Draft Regulations laid before the Scottish Parliament under section 36(6) of the Water Environment and Water Services (Scotland) Act 2003, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

ENVIRONMENTAL PROTECTION

WATER

The Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009

Made - - - - 2009

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20, 25 and 36(2) and (3) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003(**a**) and all other powers enabling them to do so.

In accordance with section 21(1) of that Act, they have consulted with (a) SEPA, (b) every responsible authority, (c) such persons appearing to them to be representative of the interests of local government, industry, agriculture, fisheries and small businesses respectively as they thought fit, and (d) such other persons as they thought fit.

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

Citation and commencement

1. These Regulations may be cited as the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"the Act" means the Water Environment and Water Services (Scotland) Act 2003;

"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**); and

(**a**) 2003 asp 3; section 20 was amended by regulation 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348).
(**b**) O.J. L 372, 27.12.2006, p.19.

"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(**a**).

Provisions of the Act which are modified for the purpose of giving effect to the Groundwater Directive 2006 and the Priority Substances Directive

3. For the purpose of giving effect to the Groundwater Directive 2006 and the Priority Substances Directive the provisions of Part 1 of the Act have effect with the following modifications—

(a) in section 2(1) and (2) (the general duties) after "Directive" insert ", the Groundwater Directive 2006 and the Priority Substances Directive"; and

(b) in section 28(1) (interpretation of Part 1)—

(i) after the definition of "groundwater" insert—

""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,"; and

(ii) after the definition of "loch" insert—

""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,".

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

4.—(1) The Water Environment (Controlled Activities) (Scotland) Regulations 2005(**b**) are amended in accordance with this regulation.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of "the Groundwater Directive" substitute—

""the Groundwater Directive 1980" means Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances;

"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) after the definition of "general binding rules" insert—

""hazardous substance" means a substance identified in accordance with Schedule 2;"; and

(c) after the definition of "premises" insert—

""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;".

(3) In regulation 4(1)(b) (application of the Regulations) for "the substances listed in Schedule 2" substitute "any hazardous substance or any other pollutant".

(4) In regulation 10 (Groundwater Directive)—

(a) before paragraph (1) insert—

"(A1) When considering an application in respect of a controlled activity which—

(a) is made on or after the date on which the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009 came into force but before 22nd December 2013; and

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(**a**) O.J. L 348, 24.12.2008, p.84.
(**b**) S.S.I. 2005/348; amended by S.S.I. 2006/553, 2007/219 and 2008/54.

(b) falls within the provisions of the Groundwater Directive 1980,

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

(b) at the beginning of paragraph (1) insert "Subject to paragraph (A1)" and after both references to "the Groundwater Directive" in that paragraph insert "2006"; and

(c) at the end of paragraph (2) insert "1980 and Article 6 of the Groundwater Directive 2006".

(5) In regulation 28(1)(b)(iii) (enforcement notices) for "any of the substances listed in Schedule 2" substitute "any hazardous substance or any other pollutant".

(6) For Schedule 2 (substances referred to in regulations 4(1)(b) and 28(1)(b)(iii)) substitute the Schedule set out in Schedule 1 to these Regulations.

(7) In rule 16 of Schedule 3, for "substances listed in Schedule 2 of these Regulations" substitute "any hazardous substance".

(8) For Schedule 4 (legislation to be applied by SEPA before determining an application) substitute the Schedule set out in Schedule 2 to these Regulations.

(9) In Schedule 8 (register)—

(a) after paragraph 1(t) omit "and"; and

(b) after paragraph 1(u) insert—

"(v) any exemptions granted by SEPA in accordance with Article 6(3) of the Groundwater Directive 2006; and

(w) 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.".

Revocations

5. The Regulations specified in Schedule 3 are revoked.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

SCHEDULE 1

Regulation 4(6)

Schedule 2 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005

"SCHEDULE 2

Regulation 2(1)

Hazardous Substances

1. SEPA shall 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 shall 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, where those are considered to be hazardous.

3. SEPA shall publish and maintain a list of the substances identified in accordance with paragraph 1. The list shall 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 shall make copies of the list and a consolidated list available to the public free of charge."

SCHEDULE 2

Regulation 4(8)

Schedule 4 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005

"SCHEDULE 4

Regulation 15(1)

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 (S.I. 2003/3245)

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99)

PART 2

Part 2 of the Nature Conservation (Scotland) Act 2004 (2004 asp 6)

The Conservation (Natural Habitats &c) Regulations 1994 (S.I. 1994/2716)

The Urban Waste Water Treatment (Scotland) Regulations 1994 (S.I. 1994/2842)

The Surface Waters (Shellfish) (Classification) (Scotland) Regulations 1997 (S.I. 1997/2470)

The Surface Waters (Fishlife) (Classification) (Scotland) Regulations 1997 (S.I. 1997/2471)

The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002 (S.S.I. 2002/276)

The Designation of Nitrate Vulnerable Zones (Scotland) (No. 2) Regulations 2002 (S.S.I. 2002/546)

The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (S.S.I. 2003/531)

The Bathing Waters (Scotland) Regulations 2008 (S.S.I. 2008/170)

The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008 (S.S.I. 2008/298)"

SCHEDULE 3

Regulation 5

Revocations

Regulations revoked	*References*
The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1990	S.I. 1990/126
The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1992	S.I. 1992/574
The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1998	S.I. 1998/250
The Surface Waters (Dangerous Substances) (Classification) (Scotland) Regulations 1998	S.I. 1998/1344

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ("the Regulations") give effect to community obligations arising under Directive 2006/118/EC of the European Parliament and of the Council on the Protection of Groundwater against pollution and deterioration ("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 ("the Priority Substances Directive").

Regulation 3 applies modified provisions of the Water and Environment and Water Services (Scotland) Act 2003 ("the Act").

- Section 2(1) and (2) of the Act is modified so as to provide that the Scottish Ministers, SEPA, and the responsible authorities must exercise their functions so as to secure compliance with the Groundwater Directive 2006 and the Priority Substances Directive.
- Section 28 of the Act is modified to introduce definitions for the Groundwater Directive 2006 and the Priority Substances Directive.

Regulation 4 amends the Water Environment (Controlled Activities) (Scotland) Regulations 2005 ("the 2005 Regulations").

- Regulation 2(1) of the 2005 Regulations is amended to introduce definitions for the Groundwater Directive 2006 and the Priority Substances Directive, and to redefine "the Groundwater Directive" as "the Groundwater Directive 1980". Regulation 2(1) is also amended to introduce a definition of a hazardous substance.
- Regulation 4 of the 2005 Regulations, which applies the 2005 Regulations to direct or indirect discharges into groundwater, is amended to take into account the new definition of a hazardous substance.
- Regulation 10 of the 2005 Regulations is amended to oblige SEPA, when considering an application in respect of a controlled activity, to take into account the Groundwater Directive 2006 and, in respect of applications made before 22nd December 2013, the Groundwater Directive 1980.
- Regulation 28 of the 2005 Regulations, which deals with enforcement notices, is amended in consequence of the new definition of a hazardous substance.
- A substitute Schedule 2 to the 2005 Regulations sets out the criteria for the identification of hazardous substances by SEPA.
- Schedule 3 to the 2005 Regulations, which contains rules concerning controlled activities, is amended to take into account the new definition of a hazardous substance.
- A substitute Schedule 4 to the 2005 Regulations includes the Groundwater Directive 2006 and the Priority Substances Directive on the list of legislation that must be applied by SEPA in its decision-making process under regulation 15. The substitute Schedule also updates the list of legislation that SEPA must have regard to when determining applications under the 2005 Regulations.
- Schedule 8 to the 2005 Regulations is amended to add further particulars to be included in the register SEPA must maintain under Regulation 33 of the 2005 Regulations.

Regulation 5 revokes regulations which have been superseded by the Priority Substances Directive and the Regulations or are otherwise dealt with in Directions by the Scottish Ministers to SEPA.

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