

*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<sup>(1)</sup> 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;

---

(1) 2003 asp 3; section 20 was amended by regulation 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348).

“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<sup>(2)</sup>; and  
 “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<sup>(3)</sup>.

### **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<sup>(4)</sup> 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)—

---

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

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

(4) [S.S.I. 2005/348](#); amended by [S.S.I. 2006/553](#), [2007/219](#) and [2008/54](#).

- (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
    - (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.

St Andrew’s House, Edinburgh  
Date

Authorised to sign by the Scottish Ministers