

Net Zero, Energy and Transport Committee

13th Meeting, 2021 (session 6), Tuesday, 7
December 2021

Subordinate Legislation - The Water Environment
(Controlled Activities) (Scotland) (Amendment)
Regulations 2021 (SSI 2021/412)

Note by the Clerk

Overview of instrument

1. The following Scottish Statutory Instrument (SSI), subject to negative procedure, is being considered at today's meeting:
 - [The Water Environment \(Controlled Activities\) \(Scotland\) \(Amendment\) Regulations 2021 \(SSI 2021/412\)](#)
2. The instrument was laid before the Parliament on 11 November 2021 and comes into force on 1 January 2022 with the exception of regulation 3(4)(j) and regulation 4 of the instrument, which provisions come into force on 1 January 2023.

Purpose of the instrument

3. The regulations provide a regulatory framework for controlling activities which could have an adverse effect on Scotland's water environment, including abstraction, impoundments, engineering, dredging, surface water drainage and pollution.
4. Regular reviews are carried out to identify any policy or legislative changes which may be required to further protect the water environment.
5. These amendments specifically introduce new measures to protect the water environment, incorporate the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 and update controls over the storage and application of organic material.
6. The Policy Note provides further detail on the instrument and is attached at **Annexe A**.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee considered this instrument at [its meeting on 23 November 2021](#) and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit. [Read the official report for the meeting on 23 November 2021.](#)

Committee Consideration

8. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 13 December 2021.

Procedure

9. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
10. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
11. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
12. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
13. Each negative instrument appears on the Net Zero, Energy and Transport Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe A: Policy Note

1) The above instrument is made in exercise of the powers conferred by section 20 and 36(2) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003. The instrument is subject to negative procedure.

Policy Objectives

2) The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR”) (as amended) provide a regulatory framework for controlling activities which could have an adverse effect on Scotland’s water environment, including abstraction, impoundments, engineering, dredging, surface water drainage, and pollution.

Consultation

3) As a matter of good practice, regular reviews are carried out to identify any policy or legislative changes which may be required to further protect the water environment. On this occasion, we proposed to incorporate The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (“SSAFO”) into CAR.

4) Between 20 January 2021 and 13 April 2021, the Scottish Government, in accordance with section 21 of the Water Environment and Water Services (Scotland) Act 2003, consulted on a draft set of proposed amendments to further amend CAR and introduce some new measures, with the aim of protecting the water environment.

5) There were 43 responses to the consultation. There was a mixed response to some of the proposals. The comments in the consultation responses were taken into consideration and a number of the proposed rules redrafted.

Regulatory Amendments

6) The Regulations make amendments to the table in Schedule 3 (General Binding Rules) (“GBRs”) to CAR. An activity in column 1 of the table is authorised if it is carried out in accordance with the rules in column 2, which correspond to that activity.

7) In addition to the consolidation of SSAFO, the regulations update controls over the storage and application of organic materials, with the following key aims:

- to update existing controls for the storage of slurry and silage;
- to introduce controls over the storage of materials associated with energy production from anaerobic digestion;
- to propose new requirements regarding more targeted and efficient application of slurry and liquid digestate.

8) The amendments to existing GBR 18 and six new activities (29-34) will provide further protection of the water environment from agricultural activities along with supporting Scotland’s air quality and climate change targets.

9) The consultation also contained proposals for minor revisions to various existing GBRs in the interests of clarity and effectiveness. The changes made to existing activities 5, 6, 8, 9, 10, 14, 15, 22, 25, 27, and 28 are mostly to clarify the requirements within the activity.

10) The key amendment to activity 18 is in respect of a phased move to low emission precision method application of slurries and digestate. Precision application will protect water quality and air quality, and benefit climate change by reducing greenhouse gas emissions

11) Activity 29 consolidates SSAFO rules on the making and storage of silage in bales or bulk bags as a GBR

12) Activities 30 and 33 relate to the treatment of lightly contaminated silage and slurry through a constructed farm wetland.

13) Activities 31 and 32 relate to consolidation of SSAFO rules on the storage of silage and slurry as GBRs.

14) Activity 34 introduces controls over the storage of liquid digestate, a by-product of the energy production process using anaerobic digestion.

15) The consolidation of SSAFO provisions into CAR includes the removal of an exemption for silage and slurry stores constructed prior to September 1991.

Transitional Periods

16) The precision application rules in activity 18 have transitional periods of up to 5 years, with splash plates for all but smaller farms banned after 1 year.

17) Rules 31, 32 and 34 on the storage of silage, slurry and digestate have transitional periods of 2 years for stores currently regulated by SSAFO and 4 years for previously exempt stores.

Revocations

18) The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 are revoked.

Financial Effects

19) Many of the changes are points of clarification or consolidation of existing legislation.

20) A partial BRIA was published alongside the consultation.