

Respondent Information Form

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Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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

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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

Questionnaire

Overarching Comments

We are extremely concerned that many of the proposals in this consultation, entirely fail to take into account the biodiversity crisis, or Scotland's Biodiversity and Wild Salmon Strategies. Scottish Ministers' clear ambition for Scotland to be Nature Positive by 2030, and to have restored and regenerated biodiversity across the country by 2045, are not reflected. Indeed, we believe that the approach set out in the consultation is inconsistent with meeting these ambitions, and in some cases appears to be around 10 years behind the reality of the environmental crisis that Scotland is facing.

As set out in the first chapter of the consultation document, the last consultation on this issue was in January 2017. Since that time Scottish Ministers have recognised that wild salmon are in crisis, and published Scotland's Wild Salmon Strategy and Implementation Plan. Scotland's Biodiversity Strategy was published in 2022 and the associated Implementation Plan was consulted on in 2023. In December 2023 the IUCN classified Atlantic salmon in Great Britain as endangered.

SEPA's primary and core role is the protection and improvement of the environment (including prevention of deterioration). In our view robust, enforceable and enforced regulation is central to delivering this aim. The consultation foreword arguably downplays this vital role, focussing instead on business growth and 'proportionate' regulation. Whilst we are not against business growth, it must also be recognised that the recent declines in biodiversity have occurred with the current environmental protections in place. The *status quo*, which is ultimately what this consultation represents, is no longer an option.

We are particularly disappointed with regard to the approach to protecting the water environment and we strongly believe that the approach to General Binding Rules must be urgently reviewed.

It remains our position that the additional duties placed on SEPA by the Regulatory Reform (Scotland) Act 2014 have been a significant retrograde step, and we believe that SEPA's focus should be purely on the protection of the environment. Indeed, SEPA's purpose is now often misquoted with the focus on economic growth given equal weight to SEPA's primary purpose. This is not consistent with the current legislation. It is hard to see how SEPA can make a meaningful contribution to addressing the biodiversity crisis under this proposed framework.

Question 1

Are there any other regulatory measures relating to the spreading of sewage sludge to land that you feel should be considered for inclusion in the Regulations?

We support the proposal in Annex C that SEPA will be required to ensure that no untreated sewage sludge is applied to agricultural land.

We don't believe that 'taking account' of the needs of plants to ensure that the quality of the soil, and the surface and ground water is not impaired is sufficiently robust. We would argue that the approach adopted in The Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008 is more appropriate. Water quality data collected as part of the [National Electrofishing Programme for Scotland](#), has highlighted potential pressures from nutrient pollution, particularly in the north-east, central belt and Ayrshire coast. High nutrient loads and eutrophication impacts are likely to become an increasing problem under climate change when combined with low summer flows and high temperatures, and we believe that more needs to be done, not just in relation to sewage slurry, but also to ensure appropriate application of nitrogen fertilizer, livestock manure, chemical fertilizer and pesticides.

Question 2

Do you agree that this carbon capture activity should be an environmental activity in the Regulations?

Not answered

Question 3

Do you agree non-waste anaerobic digestion should be an environmental activity in the Regulations?

Yes

Question 4

Do you agree any combustion plant on the same site that generate electricity and aggregate to 1 MWth or more should be an environmental activity in the Regulations?

Not answered

Question 5

Should 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)?

Not answered

Question 6

For combustion plant (or 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?

This is not a question.

Question 7

How should ammonia emissions from intensive livestock farms be controlled in future? This could include, a regulatory basis, the provision of advice, or information and examples of good practice or other means.

We are strongly of the view that control of emissions and protection of the environment should be on a regulatory basis. Please see our response to question 1 in relation to application of fertilizers, livestock manure and pesticides.

Question 8

What considerations should be taken into account when considering future control or management of ammonia emissions from intensive livestock farms? Such considerations may include specific issues relating to farm type, size or other matters related to management of emissions such as costs.

Given that this consultation comes under the heading of 'Better Environmental Regulation', the primary focus should be the protection of the environment!

Question 9

Do you have any comments on the proposal 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?

We support a requirement for pre-application public consultation. In addition, where SEPA deem that pre-application consultation is not considered appropriate, and the development or activity has the potential to impact the water environment, we believe that District Salmon Fishery Boards should be consulted.

We note that the proposed amendments of schedule 1 of the 2018 regulations also include a change to paragraph 7(3). This would change the criteria for public engagement from one that 'has the potential' to cause significant environmental harm, to one that 'is likely' to cause significant environmental harm. We do not support this change.

Question 10

Do you have any comments on the proposal 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 the associated timing provisions which prevent SEPA from finally determining the application or variation until the elapse of the statutory time periods?

Whilst we accept the narrative set out in the consultation, we do not support the proposed removal for notification and associating timing provisions. As stated in our answer to Question 9, we support pre-application public consultation, but we do not believe that the changes to call in procedures should be taken forward.

Question 11

Do you have any comments on the proposed amendment to provide for a procedure for issuing revocation notices where an authorised person has died or no longer exists?

We support this proposed amendment.

Question 12

Do you have any comments on proposed amendment to the provisions in respect of the public register required to be maintained by SEPA?

The SEPA website currently states that they plan to start publishing recently issued authorisation documentation in a phased manner from March 2024 onwards. The consultation document states, 'We propose 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 are not entirely clear what these statements mean in practice when taken together. We believe that all authorisations, licenses, permits and registrations should be published on the SEPA register, and in particular, all conditions should be available for public inspection.

Question 13

Do you have any comments on the minor amendments as set out in Annex D for the common framework: minor changes relevant to all activities?

Cross reference with regs

Question 14

Do you have any comments on the minor amendments as set out in Annex D for the minor changes relevant to radioactive substances activities?

No comment

Question 15

Do you agree with or have comments on the proposed changes to Schedules 8 and 9 for radioactive substances activities?

No comment

Question 16

Do you have any comments on the new General Biding Rules (nos. 7 and 35) for water activities in Schedule 9 and the water activities in Schedule 10 in the draft Regulations?

Comments provided below this box

Based on the narrative provided in section 5.3. of the consultation document, and subject to our significant concerns regarding the overall process as set out in our answer to question 17, we recognise that the approach to general binding rules is consistent with the current status quo. We do have some specific comments, some of which relate to the existing approach to GBRs.

GBR 1. We are strongly of the view that all weirs should be licensed, and not regulated through GBRs.

GBR 2. Given recent water scarcity episodes, it is unclear how the cumulative impact of abstractions can be appropriately managed, if abstraction (even at low volume) is permissible under GBRs.

GBR 5. We do not believe it is appropriate to allow the dredging of a river, burn or ditch under a GBR, nor do we believe that a bed width of less than 1m is an appropriate cut-off. There are many examples where Atlantic salmon, sea trout and brown trout use streams of less than 1m as spawning habitat and this GBR is no longer consistent with addressing the wild salmon crisis. Indeed, such streams can

make up a large proportion of habitat (by river length) within a catchment. Dredging and straightening of such burns is common in many areas, including during the sensitive winter/spring period. Members of Fisheries Management Scotland believe that this has contributed significantly to the decline in sea trout populations, including in coastal burns. If dredging doesn't occur, even artificially straightened or canalised streams can provide suitable habitat for juvenile fish. This appears to be recognised within the GBR, which states that works should not be undertaken during periods when fish are likely to spawn or in the period between spawning and subsequent emergence of juvenile fish. However, there doesn't appear to be any mechanism to ensure that this occurs, nor is there any requirement for the operator to consult with DSFBs or SEPA. We therefore believe that all dredging of rivers should be a licensable activity.

GBR 6 and 7. We do not believe that it is appropriate for such work to be undertaken under a GBR without a specific requirement to liaise with the relevant District Salmon Fishery Board on issues of relevance to migratory fish.

GBR 9. We do not believe that it is appropriate for such work to be undertaken under a GBR without a specific requirement to liaise with the relevant District Salmon Fishery Board on issues of relevance to migratory fish.

GBR 10 (a and b). We do not believe that it is appropriate for such work to be undertaken under a GBR – see: <https://www.bbc.co.uk/news/science-environment-68130715>

GBR 18. We seek assurance and evidence that the buffer widths referenced in this GBR are appropriate for the protection of the water environment – see further comments in question 17 below.

GBR 19. See comments below. We do not believe that the current operation of this GBR is suitably protective of the water environment. This concern includes SEPA's interpretation of the word 'significant'. We believe that livestock should be prevented from entering any land within 5 meters of water courses.

GBR 20. We seek assurance and evidence that the buffer widths referenced in this GBR are appropriate for the protection of the water environment – see further comments in question 17 below.

GBR 23. We seek assurance and evidence that the buffer widths referenced in this GBR are appropriate for the protection of the water environment – see further comments relating to licensing of pesticide application in question 17 below.

GBR 24. We seek assurance and evidence that the buffer widths referenced in this GBR are appropriate for the protection of the water environment – see further comments below. We are also strongly of the view that livestock should not have access to the water environment. This is arguably even more important following the administration of pesticides, in order to manage the impact of those pesticides on aquatic invertebrates. See also our comments above in relation to GBR 19.

Question 17

Do you have any comments on the minor amendments relevant to water activities as set out in Annex D?

Comments provided below this box

The two River Basin Management Plans covering Scotland identify rural diffuse pollution as a significant impact on the water environment. This is despite many thousands of staff-hours being deployed by SEPA in direct engagement with farm businesses in priority catchments across Scotland. In our view, the fact that so many breaches of GBRs were identified by SEPA initially (1 breach per km of river walked by SEPA staff), and the fact that such an extraordinary amount of human resource has had to be deployed to address these issues (and in the experience of river managers, these issues tend to re-surface months or years later), demonstrates that the GBR process is not fit for purpose, at least with regard to the water environment. More importantly, we are yet to see any evidence that compliance with GBRs as currently drafted, has led to significant environmental improvements. This is a regulatory regime which appears to be based on process, rather than environmental outcomes.

Water quality data collected as part of the [National Electrofishing Programme for Scotland](#), has highlighted potential pressures from nutrient pollution, particularly in the north-east, central belt and Ayrshire coast. Areas where nutrient pollution was evident were associated with depressed juvenile fish populations. The report noted that high nutrient loads and eutrophication impacts are likely to become an increasing problem under climate change when combined with low summer flows and high temperatures. Addition of fine sediment to water bodies can also smother spawning gravels, further impacting wild fish populations.

Work undertaken by the James Hutton Institute has shown that we cannot adopt riparian buffer strips to minimise nutrient delivery from farmland to waters without proper consideration of the management of those buffer strips. In particular, habitat 'roughness' through vegetation, is critical to ensuring multiple benefits arising from riparian buffer strips, including habitat, erosion trapping, bank stabilisation, tree shading and woody debris and wider recreational benefits. The General Binding Rules are silent on this vital issue.

In our answer to question 1, we commented about the regulation of the appropriate application of nitrogen fertilizer, sewage slurry, livestock manure, chemical fertilizer and pesticides. We strongly believe that the regulation of these issues needs to be reviewed, to ensure that the environment is adequately protected. The marine fish farming industry rightly has tight controls on organic inputs and the use of pesticides in the marine environment. We believe that the same controls should be applied to the terrestrial and freshwater environment under licence, not as a registration or GBR.

Given the above, and following the publication of Scotland's Biodiversity Strategy, it is astonishing that this 'better environmental regulation programme' is advocating more of the same.

The consultation document makes clear that CAR is to be revoked completely. We believe that this presents an opportunity to re-examine the powers of District Salmon Fishery Boards in relation to fish passage. In particular, we believe that there is a strong case to re-establish the Salmon (Fish Passes and Screens) (Scotland) Regulations 1994, which were revoked in favour of CAR.

Question 18

Do you have any comments on the activity "industrial emissions activities" or on the technical requirements in Schedules 19 to 24 in the draft Regulations?

No comments

Question 19

Do you have any comments on the additional technical requirements in Schedule 25 in the draft Regulations?

No comments

Question 20

Do you have any comments on the industrial activity carrying out "other emissions activities" Schedule 26 in the draft Regulations?

No comments

Question 20

Do you have any comments on the activity “operating a medium combustion plant” in Schedule 27 in the draft Regulations?

No comments

Question 21

Do you have any comments on the activity “operating a petrol vapour recovery activity” in Schedule 28 in the draft Regulations?

No comments

Question 23

Do you have any comments on this general binding rule 1, from Schedule 9, Chapter 4, Low Emission Activities in the draft Regulations?

No comments

Question 24

Do you have any comments on the minor amendments relating to PPC activities as set out in Annex D?

No comments

Question 25?

Do you agree that the regulations adequately capture waste activities?

No comments

Question 26

Do you have any comments on the geographical extent in the draft Regulations?

No comments

Question 27

Do you have any comments on the requirements applying all waste management activities (Schedule 11) in the draft Regulations?

No comments

Question 28

Do you have any comments on the requirements applying to landfill activities (Schedule 13) in the draft Regulations?

No comments

Question 29

Do you have any comments on the requirements applying to hazardous waste mixing and treatment of waste oil (Schedule 12) in the draft Regulations?

No comments

Question 30

Do you have any comments on the requirements for management of separately collected recyclable waste and for operating a materials facility (Schedule 14) in the draft Regulations?

No comments

Question 31

Do you have any comments on the requirements for the management of end-of-life vehicles (Schedule 15) in the draft Regulations?

No comments

Question 32

Do you have any comments on the requirements applying to the management of WEEE (Schedule 16) in the draft Regulations?

No comments

Question 33

Do you have any comments on the requirements applying to the management of waste batteries (Schedule 17) in the draft Regulations?

No comments

Question 34

Do you have any comments on draft GBRs 1 to 4?

No comments

Question 35

Do you have any comments on the minor amendments relating to waste activities as set out in Annex D?

No comments