Better Environmental Regulation Programme

Environmental Authorisations (Scotland) Regulations 2018: proposed amendments consultation

Analysis of responses received

June 2024

Scottish Government
Riaghaltas na h-Alba

Contents

1. Introduction

This document summarises the responses that the Scottish Government received to its consultation on potential amendments to The Environmental Authorisations (Scotland) Regulations 2018 (the 2018 Regulations). The consultation ran for 15 weeks before closing on 30 March 2024.

There were 35 questions in the consultation document. This summary is a high-level overview of the main messages from the consultation responses, reflecting the views offered. The summaries are presented in the same order as the consultation document and a government response is provided after each section of questions. It may be useful to refer to the consultation document as you read this analysis document.

The Scottish Government is grateful to everyone who took the time and effort to respond. The responses have been analysed by Scottish Government staff dealing with the consultation proposals.

Purpose of the consultation

The purpose of this consultation was to seek stakeholders' views and to invite comments on the draft Regulations, and in particular:

- the technical provisions relating to water, waste, and industrial activities
- the four proposed new activities and changes to the process in relation to the public consultation and call-in procedure
- various amendments to the common procedures in the 2018 Regulations and technical provisions for radioactive substances activities

Also sought were views to explore how ammonia emission from livestock farms, particularly dairy and intensive livestock, might be better managed and reduced.

Analysis methodology

A qualitative thematic analysis of the open-ended questions was undertaken, which identified the key points raised. Where feasible, a numerical estimate of those in support and against each proposal has been provided.

The consultation was published on the online digital platform Citizen Space which recorded responses through an online questionnaire. Responses were also received via email. Email responses which directly responded to individual questions were entered into Citizen Space manually and treated in the same way as other responses on that platform. All responses received were counted and the views presented were included in the analysis. All responses were read.

A full record of all questions is available in the consultation document.

We received 50 responses (39 responses via Citizen Space and 11 by email or letter), and whilst we have considered each response and all the information provided it is not possible to respond in this summary to every individual point raised.

Summary of responses

2. New Activities

2.1 Sewage sludge

We proposed to bring the regulation of sludge into the 2018 Regulations and to incorporate a number of new technical requirements which will:

- make appropriate parts of the Safe Sludge Matrix mandatory
- ensure the transport, storage and use of sewage sludge is subject to environmental authorisations and that all Authorised Persons can demonstrate they are a 'Fit and Proper' person
- tighten soil protection values in line with best evidence and improve monitoring and sampling provisions
- make it possible for the Scottish Environment Protection Agency (SEPA) to charge for authorisations to fund regulatory activity in this area.

Question 1 asked if there are any other regulatory measures relating to the spreading of sewage sludge to land that you felt should be considered for inclusion in the Regulations.

2.1.1 Summary of responses

22 respondees provided 83 comments in relation to Question 1 regarding sewage sludge. Most comments were supportive of the proposals and no serious objections were lodged. The main areas commented on are noted below.

There were several responses simply stating opposition to the practice of spreading sewage sludge to land itself.

Several responses expressed concerns in relation to the monitoring of contaminants within sewage sludge and noted the recent commitment for a review in the European Union (EU). The issue of odour was raised by some respondees.

The proposed introduction of a fit and proper persons test was highlighted and responses sought clarity on how the system would work effectively.

Comments were received (particularly from industry) focusing on the technical aspects of the legislation. These comments will be considered in any future development of legislation relating to the spreading of sewage sludge. Also, within the responses were a number of suggestions for additional legislative actions to be taken, whilst others expressed concern with definitions within the legislation.

2.1.2 Scottish Government response on sewage sludge

The main aim of including the sewage sludge regime in these Regulations is to implement the legislative recommendations arising from the review of sewage sludge held in 2016. Implementation of these proposals has unfortunately been significantly delayed. The consultation responses contained a wide and varied list of comments /

objections ranging from outright opposition to the practice, to technical and legal suggestions. Some suggested amendments have been accepted at this time, however in light of the delay in implementing the review recommendations, the proposals relating to sewage sludge contained within the draft Regulations will remain largely the same. As indicated in our consultation document and in line with the Scottish Government's commitment to remain aligned, where possible, with EU law, we intend to await the results of a recent evaluation of the Sewage Sludge Directive by the European Commission and will then consider further potential amendments to the 2018 Regulations as appropriate.

It is Scottish Ministers' position that properly treated sludge, when managed safely and effectively on the course of its journey from the treatment facility to being spread to land, is an effective fertiliser. As part of the review of sewage sludge conducted by the Scottish Government in 2016, an independent research report was commissioned from the James Hutton Institute. The aim of the research was to provide up-to-date and robust evidence that the practice had no harmful effect on the environment or human health. The findings of the report, whilst highlighting areas which should be closely monitored over the next few years, did not identify any new or increased risks. We will considerer our position as new evidence emerges.

The EU Commission is currently conducting a review of contaminants that should be monitored in sludge for land spreading and we are awaiting the results of that work. The Scottish Government is committed to remaining aligned with EU law and will take the appropriate action necessary to do so when the results of the review are published. It was also suggested that meeting any new EU criteria should be the minimum action taken in respect of contaminants. The Scottish Government will consider whether contaminants not recommended by the EU should be considered as well, where appropriate. Any actions on this will be fully consulted on before progressing.

Whilst the main focus of the current proposals relating to sewage sludge is to implement the legislative recommendations arising from the review of sewage sludge carried out in 2016, all legislative suggestions in the responses have been noted and will be considered in any future review. SEPA has guidance available which will provide the necessary information on how the 'fit and proper person test' will operate and be used to ensure sludge is effectively managed by persons who meet the necessary criteria.

The comments received focusing on the technical aspects of the legislation will be considered in any future development of legislation relating to the spreading of sewage sludge. The following suggestions have been accepted.

- Limits on Application to Land – Nitrogen Addition. It was suggested that the same wording is used in the 2018 Regulations as in The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008. We are content for the draft Regulations to mirror relevant provisions from these Regulations.
- Soil Sampling - Total Nitrogen. It was suggested that testing soils for total nitrogen is not required (in table 2). As this test is useful for only a limited number of waste types with a high carbon to nitrogen ratio to prevent nitrogen lock-up in the soil. We note that this can be managed via SEPA guidance on

those specific waste streams and not applied generally. Therefore we are content for Total Nitrogen to be removed from Table 2.

- Soil Sampling – Total Carbon. It was suggested that Total Carbon can be calculated from organic matter and is not required for normal agronomic practices (table 2). We have confirmed with SEPA that Table 2 is to be amended to read 'Total Carbon or Organic Matter'.
- Safe Sludge Matrix – Definition of Conventionally Treated and Enhanced Treated Sludge. It was suggested that the 'conventional treated sewage sludge' definition should also refer to 'or, a maximum allowable concentration of 100,000 E.Coli/gram dry solids'; and that the 'enhanced treated sewage' definition should also refer to 'or, free from Salmonella and a maximum allowable concentration of 1,000 E.Coli /gram dry solids.' We agree this is an important point. While the definitions in the draft Regulations were lifted directly from the Safe Sludge Matrix as per the recommendations of the 2016 Sludge Review, the biosolids assurance scheme recognises this issue and has made appropriate adjustments. BAS-Standard-Issue-5-10th-July-2020-web-version.pdf (assuredbiosolids.co.uk). It is important that the process must be 'capable' through process validation to achieve the necessary reduction in pathogens **and** through routine monitoring achieve the maximum limits. We would be content to make this amendment, however we do not think it is 'or' as suggested but 'and.' Whilst this is not quite the language in the Safe Sludge Matrix, we are content that is much more appropriate in practice.
- Safe Sludge Matrix – Grazing Land. We accept that the restriction in the regulation on conventionally treated sewage sludge being applied to the surface of grass to be used for grazing does goes further than the recommendation of the safe sludge matrix and we are therefore content for Paragraph 6 (c) to be updated to say that conventionally treated sewage sludge must be deep injected or ploughed down when applied to land used for grazing and that there should be no grazing in the season of application or in any circumstances no grazing within three weeks of application.

The Scottish Government also intends to clarify the scope of GBR 18 in relation to the storage and application of fertiliser to land, and its overlap with the requirements in relation to the application of waste to land under Schedule 14.

2.2 Carbon Capture

We proposed to include "*Any activity, if not related to any activity described in paragraph 46(13) of Part 4 of Schedule 20 for the capture of carbon dioxide from any other source*" as another emissions activity in proposed Schedule 26 such that this activity will require an authorisation in Scotland. The types of activity that would require an authorisation are:

- carbon capture removal technologies such as Direct Air Capture
- carbon capture and utilisation plant
- carbon capture plant for the purpose of storing carbon dioxide.

Question 2 asked if you agreed that carbon capture activity should be a regulated activity in the 2018 Regulations.

2.2.1 Summary of responses

The vast majority of respondees who replied to this question agreed to the introduction of the capture of carbon dioxide from any other sources as a regulated activity under the 2018 Regulations. We received two responses disagreeing with the principle of carbon capture and with monitoring requirements. One respondent disagreed that the scope of this activity extends to capturing biogenic CO_2, but accepted that if this activity were to have regulatory controls that these would be proportional to the scale and perceived risk.

Respondees sought clarity on terms such as ‘capture,’ ‘storage’ and ‘waste’ when used in connection with this proposed activity. Also, respondees sought clarity on ‘from any other source,’ seeking to limit this to industrial and technological carbon capture and storage, and not extended to capture of carbon in nature (woodland creation or peatlands). Responses highlighted the role that captured CO_2 may have in a circular economy. Stakeholders acknowledged that large scale capture plants may be regulated by a number of different regimes (such as the Control of Major Accidents Hazards) and requested that any regulatory controls to be proportionate, risk based, having account of the sensitivity of the location of the development, and the significance of any potential environmental impacts.

2.2.2 Scottish Government response on carbon capture

We will bring carbon capture, utilisation, and storage (CCUS) into the 2018 Regulations as a regulated activity and are reviewing the activity description to add clarity on its scope. This will ensure that all appropriate carbon capture, utilisation, and storage activities are regulated to protect the environment. We also acknowledge that carbon capture and storage is still a fledging industry that is important in helping Scotland achieve net zero. These Regulations provide SEPA with the flexibility needed to support innovation and enable the sector to develop whilst protecting the environment.

The 2018 Regulations include any requirements specified in EU Directives, whilst allowing greater flexibility for activities outwith of those thresholds. The Industrial Emissions Directive (IED) requirements for carbon capture and storage are specified in Schedule 20. All other carbon capture and storage activities will be regulated as a Schedule 26 activity. Schedule 26 activity regulatory controls will be administered by SEPA, including any standards set through conditions in permits and registrations. SEPA may have regard to any applicable Scottish, United Kingdom (UK) or EU guidance on the best available techniques for preventing, or where that is not practicable, reducing emissions from a Schedule 26 activity in setting conditions. We welcome the offers from stakeholders who have indicated that they wish to be party to the development of any potential future guidance.

The new CCUS activity will not change whether a captured stream of CO_2 is, or is not, considered a waste. In terms of CO_2 some sources will be sufficiently pure (i.e. no contaminants) to be used directly as a non-waste. There are examples of this already, e.g. breweries reusing CO_2.

2.3 Non-Waste Anaerobic Digestion

We proposed to add the anaerobic digestion of non-waste materials as another emissions activity in a new Schedule 26 so that this activity will require an authorisation in Scotland. Question 3 asked if you agreed that non-waste anaerobic digestion should be a regulated activity in the 2018 Regulations.

2.3.1 Summary of responses

The vast majority of respondees who replied to this question agreed to the introduction of non-waste anaerobic digestion as an activity under the 2018 Regulations. We received two responses disagreeing with non-waste anaerobic digestion plants being regulated under the 2018 Regulations. Of the respondees in agreement seven caveated their support with the following themes:

Clarification was sought for the scope of waste anaerobic digestion below the 100 tonnes/day threshold. Concerns were also raised that the proposal for the non-waste anaerobic digestion thresholds will be linked to the IED, as respondents considered that this has the potential to have a disproportionate effect on smaller facilities. Respondees raised concerns about retrospectively fitting secondary containment and the regulation of non-waste derived digestate.

A couple of respondees noted that the generation of biogas serves to support decarbonisation of their industry and the Scottish gas network (back-up power, domestic heating, and industrial processes). As such, the environmental and economic benefit of this should not go unrecognised, and the Regulations should serve to help not hinder the journey to net zero, and support the delivery of the Scottish Government's own targets.

2.3.2 Scottish Government response on non-waste anaerobic digestion

We will bring non-waste anaerobic digestion into the 2018 Regulations as a regulated activity. This will ensure a level playing field across the sector and ensure all anaerobic digestion plants are regulated to protect the environment. We welcome the contribution that the generation of these low carbon gases are able to play in supporting Scotland's progress towards meeting our net zero targets but they require management of associated environmental risks. The proposed level of authorisation for non-waste anaerobic digestion plants will be proportionate to the capacity and environmental risk.

The 2018 Regulations integrate requirements specified in the EU Directives for particular activities, whilst allowing greater flexibility for other activities outwith their scope, including non-waste anaerobic digestion, which is set out in the draft Environmental Authorisations (Scotland) Regulations (EASR) 2024, Schedule 26. SEPA has consulted on their authorisation levels to define the threshold for non-waste anaerobic digestion. Additionally, SEPA may have regard to any applicable Scottish, UK or EU guidance on the best available techniques for preventing, or where that is not practicable, reducing emissions from a Schedule 26 activity. SEPA intends to engage with stakeholders on guidance on conditions, standards, and best available techniques for non-waste anaerobic digestion.

The anaerobic digestion plant process for both waste and non-waste anaerobic digestion may include the onsite storage of digestate arising from the activity. The use of digestate or storage of digestate off-site is controlled by GBRs or other types of authorisation depending on the status of the digestate. The digestate output from non-waste anaerobic digestion plant would not normally be classified as waste and when removed from the regulated non-waste anaerobic digestion site it would be stored and used in accordance with GBR (18 and 34).

2.4 Generators of Electricity Aggregating to 1 Megawatt Thermal Input (MWth) or More

We proposed to add combustion plant generating electricity on the same site with an aggregated total rated thermal input of 1 MWth as another emissions activity in the proposed Schedule 26, so that this activity will require an authorisation in Scotland.

We asked three questions seeking your opinions as to whether: any combustion plant on the same site that generate electricity and aggregate to 1 MWth or more should be an environmental activity in the 2018 Regulations (question 4); that the scope be expanded to all combustion plants on the same site that aggregate to 1 MWth or more including those that generate heat (e.g. boilers) (question 5); and finally, for combustion plants on the same site that generate electricity and aggregate to 1 MWth or more, located in the highlands or on the islands are there plans in place to upgrade the plant or to replace it with renewable / low carbon technology / carbon capture usage and storage (question 6).

2.4.1 Summary of responses

There was near unanimous support to bring combustion plant on the same site that generate electricity and aggregate to 1 MWth or more into the scope of an environmental activity as defined in the 2018 Regulations (Question 4). However, the majority of responses supporting inclusion also identified the need for modification or exclusion from the 2018 Regulations for specific cases. Two respondents provided extensive and detailed discussion and reasoning for specific cases relating especially to the Islands. One other respondent provided a separate situation that they argued would require a different approach.

These respondees set out their reasons why exclusions for the following five situations from this new regulated activity (i.e. amending Schedule 26, Part 1, paragraph 1(4)) would be needed:

- existing island standby generation
- onsite emergency back-up and black start generation
- mobile generation operating solely for security of supply purposes in the running of the electricity network
- an operating hours exemption of 1,000 hours for plant on the Scottish Mainland and the islands
- generators with a defined nuclear safety role and operated under a nuclear site licence

In summary, these detailed responses made the following points. Currently the islands rely on standby diesel generation when national grid electricity becomes

unavailable (owing to subsea cable problems or maintenance). The majority of this standby fleet, where plant aggregate to 1 MWth or more, does not meet NOx limits that would apply should new regulation as environmental activity apply (190 mg NOx/Nm^3). Various approaches to rectify the situation have been assessed as part of an ongoing phased investment strategy in line with 2045 Net Zero targets. No single solution is applicable for all islands and all situations, and investment decisions need to consider a wider set of factors to give the best overall outcomes for the environment and communities.

Responses on whether the 2018 Regulations' scope should be expanded to all combustion plants on the same site that aggregate to 1 MWth or more including those that generate heat (e.g. boilers) (Question 5) were mixed. Of the respondents that answered this question directly, five supported their inclusion while five did not. Reasons given not to support their inclusion included avoiding 'double regulation' in some instances (several respondents cited that (some) small boilers were already caught under certain of the Energy-related Products regulations and building regulations for their emissions), and that the measures would go beyond those applied under equivalent regulations in England and Wales and so disproportionately impact operators in Scotland. Respondees also identified that the types and situations of heat generation can be very varied, which could make proportionate regulation difficult to implement (for example, the different emission profiles of natural gas versus heavy fuel oil fired heat plant, and the use of plant to provide heat to social housing).

A number of respondees described plans and factors involved with upgrading plant or replacing it with renewable / low carbon technology / carbon capture usage and storage (Question 6). This includes information from the detailed responses described in relation to Question 4 above. In terms of electricity supply to the islands, use of standby generation during peak use periods is now minimal thanks to recent increases in renewables generation capacity. This respondent also continues to explore alternatives to standby diesel generation, including the use of alternative fuels (hydrotreated vegetable oil), battery storage, upgrades to existing plant to reduce emissions (focussed on CO_2 reduction rather than NO_x) including deployment of more modern mobile plant. Some of these technologies have already been deployed (e.g. battery storage on Shetland) but as is the case for the longer term investment programme, the different individual situations and requirements mean that a single approach cannot be applied across all islands. Respondees also cited planned CCUS development, current use of hydropower, wind, and solar Photo-Voltaic to offset operations' electricity consumption, use of biogas as an alternative to fossil-based fuels, and deployment of heat pumps for heating operators' buildings.

Some respondents also identified a need to clarify some definitions, including 'same site.'

2.4.2 Scottish Government response on generators of electricity aggregating to 1MWth or more

Based on the information submitted during the consultation and other stakeholder interactions, we intend to include provisions that will add any combustion plant on

the same site that generate electricity and aggregate to 1 MWth or more as a regulated activity under the 2018 Regulations. We will do this to protect the environment and people from the impacts such plant can have, because when they operate their emissions profiles do not materially differ from equivalent unabated plant that are individually >1 MWth and that are already captured as regulated activities under the 2018 Regulations.

We recognise that certain specific exclusions are needed for this addition, to reflect the unique situation that exists in the Islands, the important role of back-up plant for many operators and the need to protect people and the environment where nuclear safety is concerned.

All generators of 1 MWth or more (individually or in aggregate on the same site) in Scotland will require an authorisation to operate, except:

> a) Back-up generators (generators operating solely to supply power during an on-site emergency e.g. a power cut, and which do not run for test purposes for more than 50 hours per year)
>
> b) Certain generators operating on a site that is the subject of a nuclear site licence (generators operating with a defined nuclear safety role within arrangements approved by the Office for Nuclear Regulation under a Nuclear Site Licence).
>
> c) Mobile plant unless connected to an electricity transmission or distribution system, or performing a function at a site that could be performed by a generator that is not mobile

unless they require an authorisation because they are a Schedule 20 or 27 activity.

The intent is that SEPA will use its discretion to set appropriate and proportionate standards as it thinks fit, with the overall policy intent that equivalent standards to those applied to specified generators in England and Wales will apply as a minimum.

With respect to the security of electricity supply on the Islands, which rely on subsea cable connections to the national grid, we consider that a balanced approach is needed that will, for the time being, allow the current fleet of standby diesel generation to operate when strictly necessary for contingency power, and we will put in place arrangements to achieve this that also continue to protect air quality.

2.5 Emissions of Ammonia From Livestock Farms

We sought views to explore how ammonia emission from livestock farms, particularly dairy and intensive livestock might be better managed and reduced.

Questions 7 and 8 asked how ammonia emissions from intensive livestock farms should be controlled in future and what should be considered when looking at future control or management of ammonia emissions from intensive livestock farms.

2.5.1 Summary of responses

20 respondees provided 43 comments to questions 7 and 8. Of these responses two respondees raised concerns about intensive agricultural and animal welfare in relation to both questions. The other responses noted the following themes:

A common response acknowledged that to reduce ammonia emissions there was a need for the provision of advice, guidance and examples of good practice backed up with targeted support. This was supported by responses noting cost differences between the various good practices highlighted in the consultation, with others commenting on the requirement that capital investment may need additional funding support. A respondent recommended the use of BATNEEC (Best Available Technology Not Exceeding Excessive Costs) to ensure that measures identified were reasonable for operators.

Respondees sought to ensure that any potential regulations would be proportionate, with the focus being on higher risk activities. It was noted that any proposed regulations should be applied in a flexible manner, as one size does not fit all. By focussing on the largest farms it was suggested that the mitigation measures used will eventually become less expensive and can then be implemented on smaller farms. Other respondees supported the use of voluntary measures with the provision of advice and good practice, as this can be as effective as regulation.

Respondees supported the Prevention of Environmental Pollution from Agricultural Activity (PEPFAA) code as providing unbiased, trusted, and clear science backed information, whilst an example of guidance from England noted Defra's Code of Good Agricultural Practice (COGAP) for reducing ammonia emissions. The Clean Air for Scotland 2 (CAFS2) Agricultural and Environment working group and, from UK Government, the Defra regulation co-design group on tackling pollution from slurry were recognised as examples of good government engagement with the sector.

The definition of 'intensive livestock farms' was raised a number of times and respondees noted the difficulties of this definition, citing stock numbers / land size and the difference between indoor and outdoor housing as alternative approaches.

Some respondees advocated for Agroecological farming.

2.5.2 Scottish Government response on ammonia emission from livestock farms

We welcome the feedback from respondees as to how emissions of ammonia from livestock farms might be controlled. We note the support for advice and guidance provision to the sector and understand the caution expressed that the measures identified in the consultation cover a range of costs and effectiveness. We will now give consideration on how to proceed to promote good practice across the sector.

3. Common Framework – Proposed Amendments

3.1 Public Consultation and Call-in Procedure

We sought to improve aspects within the 2018 Regulations in respect of the similar call-in procedures under CAR. We proposed that earlier public engagement in the process would be of much greater impact, and would result in a more effective process for ensuring public representations are appropriately considered.

Questions 9 and 10 sought comments on the proposals to: amend the existing public consultation requirements in the 2018 Regulations so that SEPA may require pre-application public consultation in relation to permit applications or applications for variations to permits in certain circumstances; and to simplify the call-in procedure provisions in the 2018 Regulations so as to remove the requirement that SEPA directly notify those who have made third-party representations of a proposed determination of a permit application or variation and that they may notify the Scottish Ministers in writing that they object to the proposed determination within the 21 day period following notice, and the associated provisions which prevent SEPA from finally determining the application or variation until the elapse of the statutory time periods, and confirmation from the Scottish Ministers as to whether they intend to call-in a particular application and any associated direction to SEPA.

3.1.1 Summary of responses

A consensus of the respondees who replied to this question agreed to the proposal to amend the existing public consultation requirements so that SEPA may require pre-application public consultation in relation to permit applications or applications for variations to permits in certain circumstances. However, a sizable minority of responders objected to this proposal. The main themes from those who disagreed were due to the potential extension of the permit timeline and a consultation being of poorer quality due to design maturity, making the UK less attractive for investment and less competitive.

Conversely, the vast majority of respondees who replied to the question to simplify the call-in procedure agreed to this second proposal. We received two responses disagreeing with the proposal, one of which supported the pre-application proposal but did not believe that the call-in procedure should be changed.

There were no specific changes or comments made in relation to simplifying the call-in procedure.

3.1.2 Scottish Government response on the common framework – Public Consultation and Call-in Procedure

In relation to both questions, we do not intend to make any changes to regulation 30 of the amending Regulations as a result of this consultation.

As proposed in the consultation, we will amend the existing public consultation requirements in the 2018 Regulations so that SEPA may require pre-application public consultation in relation to permit applications or applications for variations to

permits in certain circumstances (question 9). However, we also note that responses to the consultation wanted an explanation to provide greater clarity on the proposal for pre-application engagement.

The aim of any pre-application engagement is to explore local environmental knowledge and understand any potential issues or community concerns in relation to a proposed development. Understanding these at an early stage, as opposed to at the end of the process when any changes are likely to be more expensive to adopt, will enable the applicant to take them into account during development of their proposals .

SEPA is required to consult and publish a public participation statement outlining its policies for exercising its public participation functions. Within the public participation statement further information will be provided to make it clear which activities SEPA would normally require an applicant to carry out pre-application engagement for, due to their nature or location being of significant public interest or where experience has shown this would be beneficial to the application process (for example, in relation to fin fish farms). The requirement of pre-application engagement will not be expected for all applications or variations.

The Public Participation Statement will also set out how it expects pre-application engagement to be carried out. The intent is that it may be undertaken during the planning application process, creating synergies between both processes, or at another time suitable for the applicant. Where pre-application engagement is required, SEPA will expect to see evidence that it has been undertaken and how any local environmental knowledge, potential issues or community concerns have been considered within the subsequent application.

3.2 Other Amendments

We proposed that, in order to allow SEPA to end authorisations where the authorised person has died or no longer (legally) exists (for example, where a company has been dissolved), SEPA may, where satisfied after reasonable inquiry that the authorised person has died or no longer exists, publish the revocation notice on its website and send a copy to the last known address of the authorised person, rather than requiring SEPA to serve the revocation notice on the authorised person.

We proposed to amend the provisions in respect of the register so that information as to permits or registrations on the register, and any conditions of those permits and registrations, are evidence of those authorisations and conditions for the purpose of court proceedings, unless there is evidence to the contrary. We also proposed a complementary offence of making or causing to be made a false entry in the register.

Questions 11, 12 and 13 sought comments on: the proposed amendment to provide for a procedure for issuing revocation notices where an authorised person has died or no longer exists; the proposed amendment to the provisions in respect of the public register required to be maintained by SEPA; and the minor amendments as set out in Annex D for the common framework.

3.2.1 Summary of responses

The vast majority of respondees who replied to these questions agreed to the proposed amendments to the procedure for issuing revocation notices and to the provisions of the public register being maintained by SEPA.

Clarity was sought concerning the proposal for a complementary offence of making or causing to be made a false entry in the register and some respondents proposed it be a specified criminal intent, specifically, 'intentionally.'

Three further themes were noted from the respondents' responses. The ability for SEPA to cost recover in relation to SEPA-initiated permit variations was supported, however respondents proposed that this should be undertaken with the agreement and input from the operator. On the information that a surrender notice must include, respondees sought to limit this to the original baseline and an exemption for the removal of uneaten feed and faeces deposition from open-pen finfish aquaculture. On clarity that SEPA may include any conditions 'it thinks fit' when varying a permit, respondents proposed that consultation and agreement with the operator should be required in a similar way to consultation for standard conditions.

3.2.2 Scottish Government response on the common framework – other amendments

As there were no specific suggested changes or comments on the proposed procedure for issuing revocation notices where an authorised person has died or no longer exists, we do not intend to make any changes to draft Regulation 14 as a result of this consultation.

With reference to the provisions of the public register being maintained by SEPA, we acknowledge that amendment of the new offence in regulation 69 of the 2018 Regulations would be better with a defined criminal intent, and the words "knowing caused false information" will be added.

A number of comments related to aspects of the common framework that were consulted upon before the 2018 Regulations came into force. A few of those comments related to the minor amendments proposed in this consultation, which will now be implemented.

For clarity with regard to the themes raised by respondees, the ability for SEPA to cost recover in relation to SEPA-initiated permit variations will be set out in SEPA's charging scheme, which will be consulted upon ahead of any changes. For the surrender notice, regulation 15 specifies any steps which SEPA considers must be taken, the rights of appeal remain for an authorisation holder if they consider that the conditions on the surrender notice are inappropriate. Finally, we will retain the wording that SEPA may include any conditions 'it thinks fit' when varying a permit, as the regulatory framework of the 2018 Regulations is designed so that permits can have bespoke conditions designed to protect the environment.

We have also reflected that in any future consultations on the 2018 Regulations that we will consider a consolidated set of Regulations.

4. Radioactive Substance – Technical Provisions

We proposed a few minor changes to Schedules 8 and 9 of the 2018 Regulations to correct errors and clarify technical information and requirements. These include proposed minor amendments to the 2018 Regulations in relation to the disposal of smoke detectors and the use of radioactive substances for veterinary diagnostics and treatment.

Questions 14 and 15 sought comments on the minor amendments as set out in Annex D for the minor changes relevant to radioactive substances activities, and whether you agreed with or had comments on the proposed changes to Schedules 8 and 9 for radioactive substances activities.

4.1.1 Summary of responses

There was one comment made on the minor amendments to radioactive substances for the 2018 Regulations with the respondee stating the changes were logical.

The respondent provided comment in relation to the addition of text to Schedule 8. The respondent thought that the addition of text to Schedule 8 14(2)(b) i.e. ‘arising from the operation of the nuclear sites’ does not fully address the issue intended to be resolved and proposed an alternative.

The same respondent thought that the term ‘non-radioactive’ waste to replace ‘normal refuse’ in Schedule 9 has little formal standing and suggested ‘controlled waste’ be used. The respondent also noted that the term ‘normal refuse’ is used in the radioactive substances standard conditions applicable to registrations and permits and this proposal would create a discrepancy between the GBRs and the standard conditions that mirror them.

Two respondees noted the removal of rivers and coastal waters from small aqueous disposals of radioactive waste, currently authorised under the radioactive substances GBRs 8 and 11. They cautioned that in scenarios where the only environmental hazard posed by an aqueous waste destined for disposal to the water environment, is a radioactive component meeting the present GBR 8 and 11 activity thresholds, that the principles from the 2013 Basic Safety Standards Directive (BSSD) on exemption of activities from regulatory control continue to be upheld. They also noted that the aqueous waste provisions of GBR 11 are replicated in the Radioactive Substances Standard Conditions published by SEPA as standard condition G.4. They suggest that if any change is made to GBR 11 that these are consistently applied to G.4.

4.1.2 Scottish Government response on the radioactive substance technical provisions

We acknowledge the response that disagreed with the wording ‘arising from operation at nuclear sites’ as the respondent felt that this phrase does not adequately address the problem it is introduced to resolve. We have considered this further and the Scottish Government have decided to keep the draft consultation

wording, with some additions that will provide greater clarity. The wording used in the consultation draft will align the 2018 Regulations with the wording used in the BSSD.

We acknowledge the response received regarding the suggested change in the wording of Schedule 9 from ‘non-radioactive waste’ to ‘controlled waste’. After further consideration, the Scottish Government intends to continue with the use of the term ‘non-radioactive waste’ in Schedule 9 and the relevant standard condition will be updated to use the term ‘non-radioactive waste’.

On consideration of the comments regarding the removal of rivers and coastal waters from small aqueous disposals of radioactive waste, which is authorised under radioactive substances GBR’s 8 and 11, we have removed this proposed amendment and instead replace with a provision that will continue the status quo in the radioactive substances regime.

5. Water – Technical Provisions

We proposed two new General Binding Rules (GBRs) for water activities:

> GBR 35 – The discharge of hot tub effluent, from a site with only one hot tub, to groundwater.
> GBR 7- The installation and removal of temporary crossings and temporary structures.

We also proposed minor changes to a number of GBRs. This included widening the scope of GBR 6 to include what was previously GBR 7 in a single simpler GBR, adding a rule to GBR 23 to allow the application of pesticide to skunk cabbage and requiring notification of construction of a constructed farm wetland (GBRs 30 and 33). In addition, we proposed some minor changes to the technical requirements for water activities.

Questions 16 and 17 sought comments on the new General Binding Rules (nos. 7 and 35) for water activities in Schedule 9 and the water activities in Schedule 10 in the draft Regulations, and comments on the minor amendments relevant to water activities as set out in Annex D.

5.1.1 Summary of responses

15 respondees provided 23 comments in relation to questions 16 and 17. The vast majority of respondees supported the introduction of the new GBR 7 and GBR 35 and agreed with our other proposals.

We received a few responses suggesting improvements to the current GBRs, or seeking to engage on developing GBRs for specific sectors. Other respondees sought clarity concerning the application of the new GBRs, in a similar manner to the current water GBRs (i.e. applying to emergency works).

Respondees also raised concerns about having to re-apply for an EASR authorisation where they currently hold a valid Controlled Activities Regulation (CAR) authorisation. Other concerns related to the application of GBRs where the activity may already be authorised by the waste or Pollution Prevention and Control (PPC) regimes.

A number of respondees noted the changes to phrases used in the Water Environment (Controlled Activity) (Scotland) Regulations 2011 (CAR) and sought clarity with regard to the definition from other schedules or the revised wording (such as ‘pollutants,’ ‘substances’ and ‘pollution of’ replaced with ‘harm to.’ Others also sought clarification of the scope of the schedule for water activities to ensure that it covered reservoirs, banks, spawning seasons etc..

5.1.2 Scottish Government response on the water technical provisions

Following the feedback received, Scottish Government intends to implement the General Binding Rules (nos. 7 and 35) for water activities in Schedule 9 and the requirements for water activities in Schedule 10.

We acknowledge the stakeholder consultation responses and will reflect the themes and suggestions that have been proposed to change the current GBRs. This will form part of our on-going discussions with SEPA to review and improve regulatory controls of water activities. We do not propose to make these changes at this moment, but will keep them under review.

With regard to the responses relating to bringing the water regime into the 2018 Regulations. We note that the amendments to the 2018 Regulations will integrate SEPA’s four major regimes. Bringing these regimes together has allowed us to simplify the framework by using some common definitions across all activities, whilst retaining the original policy intent. Also, the transitional arrangements have yet to be incorporated into the draft EASR, however the intent is that existing CAR licences and registrations will automatically become an authorisation under the draft Regulations without the need for licence holders to reapply.

6. Industrial Activities – Technical Provisions

We proposed that all existing Pollution Prevention and Control (Scotland) Regulations 2012 (PPC) activities will require an authorisation under the 2018 Regulations, though there were minor changes to the description of certain activities. We sought comments on the technical requirements of the industrial emissions activities set out in in Schedule 19-24, (question 18), and petrol vapour recovery activities (Schedule 28, question 22).

We sought comments on the proposed requirements in Schedules 25 and 27 (questions 19 and 21) which align with the requirements of the Energy Efficiency Directive and the Medium Combustion Plant Directive, respectively.

We requested comments on the industrial activity carrying out ‘other emissions activities,’ with technical requirements set out in Schedule 26, which include the current PPC Part B activities as well as some existing non- Industrial Emissions Directive (IED) PPC Part A activities (question 20).

We proposed one new GBR for crushing and screening activities (question 23) and, finally, asked for comments on the minor amendments relating to the PPC activities set out in Annex D (question 24).

6.1.1 Summary of responses

16 respondents provided a total of 46 responses to questions 18-24 relating to industrial emissions activities, with a total of 70 specific comments made.

General benefits of the proposals were noted by multiple respondees, for example mentioning the streamlined framework and integrated approach, automatic transfer for PPC permit holders, clearer alignment with EU activities and regulation being appropriate to level of risk for specified activities. General concerns raised by several respondees included the complexity of schedules potentially leading to confusion, and concerns around divergence across the UK between nations that could lead to different permit requirements for businesses across the border. One respondent was not supportive of any industrial activity producing emissions.

The majority of responses made specific comments seeking points of clarification on certain aspects of the proposed draft. For example, a number of respondents requested clarification around definitions of activities and key terms, clarification whether certain activities would be in scope of technical requirements and potential overlaps of regulation across different schedules for certain activities. Some respondees did not support the regulatory approach for certain applications (for example, in a social housing context).

Six comments were received regarding the proposed minor amendment in Schedule 19, paragraph 11(2), regarding the addition of wording to clarify that “SEPA may impose authorisation conditions requiring that decarbonisation measures are implemented”. Two respondees strongly objected to these changes, while others suggested changes to ensure that measures are appropriate, or requested further clarification.

Several respondees made comments and suggestions focused on processes, costs, and level of authorisation for certain activities.

Finally, there were several comments relating to the implementation, scope, and criteria to set Best Available Techniques. Not all of these referred to specific changes set out within this consultation.

6.1.2 Scottish Government response on the industrial activities technical provisions.

Following a detailed analysis of the consultation responses, Scottish Government does not plan to make changes to the proposed Regulations in response to the consultation responses received, except for the following minor amendment:

- The activity described in paragraph 69 of Schedule 26 (relating to fish ensiling activities) will be simplified.

The following points of clarification are provided in response to comments received.

Definitions and clarifications of scope: Definitions in the majority of schedules are taken directly from relevant EU directives and are equivalent to those in the PPC Regulations. The following additional points are offered as clarification. The 2018

Regulations rely on the comprehensive definition of “environmental harm” in the Regulatory Reform (Scotland) Act 2014 which we view as appropriate for an integrated regime. We can confirm that the GBR for crushing and screening will apply to brick, tile and concrete that meets the definition of waste, and allows storage, crushing and screening of those materials only at the place of production or use. Where material is moved off site to be recovered elsewhere or is imported to the site, this would be subject to waste controls. Where material is moved off site to be recovered elsewhere, this would be subject to waste controls. Schedules 25 and 27 implement relevant EU directives and do not represent a change in scope from the equivalent requirements under PPC Regulations, therefore there should not be any change in application of requirements to heating networks in a social housing context.

Clarity on EU alignment and potential Divergence from the UK: Environmental legislation is a devolved policy area and the 2018 Regulations seek to ensure the environment in Scotland is appropriately protected. The Scottish Government has committed to continuing to maintain alignment with the EU where appropriate and in a manner that contributes toward maintaining and advancing standards across a range of policy areas. Schedules 19 to 24 apply to activities within scope of the Industrial Emissions Directive. For Annex I to the IED activities, set out in schedule 20, Best Available Techniques conclusions (BATc) apply. Existing EU BATC continue to have effect in the UK through the EU Withdrawal Act 2018 until such time as they are reviewed. The BAT Common Framework agreement[1] was developed following the UK's exit from the European Union. This agreement is a collaborative effort between the UK government and devolved governments to regulate pollution and establish a shared approach to using BAT across the UK. This framework, outlined in a Concordat, sets out how they will work together to decide on BAT. It covers international obligations, resolving disputes, decision-making processes, and focuses on setting BAT for the UK. The framework seeks to ensure consistency for UK industry while also acknowledging that different parts of the UK may need to establish their own rules regarding BAT.

Process and Cost of Authorisation: Charging schemes, and levels of authorisations for Schedule 26 activities are not set out within the regulations and will be determined by SEPA. SEPA has recently consulted on its proposed types of authorisation for waste management, water and industrial activities, and will be consulting separately regarding changes to its charging scheme. SEPA’s charging schemes are subject to the approval of the Scottish Ministers.

Overlap across schedules: An activity, such as an incinerator, can fall under different technical schedules because it is both a waste activity and an industrial emissions activity. We have set out the PPC schedules so that schedule 20 identifies the emissions activities to which Schedules 20-25 apply, and Schedule 26 relates to other emission activities, with Schedules 27 and 28 containing the specific requirements.

SEPA’s powers to impose decarbonisation measures. We acknowledge the concerns of several respondees relating to the addition of wording relating to SEPA’s powers

[1] https://www.gov.uk/government/publications/integrated-pollution-prevention-and-control-developing-and-setting-of-best-available-techniques-bat-provisional-common-framework

to impose conditions relating to decarbonisation measures. SEPA already has powers relating to decarbonisation, and the amendment set out under Schedule 19, paragraph 11(2) is a clarification, and not an addition to the scope of SEPA's existing powers. SEPA has various duties and functions relating to decarbonisation, for example under the UK Emissions Trading Scheme, the Public Bodies duties set out under the Climate Change (Scotland) Act 2009, and under existing PPC (Scotland) Regulations 2012. Scottish Government and SEPA recognise the benefits of an integrated approach to decarbonisation regulation in order to avoid unnecessary duplication and to maximise the effectiveness of any interventions.

Other miscellaneous. Specific comments were received on generators and other 'new activities,' responses to these are covered under the relevant sections above.

7. Waste – Technical Provisions

We proposed the scope of the waste activities requiring an authorisation under the draft Regulations (question 25), and that the draft Regulations maintain an equivalent provision to the existing provision in section 33(1) of EPA 1990 which references 'in or on land', limiting the requirement for an authorisation for waste activities to activities which occur "in or on land, or in the vicinity of land when connected with a waste management activity taking place on land" (question 26).

We sought comments to the proposed requirements relating to various waste activities in Schedules 11-17 (questions 27-33). In question 34 we proposed four GBRs for in relation to specific waste management activities:

> GBR–1 - temporary storage of waste at the place of production
> GBR–2 - temporary storage of waste at a place controlled by the producer
> GBR–3 - temporary storage and treatment of waste at a collection point
> GBR–4 - the deposit of non-hazardous dredging sludges or sediment on or alongside the bank or towpath of inland waters from which they have been dredged.

And finally in question 35 we proposed some minor amendments in relation to the waste activities arrangements.

7.1.1 Summary of responses

22 respondees provided 123 comments on questions 25-35 of the consultation paper relating to the waste management element of the draft Regulations.

The vast majority of the responses were supportive of the proposals but sought clarification on several aspects. Several respondees simply indicated that the waste section of the draft Regulations had no impact on them therefore they had no comment to make.

Comments were received (particularly from industry) seeking clarification on the General Binding Rules (GBRs) and the technical/operational aspects of the 'waste' legislation in general. Various comments were also received mentioning the topics of sewage sludge and Persistent Organic Pollutants (POPs).

7.1.2 Scottish Government response on the proposal for waste activities

With regard to the comments received seeking clarification on elements of the legislation and GBRs, the Scottish Government is aware that in order for the new regulatory framework to work effectively all waste producers and those who manage waste must have a clear understanding of what is expected of them in order to meet their statutory obligations. SEPA is currently developing guidance which will complement the 2018 Regulations and provide practical advice in this respect.

Sewage sludge is covered separately within this analysis report.

With regard to POPs, SEPA published guidance on 31 October 2023 to help Local Authorities and industry comply with existing obligations in relation to POPs under EU Regulation 2019/1021 and the Persistent Organic Pollutants Regulations 2007. In addition, the Scottish Government continues to work with the UK Government and other Devolved Administrations in developing measures to tackle POPs.

The suggestions received (particularly from industry) focusing on the technical and operational aspects of the 'waste' element of the legislation have been considered and the following suggested amendments have been accepted.

Schedule 11 – Scope Exclusions – Question 27. One respondent would prefer to see all scope exclusions included in Regulation 3. Currently, exclusions related to transport on the same premises and extractive waste areas/facilities are in Schedule 11 and only the householder exclusion is listed in Regulation 3.

It is agreed that having all scope exclusions in the same place for ease of use makes sense and we are content to make this change.

Waste GBR 2 – Question 34. One respondent proposed that it would be beneficial to define 'secure place' in the Regulations.

We agree this would be useful. We propose to use the same definition as used in England and Wales which is the one SEPA use in their Permits in that a place is secure in relation to waste if—

(a) all reasonable precautions are taken to ensure that the waste cannot escape from it, and
(b) members of the public are unable to gain access to the waste.

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