

Delivering Scotland's River Basin Management Plans:

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

Proposed Amendments

**Analysis of consultation responses
and next steps**

1. Introduction

The Water Framework Directive (WFD) introduced a comprehensive framework for protecting and improving the condition of the water environment across Europe through a process of river basin management planning. In December 2015, the second River Basin Management Plans (RBMPs) for Scotland were published. These set out how SEPA, the Scottish Government and Scotland's local authorities and public bodies will work together to protect and improve the environmental quality of our rivers, lochs and seas over the period to 2027.

To facilitate delivery of the objectives set out in the RBMPs, the Water Environment (Controlled Activities) (Scotland) Regulations (CAR) were introduced in 2005. These Regulations provide for controls on a range of activities likely to have an adverse effect on the water environment, including impoundments, abstractions, engineering in or near the water environment, discharges and diffuse pollution. CAR also provides protection of groundwater by controlling the discharge of certain substances to the water environment, including all pesticides.

As a matter of good practice we carry out regular reviews of the effectiveness and transparency of CAR, and make routine amendments as new requirements emerge. A major consolidation exercise was carried out in 2011. Subsequently a number of changes were made to certain general binding rules in 2013.

This consultation, which ran from 8 December 2016 to 2 February 2017, invited stakeholders to respond to proposed changes to The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR).

There were 4 key elements to the consultation:

- proposed points of clarification and consolidation to the general binding rules (GBRs) in Schedule 3 of CAR;
- proposed new general binding rule regarding bank reinforcement;
- proposed integration of the Water Environment (Oil Storage) (Scotland) Regulations 2006 into CAR as general binding rules;
- proposed minor amendments in the interests of clarity.

2. Analysis of Consultation Responses

There were 20 responses to the consultation. The responses were from a number of sources including: individuals, businesses, NGOs, and sector trade associations. The responses are published at: [Delivering Scotland's River Basin Management Plans: The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011 Proposed Amendments - Scottish Government - Citizen Space](#)

Stakeholders were invited to comment on the proposed amendments to the GBRs and a small number of miscellaneous amendments.

Respondents made no comment on the miscellaneous amendments and were generally content with the majority of the proposed GBR amendments. As respondents in the main only commented on the GBRs applicable to their sector, this resulted in a small number of responses to each individual section of the consultation.

The key comments on the proposed amendments to the GBRs were as follows:

GBR 3 - Construction of wells and boreholes

No substantive comments.

GBR 9 - Operation of vehicles in the water environment

There are a large number of activities in Schedule 3 of CAR which may require vehicles, plant or equipment to be operated in, or near, the water environment. The purpose of GBR 9 is to avoid continued repetition of measures on the use of vehicles, plant and equipment, throughout the rules in schedule 3.

Respondents were generally supportive of the proposed amendments to GBR 9.

One respondent considered this would inhibit their current practices on peatland which covers large areas of the uplands of Scotland. The two main types of peatlands are blanket bog and raised bogs. Blanket bog is extensive (covering 23% of Scotland's land area). Neither of these types of peatland is classed as wetlands and activities in these areas will not be adversely affected by the proposed amendments to the GBR.

GBR 10 – Discharge from surface water drainage systems and construction sites

The activity of GBR 10 as drafted in current legislation does not differentiate between different scales of construction sites. As the risks are often greater with the increased size of sites, the activity has been better defined to identify which sites are considered to be a lower risk and can therefore operate within a GBR. This is consistent with the principles of GBRs legislating lower risk sites.

Three respondents had comments on the scope of the activity and the content of rule (f). Respondents considered that rule (f) would benefit from some clarification of

requirements. We have taken the comments on board and the rule will be redrafted and CAR practical guidance will clarify the operational aspects.

It was also noted that the existing rule (h) has now been removed. This rule was a duplicate of rule (j) in activity 6 and has now been removed from activity 10.

GBR 11 – Discharges into a surface water drainage system

No substantive comments.

GBR 12 - Removal of sediment

The GBRs are designed to cover activities which are low risk. One respondent considered that the proposal in the GBR to only allow sediment removal within 10m upstream of a weir is too restrictive. However extending the distance over which sediment could be removed places a higher risk on the waterbody. Where the risk is increased, a higher tier of authorisation is more appropriate.

Another respondent was concerned that freshwater pearl mussels were not protected by this activity. Freshwater pearl mussels are protected by activity 9, where rule (g) prohibits the operation of any vehicles, plant, or equipment if there is likelihood of the presence of freshwater pearl mussels.

GBR15 – Temporary abstraction of groundwater

The purpose of the GBR is to ensure that flows are maintained in those rivers and lochs which depend on that groundwater body.

One respondent commented that the requirement to return groundwater from an excavation within 250m of a watercourse to the nearest part of watercourse or loch from the excavation was prohibitive. It was considered that protecting the water environment by introducing controls of this nature, through a general binding rule, is appropriate.

GBR 17 – Abstraction of groundwater for geothermal energy

No substantive comments.

GBR 18 – The storage and application of fertiliser

These measures are to protect the water environment from the risk of run off from large amounts of sewage sludge, or digestate, being stored in excess of the amount required for soil, or crop, benefit in that field, without any form of containment; and where there is no Waste Management Licence applying.

Two respondents considered “sloping land” should be defined or buffer zones extended. The GBR as drafted requires land managers, when spreading fertilisers on slopes, to ensure that run off is intercepted to prevent it entering surface waters. In practice this normally means increasing the buffer zone to a suitable width to

contain run off, depending on the individual circumstances of: slope, land use and fertiliser type.

There were also queries on how the rules would interact with a Waste Management Licence (WML). The rules are not meant to replace the conditions within a WML. The paragraph 8 exemption of a WML for sewage sludge requires that storage should be in a secure container or a lagoon. This will still apply.

These respondents also considered that the storage of digestate should be under the same legislative requirements as those which apply to slurry storage. The key objective of the rule is to protect the water environment, and the proposals are aimed at achieving this objective. The rules give SEPA the powers to protect the water environment from any impacting digestate storage, by requiring remediation. Guidance is available on the SEPA website.

One respondent considered that the rule (j)(iii) requirement to not apply fertilisers where heavy rain is forecast within 48 hours is unreasonable, particularly when heavy rainfall can be localised and difficult to predict. We propose to reduce the requirement not to apply fertilisers when heavy rain is forecast from 48 hours to 24 hours. The 24 hour weather forecasts are more accurate and we consider that farmers should be able to plan their activities accordingly.

GBR 19 – Keeping of livestock

No substantive comments

GBR 20 – Cultivation of land

One respondent raised concerns over the proposed rewording of rule 20(c). We have considered these comments and after consideration it is proposed to leave the wording as currently drafted in the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2013.

GBR 23 – Storage and application of pesticide

Two respondents were concerned over the introduction of a rule to allow the control of invasive non-native species (INNS) by pesticide application within 1 metre of surface water. The majority of applications received by SEPA for pesticide application within 1 metre are for control of INNS. It is considered that this can be controlled efficiently by GBR rather than registration and therefore be a cost saving to the operator.

One respondent considered that drinking water abstractions were not adequately protected by the rule. Following their comments we propose to amend the rule to introduce a 250 metre upstream exclusion zone from drinking water abstraction points. CAR guidance will set out best practice guidelines.

GBR24 – Operating sheep dip facilities

No substantive comments.

GBR25 – Bank protection measures

One respondent was concerned over the introduction of this activity as a GBR. We believe that the activity is suitable as a GBR rather than the need for land managers to apply for registration, and will avoid costs.

Another respondent commented on lack of detail in the rule. Full guidance is already available on the SEPA website.

GBR26 – Storage of oil in containers less than 200 litres

No substantive comments.

GBR27 – Storage of oil for residential purposes

No substantive comments

GBR28 – Storage of oil other than GBRs 26 and 27

Eight of the respondents specifically commented only on GBR 28. The majority accepted the need to include distribution depots but had concerns that sites operating under COMAH would not be exempt.

The principle of GBRs is that, if in carrying out the specified controlled activity the requirements contained within the rules of the GBR are met, there is no need to contact SEPA for authorisation by registration or licence.

Although COMAH includes measures on oil storage, COMAH is not a prior-authorisation under CAR.

COMAH MATTE sites for oil storage have to put in place all reasonable measures. If these reasonable measures comply with the GBR, the storage would be authorised under the GBR. If the reasonable measures are not compliant with those in the GBR, the storage would be required to be authorised by a CAR licence.

3. Summary of amendments to the GBRs proposed in consultation

Having taken into consideration the comments in responses we propose to revise some of the proposals made in the consultation.

The General Binding Rules affected are:

GBR 10 - Discharge from surface water drainage systems and construction sites

(f) We propose to redraft rule (f) to better clarify the requirements.

GBR 18 - The storage and application of fertiliser

(j)(iii) We propose to reduce the requirement not to apply fertilisers, when heavy rain is forecast, from 48 hours to 24 hours.

GBR 20 – Cultivation of land

(c) We will, following the consultation response, leave the wording as currently drafted in the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2013.

GBR 23 - Storage and application of pesticide

(g) We propose to amend the rule to introduce a 250 metre upstream exclusion zone from drinking water abstraction points.

4. Next Steps

We are grateful for the comments made by respondents and, taking into account these comments, we propose to take forward amendments to certain general binding rules, as set out in section 3.

The integration of the Water Environment (Oil Storage)(Scotland) Regulations 2006 into CAR has allowed us opportunity to extend the oil storage provisions to include depots for onward distribution which have been identified as a potential risk. Under the requirements of the Technical Standards Directive this will require the draft regulations to be notified to the European Commission.

It is anticipated that, following that notification, the regulations will be laid in Parliament in the autumn of 2017.



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