
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 209

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

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)(1);

“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(2);

“the EIA Directive” means Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment(3);

“the Groundwater Directive 1980” means Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances(4);

“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(5);

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

(1) [2004 c.36](#).

(2) 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).

(3) 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).

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

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

- “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⁽⁶⁾;
- “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)⁽⁷⁾ 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;
 - (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

⁽⁶⁾ O.J. L 348, 24.12.2008, p.84.

⁽⁷⁾ [2000 c.7](#); amended by the Communications Act [2003 \(c.21\)](#).

- (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⁽⁸⁾ or Part 4 of the Marine Licensing (Scotland) Act 2010⁽⁹⁾.

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;
- (b) any conditions imposed under paragraph (2); and

⁽⁸⁾ 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).

⁽⁹⁾ 2010 asp 5.

- (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⁽¹⁰⁾;
- (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;

⁽¹⁰⁾ 2004 c.36.

(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⁽¹¹⁾ (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.

(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.

⁽¹¹⁾ 1973 c.65; amended by the Criminal Procedure (Scotland) Act 1975 (c.4) and the Housing and Planning Act 1986 (c.63).

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(12) and the Solway Tweed River Basin District(13), 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(14);
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(15); 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;
 - (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;

(12) 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).

(13) 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).

(14) S.I. 2003/3245.

(15) S.I. 2004/99.

- (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⁽¹⁶⁾;
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004⁽¹⁷⁾; 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.

⁽¹⁶⁾ S.I. 2003/3245.

⁽¹⁷⁾ S.I. 2004/99.

(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.

(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(18) (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.

(18) 1995 c.25, amended by the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323).

(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.

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(**19**).

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(**20**) (“the 2005 Regulations”);
- (b) the Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006(**21**);
- (c) the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2007(**22**);
- (d) regulation 2 of, and the Schedule to, the Water Environment (Diffuse Pollution) (Scotland) Regulations 2008(**23**);
- (e) regulation 4 of, and Schedules 1 and 2 to, the Water Environment (Groundwater and Priority Substances) (Scotland) Regulations 2009(**24**).

(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.

(19) asp 10.

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

(21) S.S.I. 2006/553.

(22) S.S.I. 2007/219.

(23) S.S.I. 2008/54.

(24) S.S.I. 2009/420.

St Andrew's House,
Edinburgh
15th March 2011

R CUNNINGHAM
Authorised to sign by the Scottish Ministers