



Scottish Executive Environment Group

**The Water Environment (Controlled Activities)
(Scotland) Regulations 2004: Draft Regulations**

Analysis of Responses to the Scottish Executive
Consultation: Final Report

November 2004
Paper 2004/17

**The Water Environment (Controlled
Activities) (Scotland) Regulations 2004:
Draft Regulations**

**ANALYSIS OF RESPONSES TO THE SCOTTISH
EXECUTIVE CONSULTATION**

FINAL REPORT

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Executive Response to the consultation on Controlled Activities Regulations

Introduction

On 19 April 2004, the Scottish Executive launched its consultation paper on Controlled Activities Regulations (CAR) to be introduced under the Water Framework Directive. The consultation paper built on the issues raised in, and responses received to, our two previous consultations.

This Executive response is meant to provide a brief summary of feedback on the results of the consultation, the main issues that have been raised, and to provide information on the next steps.

The number of responses received was encouraging and indicates that there is general support for the Executive's proposals across a wide range of stakeholders, but there are common areas where stakeholders have asked for consideration to be given to making changes. The Scottish Executive is grateful to those who responded to the consultation on the draft Water Environment and Water Services (Scotland) Act 2003 Controlled Activities Regulations. It is also grateful to the internal advisory groups of technical advisers and the National Stakeholder Forum for their valuable assistance in preparing the draft regulations.

In response to this consultation paper the proposals for three tiers of control were again broadly welcomed. However key concerns raised in stakeholders' responses included:

- the detail of the draft proposals for registration and general binding rules seemed unduly prescriptive and inflexible;
- SEPA's cost projections for implementing the Water Framework Directive gave considerable cause for concern;
- the timetable for introducing the Regulations raised some concerns.

We have responded to these points in the following ways:

Registration

The original proposals for registration were based on the need for SEPA to obtain sufficient data to enable them to assess the risk to the environment from cumulative impacts of relatively minor activities. After consideration of the risks, we believe that the greatest cumulative risks are posed by a limited number of activities. We therefore propose to focus on those activities, and remove the requirement to register activities where harm to the environment is considered a very low risk. This principle has been broadly welcomed by key stakeholders.

General Binding Rules

The original thinking behind GBRs was that they would be a simple form of regulation which could be easily applied where mitigation measures were predictable. However in practice these have proved extremely difficult to draft in a way that were sufficiently flexible to apply to a wide range of different circumstances. As a result, neither stakeholders nor regulators were convinced of the usefulness of GBRs. Moreover the requirement to register under a

particular GBR appeared to place an unnecessary burden on both stakeholders and SEPA given the relatively moderate risk to the environment.

We have therefore reviewed our thinking on GBRs. We now plan to remove the requirement to register under a GBR; and we are currently carrying out a fundamental re-drafting of all GBRs with a view to introducing very simple general rules which would apply to certain activities in any variety of circumstances. This approach has also been broadly welcomed by stakeholders.

To replace the original proposals for GBRs we are considering introducing Low Risk Licences. These would broadly correspond to the tier of controls originally proposed as GBRs. The advantage of this proposal is that operators would not be subject to such prescriptive controls as proposed in the existing GBRs and SEPA would have an increased degree of flexibility to tailor conditions to specific circumstances. It should be stressed that the use of the term 'licence' does not reflect an increase in control, and that SEPA's intervention would be no greater than that originally envisaged under GBRs. Charges for low risk licences would reflect the level of charge previously proposed for GBRs.

Financial burden

Concern has been expressed throughout this process about the expected costs of SEPA's plans for implementation which will largely be recovered through licence fees. SEPA's original cost estimates of the annual additional work required to implement WFD peaked at over £15 million. We have been working closely with SEPA to produce revised implementation plans, with the aim of reducing both the regulatory and cost burden on stakeholders, whilst achieving effective implementation of WFD. SEPA's estimates of the annual additional cost of implementing the revised plans now peak at around £10-£11 million. In addition, in the recent spending review Ministers allocated to SEPA further grant in aid which will further offset that cost. The proposals for streamlining the regulatory burden outlined above should also serve to reduce the administrative burden on operators. Taken together, we believe these proposals will achieve an effective and affordable implementation programme.'

Timing and Legislative Implications

In order to take the time to respond fully to stakeholders' concerns, we have extended the timetable for introducing the new controls by 6 months and now propose to lay the Regulations before Parliament in spring 2005. Stakeholders have welcomed this extension. The Regulations will be subject to affirmative resolution.

Integration with Other Legislation

The Executive welcomed the points raised in respect of integration with other legislation. Work with stakeholders is continuing and it is anticipated that any consequential amendments to existing legislation will be produced by the spring. The Executive will also take forward, via a discussion paper with stakeholders, the designation of responsible authorities.

1. INTRODUCTION

THE CONTROLLED ACTIVITIES REGULATIONS CONSULTATION

The Scottish Executive Water Environment Division, Environment and Rural Affairs Department released the consultation paper: *Controlled Activities Regulations: A Consultation* for comment in April 2004. The paper describes and invites comment upon the proposed *Water Environment (Controlled Activities) (Scotland) Regulations 2004: Draft Regulations* (CARs), developed with assistance from SEPA (the regulator) and stakeholders. The paper represents the third in a series of consultations presenting the Executive's proposals for the implementation of the requirements of the *Water Environment and Water Services (Scotland) Act, 2003* (WEWS). The first consultation papers: *Rivers, Lochs, Coasts: The Future for Scotland's Waters* and *The Future for Scotland's Waters – Proposals for Legislation* were undertaken prior to the designation of river basin districts in 2003.

LEGISLATIVE BACKGROUND

WEWS and CARs both aim to transpose the objectives of the Water Framework Directive (WFD, 'the Directive') into Scottish law, with WEWS being the primary and CARs the secondary transpositions. The Directive has the main objectives of:

- protecting, enhancing and restoring Europe's waters, to achieve 'good' status by 2015;
- establishing a baseline of no deterioration; and
- encouraging the sustainable use of water resources and the water environment.

WEWS and the draft CARs therefore aim to **protect and improve** the ecological status of Scotland's water environment, whilst recognising the need to safeguard **the social and economic interests** of those who depend on that environment. In order to achieve this balance, the Executive believes it is necessary to introduce a new system of **simple and flexible controls** based on an assessment of risk posed to the water environment. It has been recognised that such controls must be **selective, proportionate and streamlined**, as they will be a key tool in the achievement of the objectives set by the WFD.

As discussed within the earlier consultations, and as stakeholders have indicated, it is preferable for both business and regulators to phase the changes in over a longer time period than the 2012 deadline prescribed by the Directive. By introducing the draft CARs and the associated new system for comment, Scotland leads the rest of Europe in the transposition process.

THE CONSULTATION PAPER

The CARs consultation paper has focused on three key aspects of implementation:

- the introduction of controls over activities affecting the water environment;
- transitional arrangements; and
- links with existing environmental legislation.

These three aspects form the three main chapters of the consultation document, with additional chapters introducing the aims and objectives of CARs and describing aspects of the controls in additional detail. The opinions of consultees in relation to all aspects of the proposed regulations and methods of control are sought throughout the paper.

Table 1 shows the overall structure of the paper, relating each section to the relevant controlled activities regulation.

There were some minor errors within the structure of the consultation document. These are as follows.

- There are two sections 1.7.
- There are two sections 1.21.
- There is no Part 4 in Chapter 1.

To avoid confusion during the analysis and reporting stages of the consultation, it was decided that the suffix “(a)” and “(b)” would be applied to sections 1.7 and 1.21. The absence of a Part 4 was not considered to have any implications on the consultation exercise.

Table 1: The Structure of the Consultation Document

Chapter	Title	Part	Title	Section	Title (issue / topic)	Regulation/s						
1	Proposed Regulatory Regimes	0		1.1	Introduction							
				1.2	Underpinning Principles							
				1.3	Timing							
		1	General			1.4	General Provisions	1 to 3				
						1.5	Modifications of the Act	4				
						1.6	Exempt Activities	5				
						1.7 (a)	Prohibition	6				
						2	Applications and Procedure			1.7 (b)	General Procedures	7 to 12
										1.8	Registrations	
										1.9	General Binding Rules	
										1.10	Licences	
										1.11	Management Agreements	11(5)
										1.12	Processing Times	12
		3	Authorisations			1.13	Tiers of Authorisation – Proposed Banding					
						1.14	General Conditions	13 to 15				
						1.15	Direct Discharges to Groundwater	16				
						1.16	Review of Authorisations	17				
						1.17	Variation of Authorisation	18				
						1.18	Transfer of Authorisation	19				
						1.19	Surrender of Authorisation	20				
						1.20	Revocation of Authorisation	21				
						5	Enforcement			1.21 (a)	Controls Over SEPA’s Own Activities	
										1.21 (b)	Enforcement Notices and Powers of Entry	22 to 28
						6	Information and Publicity			1.22	Information, Public Register and Advertising Requirements	29 to 34
						7	Offences			1.23	Offence Provisions and Proceedings	35 to 38
						8	Appeals			1.24	Appeals Procedures	39
		9	General			1.25	Application to the Crown and Notice Provisions	40 to 41				
						1.26	Schedule 1 – Charging Scheme					
						1.27	Schedule 2 – General Binding Rules					
						1.28	Schedule 3 – List of Main Pollutants					
						1.29	Schedule 4 – Authorised Direct Discharges to Groundwater					
1.30	Schedule 5 – Unauthorised Discharges to Groundwater											
1.31	Schedule 6 - Issue of Warrants											

Chapter	Title	Part	Title	Section	Title (issue / topic)	Regulation/s
			Schedule 7	1.32	Schedule 7 – Procedures in Connection with Appeals to Scottish Ministers	
			Schedule 8	1.33	Schedule 8 – Derogations Permitted Under Article 4 of the Directive	
			Schedule 9	1.34	Schedule 9 – Compensation for Grants of Rights	
			Schedule 10	1.35	Schedule 10 – Register	
2	General Binding Rules		Building and Engineering	2.1	Croys	
				2.2	Ditch Clearing, Dredging and Desilting Activities	
				2.3	Boulder Placement for Fisheries Enhancement	
				2.4	Gravel Extraction from Dry Gravel Beds of Watercourses	
				2.5	Bank Reinforcement	
				2.6	Pipeline or Communication Cables Crossings	
				2.7	Open Channel Watercourse Diversions	
				2.8	Bridging Culverts	
				2.9	Vegetation Removal and Management	
			Abstractions	2.10	Abstractions >10 and <30 m ³ /day; >30 and <60 m ³ /day; and >60 and <100 m ³ /day	
			Impoundments	2.11	Unmanaged Weirs Between 0.3 m and 1 m high	
				2.12	The Operation of Managed Lochs	
			Point Source Discharges	2.13	Discharge from Passive Secondary Sewage Treatment of a load with a Population Equivalent of Between 15 and 50 Persons	
				2.14	Discharge from Small Mechanical Sewage Treatment Plant Treating a Population Equivalent of up to 50 Persons	
				2.15	Discharge from a septic tank direct to a watercourse	
				2.16	Discharge from a Combined Storm Flow	
				2.17	Oil Storage Controls	
3	Transitional Arrangements			3.1	Timetable	
				3.2	Point Source Discharges	
				3.3	Abstraction and Impoundment	
				3.4	Building and Engineering Works	
4	Integration with Other Environmental Legislation			4.1	Control of Pollution Act 1974 (CoPA)	
				4.2	The Groundwater Regulations 1998	
				4.3	Natural Heritage (Scotland) Act 2003	
				4.4	The Pollution Prevention and Control (Scotland) Regulations 2000	
				4.5	Water Orders and Water Acts	
				4.6	Environmental Impact Assessments	
Annex A: Draft Controlled Activities Regulations						
Annex B: Interim Regulatory Impact Assessment						

AIMS OF THE CONSULTATION

The main aim of the consultation paper was to present the draft CARs to stakeholders from private and public organisations and individuals and to invite comment on the structure, format and objectives of the proposed legislation.

THE CONSULTATION PROCESS

The Executive invited opinions on the draft regulations from a range of organisations and individuals, both from the National Stakeholder Forum and the Executive's main contacts database. A total of 2000 consultation papers were distributed on the 19th April 2004, allowing a 12 week response period ending on the 9th July 2004. The consultation was also made available on request.

Opinions were also sought from a wider public audience through the placing of the paper and invitations to comment on the Executive's website.

165 responses were received in total, including 14 from the core resposdee group: the National Stakeholder Forum.

Additional information regarding the aims and objectives of the draft CARs and the process of consultation may be referred to within pages 1 to 7 of the consultation paper (*paper 2004/8*).

THE ANALYSIS AND SUMMARY OF RESPONSES

It is standard Executive practice for responses to consultations to be summarised and for summaries to be made publicly available. Individual responses are also made available in the Executive's library, unless a respondent has sought confidentiality (see below). This information was logged during the processing of responses. Respondees were also assigned a reference number and grouped under ten sector or group headings to aid both in the interpretation of opinions and views, and in the identification of sectors that have provided minimal or zero response ('silent voices', see **Chapter 3: The Consultees and Responses** for additional details). The ten sectors are as follows.

- *MSP/ MPs*
- *Regulator / Regulatory Bodies*
- *Local Authorities*
- *Community Councils*
- *Community and Activity Groups*
- *Research and Teaching Institutions*
- *Industry*
- *Agriculture*
- *Fisheries Representatives*
- *Others* e.g. consultants, roads authorities

Additional details regarding the analysis and summary process are included within **Chapter 2: The Summary Report.**

DATA PROTECTION

Responses, and the information contained therein, have been handled according to the requirements of the Data Protection Act. The confidentiality status of each response was checked through the provision of confidentiality status reports with each consultation document. Where forms were not returned, and no permission was given, confidentiality has been assumed and the responses treated appropriately.

2. THE SUMMARY REPORT

THE AIMS OF THIS REPORT

This report presents a summary of the views and opinions of consultee responses to the CARs consultation described within the first sections of this document. The responses have been qualitatively assessed and aligned with the structure of the consultation paper (see Chapter 1, Table 1).

The report has focused upon presenting a summary of the range of opinions to emerge from the consultation, drawing out the main issues and comments raised. No specific reference has been made to individual respondents, but comments relating to the specific issues of importance to different sectors or groups of individuals have been included where this is considered to be of significance.

No comment has been made as to the validity of comments raised by consultees.

Copies of the individual responses may be accessed in the Scottish Executive's library (subject to confidentiality restrictions).

Scottish Executive Library, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.
(An appointment can be made by contacting Mr John Williams – Tel: 0131 244 4556.)

STRUCTURE OF THE REPORT

The remainder of the report is structured as follows.

- **Chapter 3: The Consultees and Responses** includes sectoral details regarding the responses received, identifying 'silent voices' in the consultation process.
- **Chapter 4: Key Comments, Issues and Recommendations** provides a summary of the main comments and issues raised with regard to each of the sections within the consultation paper, highlighting the suggestions for amendment of the regulations.
- **Chapter 5: Additional Comments** discusses the additional comments and suggestions made for the development, implementation or management of the regulations and their associated controls.
- **Chapter 6: Conclusions** provides an overall summary of the main issues and recommendations to emerge from the CARs consultation.

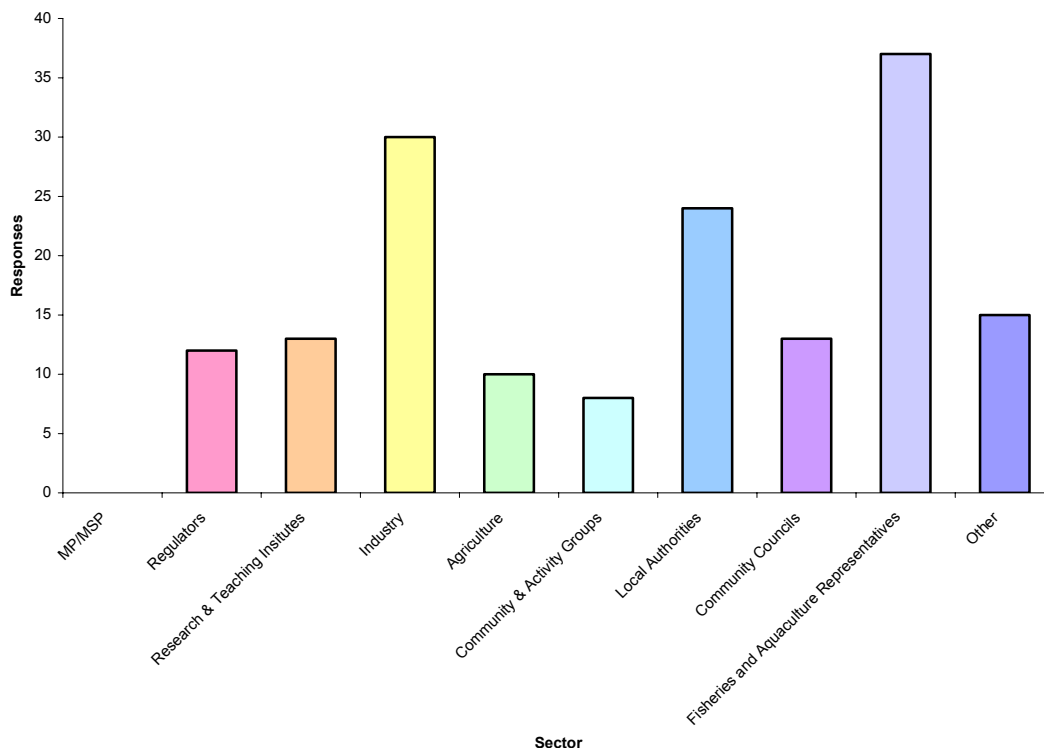
3. THE CONSULTEES AND RESPONSES

As reported within Chapter 1, consultees have been assigned sectors to aid in the analysis of responses and to identify any groups that have remained silent, i.e. not provided a response to the consultation paper. These sectors are provided again for reference below.

- *MSP/ MPs.*
- *Regulator / Regulatory Bodies.*
- *Local Authorities.*
- *Community Councils.*
- *Community and Activity Groups.*
- *Research and Teaching Institutions.*
- *Industry.*
- *Agriculture.*
- *Fisheries & Aquaculture.*
- *Others e.g. consultants, roads authorities.*

Figure 1 shows the number of responses received from each sector.

Figure 1. Response by Sector



As shown in Figure 1, the highest level of responses was received from Fisheries and Aquaculture Representatives. This highest level of response within this sector was from Scottish fishery boards. The second highest response sector was Industry, followed by Local Authorities.

4. KEY COMMENTS, ISSUES AND RECOMMENDATIONS

INTRODUCTION

This section presents a summary of the issues and comments that have emerged during the qualitative analysis of the received responses. Issues raised, opinions and recommendations have been summarised in bullet form under headings corresponding to each section and regulation discussed within the consultation paper (see Chapter 1, Table 1). Additional comment has also been made at the start of each section regarding the trends in, and level of, response from the respondents and from different sectors and groups.

Issues raised that do not specifically apply to the sections outlined above, but are worthy of mention, are included within **Chapter 5: Additional Comments**.

CHAPTER 1: PROPOSED REGULATORY REGIME

Section 1.1: Introduction

No specific comments were received on the introductory section, as this section of the consultation paper outlines the general structure of the control regimes and does not require the opinion of the consultee.

Section 1.2: Underpinning Principles

In general consultees welcomed the objectives of developing a set of ‘**proportionate and risk-based** controls’ and the combination of providing ‘...a sufficient degree of **certainty** whilst permitting **flexibility** of regulation...’ (Section 1.2, page 8 of the consultation paper) but raised doubts as to whether the draft regulations will actually deliver these objectives.

Many consultees felt that the regulations portrayed all in-river and riparian engineering works as being intrinsically harmful to the water environment. They commented that this is not necessarily the case, and that such a view may limit the benefits that may be achieved through well designed works.

There are a number of examples where partnerships between land and watercourse managers, Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), local authorities, community volunteers and others have worked together to the benefit of the water environment. Consultees expressed a wish that the lessons learnt from these partnerships – both positive and negative – be borne in mind during the tailoring of the Controlled Activities Regulations and any similar future legislation.

It is noted by consultees that the underpinning principles of the draft regulations are consistent with the principles being employed within English environmental legislation.

Specific comments regarding the risk assessment process are included under Section 1.7(b).

Section 1.3: Timing

'No Deterioration'

Consultees have requested that parameters be set to categorise what is meant by 'good' 'moderate' and 'poor' and associated objective criteria to measure deterioration.

Some consultees consider that SEPA does not have the expertise or the political standing to make decisions regarding no deterioration and the movement towards 'good' water quality due to the need to balance social and economic factors as well as environmental considerations. They feel that members of the public should be able to refer such decisions to the Scottish Ministers.

Linked to the 'no deterioration' principle, a number of consultees have raised concerns regarding the practicality of the pursuit of 'naturalness'. Fears relate to the fact that the term is open to many different interpretations, which if not balanced by practical assessment, have the potential to have a range of implications for water users and managers of the water environment. Consultees also draw attention to the fact that many watercourses in Scotland have been subject to modification for the past 200 years or more and question whether a return to 'naturalness' is practical or, in some cases, desirable.

Section 1.4: General Provisions (Regulations 1 to 3)

No specific comments were raised with regard to Section 1.4.

Section 1.5: Modifications of the Act (Regulation 4)

Scope and Definitions

A number of consultees, from all sectors, have suggested that changes to scope, further definitions or changes to current definitions are required. Suggestions include the following.

- A definition of 'water environment' needs to be stated within the regulations.
- A definition of 'watercourse' needs to be stated within the regulations.
- The scope of waters covered by the regulations needs to be clarified.
- There is no definition of 'in the vicinity of' water bodies and watercourses.
- A definition of 'location' in relation to the tiers of control (Regulations 7 to 12) needs to be developed and provided.
- The definition of 'pollutant' should include reference to the effects of temperature, i.e. heat as a pollutant.
- Amendment to the definition for 'abstraction'. The inclusion of all abstractions is noted by a small number of consultees as being disproportionate to other activities.

- The definitions of ‘abstraction’ and ‘impoundment’ would appear to cover forms of Sustainable Urban Drainage Systems (SUDS) and flood alleviation measures which ‘abstract’ water from the system (see also Section 1.6). Consultees query if this is the Executive’s intention.
- Consultees ask for general clarification and a definition of ‘direct discharge’.
- Definitions and a review of the wording of General Binding Rules (GBRs) are requested, including definitions for terms such as ‘boulder’, ‘flood conditions’ and ‘impermeable’.
- A statement needs to be made about how very minor and temporary bodies of water and areas of wetland will be covered, if at all, under the regulations.
- Transport related organisations have asked for clarification on ‘transfer’ from one area of the water environment to another in relation to dewatering (e.g. tunnel dewatering or dewatering during engineering works).
- With regard to building and engineering, the list of works should be extended to cover the installation of oil storage tanks due to their potential to cause sufficient damage to the water environment unless installed correctly. The list may also require clarification, as some consultees are unsure of which activities will require authorisation.
- There is little mention of routine coastal protection and harbour works, or larger capital works. It is presumed that these engineering works will be covered by the regulations.
- Consultees ask if the scope of building and engineering works will extend to coastal and offshore wind and wave power schemes.
- Clarification needs to be provided on the coverage of impounding works i.e. whether controls cover both new and existing structures.
- Clarification is sought on the definition for where an abstraction ‘starts’ in relation to flow monitoring requirements. The distillery industry has voiced concerns that if lades are not considered to be the point of abstraction, even though the diversion may have been created, in some cases, up to 200 years ago, then the activity of monitoring will have large economic impacts for the industry as it will need to be extended to cover the main watercourse.
- Industry and agriculture sectors ask for confirmation over what constitutes ‘use’, especially in relation to the abstraction of water where most, or all, of the volume is returned.

Although there are suggestions for amendment and clarification, it should also be noted that many consultees supported the revised definitions provided within the draft regulations. Other specific comments on the proposed scope and definitions are provided below.

- The introduction of wetlands is welcomed.
- Fisheries representatives particularly welcome the inclusion of abstractions.
- The inclusion of ‘artificial recharge or augmentation of groundwater’ in the list of controlled activities is considered to be highly beneficial.

Section 1.6: Exempt Activities (Regulation 5)

Consultees from all responding sectors made comments on Regulation 5. A number of these consultees asked for clarification of this regulation, and many called for aspects of their business to be exempted from the proposed system of control. The proposed cases for exemption are as follows.

- Emergency and preparatory works (see **Chapter 5: Additional Comments** for further discussion on this point).
- Maintenance for the purposes of security for strategic premises.
- The proposed Scotland Regulations for Oil Storage.
- The creation and maintenance of footpaths.
- Drainage canals and drainage ditches, particularly where there is a statutory obligation to maintain them.
- Flood prevention and defence measure obligations under the control of local authorities. Local authorities are concerned that their duties concerning flood prevention and defence will conflict with the aims and objectives of CARs. They have raised the question of why local authority duties such as these cannot be exempt from the regulations.
- Oil spill response is exempt within GBR 19, but in the course of a response several other GBRs would probably be contravened. Consultees ask for a *force majeure* or other clause to be included within Regulation 5, or exemptions to be included in all relevant regulations and controls.
- SUDS (see also the note under Section 1.5).
- Works, abstractions and minor watercourse diversions to troughs for the purposes of reducing direct cattle access to watercourses, as advised by SEERAD and SEPA in rural stewardship schemes.
- Woodlands subject to a plan of operations approved by the Forestry Commission.

- The abstraction of water and dewatering discharges for construction processes is exempt under the Water Resource Act 1991 in England and Wales. Construction industry consultees suggest a similar exemption be included within CARs.
- Hydro scheme operators have raised the issue that currently, under the Control of Pollution Act (CoPA), the industry is required to seek discharge consents from SEPA to discharge unpolluted water. As this water is unpolluted, it does not require consents under the English and Welsh systems and consultees ask that these discharges be given an exemption under Scotland's regulations.

With regard to the exemptions outlined within Regulation 5, one consultee asks the Executive to consider whether some of the exemptions are themselves complying with the aims and objectives of the WFD. The example of persons in compliance with the legislation concerning Nitrate Vulnerable Zones (NVZ) is highlighted. It is felt by the consultee that this legislation is not delivering the benefits that it should, and its inclusion under Regulation 5 should therefore be considered.

Section 1.7(a): Prohibition (Regulation 6)

The main comments with regard to Regulation 6 relate to the need for controls to be transparent, flexible and proportionate. Consultees also raise the issue of how operators will be certain that they are applying for the correct level of authorisation.

Section 1.7(b): General Procedures (Regulations 7 to 12)

The Three Tiers of Control

The majority of consultees were supportive of the introduction of three tiers of control. Some raised concerns that some activities appear to fall between the proposed tiers and asked how these 'grey' areas will be clarified.

Composite Authorisations

The grouping of related activities within a site under a single authorisation has been welcomed by the majority of consultees. Road and rail representatives have asked that consideration be given to making a similar provision to group similar activities, such as maintenance works, on a regional scale. Hydro operators and the agriculture sector have also asked whether activities at multiple locations, several kilometres apart may be grouped, and whether some activities such as those associated with river management could be authorised on a catchment area basis.

Local authorities have asked for clarification over whether they are able to apply for one authorisation covering all their watercourse duties (such as vegetation removal, use of vehicles in water, dredging, desilting) or if they will need to apply on a job-to-job basis (see also the request for exemption under Section 1.6).

Assessment of Risk

With regard to risk assessment, a number of consultees asked that the procedures for risk assessment be developed and released for comment as soon as possible, stressing the need for these criteria to be made widely available to ensure transparency.

The suggestion has been made that applicants should be responsible for commissioning part, or all, of the risk assessment as part of the application process.

A small number of consultees considered the emphasis on risk assessment to be a move away from Environmental Impact Assessment (EIA) and had concerns regarding this.

The importance of Natura 2000 sites being paid special consideration during the assessment of applications should be considered.

Compatibility with Local Legislation and Statutory Duties

Local authorities raised the issue of the need for SEPA's assessment of applications to take account of local policies, plans and strategies.

Local authorities and other organisations have asked that their statutory duties, for example, flood prevention and control, navigation, pathway, road and railway maintenance and watercourse management, be acknowledged and considered within the procedures for authorisation.

Requirements for the Form of Applications

Consultees agree that it is outwith the scope of the regulations to detail the requirements for the form of applications but raise concerns over the statement that SEPA will draw up requirements "*as they consider necessary*" (Section 1.7, page 13 of the consultation paper).

Registration, General Binding Rules and Licensing: Specific Comments

Comments provided on this section that related to specific considerations for registration, GBRs and licensing have been included within Sections 1.8, 1.9 and 1.10 below. One general comment, applying to all tiers, that was raised by a large proportion of consultees, is the need to consider the timing of all watercourse works with regard to migrating fish and other ecological and environmental sensitivities.

Section 1.8: Registrations

There are a number of comments made in relation to the registration tier of control. These are as follows.

- The issue of environmental benefit versus the regulatory burden and administrative costs for both SEPA, and individuals, organisations and businesses has been raised in relation to the proposed system of registration. The need for a registration tier is therefore questioned.
- It is suggested that a system similar to the ‘permitted development’ arrangement in planning legislation be used as an alternative to the proposed system of registrations.
- The benefit of the registration process for determining long term cumulative impacts is highlighted.
- A number of consultees make the suggestion that in order to encourage registration there should be no associated charges.
- Queries have been raised regarding the need to register all abstractions and septic tanks, even for domestic use.
- A definition of location needs to be developed and provided.
- It is suggested that engineering techniques be included within the registration category.

Section 1.9: General Binding Rules

General comments regarding GBRs have been summarised in this section. Detailed comments relating to specific GBRs may be referred to under Sections 2.1 to 2.17.

GBRs are generally considered to be a good solution for the control of predictable activities, however, the main comment regarding GBRs is that the detailed controls legislated within the regulations may restrict the ability for them to be adapted, developed and tailored in the future.

Additional comments relating to the system of introducing GBRs are as follows.

- There are concerns about the inclusion of many of the activities formally undertaken by river and fishery boards as routine for fisheries management. However, in one respect, this inclusion is considered to be positive and necessary. Despite the remit of the boards, they presently have very little power to control activities that fall between the planning, pollution and conservation regulations. Some boards feel that the CARs will provide the missing ‘catch all’. That being said, it is considered that the role of boards and the experience that they have to offer is important to the success of the regulations and the protection of the water environment, and should not be overlooked.

- It should be made clear in the regulations that a registration under a GBR only authorises the activity described in the GBR and does not operate as an authorisation to carry out other controlled activities connected with the set of rules.
- GBRs will need to be subject to review should further applications be made so that cumulative impacts can be assessed.
- The development of local codes of practice for reducing environmental impacts and maximising environmental benefits should not be precluded by the introduction of GBRs.
- The possibility of introducing some GBRs that would apply without the need for registration should be considered to reduce the administrative burden.
- The proposal for SEPA to develop a range of guidance to assist operators in understanding the provisions of GBRs is welcomed.

Section 1.10: Licences

The comments and issues made with regard to the proposed licensing process are summarised below. Comments were received from all responding sectors, and the majority of consultees supported the system proposed.

- At present, quarry activities, such as dewatering, have no provision within registration or GBRs and so would be subject to full licensing. Consultees query whether this should be so and suggest the development of GBRs to cover some of these activities.
- The distillery industry has concerns that it appears all distilling operations will automatically be subject to full licensing.
- Regulation 11(4) is causing concern that SEPA appears to have been given the powers to go beyond the requirements of the WFD as it sees fit. Consultees ask for reassurance in the form of a commitment for SEPA to show that the methods and conditions applied are based on sound science and are proportionate with the requirements of the Directive.
- One consultee has asked for the threshold for licensing extractions to be lowered.

Comments relating to the approach to time-limited licences are included within Section 1.14.

Section 1.11: Management Agreements

There was widespread support for the acknowledgement within the regulations of the existence of management agreements. However, a large proportion of consultees, particularly those within the agriculture, fisheries and aquaculture sectors, raised concerns about the low emphasis, generally within the draft regulations, for existing and future codes of practice for local areas. Consultees believe that there is a large body of experience, and local knowledge, which is currently not being taken into consideration or used to best advantage.

Consultees suggested that regular reviews of management agreements should be conducted to take account of changing circumstances.

One consultee raised the issue of disputes and disagreements between operators within a management agreement, and asked for guidance on how such cases would be resolved.

Section 1.12: Processing Times

This section of the consultation paper received the highest level of response from all responding sectors, with the majority of consultees disagreeing with the system and timescales for approval. Three main issues have been raised.

- The timescales for approval are considered by the majority of consultees to be unacceptable. A number of consultees have also raised issues associated with the potential for timescales for different regulatory systems to conflict, for example the planning approval system, which has a shorter timescale than the proposed four month GBR and licence consideration periods.
- The statement that if SEPA does not process the application within the prescribed timescale, it should be considered to be rejected has prompted a large negative consultee response.
- Consultees have raised doubts as to the capacity and capabilities of SEPA with regard to the processing of applications within the specified timescales. It is feared that many applications will be refused due to the inability of SEPA to process them in time, and that there is no incentive for SEPA to do so.

The following suggestions were made by consultees to address these issues.

- Automatic approval of the application if not processed within SEPA's specified consideration period. This is reportedly the approach currently being used by the Environment Agency (EA).
- The introduction of a requirement for SEPA to provide explanation as to every refusal so that the applicant is satisfied that their application has been considered.
- Maximising pre-application consultation and dialogue with SEPA to reduce the time needed for consideration.
- The introduction of an incentive in the form of a partial refund in application fees to the applicant if their application is not processed within the specified time.

Section 1.13: Tiers of Authorisation – Proposed Banding

Consultees are generally supportive of the proposed tiers of control: registration, licenses and GBRs. There are specific comments and a number of queries as to the level of control applied to various activities. For clarity, these have been discussed under the above sections under Registrations, GBRs and Licences.

Section 1.14: General Conditions (Regulations 12 to 15)

Time-Limited Licences (Regulation 14)

There is a difference of opinion amongst consultees as to whether or not, and under which circumstances, time-limited licenses should be issued. Some consultees believe that time limited licences should be issued for all works that will require regular review e.g. abstractions, as introduced by the Environment Agency. The importance of review in the light of changes in environmental conditions due to climate change and in the general expansion of knowledge relating to influences on the water environment is raised. It is suggested that licences should be issued with the presumption for renewal, but that renewal should be subject to tests measuring environmental damage, stress on water resources, efficient use and the continuity of need.

Other consultees are of the opinion that this style of licence should not be issued unless as a last resort.

The Responsible Person Concept

Discussion of Regulation 15, the introduction of the concept of a ‘responsible person’ is discussed within Sections 1.16, 1.17, 1.18, 1.19 and 1.20 due to its bearing on Regulations 17 to 21.

Section 1.15: Direct Discharges to Groundwater (Regulation 16)

The main comments of consultees to this section are as follows.

- Consultees ask for general clarification and a definition of ‘direct discharge’.
- There are requests for clarification of which activities will be covered by Regulation 16, particularly from the industry sector. There appears to be no allowance for effluent to soak away and groundwater recharge, the latter being specifically referred to within Article 11 of the WFD.
- Reference is made to the WFD draft groundwater daughter Directive and questions are raised regarding whether the provisions in the CARs adequately cover WFD requirements or whether regulations to control indirect discharges will be included under the forthcoming rules for diffuse pollution.
- If the direct discharge of list 1 substances were to be prohibited, this would effectively prohibit the pumping and treating of groundwater for the purposes of remediation.

Sections 1.16, 1.17, 1.18, 1.19 and 1.20: the Review, Variation, Transfer, Surrender and Revocation of Authorisation (Regulations 17 to 21)

The general opinion is that the ‘responsible person’ concept is a good one; however, some consultees have highlighted possible shortfalls and suggested changes to its definition. Some examples of these concerns and suggestions are included below, together with a summary of comments regarding the review, variation, transfer, surrender and revocation of authorisation.

- Consultees ask for additional clarification of the concept.
- SEPA should be able to revoke an authorisation if the activity has ceased and there is no longer a ‘responsible person’ to contact.
- Requirements for joint application to transfer responsibility are inflexible and may lead to ‘orphaned sites’ in the event that the ‘responsible person’ dies or the owning company is dissolved. If a transfer were to be effected by application from the new ‘owner’ only, this may remedy the problem.
- It is noted by consultees that an application charge may be applied to the surrender of authorisations. Consultees are concerned that this may discourage operators from surrendering authorisations.
- Clarification is required regarding the requirement to ‘return water environment and land to a state that will not cause failure of environmental objectives’ (Section 1.19, page 22 of the consultation paper).
- Local authorities have asked for clarification of who would be the responsible person with respect to council registrations. They recommend that this issue could be clarified with the Convention of Scottish Local Authorities (COSLA).
- It is not clear who should be the responsible person during the construction and commissioning of developments such as hydro schemes where works are undertaken by a contractor.
- Some consultees raise concerns about SEPA’s powers to decide whether a proposed responsible person is suitable.
- The power for SEPA to review authorisations at any time does not give the undertaker of a controlled activity any certainty in the ability to perform.
- The importance of conveying reasons for revocations to the authorisation holder is raised, together with the introduction of a notice period of the intention to revoke.
- Consultees comment that the proposed review of all authorisations at six yearly intervals does not appear to be realistic and a rolling programme of reviews is suggested.

Section 1.21(a): Controls over SEPA's Own Activities

The majority of consultees express that it would be wrong for SEPA to regulate its own activities and that an external competent authority should assume this role. Many consultees suggest that the Scottish Ministers, an independent committee appointed by the Scottish Ministers or SEERAD should hold this control. Consultees also highlight the importance of involving experts in each of the fields covered by the legislation.

Consultees suggest that SEPA continues to report to the Executive up to and after 2012.

Section 1.21(b): Enforcement Notices and Powers of Entry (Regulations 22 to 28)

The comments and queries raised in relation to Section 1.21 are as follows. Comments were received from all responding sectors.

- Consultees raise the importance of dialogue prior to the issue of notices.
- Consultees question why suspension notices are required. It is suggested that if the power has to be available, it be restricted to cases where there is an immediate risk of significant harm.
- Consultees have asked for some clarifications of the wording of the regulations.
- It is not clear how regulation 25 notices, section 22 notices and contaminated land notices will work together.
- Regulation 25(3) the power contained within this subsection should not be connected to the service of a works notice.
- Regulation 27(1) (b) should be extended to WEWS to give SEPA the powers of access to carry out general monitoring, i.e. not associated with a specific controlled activity.
- The powers of entry largely replicate and build upon the provisions of the *Environment Act 1995*. The restatement of SEPA's powers within this section would require the reissue of all SEPA personnel warrant cards and may lead to the confusion of statutes.
- The responsibility for the health and safety of SEPA personnel who enter sites, for example construction sites and railways, should be made clear. With regard to railway access, any works on or affecting the safety of the line would need to be assessed.

Section 1.22: Information, Public Register and Advertising Requirements (Regulations 29 to 34)

Some consultees have concerns about the lack of controls on SEPA's requests for information. They feel that an external body needs to be available to make judgement on the 'reasonable' nature of SEPA's requests.

With regard to the inclusion of detailed information within the public register, the issue of security is raised. There are concerns that information, such as the exact location of water abstraction points, could lead to intentional contamination. Consultees also caution against any requirement for commercially sensitive information to be made available to the public.

Section 1.23: Offence Provisions and Proceedings (Regulations 35 to 38)

The need for sufficient resources to achieve an effective enforcement system is highlighted. The requirement for sufficient and proportionate penalties is also raised.

Section 1.24: Appeals Procedures (Regulation 39)

A number of consultees request that a specific appeals system be detailed within the regulations or associated guidance. The need for arbitration to be specifically mentioned is highlighted, together with a request for time limits to be set. Other consultees commend the procedures for appeal reported within Schedule 7.

As well as full procedures, some consultees suggest that a lower level process would be beneficial for the resolution of more minor issues.

Section 1.25: Application to the Crown and Notice Provisions (Regulations 40 and 41)

This section has attracted minimal comment. The comments that have been received are in favour of Regulations 40 and 41 and no specific issues have been raised.

Section 1.26: Charging Scheme (Schedule 1)

The issue of charging has attracted a large consultation response. A list of the main comments made is included below.

- Registrations should not have a fee associated with them in order to encourage the registration of all minor activities.
- Some respondents see the charging system as a means for SEPA to raise revenue.
- Consultees representing industry, voluntary / charity organisations, small businesses, farmers and fisheries have asked for charges to be kept to the minimum due to the many existing financial pressures on their operations.

- Local authorities have highlighted that charges will restrict their ability to undertake other public service works due to budget restrictions.
- The proposed ‘composite’ authorisations where activities may be grouped, should not have the effect of increasing the charges payable above the level that would be applied if activities were taken in isolation, i.e. when in isolation they would be subject to a lower tier of authorisation.

Section 1.27: General Binding Rules (Schedule 2)

Discussion regarding GBRs has been summarised within Section 1.9 and Chapter 2.

Section 1.28: List of Main Pollutants (Schedule 3)

Comments on Schedule 3 are summarised below.

- Schedule 3 reproduces Annex VIII of the WFD; however, decisions on Priority Substances (PS) and Priority Hazardous Substances (PHS) have been inserted as a new Annex X. CARs will need to take account of this and the PS / PHS should be incorporated with appropriate provision for their control unless the Executive is satisfied that these will be covered by Pollution Prevention and Control (PPC) legislation.
- Sections 4, 5 and 12 provide general descriptions of substances that are considered harmful, but more guidance is needed on the pollutants within these categories.
- ‘Materials in suspension’ are included, but distinction needs to be made between activities that discharge materials in suspension and those that cause a temporary re-suspension, such as vessel movements.

Section 1.29: Authorised Direct Discharges to Groundwater (Schedule 4) and Section 1.30: Unauthorised Discharges to Groundwater (Schedule 5)

Discussion regarding discharges to groundwater has been summarised within Section 1.15.

Section 1.31: Issue of Warrants (Schedule 6)

No significant comments have been made on this section.

Section 1.32: Procedures in Connection with Appeals to Scottish Ministers (Schedule 7)

This section has not attracted a significant response. One consultee stated that it is regrettable that no timescale has been set for hearings or determinations of appeals.

Section 1.33: Derogations Permitted Under Article 4 of the Directive (Schedule 8)

Discussion regarding discharges to groundwater has been summarised within Section 1.15.

Section 1.34: Compensation for Grants of Rights (Schedule 9)

No significant comments have been made on this section.

Section 1.35: Register (Schedule 10)

No significant comments have been made on this section.

CHAPTER 2: GENERAL BINDING RULES

Introduction

General comments on the introduction of GBRs have been included within Section 1.9. The sections below provide specific comments and suggestions for amendment of the individual binding rules.

Comments have been provided on all of the sections in *Chapter 2*. Comments tend to be highly detailed, with croys, ditch clearing, dredging and desilting activities, vegetation clearance, abstractions and oil storage GBRs attracting the highest level of response.

Section 2.1: Croys

Recommendations for amendment concerning the GBRs for croys have predominantly been raised by fishery representatives. Other consultees have generally been in support of the controls and for the encouragement of softer engineering techniques, but have highlighted the need for flexibility within the rules. Comments are as follows.

- The reasoning behind many of the specific controls on croys such as their size, the distances between croys and their placing in the river is questioned and some consultees ask for the ecological case that supports the inclusion of such controls.
- The point is raised that the GBRs are prescriptive and do not take into account site specifics or the benefits arising from well designed croys (such as preventing bank erosion and enhancing the ecology of the watercourse). It is felt that there needs to be a distinction between those croys that are carefully designed and offer enhancement of the environment and those that do not.
- It is suggested that the detail within the GBR will restrict effective watercourse management and are written as if all watercourses are uniform. Consultees highlight that the tolerance levels for each watercourse is different and that measures to protect one will invariably not work for all.

- It is considered that decisions on watercourse management need to be made on a local level and with the benefit of local expertise and advice.
- Consultees have asked for clarification regarding existing croys (such as ‘historic’ croys), their protection from potential removal and property protection rights.
- Users of watercourses for sports have asked that the potential restrictions imposed on the navigational passibility of a watercourse by in-river structures be taken into account. If well placed, croys can offer advantages for users such as canoeists, but may also cause obstruction.

On a more detailed level, the following suggestions have been made for inclusions to the GBRs for croys.

- The stones and boulders used should be of local origin.
- Croys should be permitted to be constructed from untreated logs as an alternative to boulders and stones.

Section 2.2: Ditch Clearing, Dredging and Desilting Activities

Consultee comments on Section 2.2 are as follows. Comments were made primarily by fisheries representatives and landowners / managers. Fisheries representatives described the controls as being the most contentious for fisheries management, together with the rules concerning the clearance of vegetation, covered within Section 2.9.

- The need to maintain ditches to prevent flooding and ensure the satisfactory drainage of fields is raised. It is felt that the charges and timescales for authorisations must be as low as is practicable to prevent the regulations being disincentive to these activities being carried out.
- On the point of clearing and maintaining watercourses in line with flooding legislation, Local Authorities seek advice on the requirement for authorisation and the apparent restrictions this would place on the undertaking of works to prevent flooding in an emergency.
- The use of ‘naturalness’ as a determinant for the regulations is cautioned against due to the difficulties in defining the term.
- The need to remove gravel deposits to prevent bank scour and maintain fishery in certain circumstances is raised.
- Some consultees query the inclusion of vegetation controls in this GBR rather than within the vegetation GBR (see Section 2.9, Rule 7, Schedule 2 of the consultation paper).
- Consultees query the provision for vegetation to be cleared from one side of the water course only, and ask for confirmation of how this will be managed in cases where each

side of the watercourse has a different riparian owner. The point is raised that fishery boards often only control one side, and also that the owner that is unable to clear vegetation in order, for example, to improve fishery access would expect to seek compensation.

- Clarification is required regarding whether scouring and dredging of reservoirs falls under these rules.
- The requirement for a licence to cut trees over 15cm in diameter is questioned. Consultees warn that this will encourage landowners and managers not to allow saplings to grow to this size.
- With regard to tree felling, a reminder is made that GBRs should refer to the possible requirement for felling licences from the Forestry Commission.
- Consultees query the reasoning behind the provision to work in an upstream to downstream direction. Management works are generally conducted from the furthest point downstream. Working in the opposite way would mean workers do not have the visibility (due to suspended sediments) to work efficiently and effectively.
- Consultees ask if the Centre for Ecology and Hydrology (CEH) 1:50,000 maps to which the GBRs refer for the purposes of identifying which watercourses are subject to controls are readily and easily available. Some consultees have encountered problems in accessing them. Some streams are apparently included within CEH maps but not 1:50,000 Ordnance Survey (OS) maps.
- The regulations require GBRs for watercourses under 1m width and licences for those over 1m. Consultees highlight that many watercourse within farms are around this 1m width and draw attention to the importance of clear measurement criteria, including statements concerning the time of year ditches are measured. The point is also raised that the management of ditches will be very difficult to regulate in practice.
- Fisheries representatives support the inclusion of small streams in the regulations due to their importance for juvenile trout.
- Consideration of bank-side ecological habitats and the effects of desilting, dredging and clearing is not made.
- Historical significance is not mentioned within the GBRs; however, desilting or dredging in areas of significance has the potential to affect archaeological deposits.
- Ditch clearing and dredging are covered within the Common Agricultural Policy (CAP) reforms. There are potential conflicts between these two areas.
- It is suggested that the rules be amended to allow the dredging, clearance and desilting of watercourses less than 3m width in urban areas where previous straightening, canalisation or ditching has occurred.

Section 2.3: Boulder Placement for Fisheries Enhancement

Many of the issues raised for the regulation of croys also covered the placement of boulders. Comments made on this section are as follows.

- Consultees ask for clarification of what constitutes a boulder.
- The requirement for boulders not to be placed within one active channel width of the nearest in-channel boulder is questioned. It is thought that this could have large effects on small watercourses, whilst large ones would be unaffected by the placement of boulders.
- The positive effects of boulder placement for fish (shelter, resting places) are highlighted. It is felt that the regulations should consider the positive effects as well as the potential negative impacts. The positive effects of grouping up to three boulders should also be considered, especially for larger watercourses and not automatically precluded.
- ‘Natural bank height’ may be difficult to ascertain in the case of some watercourses.
- The placement of boulders too close to the bank may cause erosion. The removal of boulders can also have impacts on the watercourse. Consultees ask for the consideration of these points.
- Consultees ask that the preference for naturally sourced boulders be added to the regulations.

Section 2.4: Gravel Extraction from Dry Gravel Beds of Watercourses

Consultees generally welcome the inclusion of this activity within the regulations, but have some concerns and suggestions regarding the parameters stated and the scope of the rules. Consultee comments on Section 2.4 are as follows.

- Consultees comment that traditionally gravel is taken over a wider and shallower area than proposed within the GBRs. As stated, the excavated hole would be potentially unstable and does not represent the best ecological, environmental, hydrological or commercial scenario. Consultees also state that the extraction methods proposed would require a digger rather than less invasive tractor or fork-lift truck methods.
- The permitted extraction rates are queried as they do not take account of the length, width or depth of sand and gravel beds and appear to be linked to the length of river stretches.
- The difficulties associated with the regulation of extractions, which are often on a small scale for onsite works such as private road and path building, are raised.
- Consultees ask for guidance regarding the removal of gravel beds to protect bank scour. The practice of removing such deposits has been practiced for many years. Conflicts with Rule 7 (Section 2.5, below) regarding bank protection are raised.

- Local Authorities raise the question of the rules not appearing to take account of flood management.
- Issues are raised with regard to the situation of two riparian owners on either bank of a watercourse wishing to extract gravel at the same time. Consultees ask what return periods will be considered and whether extractions will be staggered.
- Consultees ask if seasonal restrictions will be applied i.e. during salmonid spawning periods.
- Consultees ask why the rules cover only dry gravel removal and not removal from any part of the watercourse. The inclusion of wetted gravel would generally be welcomed as this would have many benefits including affording protection to juvenile fish habitats.
- The rules appear not to differentiate between beds colonised by vegetation (which is often specialised) and those that are not.

Section 2.5: Bank Reinforcement

Comments on this section have mainly been supplied by fisheries consultees and other riparian landowners / managers. A summary of the comments is provided below.

- Recognised methods of bank reinforcement that use the least environmentally damaging combination of materials and delivery may contravene parts of this GBR, for example the use of fieldstones and delivery by trailer often leaves some materials more than half way up the bank sides.
- The proposal to limit the rock area to the 'lower half of the bank' should be reviewed. This definition does not take account of seasonal changes in the water level. Not extending loose rock above this level is also questioned. It is thought that this might lead to destabilisation from erosion to the bank from above.
- Consultees question the rule to fence three sides of seeded areas. The rule takes no account of whether there are grazing animals at the site. If there are, the fencing arrangement would not protect the areas from grazing animals, whereas if there are none, fencing is not necessary and not desirable.
- It is thought that the rules for bank stabilisation above rock would in some cases lead to the destruction of important nesting habitats.
- The question of who determines the size of rocks and their ability to withstand the hydraulic forces of the watercourse is raised. A definition of 'not significantly larger' and 'flood conditions' is sought, and the comment is made that the rules should stipulate not only the size, but the origin of the material to be used.
- The recommendation of greater than one, but less than three channel widths is thought by some to create too large an area for large watercourses.

- A number of consultees state that gabion baskets, if properly designed and applied, can provide the most stable bank protection and enhance the environment. There are watercourses where no alternative, ecologically viable alternatives exist. Some consultees have asked for evidence as to the detrimental nature of gabion baskets.
- Historic environment, landscape and potential impacts of bank reinforcement on archaeological features should be covered within these rules.
- Some consultees ask that the relationships between these rules, flood management and biodiversity are expressed with greater clarity.

Section 2.6: Pipeline or Communication Cable Crossings

Consultee comments on Section 2.6 are as follows.

- Consultees ask for clarification on all the rules in this section.
- There should be a scale determination on the size of the stream.
- The need to ensure that the gradient of the bank and the riverbed are retained should be reflected within the rules.

Section 2.7: Open Channel Watercourse Diversions

There were a small number of responses to Section 2.7, all of which raised concerns about the same point – the 10 day diversion limit for tiers of control. One consultee raised the issue that maintaining the integrity of watercourses during diversions does not have a direct relationship with the period of time over which the watercourse is diverted. Other consultees suggested various other time cut-offs, from 2 weeks to 3 months.

Section 2.8: Bridging Culverts

Consultee comments on this section are as follows.

- The rules covering box culverts, where it is stated that they cannot be used if their length will exceed 5m will preclude their use for virtually all roads and add considerable costs to many projects.
- The incorporation of baffles on the base of box culverts over 5m to maintain flow velocity are beginning to be used and should be considered.
- The importance of allowing the passage of smolts through culverts should be referred to.
- The importance of sizing a culvert appropriately to allow a suitable depth of natural bed material to be reinstated should be reflected within the rules.

- The requirement for bars of a screen to have a minimum of 230mm separation would appear to be in conflict to CIRIA good practice (as stated within *CIRIA Report 68 Culvert Design Manual*) where the screen is designed to prevent unauthorised access.
- Account should be taken of flood management.
- Landscaping considerations should be considered as part of the application procedure.
- The regulations allow a bridge to be built under registration providing the river channel and bank zone are not affected. This does not take into account the activities that will be carried out over the river.
- Bridge maintenance should be covered by GBRs.

Given the comments relating to the use of culverts in road schemes, it appears that some clarification may be needed with regard to the application of the rules to transport projects where, in some cases, there is no other alternative but to culvert sections of a watercourse.

Section 2.9: Vegetation Removal and Management

There was a large response to this section. Responses were generally seeking clarification and amendment to the GBRs. Comments were received from all responding sectors, with landowners, managers and fisheries representatives being the most numerous respondees. Fisheries representatives described these rules as being the most contentious, together with the controls on clearing, dredging and desilting, discussed within Section 2.2. Comments and issues raised are as follows.

- The rules appear to prohibit normal riverbank management. The negative impacts to ecology of not carrying out this management are considered to be large.
- Local knowledge and the experience of managers and ghillies appear to have been ignored during the formulation of these rules.
- The need to keep site boundaries clear of vegetation for security purposes has been raised and it is suggested that this be considered to be an exemption (see also Section 1.6).
- Clearance for the purposes of footpath maintenance should be excluded from control (see also Section 1.6).
- Woodlands subject to a plan of operations approved by the Forestry Commission should be subject to exemption (see also Section 1.6).
- In some areas, if water weed is not allowed to be cleared, local fisheries will not be able to operate.
- It appears that the rules would cover the clearing of flood debris, which does not seem reasonable.

- Riparian managers may be incentivised to cut scrub before it reaches the 15cm diameter limit for requiring a licence (see also Section 2.2).
- The requirement for felling licenses from the Forestry Commission for some activities should be referred to within the rules.
- In some cases, the removal of trees can be beneficial to the riparian environment. No consideration of this is made within the rules.
- Consultees ask that drainage ditches, like navigational canals, be exempt from controls (see also Section 1.6).
- The benefits of mowing riverbanks if conducted in a responsible way can encourage natural meadow and enhance local biodiversity.
- Clarification is sought on the distance from the river that these rules will cover.

Section 2.10: Abstractions >10 and <30 m³ / day; >30 and <60 m³ / day; and >60 and <100 m³ / day

Comments on Section 2.10 are summarised below. Comments have been received from all responding sectors. Many consultees welcome the inclusion of abstractions within the regulations but require clarification and seek specific amendments.

- Some consultees have queried the apparent assumption that the larger a volume of water abstracted, the larger the environmental impact. There is also no explanation of the reasoning for volume limits for abstractions chosen.
- Some consultees comment that the abstraction volumes requiring authorisation through GBRs are low and suggest higher limits.
- The four month timescale for authorisation under the GBR system would be impractical for abstractors whose operations are seasonally controlled.
- Proposals for volumetric charging would be opposed by consultees.
- The definitions for water abstraction are unclear in relation to small scale and domestic water supplies.
- Clarification is required of what is meant by ‘reasonable steps’ to ensure leak reduction.
- Farmers that have removed livestock and fenced off riparian areas as part of rural stewardship schemes would be charged for the abstraction of water to troughs. This should be considered and addressed.
- No mention is made of abstractions from springs, channelled or collected under gravity for private use or irrigation.

- The GBRs do not have the flexibility to permit the understanding of the purpose and potential benefits of any abstraction.
- The possibilities of authorising on a catchment rather than a user basis should be explored. Where multiple abstractions occur, these could then be regulated collectively.
- Different thresholds are required relating to the size of the watercourse from which water is being abstracted. This does not seem to be acknowledged within the rules.

Section 2.11: Unmanaged Weirs between 0.3m and 1m High

Consultees generally support the inclusion of these rules, but provide some comments and suggestions for amendment. Comments on Section 2.11 are as follows.

- Routine annual maintenance such as the clearance of obstructions (branches, leaf detritus) should be stipulated.
- The Q95 flow levels should be revisited and updated.
- The hydraulic drop associated with weirs needs to be considered from the point of view of maintaining access for recreational users of watercourses such as canoeists. Weirs can represent an obstruction or introduce safety risks if care is not taken in their design. There should be an obligation to consult with such watercourse users.

Section 2.12: The Operation of Managed Lochs

Comments on Section 2.12 have been summarised below.

- Routine annual maintenance should be stipulated as part of the authorisation process.
- Potential impacts upon archaeological sites should be acknowledged.
- Access to the managed loch needs to be maintained under ‘normal’ flow conditions.

Section 2.13: Discharge from Passive Secondary Sewage Treatment of a Load with a Population Equivalent of Between 15 and 50 Persons

Minimal comments have been received for these GBRs. Consultees highlight that mention of the requirement for a building warrant prior to the construction of a private treatment works and infiltration field would be helpful within the rules. Liaison with Building Control and Scottish Water would also be of benefit.

The promotion of SUDS for all GBRs associated with the treatment of sewage and wastewaters is advocated.

Section 2.14: Discharge from a Small Mechanical Sewage Treatment Plant Treating a Population Equivalent of up to 50 Persons

Minimal comments were made upon these rules. The main comments received raised queries regarding how the desludging requirement will be regulated, and the current availability and capacity of plant and operators available to undertake desludging and appropriately handle and dispose of sludge material.

Section 2.15: Discharge from a Septic Tank Direct to a Watercourse

Comments on Section 2.15 have been summarised below.

- The rules appear to be overly bureaucratic and difficult to regulate.
- It is not clear whether and to what extent these rules apply to existing septic tank systems.
- Consultees query whether the owner of every septic tank will be required to retain records of maintenance for five years.
- Consultees question how the two year desludging requirement will be regulated, and the current availability and capacity of plant and operators (see also Section 2.14 above). The comment is also raised that a well maintained tank should not need to be desludged with this frequency and that encouragement to do so might be detrimental.
- It is unclear why the 15 person population figure has been adopted.
- Consultees ask if septic tank soak away controls will be included under the forthcoming regulations for diffuse pollution control.
- It is suggested that methods of increasing education and awareness regarding the use and maintenance of septic tanks be investigated and promoted.

Section 2.16: Discharge from a Combined Storm Flow

Comments on Section 2.16 are as follows.

- The relationship to biodiversity and flood management requires clarification.
- Consultees ask for the means of cessation of Combined Storm Overflows (CSOs) to be detailed.
- It appears that CSOs will not be allowed in salmonid rivers. Consultees ask if this requirement will be applied retrospectively to existing overflows. Consultees also feel that similar controls should be investigated for environments where other sensitive species are present. Some consultees indeed consider that CSOs should not be allowed in any watercourse containing any species of fish.

Section 2.17: Oil Storage Controls

This section attracted a large volume of comments. Consultees from industry provided the most responses, but comments were supplied by all sectors. Received comments are summarised below.

- Interaction with other legislation needs to be carefully examined to ensure that there is not a shortfall due to timetable or the coverage of regulations. Consultees also seek clarification of which legislation takes precedence.
- The proposed timetable of 2006 for compliance is considered to be difficult to meet.
- Some consultees have noted surprise that the methods do not mirror those introduced in England and raise concerns regarding the harmonisation of regulations within the UK. Other consultees have commented that they are disappointed that regulations appear to be mirroring the systems introduced in the rest of the UK.
- Some consultees believe that oil storage should be the subject of separate legislation.
- An exemption for the proposed Scotland Regulations for Oil Storage is suggested (see also Section 1.6).
- Regulations concerning oil storage at farms, such as those for slurry, are considered to be unsafe and should not be considered to be exempt under the CARs.
- Queries are raised with regard to the thresholds for applying to store oil and the practicalities of applying and waiting up to four months for authorisations to store small volumes.
- The domestic container size is below the permitted development level included within the *Town and Country Planning (General Permitted Development) (Scotland) Order 1992* which could result in confusion. The two pieces of legislation should have the same thresholds.
- The requirements should include specific rules for installation and maintenance.
- The requirements should include the assessment and registration of technicians under an accredited scheme.
- Transport works such as rail track maintenance will require a very large number of applications before 2006 under the proposed regulations.
- The issue is raised of how oil suppliers will know whether the consumer has complied with the regulations and whether the supplier could hold any liability due to the failure of the consumer to comply.
- There does not appear to be any requirement for the oil consumer to identify the total capacity of the tank or the grade of the fuel stored. This has the potential to lead to overfilling or cross-contamination problems.

CHAPTER 3: TRANSITIONAL ARRANGEMENTS

Section 3.1: Timetable

Three main issues have been raised in relation to the timetable for implementation of the CARs. These are as follows.

- It is felt by many consultees that there is not sufficient time to set up the system and to ensure that the necessary resources are available to SEPA within the current timescale and that a longer timeframe for implementation would be beneficial. As Scotland is introducing the system in advance of the requirements of the WFD, consultees warn against the rushing of implementation before the necessary capacity and guidance is in place and problems or uncertainties within the regulations remain.
- The decision to split the transitional process into two tranches, the first tranche being made up of higher risk activities, is questioned. Clarification of what will be considered to be a 'higher risk' activity is also required.
- Consultees have asked that care be taken to ensure that there are no shortfalls or significant overlaps in the timing and transfer of responsibilities between existing legislation and the introduction of CARs.

Consultees mainly chose to raise the overall timetable issues summarised above, and did not tend to provide detailed comments on the specific timetables for point source discharges, abstraction and impoundment, and building and engineering works. This has resulted in a low response to these sections. Comments restating those reported above have not been restated in the sections below.

Section 3.2: Point Source Discharges

As discussed above, the response of consultees to Section 3.2 was low. Comments and issues raised are as follows.

- For activities currently consented under CoPA for which the timeframe for application is 1st April to 30th July 2005, if an application has been duly made, the transitional provisions should bring the new regulations into force on the 1st October 2005, or the date of granting of the authorisation if later. If this is not done, there is a risk of existing activities becoming unlawful by default on 1st October 2005 if the necessary authorisations are not issued by SEPA by that date.
- SEPA should carry out a neutral translation from the existing consent to the new licence. The proposed new application process provides no environmental benefit and introduces a large administrative burden, both for SEPA and the consent holder.

Section 3.3: Abstraction and Impoundment

Comments on Section 3.3 are as follows.

- Consultees require clarification of whether a licence is required for abandoned reservoirs.
- Concerns of shortfalls in regulation during the transition period are raised.

Section 3.4: Building and Engineering Works

Comments on Section 3.4 are as follows.

- It is not clear how the assessments of the potential number of structures and works that will require authorisation have been calculated, but it may be a significant underestimation as no consultation with local authorities has been undertaken.
- It should be made clear which ‘other necessary permissions’ must be in place by 30th November 2005. Permissions that should be in place should be limited to planning permission or ministerial consents / orders having similar effect and building control permission (where applicable).
- Clarification is sought regarding how the proposals will apply to riverine and coastal flood defence schemes, and how they will be assessed prior to December 2005. It is suggested that separate arrangements may be required.
- The statement ‘existing structures will not require authorisation under the controls for this regime’ appears to contradict Section 3.3.
- It appears that, as the draft regulations stand, permanent works that have planning permission, but are not completed by the 30th November 2005, would not require authorisation, but temporary and enabling works to facilitate their construction would. This requires clarification.

CHAPTER 4: INTERACTION WITH OTHER ENVIRONMENTAL LEGISLATION

Introduction

Consultee comments in relation to the interaction of the proposed CARs with other environmental legislation are summarised within this section. Comments were invited with reference to the *Control of Pollution Act, 1974* (CoPA), *The Groundwater Regulations, 1998*, the *Natural Heritage (Scotland) Act, 2003*, the *Pollution Prevention and Control (Scotland) Regulations, 2000* (PPC), Water Orders and Acts, and the *Environmental Impact Assessment (Water Management) (Scotland) Regulations, 2003*. Comments raised with regard to the interaction of CARs with other legislation applicable to the water environment are discussed in **Chapter 5: Additional Comments**.

Comments were received from a range of sectors, but the response level was not high. This may be associated with the fact that consultee concerns were associated with other aspects of

the implementation and interactions of CARs, such as the timetable and transitional arrangements discussed above under Chapter 3. The low level of response may also relate to this section being the last in the paper, i.e. time constraints prevented consultees from responding on later sections in as much detail as earlier ones.

Section 4.1: Control of Pollution Act 1974 (CoPA)

Consultees generally support the proposed integration of CARs with CoPA. Specific consultee comments are summarised below.

- The call-in process is considered to be valuable and its retention in the new regulations is welcomed by the majority of consultees.
- It would be undesirable to retain a separate provision of CoPA for sewerage and trade effluent offences and defences.
- Care needs to be taken to repeal CoPA as the new regime comes into effect to ensure that there is no overlapping of requirements and controls.
- Some consultees query that there are shortfalls within CoPA, and ask for further explanation of why the existing system is being replaced.

Section 4.2: The Groundwater Regulations 1998

In general, consultees support the integration of the groundwater regime within CARs. Comments and issues raised within the responses received are summarised below.

- It is suggested that current authorisations under the Groundwater Regulations be transferred to the new system only at the time of their four-yearly review.
- Some consultees feel that the new definition of ‘pollution’ as defined by the WFD should be applied from the start. Other consultees acknowledge that it is important to accept the new definition, but express that transitional arrangements are needed for existing exemptions for certain discharges to groundwater that will be illegal under the new definition and the new regime.
- Details of the proposed disposal methods for some substances authorised for discharge that cannot be treated through discharge to waste water treatment works are required.

Section 4.3: Natural Heritage (Scotland) Act 2003

The main comments received on this section are associated with the proposals for the granting of drought orders and drought planning under the proposed regulations. These comments are summarised below.

Drought Orders Powers

In consideration of the granting of powers for drought orders, the majority of consultees agree with the proposal for the CARs, which continue to afford the powers to the Scottish Ministers. In general consultees would like SEPA to be consulted in the process to ensure that environmental considerations are taken into account and to allow SEPA to advise on local conditions. Consultees also suggest consultation with Scottish Water and SNH to enable Ministers to make an informed decision.

A few consultees ask why SEPA is empowered with the making of decisions to balance competing uses to best manage water resources but are considered to be less equipped to undertake that balancing act with regard to applications for drought orders.

Drought Orders and Drought Planning

General comments on the proposals for drought planning are as follows.

- There is support for making drought plans statutory.
- There is support for the provision to remove emergency drought orders.
- It is agreed that some regulation should be made where there is a danger to fish or other aquatic life due to drought conditions.
- Consideration should be given, as mentioned within the consultation paper, to the application of drought orders to other water users i.e. not just for public water supply.
- The regulations should emphasise that drought rules should be applied only in exceptional circumstances and not used to redress the lack of resource planning by water companies. The importance of the development of competent contingency plans is also raised.
- With reference to the point above, consultees are generally in favour of the proposal for Scottish Water to develop drought plans as a statutory duty, to be reviewed and updated as necessary.
- The suggestion to charge for drought orders and drought permits for the purpose of cost recovery is made.
- The local knowledge and role of fisheries boards and trusts in the compilation of drought plans should not be underestimated.
- The importance of encouraging the conservation of water through other methods such as education and campaigns is raised.

Section 4.4: The Pollution Prevention and Control (Scotland) Regulations 2000

The responses received support the parallel operation of the PPC regulations and CARs. It is felt that the integration of the two systems at this time would be extremely complicated. Concerns are raised regarding the difficulties that would result if sites were authorised under different systems.

Section 4.5: Water Orders and Water Acts

Comments received on Section 4.5 concerning local Water Orders and local Water Acts in respect of abstraction and impoundment works are summarised below.

- Some consultees ask for clarification of why there is a difference in the Executive's approach to local Water Orders and Acts. There is support for both being transferred to the proposed CARs system of control. It is felt that a mechanism should be found for repealing local Water Acts in their entirety, i.e. not just the environmental conditions.
- The importance of reviewing existing Water Orders in the light of changing circumstances and the increased knowledge of the impacts of abstraction on the water environment is raised.
- Details of proposals for the owners of private water supplies and small hydro-electric schemes are sought. It is considered that these have not been considered within the proposed regulations.

Section 4.6: Environmental Impact Assessments

Consultee comments concerning the interaction of CARs with the *Environmental Impact Assessment (Water Management) (Scotland) Regulations, 2003* are as follows.

- Environmental Impact Assessment (EIA) is required under other consent regimes, such as town and country planning and S.36 of the *Electricity Act*. It is important that any EIA provisions introduced to cover projects under CARs are not applied where a project is already subject to EIA under another consent regime.
- Some consultees ask that the 2003 regulations be repealed, and that the requirements of the *Environmental Impact Assessment Directive* be met by CARs.
- If regulations are introduced to meet the requirements of the EIA Directive, consultees ask that they be consulted.
- In addition to EIA requirements, it would be helpful if clear procedures relating to flood impact assessment, particularly in an urban context, be made mandatory.

ANNEX B: INTERIM REGULATORY IMPACT ASSESSMENT

A number of comments were raised on *Annex B*. Consultees have mainly highlighted the use of incorrect or out of date data in the report.

5. ADDITIONAL COMMENTS

INTRODUCTION

There are a number of additional issues being raised by consultees. The key issues that are common to a number of different responses are as follows.

- Competitive disadvantage.
- The incorporation of regulations and procedures for emergency works and emergency preparatory works, which has been highlighted as being absent from the regulations and consultation document in their current form.
- SEPA's capacity and capabilities in relation to fulfilling their proposed responsibilities.
- The integration of CARs with other legislation and regulations not included within the consultation document.
- Liability and compensation.
- The Controlled Activities Consultation process.

COMPETITIVE DISADVANTAGE

Summary of Comments

Consultees, whilst generally supporting the aims and objectives of the WFD, WEWS and the draft CARs, have raised concerns regarding the competitive disadvantage of operating within Scotland under the new system in advance of the rest of Europe. Disadvantages are mainly seen as being related to the cost burden of introducing new controls together with the administrative costs and charges associated with the procedures for authorisation of controlled activities.

EMERGENCY WORKS AND EMERGENCY PREPARATORY WORKS

Summary of Comments

Concerns are raised in a number of responses regarding the apparent lack of regulations, procedures and guidance for situations where emergency works are required, for example where trees have fallen, banks have collapsed and removal is required to minimise impacts to watercourses and supported fisheries. It is suggested that either a clause needs to be included, for example, in each of the GBRs, or that an overall emergency clause be included within the regulations.

One consultee has also raised the issue of emergency preparatory works, such as oil spill response drills, which involve temporary impacts to the water environment (e.g. through the

deployment of sandbags and booms). The point is made that the authorisation process and tier of control for such drills needs to be kept as simple as possible to ensure that companies are not incentivised to reduce the occurrence or scale of such exercises.

SEPA'S CAPACITY AND CAPABILITIES

Summary of Comments

A large proportion of the consultees raise concerns or highlight issues associated with the implications of SEPA's proposed new responsibilities with regard to their:

- capacity in terms of staff to administer and regulate CARs; and
- capabilities, in terms of available and suitably qualified specialists.

It is acknowledged by consultees that the administrative burden upon SEPA will be large, and that the timescales for introduction of the new system are relatively short. In the past SEPA has had a number of problems meeting deadlines due to capacity issues. It is accepted that SEPA will increase its capacity to accommodate the workload, but consultees have concerns as to whether SEPA will recruit sufficient numbers of personnel, and whether they can recruit and train staff in advance of CARs implementation.

With regard to the SEPA's capabilities, there are two main concerns. The first is that consultees understand the need for the regulating body to be able to balance environmental, social and economic considerations. Some consultees have doubts that this can be achieved by SEPA. The second is associated with experience and specialisms. Many consultees also have had direct experience of staff knowledge and abilities within the organisation being subject to a level of variability. Personnel are sometimes lacking in knowledge of the local environmental sensitivities, and specialists, for example, hydrologists, geologists and ecologists, are often not available due to constraints of location and workload.

Consultees request assurance from the Executive and SEPA themselves that the organisation will have both the capacity and expertise to fulfil their new role in the assessment of controlled activities and achieve the correct balance between environmental protection, improvement, social development and economic strength.

INTEGRATION WITH OTHER LEGISLATION AND REGULATIONS

Introduction

With the introduction of all new regulations there are possibilities of conflicts, overlaps and shortfalls between the new and existing legislation. This is especially complex when there are a number of different pieces of existing legislation, as is the case with environmental policy at present within Scotland. As the Controlled Activities Regulations aim to bring the controls, aims and objectives of many of these pieces of legislation under one umbrella, whilst updating the regulations in accordance with the aims and objectives of the WFD, it is expected that there would be a number of potential issues, both with environmental legislation and other legislation such as planning, building, transport, flooding and agriculture

policies. This section highlights some of the potential issues raised by consultees in this regard.

Planning Policy

Consultees indicate that there may be a number of areas where planning policy and CARs interact. Care needs to be taken to ensure that the proposed CARs regulations do not conflict, overlap or hinder the planning policy system. The two main areas of potential conflict include thresholds for various parameters (e.g. septic tank volumes) and the differing timescales for authorisation and approval.

The Scottish Building Regulations

A number of issues have been raised regarding the integration of CARs with the aims, responsibilities and Technical Standards outlined within the Scottish Building Regulations. These include the following.

- The statement within the consultation document (page 6) that SEPA is to regulate building. However, the buildings regulations control the design, installation and construction of buildings and the Building Standards Division believe that SEPA will only control the specific building works not covered by the building regulations and consider that the draft regulations are misleading on this point.
- The timetable for protection from leaks and spills from new oil tanks needs to be carefully coordinated with the new building standard system to ensure that there is no shortfall in legislative control. At present there is the possibility that one may occur.

Reservoir, Flood Protection and Road Regulations

Local authorities raise concerns that the new CARs regime will affect activities undertaken under the *Reservoirs Act, 1975*; the *Flood Prevention (Scotland) Act, 1961* as amended by the *Flood Prevention and Land Drainage (Scotland) Act, 1997*; and the *Roads (Scotland) Act, 1984*.

Natural Habitats Regulations

Interactions between the proposed CARs, the *Habitats Directive* and *Conservation (Natural Habitats) Regulations, 1994* need to be investigated to highlight any requirements for the assessment of applications with the potential to affect protected and ecologically sensitive areas.

Silage Slurry and Agricultural Fuel Oil Regulations

A number of consultees have expressed concern over the current regulation of agricultural fuel storage and ask that it be brought under the control of CARs.

The Common Agricultural Policy (CAP)

Consultees have highlighted potential conflicts between the CAP and some of the GBRs, such as the draft rules for ditch clearing and dredging.

LIABILITY, COMPENSATION AND INSURANCE

Summary of Comments

The issue of compensation, liability and insurance is raised by a number of consultees. The scenarios and points included within their responses are summarised below.

- The refusal by SEPA of an application to conduct maintenance works to ensure the integrity of a fishing area may result in a degradation of the value of that fishery. Consultees raise this as a potential liability issue that landowners may expect to be compensated for.
- The issue of compensation has also been raised with regard to what happens in a situation where either SEPA's refusal for authorisation, or advice and conditions, result in an adverse situation or event.
- With regard to the development of control regimes and guidance within Europe in time for 2012, the advanced introduction by Scotland of the CARs introduces the risk that controls may be:
 - a) too strict; or
 - b) not stringent enough.

Both of which raise issues of liability for operators and managers, as well as for SEPA.

- Insurance is usually taken out to cover any damage e.g. to river banks caused by upstream proprietors. If any damage were to occur as a result of an activity that has been regulated by SEPA, it is unlikely that insurers would provide compensation.

THE CONTROLLED ACTIVITIES CONSULTATION PROCESS

Summary of Comments

Consultee comments on the methods of consultation used for the Controlled Activities Consultation are as follows. Comments raised mainly relate to the consultee list and methods of distribution, as well as the style of the consultation paper.

- Consultees commented that the paper provided a good description of the draft regulations and proposed system of control. Other consultees commented that the paper was too long, and raised the issue of time constraints associated with commenting on a paper of that size.
- The majority of consultees have asked to be informed and consulted with regard to future developments in the legislation.
- Some consultees raised concerns about not being consulted or asked to provide information on their experience, activities, operations and sites at an earlier stage.
- It is suggested that landowners should have been included within the list of consultees.
- Consultees who responded after hearing of the consultation through word of mouth or accessing it on the Executive's website expressed the wish for such consultations to be more publicly advertised.

6. CONCLUSIONS

INTRODUCTION

Consultees provided valuable feedback regarding both the way the draft CARs are presented and a wide range of comments, issues and recommendations for amendments relating to specific sections and regulations. A full summary of these comments, issues and recommendations has been included within **Chapter 4: Key Comments, Issues and Recommendations** and **Chapter 5: Additional Comments** of this summary report. This section provides a conclusion of the main issues and points to emerge from the consultation process.

KEY CONCLUSIONS

Overall Style and Approach of the CARs

After analysis of the responses received to the Controlled Activities Consultation overall, there is wide support for the aims and objectives of the *Water Framework Directive*; the *Water Environment and Water Services (Scotland) Act, 2003*; and *Water Environment (Controlled Activities) (Scotland) Regulations 2004*. The majority of responses were in agreement to the approach taken to protect and improve the water environment through the introduction of the CARs and the proposed three tiers of control.

However, some consultees felt that the approach appears to be prescriptive in relation to the GBRs, and that the level of detail provided may restrict the flexibility and adaptability which will be needed to allow the successful implementation and working of the system. It is suggested that care be taken within the regulations to encourage the development of management plans and local codes of practice as methods of protecting and improving the water environment.

Registrations

The issue of environmental benefit versus the regulatory burden and administrative costs for both SEPA, and individuals, organisations and businesses has been raised in relation to the proposed system of registration. It is suggested that the possibility of removing this tier of authorisation be investigated. This would, however, result in a reduction in the ability to track and assess potential cumulative impacts.

General Binding Rules

There are many comments, issues and recommendations for amendment made relating to the GBR system in general and the proposed individual GBRs presented within the consultation paper. These have been summarised in detail within Chapter 4 of this summary report. GBRs concerning croys, ditch clearing, dredging and desilting activities, vegetation clearance, abstractions and oil storage attracted the highest level of response, with the fisheries sector in particular noting the rules for ditch clearing, dredging and desilting activities (Section 2.2 of the consultation paper) and vegetation removal and management (Section 2.9 of the consultation paper) as being the most contentious.

One of the key comments made by consultees with regard to GBRs was that the decision to provide a high level of detail within the regulations may restrict the ability for them to be adapted and tailored further in the future.

Licences

In general, consultees are supportive of the proposed licence system.

With respect to composite licences, organisations and businesses dealing with works that are standard and similar but on a regional scale, such as maintenance works for roads and railways, have asked that consideration be given to grouping such activities under one 'regional' application. Hydro operators and the agriculture sector have also asked whether activities at multiple locations several kilometres apart may be grouped, and whether some activities such as those associated with river management could be authorised on a catchment area basis.

Local authorities have asked for clarification over whether they are able to apply for one authorisation covering all their watercourse duties (such as vegetation removal, use of vehicles in water, dredging, desilting).

Timescale for Implementation

It was felt by many consultees that a longer timeframe than that presented within the consultation paper for implementation of the regulations would be beneficial.

Consultees have also asked that care be taken to ensure that there are no shortfalls or significant overlaps in the timing and transfer of responsibilities between existing legislation and the introduction of CARs.

Financial Burden

There are concerns from local authorities and voluntary organisations that the administrative and training costs associated with compliance with CARs and the associated applications procedure will force them to reduce the services they currently provide.

Integration with Other Legislation

Responses indicate that integration of the regulations with existing legislation is not as comprehensive as is needed to reduce the possibility of a shortfall or overlap in regulation and protection. In particular, the need to consider, in detail, the interfaces and potential conflicts between the following legislative areas and regulations have been identified.

- Planning.
- Building control.
- Common Agricultural Policy (CAP) reforms.
- Transport policy.
- Flood prevention policy.
- Habitats regulations.

Consultees urge the Executive to consider the implications of the regulations for organisations and businesses that operate in cross-border areas i.e. between Scotland and England.

Local authorities and other organisations have asked that their statutory duties, for example, flood prevention and control, navigation, pathway, road and railway maintenance and watercourse management, be acknowledged and considered within the procedures for authorisation.

The System and Associated Timescales for Application and Approval

This section of the consultation paper received a large level of response, with a high percentage of consultees disagreeing to the system and timescales for approval. The timescales for approval are considered by a majority of consultees to be unreasonable. A number of consultees also raise issues associated with the potential for timescales for different regulatory systems to conflict, for example the planning approval system, which has a shorter timescale than the proposed four month GBR and licence consideration periods. Consultees have raised doubts as to the capacity and capabilities of SEPA with regard to the processing of applications within the specified timescales. It is feared that many applications will be refused due to the inability of SEPA to process them in time, and that there is no incentive for SEPA to do so.

Possible Exemptions

A number of activities have been suggested for exemption. A list of these activities is included within Chapter 4 of this summary report.

Some of the exemptions listed under Regulation 5 have been questioned with regard to their fulfilment of the aims and objectives of the WFD.

Appeal, Arbitration and Liability

A number of consultees have asked that arbitration procedures be outlined within the regulations, together with further details regarding the appeals procedures to be followed in the event that an application is refused by SEPA.

Consultees have also asked for guidance regarding the liability that SEPA will have, and clarification on the compensation status for requirements that SEPA may make, which are later proved to be unnecessary or detrimental to the situation / application.

Competition and Advantage

Responses from the business community that in an international environment where competition is already high for many of the goods and services that are offered by Scotland, the implementation of the regulations in advance of the rest of Europe may place an unfair regulatory and financial burden for Scottish based business.

SEPA's Capacity and Capabilities

Consultees commented on the capacity and capabilities of SEPA to handle the high workload and complex assessments associated with the regulation of the system of control under CARs. Consultees will require assurance from the Executive and SEPA themselves that the organisation will have both the capacity and expertise to fulfil their new role and achieve the correct balance in the assessment of controlled activities between environmental protection and improvement, social development and economic performance.



Small changes in the way we perform everyday tasks can have huge impacts on Scotland's environment.

Walking short distances rather than using the car, or being careful not to overfill the kettle are just two positive steps we can all take.

This butterfly represents the beauty and fragility of Scotland's environment. The motif will be utilised extensively by the Scottish Executive and its partners in their efforts to persuade people they can do a little to change a lot.