

# **Delivering Scotland's River Basin Management Plans:**

## **The Water Environment (Controlled Activities) (Scotland) Regulations 2011 – Proposed amendments**

**A consultation**

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## **1. PURPOSE**

This consultation invites stakeholders to respond to proposed changes to The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR”).

There are 4 key elements to this consultation:

- proposed points of clarification and consolidation to the general binding rules 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.

**We welcome your views on the proposed changes to schedule 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011, as outlined in sections 4-8 of this consultation, and to the various proposed amendments in the interests of clarity set out in section 9.**

## **2. CONSULTATION ARRANGEMENTS**

The arrangements for responding to this consultation are set out in Annex A.

**Early responses would be welcome.**

### 3. 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 Scotland's public bodies, businesses and land managers 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.

The structure of CAR provides for 3 tiers of risk-based control, in line with better regulation principles. Activities posing the lowest environmental risk may be carried out without the need for further authorisation from SEPA, provided the activity is undertaken in accordance with the relevant general binding rules (GBRs). Activities authorised in this way are set out in Column 1 of Part 1 of Schedule 3 to CAR, together with the relevant rules in Column 2.

As a matter of good practice we carry out regular reviews of the effectiveness and transparency of CAR, and propose routine amendments in the light of experience gained.

This consultation makes proposals regarding:

- proposed points of clarification and consolidation to the general binding rules 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; and
- a number of minor general amendments to CAR in the interests of transparency.

These various matters are discussed separately in sections 4 to 9.

#### 4. GENERAL BINDING RULES 3-17 - PROPOSED AMENDMENTS

The suite of general binding rules (GBRs) at Schedule 3 of CAR has been developed over time to reflect our increasing understanding of certain activities and the effect these can have on Scotland's water environment. GBRs 1-11 were introduced with the original CAR in 2005, and these dealt with a broad range of activities relating to impoundments, abstractions, engineering works and activities liable to cause pollution. GBRs 12-17 were subsequently introduced in 2007, expanding the original range of activities.

These GBRs are reviewed from time to time in the light of our growing experience. We now propose some further amendments to some of these GBRs, reflecting our increased understanding of certain environmental impacts and clarifying exactly where and how the rules apply.

The proposed amendments for each GBR are set out in more detail below. For ease of understanding, the full text of each GBR is set out below with the proposed revisions highlighted.

##### 4.1 General Binding Rule 3

###### Amendment to the definition of activity

It has been identified that the ongoing operation of boreholes carries a potential risk to contamination of groundwater and should be brought within the scope of the GBR. The proposed amendment to the definition of Activity 3 is intended to clarify that the GBR provides authorisation for both the construction and the on-going operation of a well or borehole.

###### Amendment to rule (a)

Proposed amendment to include 'and operation'

###### Amendment to rule (d)

Proposed amendment is to clarify the requirement for wells and boreholes which are no longer operational.

###### Additional rule (e)

The proposed addition of rule (e) is intended to make clear that authorisation under GBR is limited to boreholes drilled to 200 metres. On account of the risk of connecting fresh groundwater with deeper, saline groundwater, SEPA currently requires authorisation by licence for boreholes drilled to depths greater than 200 metres; and this change reflects that existing practice.

Activity	Rules
<b>3.</b> The construction, extension or operation of any well, borehole or other works by which water may be abstracted, if such works are:	(a) subject to paragraphs (c) and (d), the construction and operation of the well or borehole must be such as to avoid the entry of pollutants or water

<ul style="list-style-type: none"> <li>(a) not intended for the purpose of abstraction;</li> <li>(b) intended for the abstraction of less than 10 m<sup>3</sup> of water in any one day;</li> <li>(c) intended for the abstraction of less than 150 m<sup>3</sup> of water in any period of one year, and the purpose of the abstraction is either— <ul style="list-style-type: none"> <li>(i) to test for the yield of the borehole or well or the hydraulic properties of the aquifer; or</li> <li>(ii) to sample the water quality;</li> </ul> </li> <li>(d) intended to dewater one or more excavations at— <ul style="list-style-type: none"> <li>(i) a construction site for roads, buildings, pipelines, or other built developments; or</li> <li>(ii) a site at which the maintenance of such developments is being undertaken; or</li> </ul> </li> <li>(e) intended for the purpose of undertaking activity 17.</li> </ul>	<ul style="list-style-type: none"> <li>of a different chemical composition into any body of groundwater;</li> <li>(b) drilling fluids may be introduced into the well or borehole if necessary to facilitate the drilling of the well or borehole provided this does not result in pollution of the water environment;</li> <li>(c) potable water may be introduced into the well or borehole to test the hydraulic properties of the aquifer;</li> <li>(d) when the well or borehole is no longer required, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer and to avoid the entry of pollutants or water of a different chemical composition into any body of groundwater; and</li> <li>(e) the depth of the well or borehole beneath the surface of the ground must not exceed 200 metres.</li> </ul>
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## 4.2 General Binding Rule 9

### Amendment of activity

The proposed amendment to the definition of the activity allows the GBR to authorise the operation of vehicles in the water environment when required for the purposes of carrying out any other GBR-level activity or carrying out activities for which SEPA does not require authorisation under regulation 7 or 8 (registration or licence), such as maintenance works.

### Amendment to rule (b), (c), and (e)

The proposed amendments to rules (b), (c) and (e) are intended to clarify, and bring consistency, as to how distances from surface waters are to be measured for the purpose of compliance with the GBR.

### Addition of rule (i)

The proposed addition is to ensure that any damage caused to the bed and banks of the river or loch caused by the operation of the vehicle, plant or other equipment is repaired and the banks reinstated once the operations are complete.

Activity	Rules
<p data-bbox="188 264 767 593"><b>9.</b> Operating any vehicle, plant or equipment in or near a watercourse, loch, transitional water or coastal water for the purpose of undertaking any other activity specified in this schedule or for the purpose of maintaining an existing man-made structure in, or near, a watercourse, loch, transitional water or coastal water.</p>	<p data-bbox="810 264 1398 414">(a) Any vehicles, plant or other equipment must only operate in water where it is impracticable for them to operate on dry land;</p> <p data-bbox="810 448 1398 777">(b) the refuelling of vehicles, plant or other equipment must be undertaken at least 10 metres from any river, burn, ditch or loch, as measured from the top of the bank; at least 10 metres from any wetland; and at least 10 metres from any transitional water or coastal water, as measured from the shoreline;</p> <p data-bbox="810 810 1398 1294">(c) any static plant or equipment used within 10 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 10 metres of any wetland; or within 10 metres of any transitional water or coastal water, as measured from the shoreline, must be positioned on a suitably sized and maintained impervious drip tray with a capacity equal to 110% of the capacity of the fuel tank which is supplying the tank or equipment;</p> <p data-bbox="810 1361 1398 1473">(d) any vehicle, plant or other equipment used in or near surface water must not leak any oil;</p> <p data-bbox="810 1507 1398 1910">(e) the washing of vehicles, plant or other equipment must be undertaken at least 10 metres from any river, burn, ditch or loch, as measured from the top of the bank; at least 10 metres from any wetland; and at least 10 metres from any transitional water or coastal water, as measured from the shoreline, and water from such washing must not enter any surface water;</p> <p data-bbox="810 1944 1398 2022">(f) vehicles, plant or other equipment must not be operated in a river, burn</p>

	<p>or ditch during periods in which fish are likely to be spawning in the river, burn or ditch nor during the period between any such spawning and the subsequent emergence of the juvenile fish;</p> <p>(g) vehicles, plant or equipment must not be operated in any part of a river, burn or ditch if there is a reasonable likelihood that, within 50 metres of such an operation, there are freshwater pearl mussels; and</p> <p>(h) during forestry operations the operator must not operate machinery in watercourses.</p> <p>(i) following the operation of the vehicle, plant or other machinery, any damage caused by the operation to the bed and banks of the watercourse or loch must be repaired. This must include re-establishing vegetation on any areas of bare earth on the banks resulting from the operation, either by covering the areas with grass turfs or lining them with a biodegradable geotextile and seeding.</p>
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### 4.3 General Binding Rule 10

#### Amendment of activity

The proposed amendments to the activity are intended to clarify the scale of activity that can be authorised under GBRs versus those that require authorisation under regulation 7 or 8 of CAR (registration or licence). This ensures that, for higher risk sites, SEPA can check that a suitable management plan is in place to manage pollution risks.

Part (a) sets out in more detail the areas where drainage is authorised under the GBR. Part (b) clarifies that the activity covers all water run-off from construction sites. Any water run-off discharging to the water environment from a construction site must only be made via a SUD system or equivalent.

#### Amendment to rule (b)

The proposed amendment is intended to help clarify that the discharge does not have to be of trade effluent or sewage for the second part of the rule to apply.

### Amendment to rule (e)

The proposed amendment is intended to provide that each of (i), (ii) and (iii) should apply to areas constructed after 1 April 2007.

### Additional rule (f)

The proposed additional rule (f) is intended to ensure that parts of construction sites likely to generate polluted run-off are drained by a surface water drainage system.

Activity	Rules
<p><b>10 (a)</b> Discharge of water run-off from a surface water drainage system to the water environment from:</p> <ul style="list-style-type: none"><li>(i) up to 60 hectares of land used for residential premises;</li><li>(ii) land used for non-residential premises or yards, except where the buildings or yards are in an industrial estate;</li><li>(iii) land used as a motorised vehicle parking area with up to 1,000 parking spaces;</li><li>(iv) metalled roads other than motorways and A roads;</li><li>(v) waterbound roads and tracks or</li></ul> <p><b>(b)</b> discharge of water run-off to the water environment from a construction site where the site, including any constructed access tracks:</p> <ul style="list-style-type: none"><li>(i) has an area of less than 4 hectares;</li><li>(ii) has a road or track length of less than 5 km; or</li><li>(iii) does not include any area of more than 1 hectare or any length of more than 500 metres on ground with a slope in excess of 25°.</li></ul>	<p>(a) All reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment;</p> <p>(b) the discharge must not:</p> <ul style="list-style-type: none"><li>(i) contain any trade effluent or sewage; or</li><li>(ii) result in visible discolouration, iridescence, foaming or growth of sewage fungus in the water environment;</li></ul> <p>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving surface water;</p> <p>(d) the discharge must not contain any water run-off from any built developments, the construction of which is completed after 1st April 2007, or from construction sites operated after 1st April 2007, unless—</p> <ul style="list-style-type: none"><li>(i) during construction those developments are drained by a SUD system, or equivalent system, equipped to avoid pollution of the water environment;</li><li>(ii) following construction those developments are drained by a SUD system equipped to avoid pollution of the water environment;</li></ul>

	<ul style="list-style-type: none"> <li>(iii) the run-off is from a development that is a single dwelling and its curtilage; or</li> <li>(iv) the discharge is to coastal water;</li> <li>(e) the discharge must not contain any water run-off from; <ul style="list-style-type: none"> <li>(i) any fuel delivery areas constructed after 1st April 2007, or any areas constructed after 1st April 2007 where vehicles, plant and equipment are refuelled;</li> <li>(ii) vehicle loading or unloading bays constructed after 1st April 2007 where potentially polluting matter is handled; or</li> <li>(iii) oil and chemical storage, handling and delivery areas constructed after 1st April 2007;</li> </ul> </li> <li>(f) from [coming into force date], in relation only to activity 10(b), all parts of a new construction site on which any works are to be undertaken or on which any construction vehicles are to be operated or parked must be drained by a surface water drainage system with capacity to accommodate the maximum volume of run-off that would be reasonably expected to occur from that land on any occasion during the period of construction;</li> <li>(g) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, must be maintained in a good state of repair; and</li> </ul>
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	<p>(h) all reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.</p>
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#### 4.4 General Binding Rule 11

##### Amendment to rule (d)

The intention of the proposed amendment is to ensure that it is the area of, and time for which, soil is exposed that must be minimised.

<b>Activity</b>	<b>Rules</b>
<p>11. Discharge into a surface water drainage system</p>	<p>(a) Oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants must not be disposed of into a surface water drainage system or onto any surface that drains into a surface water drainage system;</p> <p>(b) any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment must not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system;</p> <p>(c) sewage or trade effluent must not be discharged into any surface water drainage system; and</p> <p>(d) on construction sites, any area of exposed soil from which the discharge of water run-off to the water environment is authorised under activity 10, and the period of time during which such soil is exposed, must be the minimum required to facilitate the construction works being undertaken at that site.</p>

## 4.5 General Binding Rule 12

### Amendments to rules

The proposed package of amendments to the activity 12 rules is designed to make the environmentally good practice of returning excavated sediment to rivers or burns the default.

### Amendment to rule (a)

The proposed amendment is to clarify that sediment can **only** be removed in the 10 metres upstream of the weir.

### Amendment to rules (c)-(g)

It is proposed to remove rules (c) to (g) and replace with new rules (c) to (h). The proposed amendments better clarify the requirements and, to increase flexibility, remove the current restriction that sediment be returned within 10 metres of the weir. The other conditions on the return of sediment are retained.

Activity	Rules
<p><b>12.</b> The removal of sediment or any other matter that may have been deposited on the bed of a river, burn or ditch in the area of impounded water upstream of a weir the operation of which is authorised under these Regulations and the return of that sediment to the river, burn or ditch from which it was removed.</p>	<p>(a) Sediment or other matter must only be removed within 10 metres upstream of the weir;</p> <p>(b) the sediment or other matter removed must only include sediment or other matter that could reasonably be expected to have been deposited on the bed of the river, burn or ditch within a period of 3 years preceding the date of the removal;</p> <p>(c) if it is reasonably practicable to do so in compliance with rules (d) and (f) below, the removed sediment must be placed at the edge of the river or burn downstream of the weir in such a way and at such a location that high river flows are able to cause it to be redistributed and transported by the river or burn;</p> <p>(d) when placing sediment at the edge of a river or burn, the sediment must;</p> <p>(i) not be placed in such a way or such a location as to result in an accumulation of sediment likely to impede the free passage of migratory fish;</p>

	<ul style="list-style-type: none"> <li>(ii) not be placed in a wetted part of the river or burn during periods in which fish are likely to be spawning in that part of the river, burn or during the period between any such spawning and the subsequent emergence of the juvenile fish;</li> <li>(iii) be placed in such a way and such a location that the risk of the placement resulting in increased erosion of the bed or banks of the river or burn is minimised; and</li> <li>(iv) not contain man-made matter;</li> <li>(e) removed sediment must not be deposited in the channel or on the banks of a river, burn or ditch except in accordance with rules (c), (d) and (f);</li> <li>(f) the removal and placement of sediment must not result in pollution of the water environment;</li> <li>(g) vegetation on any bank of the river, burn or ditch must be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification; and</li> <li>(h) any vegetation removed must not be disposed of into the channel.</li> </ul>
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#### 4.6 General Binding Rule 13

There is no amendment to the content of activity or rules of GBR 13. The proposed amendment corrects a typing error by clarifying that previous rule (h)(iv) is a separate rule, (i), rather than a sub-set of rule (h)

#### 4.7 General binding rule 15

In this GBR, rule (b) was intended to protect watercourses from temporary groundwater abstractions by limiting dewatering in geological settings where groundwater inputs to surface waters contributes significantly to maintaining river flows. The current rule is complex, not well understood and difficult to enforce. The

revised wording of rule (b) provides equivalent protection using a simple stand-off distance.

**Amendment to rule (a)**

Proposed amendment to remove ‘subject to paragraph b’ as this no longer applies to the revised rule (b).

**Amendment to rule (b)**

Proposed revision of the wording of rule (b) to set a simplified exclusion zone.

Activity	Rules
<p><b>15.</b> The temporary abstraction of groundwater at-</p> <ul style="list-style-type: none"> <li>(a) a construction site for roads, railways, buildings, pipelines, communication links or other built development; or</li> <li>(b) a site at which the maintenance of such development is being undertaken;</li> </ul> <p>by means of-</p> <ul style="list-style-type: none"> <li>(i) pumping the groundwater directly from any excavation or excavations on the site; or</li> <li>(ii) pumping the groundwater from any wells or boreholes on the site in order to help dewater any other excavation or excavations on the site;</li> </ul> <p>and, if desired, the subsequent discharge of the abstracted groundwater to the water environment.</p>	<ul style="list-style-type: none"> <li>(a) groundwater may only be abstracted at the site within a period of 180 days beginning with the first day on which groundwater is abstracted at the site;</li> <li>(b) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of a watercourse or loch unless the abstracted water is discharged into the watercourse or loch at the nearest part of the watercourse or loch to the point of abstraction and in accordance with paragraph (f);</li> <li>(c) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of a wetland;</li> <li>(d) groundwater must not be abstracted from any excavations, wells or boreholes that are within 250 metres of an abstraction that is not for the sole purpose of dewatering an excavation;</li> <li>(e) all reasonable steps must be taken to ensure that the quantity of sediment in any abstracted water is minimised; and</li> <li>(f) if the abstracted groundwater and, if it is pumped directly from an excavation, any precipitation or water run-off that has also collected in the</li> </ul>

	excavation, is discharged to the water environment, it must be via a surface water drainage system authorised under these Regulations and with the consent of the person having operational control of the system.
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#### 4.8 General Binding Rule 17

SEPA recently consulted on requirements relating to geothermal abstractions. This has resulted in proposed amendments to the general binding rule on geothermal abstractions.

##### Amendment of activity

The scope of activities authorised under GBR 17 has been widened to include the abstraction and subsequent return of groundwater as part of a cooling system.

##### Amendment of rule (a)

The proposed amendments to rule (a) are:

- (i) the inclusion of ‘part of’, which ensures the return of abstracted water to the same part of the geological formation from which it was abstracted. This minimises the risk of any adverse impact on another area of groundwater.
- (ii) a reference to ‘mine workings’ has also been added in rule (a). Returning water abstracted from mine workings to underground strata not affected by mining could result in the transfer of polluted water into good quality groundwater resources.

##### Amendment of rule (c)

Proposed amendment to clarify that pollutants must not be added to the abstracted water before its return. Previously, the rule had been that the “chemical quality” of the water must not be altered.

##### Addition of rule (f)

Proposed addition of rule (f) to ensure geothermal abstractions do not take place next to other abstractions in ways that could reduce the availability of supply for neighbouring abstractions.

Activity	Rules
17. The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the abstracted water or for the purpose of transferring heat to geological formations as part of a cooling system.	(a) The abstracted water must be returned to the same part of the geological formation or the mine workings from which it was abstracted; (b) any volume of water may be

	<p>abstracted but the volume of water abstracted and not returned must not exceed 10 m<sup>3</sup> per day;</p> <p>(c) no pollutants may be added to, or otherwise allowed to enter, the abstracted water prior to its return to the geological formation;</p> <p>(d) there must be a means of demonstrating that the net abstraction is not more than 10 m<sup>3</sup> in any one day;</p> <p>(e) water leakage must be kept to a minimum by ensuring that all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a good state of repair; and</p> <p>(f) the activity must not be located within 250 metres of any abstraction of water intended for human consumption and must not adversely affect any other water abstractions.</p>
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## **5. DIFFUSE POLLUTION GENERAL BINDING RULES 18-24 – PROPOSED AMENDMENTS**

Rural diffuse pollution has been identified as the largest polluting pressure on Scotland's water environment. General binding rules 18-24 were introduced to CAR in 2008, with the aim of reducing diffuse pollution.

In implementing the first RBMPs, 14 priority catchments were identified where the water environment was at greatest risk from diffuse pollution. SEPA has been working closely with land managers in these catchments to encourage compliance with the diffuse pollution GBRs. This approach involves a major campaign of awareness-raising, farm visits, guidance, and training.

The work has been well received by landowners, and through the Diffuse Pollution Management Advisory Group (DPMAG) a good working relationship between SEPA, the Scottish Government, land managers and other relevant bodies has been established. Following the success of this approach in implementing the first RBMP, it has been carried through into the second RBMP (2015-2021) with the number of priority catchments increased to 57. SEPA will continue to work closely with land managers in these catchments to deliver compliance with the GBRs.

The work in the priority catchments has helped identify where the diffuse pollution rules can be further improved and clarified. The proposals include amendment to or clarification regarding:

- distances from watercourses
- fertiliser application
- storage of liquid inorganic fertiliser
- protection of private water supplies
- reducing contaminated runoff
- reducing soil erosion
- bankside pesticide use
- pour-on sheep treatments

The proposed amendments for each GBR are set out in more detail below. For ease of understanding, the full text of each GBR is set out below with the proposed revisions highlighted.

### **5.1 General Binding Rule 18**

General binding rule 18 applies to all products which are stored, or applied, as fertilisers and includes: digestate, sewage sludge and compost. A number of amendments are proposed to clarify that latest operational practices must not pose a risk to the water environment.

#### **Amendment of activity**

The activity currently provides exemptions if the storage or application of fertiliser is regulated by certain specified legislation. Since the introduction of the general binding rule 18 in 2008 it has been identified that some of this specified legislation

does not actually deal with the storage of fertilisers, and none of it with deals the application of fertiliser. Therefore the activity requires amendment to reflect this.

It is proposed to split the activity into (a) storage and (b) applications; as the exemptions would only apply to the storage and not to the application of the fertiliser. With regard to storage, the exemptions will be continue to apply:

- when the storage is covered as a waste in terms of section 35 (waste management licence: general) of the Environmental Protection Act 1990.
- when the storage is covered by The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (SSAFO) also remains.

### **Amendment of rules**

To ensure that storage of digestate, which is not legislated by the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003, is in a container of suitable structural integrity, rules (c) and (d) have been added. Storage should generally be of the same standard as for slurry storage.

Following instances of pollution and fish kill due to inorganic liquid fertiliser being inadequately stored, rules (e) (f) and (g) have been introduced to place controls over storage of liquid fertilisers. The rules are in line with the Code of practice on fluid fertilisers published by the Agricultural Industries Confederation.

Rule (k) has been added to ensure that there are controls over semi solid digestate when stored on farmland.

### **Current rules (c) to (e) become rules (h) to (j)**

#### **Amendment of rule (a)**

The proposed amendment is to ensure that it is clear that the temporary storage of fertiliser is included.

#### **Amendment of rules (a)(i), (h)(i) and (i)(i)**

The proposed amendments of rules (a)(i), (f)(i) and (i)(i) are intended to clarify and bring consistency, to how distances from surface waters are to be measured for the purpose of compliance with the GBRs.

#### **Addition to rule (a)(i)**

The proposed addition to rule(a)(i) is intended to control the risk of fertiliser entering the water environment via a surface water drainage system.

#### **Amendment of rules (a)(ii), (h)(ii) and (i)(ii)**

Proposed amendment to these rules to ensure all wells and springs supplying water for human consumption are protected similarly. For the purpose of these regulations a “well” also now includes a permeable underground collection tank (see the proposed new definitions in Section 8). It has been identified that, in some cases, private water supplies which use these tanks as part of their supply system have had water supplies contaminated due to the close proximity of certain activities.

### **Additional rules (c) and (d).**

Proposed new rules (c) and (d) have been added to ensure that digestate from anaerobic digestion plants, which is becoming more commonly used as a fertiliser, is stored in containment which is fit for purpose.

### **Additional rules (e), (f) and (g)**

The proposed additional rules (e),(f),and (g) are designed to provide appropriate conditions for the storage of liquid inorganic fertiliser because of the specific additional risks to the water environment this type of fertiliser poses.

### **Current rules (f) and (g) become rules (l) and (m)**

### **Amendment to rule (j) (previously rule (e))**

The proposed revision of the rule, and the requirements of parts (i) and (ii), is to clarify that nitrogen fertiliser must not be applied in excess of crop needs and to ensure that the phosphorus status of soils is not raised to an unacceptably high level. This will reduce the risk to the water environment through leaching of nutrients, due to there being excessively high levels in the soil.

There is also a proposed amendment to require that fertiliser must not be applied during heavy rainfall or when such rainfall is forecast. Application at such times poses a high risk that the fertiliser will be carried in rainfall run-off to the water environment. Apart from the pollution aspect this would also be a loss of a valuable asset to the farm business.

### **Additional rule (k)**

There have been recent instances where the storage on farmland of large quantities of semi-solid anaerobic digestate, or sewage sludge for use as fertiliser has resulted in pollution of the water environment. It is considered that a control on such storage of this material is required. It is proposed that where the digestate, or sewage sludge, is stored in-field it can only be stored in the amount to be applied to that particular field in the current growing season.

<b>Activity</b>	<b>Rules</b>
<b>18(a)</b> The storage of fertiliser unless the storage is regulated by: <ul style="list-style-type: none"><li>(i) a waste management licence in terms of section 35 (waste management licence: general) of the Environmental Protection Act 1990; or</li><li>(ii) the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003; and</li></ul> <b>(b)</b> the application of any fertiliser	<b>(a)</b> No fertiliser may be stored, including temporarily in a mobile tank or bowser, on land that: <ul style="list-style-type: none"><li>(i) is within 10 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 10 metres of any wetland; or within 10 metres of any transitional water or coastal water, as measured from the shoreline, or within 10 metres of any opening into a surface water drainage system;</li></ul>

	<p>(ii) is within 50 metres of any well or spring that supplies water for human consumption or within 50 metres of any borehole that is not capped in such a way so as to prevent the ingress of water;</p> <p>(iii) is waterlogged;</p> <p>(iv) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except if the fertiliser is stored in an impermeable container; or</p> <p>(v) is sloping, unless the fertiliser is inorganic or it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;</p> <p>(b) paragraph (a) does not apply if such storage is in a building which is constructed and maintained to such a standard as is necessary to prevent any run-off or seepage of fertiliser from the building;</p> <p>(c) the base and walls of any container, and the walls and joints of any pipes, of any storage system constructed after [<i>coming into force date</i>] and used to store liquid digestate must:</p> <ul style="list-style-type: none"> <li>(i) be impermeable and protected against corrosion; and</li> <li>(ii) capable of withstanding the loads on them when the storage system is full;</li> </ul> <p>(d) any storage system used to store liquid digestate must be maintained in such a condition that no digestate escapes from the system;</p>
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	<p>(e) inorganic liquid fertiliser must only be stored in a rigid, impermeable tank that:</p> <ul style="list-style-type: none"> <li>(i) has a lockable, double valve on the outlet that is closed and locked when the tank is unattended;</li> <li>(ii) is located above ground; and</li> <li>(iii) is protected from vehicle collision;</li> </ul> <p>(f) when temporarily stored in field, inorganic liquid fertiliser must only be contained in a tank, bowser or spreading equipment:</p> <ul style="list-style-type: none"> <li>(i) whose hatches and lids are securely closed and whose outlets are securely closed and locked, except when the fertiliser is being transferred or applied;</li> <li>(ii) that is held on a support in such a way that it cannot become dislodged; and</li> <li>(iii) that is on a support which is stable under the fully loaded weight of the tank or bowser and cannot itself become dislodged;</li> </ul> <p>(g) when any inorganic liquid fertiliser is being transferred to a tank, bowser or spreading equipment, all necessary steps must be taken to prevent any spillage or leakage entering the water environment;</p> <p>(h) no organic fertiliser may be applied to land that—</p> <ul style="list-style-type: none"> <li>(i) is within 10 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 10 metres of any</li> </ul>
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	<p>wetland; within 10 metres of any transitional water or coastal water, as measured from the shoreline; or within 10 metres of any opening into a surface water drainage system;</p> <p>(ii) is within 50 metres of any well or spring that supplies water for human consumption or within 50 metres of any borehole that is not capped in such a way so as to prevent the ingress of water;</p> <p>(iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations;</p> <p>(iv) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow; or</p> <p>(v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;</p> <p>(i) no inorganic fertiliser may be applied to land that—</p> <p>(i) is within 2 metres of any river, burn, ditch or loch, as measured from the bank top; within 2 metres of any wetland; within 2 metres of any transitional water or coastal water, as measured from the shoreline; or within 2 metres of any opening into a surface water drainage system;</p>
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	<ul style="list-style-type: none"> <li>(ii) is within 5 metres of any well or spring that supplies water for human consumption or within 5 metres of any borehole that is not capped in such a way so as to prevent the ingress of water;</li> <li>(iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations;</li> <li>(iv) is frozen, waterlogged, or covered with snow; or</li> <li>(v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;</li> </ul> <p>(j) fertilisers must not be applied to land:</p> <ul style="list-style-type: none"> <li>(i) in such amounts, that the crop requirement for nitrogen is exceeded;</li> <li>(ii) in excess of the amount required to maintain the soil phosphorus status at acceptable agronomic levels; or</li> <li>(iii) during heavy rainfall or where heavy rainfall is forecast within 48 hours</li> </ul> <p>(k) digestate or sewage sludge stored in-field on farmland must not be stored in excess of quantities expected to be spread on that field in a single growing season.</p> <p>(l) any equipment used to apply fertiliser must be maintained in a good state of</p>
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	repair; and  (m) fertiliser must be applied on land in such a way and at such times that the risk of pollution of the water environment is minimised.
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## 5.2 General Binding Rule 19

The rules associated with the keeping of livestock contain minimum distances from watercourses. The minimum distances shall remain, but in some instances it has been identified that, at some locations, this may not provide adequate protection, and run off still has potential to enter watercourses. Therefore it is proposed that in instances where the minimum distance is observed and run off is still entering watercourses an additional adequate buffer zone is observed.

### Amendment of rules (a) and (c)

The proposed amendments are intended to clarify how distances from surface waters are to be measured for the purpose of compliance with the GBRs.

### Additional rule (d)

The proposed addition is intended to ensure that rainwater run-off from areas around feeders and watering points does not enter the water environment. In relation to areas around feeders the addition replaces the existing rule but clarifies that it is run-off from areas in which livestock congregate around the feeders, and that, in certain circumstances, the buffer must be increased to an adequate width to avoid run off entering the watercourse.

Activity	Rules
<p><b>19.</b> Keeping of livestock.</p>	<p>(a) Significant erosion or poaching of any land that is within 5 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 5 metres of any wetland; or within 5 metres of any transitional water or coastal water, as measured from the shoreline, must be prevented;</p> <p>(b) livestock must be prevented from entering any land that is within 5 metres of any spring or well that supplies water for human consumption or within 5 metres of any well or borehole that is not capped in such a way so as to prevent the ingress of water;</p>

	<p>(c) livestock feeders must not be positioned within 10 metres of any river, burn, ditch, or loch, as measured from the bank top, within 10 metres of any wetland or within 10 metres of any transitional water or coastal water, as measured from the shoreline; and</p> <p>(d) before entering any surface water or wetland, run-off from land on which livestock congregate to access watering points or feeders must be intercepted (by means of a sufficient buffer zone or otherwise) such that any faeces, urine or soil in the run-off are prevented from entering that surface water or wetland.</p>
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### 5.3 General Binding Rule 20

To ensure that there is consistency with other general binding rules, rule (a)(i) requires to contain the point of measurement from the water course; and similarly rule (a)(ii) requires to contain “well”, to protect private water supplies, in line with proposals for amendments to GBR 18.

As the risk in rule (b) only occurs when the operation is on a slope which slopes towards a watercourse, it is proposed that in the interest of clarity the rule is reworded to reflect this.

Soil erosion, from cultivation of land, has been identified as a major risk to water quality and the proposed amendment of rule (c) clarifies that minimising soil erosion is included.

#### **Amendment of rule (a)(i)**

The proposed amendments are intended to clarify and bring consistency to how distances from surface waters are to be measured for the purpose of compliance with the GBRs.

#### **Amendment of rule (a)(ii)**

The proposed amendments are designed to ensure the protection of wells from pollution risks arising from the cultivation of land.

#### **Amendment of rule (b)**

The proposed amendments at (b)(ii) are designed to improve clarity – ie that it is the direction of slope of the land not the surface water that is the restriction intended.

### Amendment of rule (c)

The proposed amendment is to ensure that the cultivation of land is carried out in such a way that pollution from soil erosion is minimised

Activity	Rules
20. Cultivation of land.	<p>(a) No land may be cultivated for crops that is—</p> <ul style="list-style-type: none"><li>(i) within 2 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 2 metres of any wetland; or within 2 metres of any transitional water or coastal water, as measured from the shoreline;</li><li>(ii) within 5 metres of any spring or well that supplies water for human consumption or within 5 metres of any well or borehole that is not capped in such a way so as to prevent the ingress of water; or</li><li>(iii) waterlogged;</li></ul> <p>(b) moling of land must not be carried out on slopes that:</p> <ul style="list-style-type: none"><li>(i) have an overall gradient in excess of 4.5°; and</li><li>(ii) slope towards a river, burn, ditch, loch, transitional water, coastal water or wetland;</li></ul> <p>(c) land must be cultivated in a way that minimises the risk of pollution to the water environment, including as a result of soil erosion;</p>

## 5.5 General Binding Rule 23

### Amendment of activity

The scope of this general binding rule with regard to pesticides is only intended to apply to those pesticides which are plant protection products. Plant protection products are substances intended for use in agriculture, horticulture, forestry, and amenity areas for the purpose of :

- protecting plants or plant products by destroying, repelling or limiting the growth of pests
- destroying or limiting the growth of weeds or undesired plants
- controlling or modifying the growth of plants (other than as nutrients).

For the purposes of this general binding rule the definition of plant protection products is set out in Section 8

### Amendment of rules(a), (b), and (c),

The proposed amendments of rules (a), (b) and (c) are to include all methods of application.

### Amendment of rules (a)(ii) and(i)(i)

Amendments to (a)(ii) and (i)(i) are intended to clarify how distances from surface waters are to be measured for the purpose of compliance with the GBRs.

### Amendment of rules (f)(iv), and (i)(ii)

The proposed amendments are designed to ensure the protection of wells from pollution risks arising from the storage and application of pesticides.

### Additional rule (g)

The proposed addition of rule (g) is intended to allow the application of herbicide to control non-native invasive species of plants on river banks. As the majority of applications to SEPA on the use herbicide on river banks are for the purpose of controlling invasive plants this will enable work to be carried out without applying for authorisation.

**Current rules (g) and (h) become (h) and (i); and previous final text under rule (h) becomes separate rule (j).**

Activity	Rules
<b>23.</b> The storage and application of pesticides that are plant protection products.	(a) The preparation of pesticide for application and the filling, cleaning or maintenance of pesticide sprayers or other devices used to apply pesticides;  (i) must be undertaken in a manner which prevents any spillages, runoff or washings from entering any river, burn, ditch, wetland, loch, transitional water or coastal water; and

	<ul style="list-style-type: none"> <li>(ii) must not be undertaken within 10 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 10 metres of any wetland; within 10 metres of any transitional water or coastal water, as measured from the shoreline; or within 10 metres of any opening into a surface water drainage system;</li> <li>(b) pesticide sprayers and other devices used to apply pesticides must be maintained in a good state of repair, such that there is no leakage of pesticide from any part of the equipment and the sprayer is calibrated to accurately deliver the required application rate;</li> <li>(c) pesticide sprayers and other devices used to apply pesticide must not be filled with water taken from any river, burn, ditch, wetland or loch unless; <ul style="list-style-type: none"> <li>(i) a device preventing back siphoning is fitted to the system; or</li> <li>(ii) the water is first placed in an intermediate container;</li> </ul> </li> <li>(d) pesticide-treated plants must not be stored or soaked in any river, burn, ditch, wetland or loch;</li> <li>(e) pesticide must be applied in accordance with the terms and instructions of the relevant product approval;</li> <li>(f) unless in accordance with rule (g), pesticide must not be applied in, onto or over ground or allowed to drift onto or over ground— <ul style="list-style-type: none"> <li>(i) that is frozen, snow covered or waterlogged, except where the application in, onto or over waterlogged ground is necessary for the purpose of controlling fungal disease and all precautions are taken to minimise the risk of pesticide</li> </ul> </li> </ul>
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	<p>entering any river, burn, ditch, wetland, loch, transitional water or coastal water;</p> <p>(ii) that is within 1 metre of any river, burn, ditch or loch, as measured from the top of the bank; within 1 metre of any wetland; or within 1 metre of any transitional water or coastal water as measured from the shoreline</p> <p>(iii) that is sloping, unless it is ensured that any run-off of pesticide is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any river, burn, ditch, wetland, loch, transitional water or coastal water towards which the land slopes;</p> <p>(iv) that is within 50 metres of any well or spring that supplies water for human consumption;</p> <p>(vi) that is within 50 metres of any well or borehole unless the well or borehole is capped in such a way as to prevent the ingress of the pesticide;</p> <p>(vi) that has an impermeable surface which drains directly into a surface water drainage system, unless measures are taken to minimise the risk of pesticides entering the drainage system; or</p> <p>(vii) along roads, railway lines, permeable surfaces or other infrastructure, unless measures are taken to minimise the risk of pollution of any river, burn, ditch, wetland, loch, transitional water, coastal water or surface water drainage system;</p> <p>(g) pesticide may be applied within 1 metre of any river, burn, ditch or loch, as measured from the top of the bank; within 1 metre of any wetland; or within 1 metre of any transitional water or coastal water as measured from the shoreline where-</p>
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	<ul style="list-style-type: none"><li>(i) the pesticide is specifically approved for aquatic use under the Plant Protection Products Regulation (EC) No 1107/2009 and are applied in accordance with the terms of that approval;</li><li>(ii) the application is for the sole purpose of controlling an invasive non-native species of plant;</li><li>(iii) no pesticide enters the river, burn, ditch, wetland, loch, transitional water or coastal water;</li><li>(iv) the ground over or onto which pesticide is applied is not frozen, snow covered or waterlogged;</li><li>(v) the ground over or onto which plant protection product is applied is not an impermeable surface which drains directly into a surface water drainage system unless measures are taken to minimise the risk of pesticide entering the drainage system;</li><li>(vi) the ground over or onto which pesticide is applied is not within 50 metres of any well or spring that supplies water for human consumption;</li><li>(vii) the ground over or onto which pesticide is applied is not within 50 metres of any well or borehole unless the well or borehole is capped in such a way as to prevent the ingress of the pesticide;</li><li>(viii) the application, including the method used, is designed to minimise damage to other, non-target vegetation; and</li><li>(ix) all necessary steps are taken to ensure that the application does not result in increased erosion of the</li></ul>
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	<p>banks of the river, burn, or loch or the shoreline of the transitional water or coastal water.</p> <p>(h) application of pesticide must be carried out in such a way, and at such times, that the risk of pollution of any river, burn, ditch, wetland, loch, transitional water or coastal water is minimised and, in particular, pesticide must not be applied—</p> <p>(i) during rainfall; or</p> <p>(ii) during conditions when there is a risk that spray will drift or be blown outwith the target area; and</p> <p>(i) pesticide, including any used packaging that has been stored in contact with pesticide, must not be stored—</p> <p>(i) within 10 metres of any river, burn, ditch or loch, as measured from the top of the bank; within 10 metres of any wetland; or within 10 metres of any transitional water or coastal water, as measured from the shoreline;</p> <p>(ii) within 50 metres of any well or spring that supplies water for human consumption;</p> <p>(iii) within 50 metres of any well or borehole unless the well or borehole is capped in such a way as to prevent the ingress of any pesticide; or</p> <p>(iv) on an impermeable surface draining to a surface water drainage system,</p> <p>(j) rules (i) (i), (ii) and (iii) do not apply where the pesticide or used packaging is stored in such a way that any leakage or spillage and any exposed pesticide on used packaging cannot reach any river, burn, ditch, wetland, loch, transitional water, coastal water or any opening into</p>
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	a surface water drainage system, including by being transported in rainwater runoff.
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## 5.6 General Binding Rule 24

In recent years there has been a move within the agriculture sector from the actual dipping of sheep to the use of ‘pour on’ treatments. This treatment can still have potential to impact on the water environment. The activity and rule needs to provide that ‘pour on’ treatments are treated the same as sheep dip.

### Amendment to the description of the activity

The proposed amendment proposes the inclusion of the activity of operating sheep handling facilities in which sheep are held during, or after, treatment with pour on chemicals.

### Amendment of rule (a)

The proposed amendment clarifies that the rule applies to the use of pour on treatments, in addition to dipping.

### Amendment of rule (b)

The proposed amendment applies the existing rule (which applies to dipping facilities) to handling facilities used for pour on treatments. The proposed amendments are also intended to clarify how distances from surface waters are to be measured for the purpose of compliance with the GBRs

Activity	Rules
<p><b>24.</b> Operating sheep dipping facilities; and operating sheep handling facilities where:</p> <ul style="list-style-type: none"> <li>(a) sheep are held immediately after dipping;</li> <li>(b) pour on parasite treatments are applied; or</li> <li>(c) sheep are held immediately after the application of pour on treatments</li> </ul>	<ul style="list-style-type: none"> <li>(a) After treatment, sheep must be prevented from having access to any river, burn, ditch, or wetland, loch, transitional water or coastal water while there is a risk of transfer of sheep dip fluid or any pour-on external parasite treatment from their fleece to such places;</li> <li>(b) no mobile sheep dipping facility or part of any sheep dipping facility constructed after 1<sup>st</sup> April 2008, and no sheep handling facility used for pour on treatments constructed after (coming into force date) may be located within 50 metres of any:</li> </ul>

	<ul style="list-style-type: none"> <li>(i) river, burn, ditch, or loch, as measured from the top of the bank;</li> <li>(ii) wetland</li> <li>(iii) transitional water or coastal water, as measured from the shoreline; or</li> <li>(iv) well, spring or borehole;</li> </ul> <p>(c) sheep dipping facilities must not discharge underground and must not leak or overspill;</p> <p>(d) sheep dipping facilities must not be filled with water taken from the water environment unless—</p> <ul style="list-style-type: none"> <li>(i) a device preventing back siphoning is fitted to the system; or</li> <li>(ii) the water is first placed in an intermediate container; and</li> </ul> <p>(e) without prejudice to the continued requirement to obtain specific authorisation for the disposal of sheep dip under these Regulations, sheep dip facilities must be emptied within 24 hours following completion of dipping.</p>
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## 6. PROPOSED NEW GENERAL BINDING RULE 25 - BANK REINFORCEMENT

Following heavy rainfall events in recent years, riverbank erosion caused by swollen rivers has become an increasing land management problem. River bank erosion can result in losses of productive land and damage to fencing, tracks and other infrastructure. But trees or parts of trees can be used to protect eroding banks by cushioning them against the force of the river. These techniques have a number of benefits over alternative ways of protecting riverbanks:

- they don't put banks downstream at increased risk of erosion. This is because some of the force of the river is dissipated as it flows through the tree stems, roots and branches protecting the bank. In contrast, where hard bank protection is used, the full force of the river is transferred downstream;
- if live trees are used, their roots increase the strength of the bank and help create a buffer against diffuse pollution from the surrounding land;
- they mimic natural habitats and so help improve the health of the river.

Land managers have called for a GBR to allow them to carry out this type of bank reinforcement without the need for an application (and hence no application costs) to SEPA.

### 6.1 General Binding Rule 25

The proposed new activity provides for authorisation of the use of bank reinforcement techniques. The rules to which the authorisation would be subject are designed to ensure:

- the trees used are properly secured in place. This is particularly important where large, heavy wood is used as this can cause damage to bridges and other structures if washed away by the river;
- the protection does not increase erosion of the bed or banks. The rules require that the protection does not cause steps in the line of the bank that could be triggers for erosion;
- the risk of soils and other sediments getting into the river as a result of the works to install the protection are minimised; and
- risks to one of Scotland's most threatened species, the freshwater pearl mussel are taken into account.

Activity	Rules
<p><b>25.</b> The placement of trees or parts of trees in a watercourse to protect eroding banks</p>	<p>(a) Other than in accordance with rule (e), the trees or parts of trees must only be placed in or along eroding banks;</p> <p>(b) the placement must result in an arrangement of live or dead tree stems, branches or roots which, as</p>

	<p>the watercourse flows through the arrangement, flex or bend and impede its flow with the effect of cushioning the bank from the force of the watercourse;</p> <p>(c) the trees or parts of trees must be tied, keyed or staked into the bank or bed of the watercourse so as to secure them in place;</p> <p>(d) the placed trees or parts of trees must:</p> <ul style="list-style-type: none"> <li>(i) follow the line of the toe of the eroded bank at the time of the works; and</li> <li>(ii) be graded into the existing lines of the banks at either end of the protected section;</li> </ul> <p>(e) the placement may extend beyond the upstream and downstream ends of an eroding bank only to the extent necessary to:</p> <ul style="list-style-type: none"> <li>(i) prevent the river from going around the placements and eroding the bank behind them; and</li> <li>(ii) ensure the line of the placements is graded smoothly into the existing lines of the banks at either end of the protected section;</li> </ul> <p>(f) when placing willow spiling or live willow stakes:</p> <ul style="list-style-type: none"> <li>(i) the angle of the eroding bank may be reduced to enable the establishment and growth of the willow; and</li> <li>(ii) stones may be placed at the toe of the bank to help prevent the bank above being undercut by the watercourse before the willow has become established. The stones used must be no larger than the largest stones</li> </ul>
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	<p>that have been deposited by the watercourse on the channel bed in the vicinity of the eroding bank;</p> <p>(g) all reasonable steps must be taken whilst placing the trees or parts of trees to prevent any exposed soil or other sediments from entering the watercourse and being transported beyond the stretch being protected;</p> <p>(h) once the trees or parts of trees have been placed, any areas of bare earth on the banks resulting from the works must be re-vegetated to minimise the risk of soil erosion, either by covering with grass turfs or lining with a biodegradable geotextile and seeding; and</p> <p>(i) where the trees or parts of trees need to be placed on the wetted part of the bed of the watercourse or their placement would otherwise be likely to disturb the wetted part of the bed of the watercourse they must not be placed if there is a reasonable likelihood that there are freshwater pearl mussels in the part of the watercourse that would be affected.</p>
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## 7. PROPOSED NEW GENERAL BINDING RULES 26, 27, AND 28 - OIL STORAGE PROVISIONS

The Water Environment (Oil Storage) (Scotland) Regulations 2006 (“Oil Storage Regulations”) introduced detailed requirements for the storage of oil with the aim of preventing pollution. These were introduced as standalone regulations, although they were underpinned by CAR.

It is conceivable that certain oil storage installations could have a serious impact on our environment in the event of an incident, particularly given the size, age and location of some of these installations. In particular, concerns have been raised regarding the proximity of certain large installations to the water environment and to residential properties.

We recognise the need for clarity around the rules applying to oil storage; so we propose to incorporate oil storage provisions within CAR as a new set of GBRs. As there are 3 distinct types of oil storage covering differing scales, we propose to split these into 3 separate GBRs. The corresponding rules are in line with those currently set out in the Oil Storage Regulations.

It is recognised that certain oil distribution depots may be unable to comply in the first instance with the relevant GBR. However, as for any other general binding rule, where operators cannot meet the specific requirements of an applicable general binding rule they can operate under a CAR licence, which will contain conditions to ensure that appropriate controls are in place to minimise any environmental impact.

### 7.1 General Binding Rule 26

General Binding Rule 26 will cover oil storage in containers up to 200 litres currently regulated under regulation 4 of the Oil Storage Regulations 2006

Activity	Rule
<p><b>26.</b> The storage of oil in a portable container with a capacity of less than 200 litres.</p>	<p>The container must be of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in its ordinary use.</p>

### 7.2 General Binding Rule 27

General Binding Rule 27 will cover oil storage at residential premises currently regulated under regulation 5 of the Oil Storage Regulations 2006.

Activity	Rule
<p><b>27.</b> The storage of oil on premises used for residential purposes (except where the premises is a vehicle or vessel), where the oil is– (a) stored in a container with a capacity</p>	<p>(a) The container must be of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in its ordinary use; and</p>

<p>of 2,500 litres or less; and  (b) where the oil is used solely to serve a fixed combustion appliance installation providing space heating or cooking facilities;</p>	<p>(b) any container which is installed or altered must comply with the requirements of any applicable regulations under the Building (Scotland) Act 2003.</p>
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### 7.3 General Binding Rule 28

General Binding Rule 28 will cover all other storage of oil other than that covered by GBRs 26 and 27.

<b>Activity</b>	<b>Rule</b>
<p><b>28.</b> The storage of oil on premises other than:</p> <p>(a) where the premises is a vehicle or vessel;</p> <p>(b) where the storage is:</p> <p>(i) in accordance with an authorisation under regulation 7 or 8; or is a relevant authorisation in terms of Part 2 of Schedule 10;</p> <p>(ii) is an activity specified at activities 26 or 27 of Column 1 of this schedule;</p> <p>(c) in a container which is wholly underground (unless situated wholly within a building underground);</p>	<p>(a) The oil must be stored in a container which is of sufficient strength and structural integrity, and has been installed so as to ensure that it is unlikely to burst or leak in its ordinary use.</p> <p>(b) the container must be situated within a secondary containment system:</p> <p>(i) which, subject to rule (e), has a capacity of not less than 110% of the container's storage capacity or, if there is more than one container within the system, of not less than 110% of the largest container's storage capacity, or 25% of the aggregate storage capacity, whichever is greater;</p> <p>(ii) which is positioned, or otherwise protected, so as to minimise any risk of damage to it by impact so far as is reasonably practicable;</p> <p>(iii) the base and walls of which are impermeable to water and oil;</p> <p>(iv) the base and walls of which are not penetrated by any valve, pipe or other opening which is used for draining the system; and</p> <p>(v) which, if a fill pipe or draw off pipe penetrates its base or any of its walls, has all points at which the</p>

	<p>pipe meets the base or wall adequately sealed to prevent oil escaping from the system;</p> <p>(c) any valve, filter, sight gauge, vent pipe or other equipment ancillary to the container (other than a fill pipe or draw off pipe or a pump) must be situated within the secondary containment system;</p> <p>(d) if the connection point to a fill pipe is not within the secondary containment system, a drip tray must be used to catch any oil spilled when the container is being filled with oil;</p> <p>(e) where any drum is used for the storage of the oil in conjunction with a drip tray as a secondary containment system, it is sufficient if the tray has a capacity of not less than 25% of:</p> <ul style="list-style-type: none"> <li>(i) the drum's storage capacity; or</li> <li>(ii) if there is more than one drum used at the same time with the tray, the aggregate storage capacity of the drums;</li> </ul> <p>(f) where a fixed tank is used for storing oil:</p> <ul style="list-style-type: none"> <li>(i) any sight gauge must be properly supported and fitted with a valve which closes automatically when not in use;</li> <li>(ii) any fill pipe, draw off pipe or overflow pipe must: <ul style="list-style-type: none"> <li>1. be positioned or other steps taken, so as to minimise any risk of damage by impact so far as is reasonably practicable;</li> <li>2. if made of materials which are liable to corrosion, be adequately protected against corrosion; and</li> <li>3. not be permeable to</li> </ul> </li> </ul>
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	<p>hydrocarbon vapours;</p> <p>(iii) if underground, any fill pipe, draw off pipe or overflow pipe must:</p> <ol style="list-style-type: none"> <li>1. have no mechanical joints, except at a place where such joints are accessible for inspection by removing a hatch or cover;</li> <li>2. be adequately protected from physical damage;</li> <li>3. have adequate facilities for detecting any leaks;</li> <li>4. if fitted with a leakage detection device which is continuously to monitor for leaks the detection device must be maintained in working order and tested at the appropriate intervals, and at least every 5 years, to ensure that it works properly; and</li> <li>5. if not fitted with a leakage detection device, must be tested for leaks before it is first used and further tests for leaks must be performed in the case of pipes which have mechanical joints, at least once every 5 years, and in other cases, at least once in every 10 years;</li> </ol> <p>(iv) if above ground, any fill pipe, draw off pipe or overflow pipe must be properly supported;</p> <p>(v) the tank must be fitted with an automatic overfill prevention device (which may include an alarm sounding device) if the filling operation is controlled from a place where it is not reasonably practicable to observe the tank or any vent pipe;</p> <p>(vi) where a screw fitting or other fixed coupling is fitted, it must be maintained in good condition and</p>
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	<p>used whenever the tank is being filled with oil;</p> <p>(vii) where oil from the tank is delivered through a flexible pipe which is permanently attached to the container or delivery pump:</p> <ol style="list-style-type: none"> <li>1. the pipe must be fitted with a tap or valve at the delivery end which closes automatically when not in use;</li> <li>2. the tap or valve must not be capable of being fixed in the open position unless the pipe is fitted with an automatic shut off device;</li> <li>3. the pipe must be enclosed in a secure cabinet (equipped with a drip tray) which is locked shut when not in use; or the pipe must have a lockable valve where it leaves the container which is locked shut when not in use; or the premises in which the pipe is situated must have appropriate security to prevent unauthorised access; and</li> <li>4. the pipe must be kept within the secondary containment system or positioned above an area which drains to a suitable oil interceptor when not in use;</li> </ol> <p>(viii) any pump must be:</p> <ol style="list-style-type: none"> <li>1. fitted with a non-return valve in its feed line;</li> <li>2. positioned or other steps must be taken, so as to minimise any risk of damage to it so far as is reasonably practicable; and</li> <li>3. protected from unauthorised use; and</li> </ol>
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	<p>(ix) any permanent vent pipe, tap or valve through which oil can be discharged from the tank to the open must be:</p> <ol style="list-style-type: none"> <li>1. situated within the secondary containment system;</li> <li>2. arranged so that any oil discharged from the tank other than to its intended destination is contained within the system; and</li> <li>3. in the case of a tap or valve, fitted with a lock and locked shut when not in use; and</li> </ol> <p>(g) Where a mobile bowser is used for storing oil:</p> <p>(i) any tap or valve permanently fixed to the bowser through which oil can be discharged to the open must be fitted with a lock and locked shut when not in use;</p> <p>(ii) where oil is delivered through a flexible pipe which is permanently attached to the mobile bowser:</p> <ol style="list-style-type: none"> <li>1. the pipe must be fitted with a manually operated pump or a valve at the delivery end which automatically closes when not in use;</li> <li>2. the pump or valve must be provided with a lock and locked shut when not in use; and</li> <li>3. the pipe must be fitted with a lockable valve at the end where it leaves the container and must be locked shut when not in use; and</li> </ol> <p>(iii) any sight gauge must be secured to the mobile bowser and be fitted with a valve or tap which must be locked in the shut position when not in use.</p>
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## 8. NEW DEFINITIONS

The additions and changes described in the preceding sections introduce new terms which would benefit from legal definitions. We therefore propose to add the following definitions at Part 2 of Schedule 3 of CAR:

**“container”** means a single or double skinned fixed tank, a drum, a mobile bowser or (even if not connected to fixed pipe or fixed pipework) an intermediate bulk container.

**“crop requirement”** means the amount of nitrogen fertiliser in kilograms (“kg”) which it is reasonable to apply to land in any year having regard to the foreseeable nitrogen requirement of the crop growing or to be grown on the land and the nitrogen supply to the crop from the soil and from other sources, including any previous applications of livestock and other organic manures.

**“drum”** means an oil drum or similar container used for storing oil

**“eroding bank”** means any bank of a watercourse which is being eroded by the action of the river when river levels are sufficiently high.

**“fixed tank”** includes an intermediate bulk container which is connected to fixed pipework

**“invasive non-native species of plants”** means any plants identified as such by Scottish Ministers in directions they give to SEPA in exercise of the powers conferred by section 40(1) and (2) of the Environment Act 1995(a), section 2(6) of the Water Environment and Water Services (Scotland) Act 2003(b) and of all other powers enabling them to do so.

**“maintaining existing man-made structures”** means undertaking any routine, recurring work needed to keep structures in the state of repair necessary to ensure that they can continue to serve their normal, intended functions. It includes running repairs, such as re-pointing or replacing worn or damaged parts (e.g. corroded debris screens or fixings) provided that the works do not extend the structures beyond their current footprints or change their structural characteristics.

**“minor bridge”** means a bridge having no part of its structure within the channel of a river, burn or ditch and constructed for the purpose of supporting a footpath, cycle route, single track road, single track railway or pipeline.

**“oil”** means any kind of oil other than solid products, such as uncut bitumen, and includes fuel oil, waste oil, biofuel mixtures, vegetable oil, plant oil, lubricant oil and hydraulic oil.

**“plant protection products”** mean products, in the form in which they are supplied to the user, consisting of, or containing, active substances, safeners or synergists, and intended for one of the following uses:

- (i) protecting plants or plant products against all harmful organisms or preventing the action of such organisms, unless the main purpose of these products is

considered to be for reasons of hygiene rather than for the protection of plants or plant products;

- (ii) influencing the life processes of plants, such as substances influencing their growth, other than as a nutrient;
- (iii) preserving plant products;
- (iv) destroying undesired plants or parts of plants, except algae unless the products are applied on soil or water to protect plants; or
- (v) checking or preventing undesired growth of plants, except algae unless the products are applied on soil or water to protect plants.

**“root wad”** means the lower part of the trunk of a tree with the roots still attached and as much of the soil as possible removed so that the roots are left exposed. The tree may be dead or alive.

**“secondary containment system”** means a drip tray, an area surrounded by a bund or catchpit, or any other system for preventing oil which is no longer in its container from escaping from the place where it is stored.

**“shoreline”** means the inland limit of land affected by recurring inundation as a result of tidal flows, freshwater flows or wave action. Land affected by such inundation includes: beaches, including storm beaches; all land below mean high water springs; all land below the inland limit of trash lines, other than trash lines resulting from exceptional storms; land supporting wildlife species and habitats adapted to inundation, such as salt marsh; and all land below banks created by such inundation.

**“SUD system”** has the same meaning as in the Sewerage (Scotland) Act 1968 and an **“equivalent system”** means a sustainable drainage system that is equivalent to a SUD system in terms of its ability to attenuate, settle or treat water run-off.

**“trees or parts of trees”** include root wads; brash; stakes made of live willow; and willow spiling.

**“water run-off”** means

- (i) any water from rainfall, or any meltwater from ice or snow flowing over, or horizontally through, the surface of the ground; and
- (ii) any matter picked up by that water as it does so.

**“well”** includes a permeable underground collection tank.

**“willow spiling”** means live willow rods woven between live willow uprights driven into the bank or bed of a watercourse.

## **9. AMENDMENTS TO IMPROVE CLARITY**

As a matter of good practice we carry out regular reviews of the effectiveness and transparency of CAR, and make routine amendments in the light of experience and new developments.

On this occasion we propose to make amendments in a number of specific areas, discussed below.

### **9.1 Revised Environmental Impact Assessment Directive**

EIA Directive 85/337/EEC required Member States to ensure that certain development projects likely to have a significant effect on the environment were subject to an environmental impact assessment before permission could be granted to carry out the project. This included “irrigation projects”.

The core aims of the EIA Directive sought to ensure that relevant environmental information is obtained, made publicly available, and taken into account in decision-making. These procedures broadly mirrored the existing CAR procedures for considering impacts on the water environment posed by any activity; and so in 2011 we made a number of amendments to CAR to reflect more visibly the EIA Directive’s core requirements whilst ensuring any obligations on business were proportionate.

EIA Directive 2014/52/EU now makes amendments to the previous EIA Directive. Some of the new requirements are not generally applicable to all controlled activities, so it is not appropriate to embed these into CAR. Transposition of the revised EIA Directive is therefore being taken forward by alternative means, and we propose to remove references to the EIA Directive from CAR.

### **9.2 Part 2 of Schedule 4**

Part 2 of Schedule 4 lists legislation introduced in connection with the protection of the water environment. The effect of Part 2 as read with regulation 15 is to require SEPA to take account of the potential impacts of any proposed controlled activity, and ensure the requirements of the listed legislation are given effect through the determination process, by the setting of appropriate standards and conditions.

The purpose of this Part was to ensure CAR would be used to achieve the requirements of other water-related European Directives, such as the protection and improvement of bathing waters or Natura sites; or the standards required by the Urban Wastewater Treatment Directive.

However a very broad approach was taken in drafting such that Part 2 includes reference to certain Regulations which, although they are generally of relevance for the protection and improvement of the water environment, are not in fact relevant to SEPA’s considerations in granting an authorisation under CAR. We therefore plan to remove certain Regulations from the current list with the aim of ensuring Part 2 lists only that legislation which SEPA genuinely needs to take into account before granting an authorisation under CAR.

The following Regulations have no bearing on the granting of a CAR licence, and we therefore propose to remove these from the list at Part 2:

- The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002
- The Designation of Nitrate Vulnerable Zones (Scotland) (no 2) Regulations 2002
- The Control of Pollution (Silage Slurry and Agricultural Fuel Oil)(Scotland) Regulations 2003
- The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008
- The Management of Extractive Waste (Scotland) Regulations 2010

The following will be retained:

- Part 2 of the Nature Conservation (Scotland) Act 2004
- The Conservation (Natural Habitats &c) Regulations 1994
- The Urban Waste Water Treatment (Scotland) Regulations 1994
- The Bathing Waters (Scotland) Regulations 2008

This will provide greater clarity regarding the purpose of Part 2 of Schedule 4.

### **9.3 Miscellaneous amendments**

We propose to set out that licence conditions under regulation 8(2) may include conditions for the purpose of protecting or enhancing the water environment, or protecting the interests of other users of the water environment; and may include monitoring requirements. These are already a matter of practice, and this change is merely to ensure greater transparency. In the interests of consistency we also propose to make some corresponding clarifications at regulation 15(6) and Schedule 8(1)(g).

### **9.4 Preventing pollution of marine waters**

The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013 set out in some detail how certain aspects of river basin planning should be carried out, in line with the provisions of the Water Framework Directive (WFD). The Directive requires that any measures taken to reduce pollution in freshwater should not increase pollution of marine waters. Although we believe that we have taken all practical steps to ensure our measures to reduce freshwater pollution would not increase marine pollution, we propose to introduce a provision to that effect in the interests of transparency.

## 10. SUMMARY AND NEXT STEPS

The second River Basin Management Plans for Scotland, published in December 2015, set out how Scotland's public bodies, businesses and land managers will work together to protect and improve the environmental quality of our rivers, lochs and seas over the period to 2027.

CAR is one of our key tools for achieving the delivery of the RBMPs. As a matter of good practice from time to time we carry out reviews of the effectiveness and transparency of CAR. This latest suite of amendments reflects experience gained in the practical application of these regulations during the first RBMP cycle. Many of the amendments proposed are points of clarification. The engagement between SEPA and the farming sector during the first cycle work in tackling diffuse pollution has informed the amendments to the diffuse pollution general binding rules proposed in this consultation. Other proposed amendments, such as storage of digestate and liquid fertiliser, are included because of the risk to the water environment or identified pollution incidents.

This revision of CAR is also an opportunity to introduce a GBR on bank reinforcement. This will allow land managers to carry out certain types of erosion protection without having to apply to SEPA for authorisation.

The incorporation of the provisions of the Oil Storage Regulations within CAR will increase clarity and reflects the principle of better regulation.

Together these amendments will ensure the Scottish Government continues to have an effective and transparent approach to the protection and improvement of Scotland's water environment. Following consultation and due consideration of the responses it is proposed to implement these proposals into legislation early in 2017.

**We would welcome your views on the proposed changes to schedule 3 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011, as outlined in sections 4-8 of this consultation, and to the various proposed amendments in the interests of clarity set out in section 9.**

## **ANNEX A**

### **Responding to this Consultation**

We are inviting responses to this consultation by 1 February 2017.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/water-environment-team/the-water-environment-regulations-2011-amendments>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 1 February 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to: [EQCAT@scotland.gsi.gov.uk](mailto:EQCAT@scotland.gsi.gov.uk)

### **Handling your response**

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them [EQCAT@scotland.gsi.gov.uk](mailto:EQCAT@scotland.gsi.gov.uk)

## **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## The Water Environment(Controlled Activities)(Scotland) Regulations 2011 – Proposed amendments

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.  
Please indicate your publishing preference:

- Publish response with name  
 Publish response only (anonymous) – Individuals only  
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No



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