requested by a person

who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

**21.** Before exercising the power conferred by paragraph 11 in the case of any article or substance, an authorised person must consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
- (b) such other persons,

as appear to that authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which that person proposes to do or cause to be done under the power.

**22.** No answer given by a person in pursuance of a requirement imposed under paragraph 13 will be admissible in evidence against that person in any criminal proceedings.

**23.** Nothing in this schedule will be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

**24.** A person who enters any premises in the exercise of any power conferred by these Regulations must leave the premises as effectually secured against unauthorised entry as that person found them.

## PART 3

### Issue of warrants

**25.** If a sheriff or justice of the peace is satisfied that—

- (a) there are reasonable grounds for the exercise in relation to any premises of a power under Part 1 of this Schedule; and
- (b) one or more of the conditions specified in paragraph 26 is fulfilled in relation to those premises,

the sheriff or justice of the peace may by warrant authorise SEPA to designate a person to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

**26.** The conditions mentioned in paragraph 25 are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises, and the case is one of urgency;  
or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

**27.** In a case where paragraph 25 applies, a justice of the peace or sheriff must not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless that person is also satisfied that the notice required by paragraph 18 has been given and that the period of that notice has expired.

**28.** Every warrant under this Schedule will continue in force until the purposes for which the warrant was issued have been fulfilled.

## PART 4

### Evidence

- 29.** In any legal proceedings it will be presumed until the contrary is shown, that any sample—
- (a) taken by virtue of the powers under this Schedule at a gauge, measuring station or other place provided in compliance with a condition imposed in an authorisation, is a sample, taken in accordance with those powers, of what was passing to the water environment at the place and the time recorded;
  - (b) taken in exercise of the powers under this Schedule in circumstances that an authorised person has agreed with the operator or responsible person the time when, and the points at which, samples are to be taken, is a sample taken under that agreement and in accordance with those powers, of what was passing to the water environment at the place and time recorded.
- 30.** Subject to paragraph 22, information obtained in consequence of the exercise of a power under this Schedule, with or without the consent of any person, will be admissible in evidence against that or any other person.
- 31.** Without prejudice to the generality of paragraph 30, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a power under this Schedule with or without the consent of any person in occupation of the premises, is admissible in evidence in any proceedings against that or any other person.

## PART 5

### Compensation

- 32.—**(1) SEPA must compensate any person who has sustained loss or damage by reason of—
- (a) the exercise by an authorised person of the powers in paragraphs 1, 2 or 16; or
  - (b) the failure of an authorised person to perform the duty imposed by paragraph 24,
- unless the damage is attributable to the fault of the person who sustained it.
- (2) SEPA must compensate any person for damage or destruction of an article or substance in exercise of powers under paragraph 11 if that article or substance was found not to have a significant adverse impact on the water environment.
- (3) Any dispute as to a person's entitlement to compensation under paragraph (1) or (2), or as to the amount of such compensation, is to be determined by a single arbiter appointed by agreement between SEPA and the person claiming damage, or in default of agreement, by the President of the Lands Tribunal for Scotland.
- (4) An authorised person is not liable in any civil or criminal proceedings for anything done in purported exercise of any of the powers conferred on that person in accordance with regulation 31(4) if the court is satisfied that it was done in good faith and that there were reasonable grounds for doing it.

## Compensation for grant of rights

### Interpretation

#### 1. In this Schedule—

“the 1963 Act” means the Land Compensation (Scotland) Act 1963(a);

“grantor” means a person who has granted or joined in granting any rights pursuant to regulation 34; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to regulation 34.

### Period for making an application

2. An application for compensation must be made to the person referred to in regulation 34(6) or, if regulation 33(1)(b) applies and no person has been found, to SEPA, within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates—

- (a) 12 months after the date of the grant of those rights;
- (b) if there is an appeal against the works notice which imposed the requirements in relation to which the rights in question were granted, 12 months after the date of the final determination or abandonment of the appeal; or
- (c) 6 months after the date on which the rights were first exercised.

### Form of application

3.—(1) An application for compensation must be made in writing and delivered or sent by pre paid post to the last known address for correspondence of the person liable.

(2) The application must contain, or be accompanied by—

- (a) a description of the grant of rights in respect of which the grantor is applying for compensation, and of any relevant plans;
- (b) a description of the grantor’s relevant interest in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4, indicating how the amount applied for under each sub-paragraph has been calculated.

### Loss and damage for which compensation payable

4. Compensation is payable under this Schedule for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;

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(a) 1963 c.51; amended by the New Towns Act 1966 (c.44); the Town and Country Planning (Scotland) Act 1969 (c.30); the Tribunals and Enquiries Act 1971 (c.62); the Town and Country Planning (Scotland) Act 1972 (c.52); the Statute Law (Repeals) Act 1974 (c.22); the Interpretation Act 1978 (c.30); the Local Government, Planning and Land Act 1980 (c.65); the Housing (Scotland) Act 1987 (c.26); the Statute Law (Repeals) Act 1989 (c.43); the Planning and Compensation Act 1991 (c.34); the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11); and the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5).

- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the rights or the exercise of them;
  - (ii) does not consist of depreciation in the value of that interest; and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(a) in pursuance of a notice to treat served on the date on which the rights were granted;
- (c) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is attributable to the grant of the rights or the exercise of them; and
- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the rights and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal under paragraph 6).

#### **Basis on which compensation assessed**

5.—(1) The rules set out in section 12 of the 1963 Act (rules for assessing compensation) so far as applicable and subject to any necessary modifications, have effect for the purposes of paragraph 4 as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) If the relevant interest in respect of which compensation is to be assessed is subject to a standard security within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(b)—

- (a) the compensation will be assessed as if the interest were not subject to that security;
- (b) no compensation will be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security); and
- (c) any compensation which is payable in respect of the interest which is subject to the security must be paid (subject to the maximum sum due thereunder) to the creditor in that security or, if there is more than one creditor, to the first ranking creditor and must, in either case, be applied by that person as if it were proceeds of sale.

#### **Payment of compensation and determination of disputes**

6.—(1) Amounts of compensation determined under this Schedule is payable—

- (a) if the person to whom the rights were granted and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) if the person to whom the rights were granted and the grantor or such a creditor agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; or
- (c) in any other case, subject to any direction of the Lands Tribunal for Scotland as soon as reasonably practicable after the amount of the compensation has been finally determined.

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(a) 1947 c.42; as amended by the Statute Law Revision Act 1950 (c.6); the Statute Law Revision Act 1953 (c.5); the Tribunals and Inquiries Act 1958 (c.66); the War Damage Act 1964 (c.25); the Land Compensation (Scotland) Act 1973 (c.56); the Criminal Procedure (Scotland) Act 1975 (c.21); the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23); the Gas Act 1986 (c.44); the Electricity Act 1989 (c.29); the National Health Service and Community Care Act 1990 (c.19); the Coal Industry Act 1994 (c.21); the Postal Services Act 2000 (c.26); the Land Reform (Scotland) Act 2003 (asp 2) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

(b) 1970 c.35.

(2) Any question of disputed compensation must be referred to and determined by the Lands Tribunal for Scotland.

(3) In relation to the determination of any such questions, sections 9 and 11 of the 1963 Act (procedures on reference to the Lands Tribunal and expenses) apply as if—

- (a) the reference in section 9(1) of the 1963 Act to section 8 were a reference to sub paragraph (1) above; and
- (b) references in section 11 of the 1963 Act to the acquiring authority were references to the person to whom the rights were granted.

## SCHEDULE 8

Regulation 37

### Register

1. The register maintained by SEPA under regulation 37 must contain all particulars of:
  - (a) any application made to SEPA for an authorisation;
  - (b) any notice to the applicant by SEPA under regulation 13(2), 14(1) or 16(2);
  - (c) any advertisement published pursuant to regulation 13 and any representations made by any person in response to such an advertisement, other than representations which the person who made them requested should not be placed in the register;
  - (d) in a case where any such representations are omitted from the register at the request of the person who made them, a statement by SEPA that representations have been made which have been the subject of such a request (but such statement must not identify the person who made the representations in question);
  - (e) any representations made by any public authority under regulation 12(2);
  - (f) any authorisation granted, or deemed to be granted, under these Regulations;
  - (g) in the case of an application in respect of a controlled activity that SEPA considered likely to have a significant adverse impact on the water environment, the main reasons for the grant or refusal of the application, the matters considered in determining the application, and details of any mitigation measures to be taken;
  - (h) any authorisation imposed by SEPA;
  - (i) any application made to SEPA for the variation, transfer or surrender of an authorisation;
  - (j) any variation, transfer and surrender of, or cessation of activity permitted under, any authorisation granted by SEPA;
  - (k) any suspension or revocation of an authorisation granted by SEPA;
  - (l) any notice issued by SEPA withdrawing or modifying a variation notice, a notice of surrender or a notice of suspension or revocation;
  - (m) any enforcement notice, issued by SEPA;
  - (n) any notice issued by SEPA withdrawing or modifying any enforcement notice;
  - (o) any notice of appeal against a decision by SEPA or a notice served by it and of the documents relating to the appeal mentioned in paragraph 2(a), (d) and (e) of Schedule 9;
  - (p) any representations made by any person in response to a notice given under paragraph 6 of Schedule 9, except where the person making the representation has requested that the representation be omitted from the register;
  - (q) where paragraph (n) applies a statement that representations have been made which have been the subject of such a request (but such statement must not identify the person who made the representations);
  - (r) any written notification of the determination by the Scottish Ministers of an appeal and any report accompanying any written notification;
  - (s) any monitoring information relating to the carrying on, or the causing or permitting of the carrying on, of a controlled activity under an authorisation granted by SEPA which has been obtained by it as a result of its own monitoring or furnished to it in writing by virtue of a condition of the authorisation or under regulation 36(2);
  - (t) in a case where any monitoring information is omitted from the register by virtue of regulation 38, a statement by SEPA, based on the monitoring information from time to time obtained by or furnished to it, indicating whether or not there has been compliance with any relevant condition of the authorisation;

- (u) any other information furnished in compliance with a condition of the authorisation, a variation notice, enforcement notice, suspension notice or works notice, or by virtue of regulation 36(2);
- (v) any direction given to SEPA under any provision of these Regulations;
- (w) convictions for offences under these Regulations;
- (x) any exemptions granted by SEPA in accordance with Article 6(3) of the Groundwater Directive 2006; and
- (y) any emissions, discharges or losses of any of the priority substances or pollutants listed in Part A of Annex I to the Priority Substances Directive.

2. If an application is withdrawn by the applicant at any time before it is determined, all particulars relating to that application which are already in the register must be removed from the register not less than two months and not more than three months after the date of withdrawal of the application, and no further particulars relating to that application may be entered in the register.

3. Nothing in paragraph 1 will require SEPA to keep in the register maintained by it—

- (a) monitoring information relating to a particular controlled activity 6 years after that information was entered in the register; or
- (b) information relating to a controlled activity which has been superseded by new information relating to that controlled activity 6 years after that new information was entered in the register.

4. Paragraph 3(a) does not apply to any aggregated monitoring data relating to specific impacts or classes of impacts on the water environment from controlled activities generally or from any class of controlled activities.

## Procedures in connection with appeals to the Scottish Ministers

1. A person who wishes to appeal to the Scottish Ministers under regulation 50 must give to the Scottish Ministers written notice of the appeal together with the documents specified in paragraph 2 and must at the same time send to SEPA a copy of that notice together with copies of the documents specified in paragraph 2(a) and (f).

2. The documents mentioned in paragraph 1 are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application;
- (c) a copy of any relevant authorisation;
- (d) a copy of any relevant correspondence between the appellant and SEPA;
- (e) a copy of any decision or notice which is the subject matter of the appeal; and
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

3. An appellant may withdraw an appeal by notifying the Scottish Ministers in writing, and must send a copy of that notification to SEPA.

4. Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given—

- (a) in the case of an appeal under regulation 50(a), (b) or (c), before the expiry of the period of three months beginning with the date of the decision or deemed decision which is the subject matter of the appeal;
- (b) in the case of an appeal under regulation 50(i), before the date on which the suspension or revocation takes effect;
- (c) in the case of an appeal under regulation 50(d), (e), (f), (g), or (h), before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;
- (d) in the case of an appeal under regulation 50(j) or (k), before the expiry of 21 days beginning with the date of the notice which is the subject matter of the appeal.

5. The Scottish Ministers may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in paragraph 4(a), (c), or (d).

6. Subject to paragraph 9, SEPA must, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to—

- (a) any person who made representations to SEPA with respect to the subject matter of the appeal; and
- (b) any person who appears to SEPA to be affected or likely to be affected by, or have an interest in, the subject matter of the appeal.

7. A notice under paragraph 6 must—

- (a) state that the notice of appeal has been given;
- (b) state the name of the appellant and the address of the site where the controlled activity is being carried on;
- (c) describe the application or authorisation to which the appeal relates; and
- (d) state that representations with respect to the appeal may be made to the Scottish Ministers in writing by any recipient of the notice within a period of 21 days beginning with the date of the notice and that copies of any representations so made will be furnished to the appellant and to SEPA;

- (e) explain that any such representations made by any person will be entered in a public register unless that person requests in writing that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request;
- (f) state that if a hearing is to be held wholly or partly in public, a person mentioned in paragraph 6(a) or (b) who makes representations with respect to the appeal will be notified of the date of the hearing.

8. SEPA must, within 14 days of sending a notice under paragraph 6—

- (a) notify the Scottish Ministers of the persons to whom and the date on which the notice was sent; and
- (b) indicate whether it wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

9. In the event of an appeal being withdrawn, SEPA must give notice of the withdrawal to every person to whom notice was given under paragraph 6.

### **Hearing procedure**

10. Before determining an appeal under regulation 51, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them (“the appointed person”) and they must do so in any case where a request is made by the appellant or SEPA to be so heard.

11. A hearing held under paragraph 10 may, if the appointed person so decides, be held wholly, or held to any extent, in private.

12. If the Scottish Ministers cause a hearing to be held under paragraph 10, they must give the appellant and SEPA at least 28 days’ written notice (or such shorter period of notice as they may agree with the appellant and SEPA) of the date, time and place fixed for the holding of the hearing.

13. In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice mentioned in paragraph 12 in a newspaper circulating in the locality in which the controlled activity is carried on or is to be carried on;
- (b) serve a copy of that notice on every person mentioned in paragraph 6 who has made representations to the Scottish Ministers.

14. The Scottish Ministers may vary the date fixed for the holding of any hearing and paragraphs 12 and 13 must apply to the variation of a date as they applied to the date originally fixed.

15. The Scottish Ministers may also vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to them to be reasonable.

16. The persons entitled to be heard at any hearing are the appellant and SEPA.

17. Nothing in paragraph 16 prevents the appointed person from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

18. After the conclusion of a hearing, the appointed person must make a report to the Scottish Ministers in writing which must include the conclusions and recommendations of that person or the reasons for not making any recommendation.

**19.** Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973<sup>(a)</sup> (which relates to the costs of and holding of local inquiries) apply to hearings held under this paragraph by an appointed person as they apply to inquiries held under that section, but with the following modifications—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc.) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses) for the references to the Minister of references to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
  - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
  - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
  - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses) for the reference to the Minister, the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

### **Procedure for written representations**

**20.** Where the appeal is to be disposed of on the basis of written representations, SEPA must submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents mentioned in paragraph 2(a) and (f).

**21.** The appellant must make any further representations by way of reply to any representations made from SEPA not later than 28 days after the date of submission of those representations by SEPA under paragraph 20.

**22.** Any representations made by the appellant or SEPA must bear the date on which they are submitted to the Scottish Ministers.

**23.** When SEPA or the appellant submits any representations to the Scottish Ministers they must at the same time send a copy of them to the other party.

**24.** The Scottish Ministers must send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 6 and must allow the appellant and SEPA a period of not less than 14 days in which to make representations on them.

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(a) 1973 c.65.

25. The Scottish Ministers may in a particular case—

- (a) set later time limits than those mentioned in paragraphs 20, 21 and 24;
- (b) require exchanges of representations between the parties in addition to those mentioned in paragraphs 20 and 21.

**Determination and publication of appeal**

26. The Scottish Ministers must give notice to the appellant of their determination of the appeal and their reasons for that determination, and must provide the appellant with a copy of any report mentioned in paragraph 18.

27. The Scottish Ministers must at the same time send a copy of the notice of the determination of the appeal, their reasons for that determination and a copy of any report mentioned in paragraph 18 to SEPA and to any person who made representations to the Scottish Ministers during the appeal.

## Transitional and Savings Provisions

## PART 1

## Water Environment

1. If on 31st March 2011 an authorisation under regulation 8 or 9 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005<sup>(a)</sup> (“the 2005 Regulations”) is in force, that authorisation will be treated as an authorisation granted under these Regulations which is subject (unless subsequently varied) to the same conditions, if any, as that authorisation.

2. For the avoidance of doubt, paragraph 1 applies to any authorisation that is treated as an authorisation by virtue of paragraphs 6, 11, 14 or 26 of Schedule 10 to the 2005 Regulations.

3. If on or before 31st March 2011 a person—

- (a) has applied under regulation 12 of the 2005 Regulations for an authorisation under regulations 8 or 9 of the 2005 Regulations;
- (b) has received notice from SEPA under regulation 11 of the 2005 Regulations that SEPA is treating an activity as an activity in respect of which an application has been made;
- (c) has applied under regulation 21 of the 2005 Regulations for a variation of an authorisation under regulations 8 or 9 of the 2005 Regulations;
- (d) has applied under regulation 22 of the 2005 Regulations to transfer an authorisation under regulation 9 of the 2005 Regulations; or
- (e) has applied under regulation 24 of the 2005 Regulations to surrender an authorisation under regulation 9 of the 2005 Regulations;

and that application has not been determined, paragraph 4 applies.

4. Notwithstanding the revocation of the 2005 Regulations by regulation 58, regulations 8 to 10, 12 to 17, and 46 to 49 of the 2005 Regulations continue to have effect in relation to any application referred to in paragraph 3.

5. If an authorisation is granted in respect of an application referred to in paragraph 3, that authorisation will be treated as an authorisation granted under these Regulations.

6. Notwithstanding the revocation of the 2005 Regulations by regulation 58—

- (a) any enforcement notice issued by SEPA in accordance with regulation 28 of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 32 of these Regulations;
- (b) any variation notice issued by SEPA in accordance with regulation 20(2) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 23(3) of these Regulations;
- (c) any authorisation issued by SEPA under regulation 27(1) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 31(4) of these Regulations;
- (d) any notice of suspension or revocation issued by SEPA in accordance with regulation 26(1) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 29(1) of these Regulations;

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(a) S.S.I. 2005/348.

- (e) any application for compensation made by a person in accordance with regulation 30(5) of the 2005 Regulations before 31st March 2011 has effect as if it had been made under regulation 34(5) of these Regulations;
- (f) any court proceedings commenced by SEPA under regulation 31 of the 2005 Regulations before 31st March 2011 will be treated as if they had been commenced under regulation 35 of these Regulations;
- (g) any notice served by the Scottish Ministers or SEPA under regulation 32 of the 2005 Regulations before 31st March 2011 has effect as if it had been served under regulation 36 of these Regulations;
- (h) any application for the determination of commercial confidentiality made by a person in accordance with regulation 35 of the 2005 Regulations before 31st March 2011 has effect as if it had been made under regulation 39 of these Regulations;
- (i) any notice of the registration of commercially confidential information and any notice of determination of commercial confidentiality issued by SEPA in accordance with regulation 36(1) or 36(3) of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 40(1) or 40(3) of these Regulations, as appropriate;
- (j) any notice of review and any notice of the determination of a review issued by SEPA under regulation 37(2) or (37(4) of the 2005 Regulations before 31st March 2011 will be treated as if it had been issued under regulation 41(2) or 41(4) of these Regulations, as appropriate;
- (k) any direction issued by the Scottish Ministers under regulation 39 of the 2005 Regulations before 31st March 2011 will be treated as if it had been issued under regulation 43 of these Regulations;
- (l) any order issued by a court under regulation 45 of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 49 of these Regulations;
- (m) any appeal under regulation 46 of the 2005 Regulations, notice of which has been given to the Scottish Ministers in accordance with paragraph 1 of Schedule 9 to the 2005 Regulations before 31st March 2011, will be treated as if it had been commenced under Part VIII of these Regulations;
- (n) any guidance issued by the Scottish Ministers under regulation 52 of the 2005 Regulations before 31st March 2011 has effect as if it had been issued under regulation 56 of these Regulations.

## PART 2

### Pollution Control

**7.** If on 31st March 2011 a relevant authorisation is in force in respect of an activity which is a controlled activity, the provisions of paragraphs 8 to 11 apply.

**8.** The relevant authorisation referred to in paragraph 7 will be treated as an authorisation granted under these Regulations.

**9.** SEPA must, insofar as it has not done so under paragraph 15 of Schedule 10 to the 2005 Regulations, review all relevant authorisations referred to in paragraph 7 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.

**10.** When carrying out a review in accordance with paragraph 9, SEPA must—

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;

- (b) where it considers that the authorised activity has or is likely to have a significant adverse impact on the water environment—
  - (i) assess the indirect effects of that impact on any other aspects of the environment likely to be significantly affected;
  - (ii) consider any likely adverse social and economic effects of that impact and of any indirect environmental effects identified in accordance with sub-paragraph (i); and
  - (iii) consider the likely environmental, social and economic benefits of the activity;
- (c) assess the impact of the authorised activity on the interests of other users of the water environment;
- (d) assess what steps may be taken to ensure efficient and sustainable water use;
- (e) apply the requirements of the legislation referred to in Part 1 of Schedule 4, including, in particular, the provisions of Article 4 of the Directive and Article 6 of the Groundwater Directive 2006; and
- (f) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4,

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

**11.** The review required under paragraph 9, and the steps required under paragraph 10 must be completed by 22nd December 2012.

**12.** Where an application for a relevant authorisation in respect of an activity that is a controlled activity has been made before 31st March 2011 but has not been determined by that date, the provisions of paragraphs 13 and 14 apply.

**13.** SEPA must, when considering an application referred to in paragraph 12—

- (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 to the 2005 Regulations; and
  - (ii) regulation 24(5) of the 2005 Regulations; and
- (d) have regard to the provisions of the legislation referred to in part 2 of Schedule 4 to the 2005 Regulations,

and must, if they grant the application, ensure that the relevant authorisation complies with the requirements of the 2005 Regulations (notwithstanding their repeal by regulation 58 of these Regulations).

**14.** If an application is granted in accordance with paragraph 13, it will be treated, for the purposes of these Regulations, as an authorisation granted under these Regulations.

**15.** If, on or after 31st March 2011, an application for a relevant authorisation is made in respect of an activity which is a controlled activity, the provisions of paragraphs 16 and 17 apply.

**16.** SEPA must, when considering an application referred to in paragraph 15—

- (a) assess the risk to the water environment posed by the carrying on of the authorised activity;
- (b) where the application is in respect of an activity that it considers has or is likely to have a significant adverse impact on the water environment—
  - (i) assess the indirect effects of that impact on any other aspects of the environment likely to be significantly affected;
  - (ii) consider any likely adverse social and economic effects of that impact and of any indirect environmental effects identified in accordance with sub-paragraph (i); and

- (iii) consider the likely environmental, social and economic benefits of the activity;
- (c) assess the impact of the controlled activity on the interests of other users of the water environment;
- (d) assess what steps may be taken to ensure efficient and sustainable water use;
- (e) apply the requirements of the legislation referred to in Part 1 of Schedule 4, including, in particular, the provisions of Article 4 of the Directive and Article 6 of the Groundwater Directive 2006; and
- (f) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4,

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

17. If an application is granted in accordance with paragraph 16, it will be treated, for the purposes of these Regulations, as an authorisation granted under these Regulations.

18. In this Part—

- (a) “authorised activity” means an activity referred to in paragraph 7, 12 or 15, 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(a);
  - (ii) a registration or authorisation under the Radioactive Substances Act 1993(b) (but not an exemption from a requirement for such registration or authorisation);
  - (iii) a permit under the Pollution Prevention and Control (Scotland) Regulations 2000(c); and
  - (iv) a waste management licence under the Waste Management Licensing (Scotland) Regulations 2011.

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(a) 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).

(b) 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).

(c) 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.

## SCHEDULE 11

Regulation 58

### Amendments

#### **Amendments to the Town and Country Planning (Scotland) Act 1997**

1. In section 26 of the Town and Country Planning (Scotland) Act 1997<sup>(a)</sup> (meaning of “development”) in subsection (2A)—

- (a) omit “irrigation or”; and
- (b) at the end insert “, but does not include the carrying out of irrigation work”.

#### **Amendments to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

2. In Schedule 1, Part 6 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992<sup>(b)</sup>, in paragraph (1) of Class 18A (water management)—

- (a) omit “irrigation or”; and
- (b) at the end insert “, but not including the carrying out of irrigation work”.

#### **Amendment to the Environmental Impact Assessment (Scotland) Regulations 1999**

3. In column 1 of the table in Schedule 2 to the Environmental Impact Assessment (Scotland) Regulations 1999<sup>(c)</sup> at “1. Agriculture and aquaculture”, in entry (b) for “irrigation and land drainage projects” substitute “drainage projects, but excluding irrigation projects”.

4. In column 2 of the table referred to in paragraph 3, at “1. Agriculture and aquaculture” omit—

- (a) entries (i) and (ii); and
- (b) the words “and for the purposes of this entry, “agricultural land” and “agricultural unit” have the same meaning as in Part 6 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992”,

and replace with “The area of the works exceeds one hectare”.

#### **Savings Provision**

5. Nothing in paragraphs 1 to 4 will affect the continued operation of any of the provisions amended by them, as such provisions relate to—

- (a) any application lodged with, or received by, a planning authority or the Scottish Ministers prior to the commencement of these Regulations, or any appeal in relation to such an application;
- (b) any matter in relation to which an enforcement notice has been issued prior to the commencement of these Regulations; or,
- (c) the completion of any permitted development begun before the commencement date of these Regulations.

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(a) 1997 c.8.  
(b) S.I. 1992/223.  
(c) S.S.I. 1999/1.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 20 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, and to the terms of Article 14.1 of the Directive. They also implement, in part, 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) (“the Groundwater Directive 1980”) and Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration (O.J. L 372, 27.12.2006, p.19) (“the Groundwater Directive 2006”) and Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy (O.J. L 348, 24.12.2008, p.84).

Part I of the Regulations sets out the scope and application of the Regulations. Regulation 2 and Schedule 1 set 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 sets out the application of the Regulations. Regulation 3(1) and schedule 2 set out the category of activities to which the Regulations apply — the “controlled activities”. Regulation 4 prohibits the carrying out of any controlled activity unless authorised under the Regulations. Regulation 5 makes provision for a duty to secure efficient and sustainable water use.

Part II of the Regulations describes the authorisations which the Scottish Environment Protection Agency (“SEPA”) may give and which are necessary to avoid breach of the prohibition in regulation 4. Regulation 6 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 7 makes provision for certain activities which are not normally considered to have a significant adverse impact on the water environment (unless cumulatively with other activities) to be authorised in accordance with a registration, to which conditions may be attached. Regulation 8, which applies where an authorisation under regulations 6 or 7 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 7 or 8 are set out in regulation 15. Regulation 9 makes specific provision to ensure that any activities authorised are fully compliant with the Groundwater Directive 1980 and the Groundwater Directive 2006. Regulation 10 gives SEPA powers to impose an authorisation where it considers an unauthorised activity is being carried out in contravention of regulation 4, or an activity regulated under regulation 6 requires additional measures to protect the water environment, or where an existing authorisation under regulation 7 would be more appropriately authorised under regulation 8, or vice versa.

Part III of the Regulations makes provision for applications and their determination. Regulation 11 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. Additional information requirements apply where SEPA considers the proposed activity to be likely to have a significant adverse impact upon the water environment. Applicants may request a screening opinion from SEPA as to whether the proposed activity is likely to do so. Regulation 12 requires SEPA to consult public authorities with an interest in the application where the proposed activity has, or is likely to have, a significant adverse impact on the water environment. 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. It also provides that SEPA must make the reasons for its decision publicly available where the application is in respect of an activity that is likely to have a significant adverse impact on the water environment. Regulation 16 makes provision about consideration by SEPA of third party representations. Regulation 17 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 18 allows for the determination by SEPA of applications, variations and suspensions under an accelerated procedure in an emergency (as defined in regulation 2), and Regulation 19 enables the Scottish Ministers to direct SEPA in that regard. Regulation 20 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 21 requires SEPA to periodically review the authorisations it grants under regulations 7 and 8, and to make recommendations to Scottish Ministers regarding any changes that may be necessary to Schedule 3 (general binding rules). Regulation 22 gives power to SEPA to review any authorisation under regulations 7 or 8 and regulation 23 makes provision for the procedure to be followed in such a variation. Regulation 24 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 25 makes provision for transfer of an authorisation and regulation 26 makes provision for conditions to be attached to such transfers. Regulation 27 makes provision in respect of the surrender of authorisations and regulation 28 makes provision for the determination of a surrender application in relation to authorisations under Regulation 8. Regulation 29 makes provision for revocation or suspension of an authorisation. Regulation 30 enables SEPA to issue consolidated authorisations.

Part V makes provision for enforcement of the Regulations. Regulation 31 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 31 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 32 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 33 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 34 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 35 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 36 gives Scottish Ministers power to obtain information from SEPA, and for SEPA to obtain information from other persons. Regulation 37 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 38 to 43 make provision in respect of confidential information. Regulation 38 defines confidential information; regulation 39 makes provision for a person giving information to have it determined commercially confidential; regulation 40 makes provision for SEPA itself to determine that information is commercially confidential; regulation 41 enables SEPA to periodically review its determinations of commercial confidentiality and regulation 42 makes provision in relation to information that has been determined not to be commercially confidential. Regulation 43 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 44(1) specifies the actions or inactions which are created as offences under the Regulations. Regulation 44(2) makes provision for penalties on conviction. Regulation 45 makes provision in respect of the commission of offences by bodies corporate. Regulation 46 makes provision for when the commission of an offence by one person is due to the act or default of another person. Regulation 47 makes provision as to the admissibility of evidence in specified circumstances. Regulation 48 specifies defences to the offences set out in Regulation 44(1). Regulation 49 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 50 specifies the circumstances in which appeals may be made to Scottish Ministers. Regulation 51 makes provision as to the decisions Scottish Ministers may make and the action to be taken to implement those decisions. Regulation 52 makes provision for the continuation or the suspension of the effect of the decision appealed against. Regulation 53 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 54 applies the Regulations to the Crown. Regulation 55 makes provision for the application of the Regulations to SEPA. Regulation 56 makes provision for Scottish Ministers to issue guidance to SEPA. Regulation 57 makes provision in respect of all notices served under the Regulations. Regulation 58 revokes the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) (“the 2005 Regulations”) subject to the transitional and savings provisions contained in Schedule 10 to the Regulations, and introduces the amendments made by Schedule 11. Schedule 10 makes provision for the transfer of authorisations under the 2005 Regulations to the new regime, and for the interaction between existing pollution control regimes and this regime. Schedule 11 amends the Town and Country Planning (Scotland) Act 1997 and related legislation so that irrigation will no longer be subject to planning controls (but will require authorisation under these Regulations).

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