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## 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 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).