



Scottish Executive Environment Group

**Controlled Activities Regulations:
Revised Proposals for General Binding Rules**

March 2005
Paper 2005/4

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ISBN: 0-7559-3929-8

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Edinburgh
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Produced for the Scottish Executive by Astron B40358 03/05

Published by the Scottish Executive, March, 2005

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

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PURPOSE

In April 2004 we published a consultation on the “Controlled Activities Regulations”. This set out the Executive’s proposals for the Water Environment (Controlled Activities) (Scotland) Regulations to be introduced under the Water Environment and Water Services (Scotland) Act 2003.

The responses highlighted many concerns over the proposed General Binding Rules. These have been fundamentally streamlined and are now being published to allow further final comment prior to the regulations being made.

(The original consultation and the Executive’s response can be viewed at: <http://www.scotland.gov.uk/Topics/Environment/Water/17316/CARConsultationandAnalysis>)

Comments on the proposals should reach us by **Tuesday 5 April**. Thereafter we hope to lay the Regulations in the Scottish Parliament later in April 2005.

ARRANGEMENT FOR RESPONSES

Please send your views and comments on the proposed general binding rules set out in this paper to:

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Responses should reach us by Tuesday 5 April

Earlier responses would be welcome.

Responses received will be made available publicly unless respondents ask for their comments to remain confidential. Details about how to access the responses can be obtained from Linda Galbraith on 0131 244 0386.

INTRODUCTION

The Water Environment and Water Services (Scotland) Act 2003 established a broad framework for the future management of our rivers, lochs, coasts and groundwater. It gives Ministers powers to make regulations to control activities that impact on the water environment. Since April 2003, we have been working with the Scottish Environment Protection Agency (SEPA) and stakeholders to develop Controlled Activities Regulations to control point source pollution, abstraction and impoundment, and building and engineering works impacting on the water environment.

Responses to our consultation on the Controlled Activities Regulations in April 2004 indicated that the original proposals for General Binding Rules (GBRs) were too prescriptive and inflexible. As a result, neither stakeholders nor regulators were convinced of the usefulness of GBRs as drafted. 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 since held further discussions with key stakeholders and SEPA in order to address these concerns. We have now reviewed our thinking on GBRs and propose 2 major changes to our original proposals:

- removing the requirement for operators to register with SEPA
- significant streamlining of the original proposals for GBRs

Given that we have made such significant changes to our original proposals, we wish to give stakeholders the opportunity to comment on the revised proposals, prior to making the regulations.

REVISED PROPOSALS

The proposed General Binding Rules (GBRs) have been significantly revised since the consultation was published in April 2004. As these activities are considered to present a very low risk, operators will not be required to register with SEPA but must comply with the rules set out for each activity.

The revisions are designed to ensure that:

- The rules of the GBRs are simple and practicable
- Natural heritage obligations are fulfilled
- The rules give scope for SEPA to develop suitable guidance to water users on how to undertake such activities

The activities covered by the GBRs have also been revised and are as follows:

- Operation of passive weirs constructed before 1st April 2006
- Abstractions of less than 10m³/day
- Construction/extension of wells/boreholes and subsequent abstractions
- Dredging activities
- Construction and maintenance of temporary/minor bridges
- Laying of pipeline/cable by boring
- Works to control the erosion of a bank of a river, burn or ditch using revetments
- Operation of vehicles, plant/equipment
- Low risk surface water discharges

This document sets out the revised context for GBRs, followed by a summary of changes since the consultation. The text of the revised proposals is then presented in Annex A.

We would welcome any comments regarding these revised proposals.

GENERAL BINDING RULES

The GBRs form part of the Controlled Activities Regulations and Regulation 6 of those regulations introduces the GBRs:

6. (1) Subject to paragraph (2), a controlled activity specified in Column 1 of Schedule 2 is authorised under these Regulations if it is carried out in accordance with the rules of general application (“general binding rules”) specified for that activity in Column 2 of that Schedule.

(2) Any controlled activities authorised by general binding rules, and any activities directly associated with them, shall be carried out so as to comply with all relevant requirements of –

- (i) Part I of the Wildlife and Countryside Act 1981;
- (ii) the Protection of Badgers Act 1992;
- (iii) the Nature Conservation (Scotland) Act 2004; and
- (iv) the Conservation(Natural Habitats &c.) Regulations 1994.

Regulation 6 has been expanded to ensure that natural heritage obligations are fulfilled.

Specific revisions to the GBRs are set out below. For ease of reference, the number used to refer to the GBR in the April 2004 consultation is shown in brackets after the new numbers.

WATER RESOURCES

GBR 1: ‘The operation of a weir that...’ (formerly GBR 5)

The description of the activity has been simplified to clarify which impounding works are covered by the GBR.

The GBR has been revised so that a fish pass is only needed on those weirs that would otherwise impede the passage of migratory fish. The reference to facilitating the free passage of fauna, other than fish, has been removed.

GBR 2: ‘The abstraction of less than 10m³ in any one day’ (formerly GBRs 1-3)

The GBR now applies to abstractions that are of less than 10m³ in any one day and has been substantially streamlined.

The previous GBRs required no more water to be abstracted than required for the purpose of the abstraction. This rule has been deleted and replaced by a general duty in the Controlled Activities Regulations to use water efficiently.

The GBR has been revised to clarify that options other than forms of metering can be used to demonstrate that less than 10m³ per day is being abstracted. This will provide greater flexibility for water users.

Clarification has been provided in the requirements for minimising leakage.

GBR 3: ‘The construction or extension of any well, borehole.....’ and GBR 4: ‘The abstractions from a borehole’

The April 2004 consultation referred to the development of further GBRs in relation to drilling, and the following GBRs have been developed for that purpose.

- GBR 3 relates to the specified activity of installing the works necessary to enable abstraction, etc. e.g. wells and boreholes
- GBR 4 (along with GBR 2) specifies rules related to the use of such works for abstracting water

The key aim of these rules is to avoid negative impacts on groundwater.

ENGINEERING ACTIVITIES

GBR 5: ‘The dredging of a river, burn or ditch...’ (formerly GBR 10)

The GBR now provides authorisation for the activity on any qualifying river, burn or ditch.

The rules for this activity have been revised to:

- Allow vegetation removal or modification on both banks to the extent that this is necessary to undertake the works
- Include an obligation to take all reasonable steps to avoid increased erosion of the bed or banks
- Specify that a part of the bed must be left undisturbed to act as a refuge for the fauna and flora of the river, burn or ditch. This rule does not prevent the works from increasing the cross-sectional area, and hence the conveyance, of the channel
- Ensure appropriate preventative measures are taken to prevent the transport of sediments disturbed by the works into other waters. This is intended to ensure the proper management of dredged sediments

GBR 6: ‘Bridge construction, maintenance and removal works’ (formerly GBR 14 in part)

This GBR has been developed to cover not just culverts but also minor and temporary bridges. The activities covered by this GBR have been further widened to include the maintenance of such bridges and the removal of temporary bridges.

The rules have been revised to:

- Allow vegetation removal or modification on opposite banks as is practicable in relation to bridge construction works
- Clarify culverts can be as long as necessary to span the channel but that it must not be wider than 10 metres in its length along the river

Common changes - GBR 5, 6, 7, 8 and 9

The following common changes have been made to GBRs 5, 6, 7, 8 and 9 authorising various engineering activities:

- Rules to ensure works are undertaken in a manner that protects fish populations have been included in GBR 5, 6, 8 and 9
- References to ‘watercourse’ have been changed to ‘river, burn or ditch’. The definition of ‘watercourse’ in the previous draft included drains and sluices. The rules are not intended to apply to drains and sluices
- The use of vehicles and other plant in relation to such works is now covered by GBR 9
- References to ‘active’ channel width have been deleted for simplification

**GBR 7: ‘The laying of a pipeline or cable by boring beneath the bed and banks...’
(formerly GBR 12)**

The activities covered by this GBR have been widened to include the repair and maintenance of such pipelines or cables by boring beneath the bed and banks.

**GBR 8: ‘Works to control the erosion of a bank of a river, burn or ditch’
(formerly GBR 8)**

The scope of this GBR has been widened and the requirements simplified:

- Erosion control through revetment instead of only reinforcement using loose rock is now included
- The use of other softer materials, in addition to stone is allowed
- The repair of existing bank protection works is also included
- Ongoing maintenance is required

GBR 9: ‘Operating any vehicle, plant or equipment....’

This GBR has been introduced to bring the rules on operating vehicles, plant or equipment into one general GBR. This avoids duplication in each individual GBR.

POINT SOURCE DISCHARGES

**GBR 10: ‘Discharge of surface water run-off....’
and**

GBR 11: ‘Discharge into a surface water drainage system..’

The scope of GBR 10 makes it clear that it refers to surface water run-off from the built environment and from construction sites. It does not apply to premises such as land in cultivation.

There are specific requirements for discharges constructed after 1st April 2006:

- A suitable SUD system is required for discharges from sites constructed after 1st April 2006 unless the site is a single dwelling
- The GBR does not extend to discharges of run-off from high risk areas constructed after 1st April 2006, such as fuel delivery areas

GBR 11 ensures pollutants are not disposed of into a surface water drainage system.

DEFINITIONS

Definitions have been included at the end of the Schedule rather than within the rules in order to streamline the rules themselves. Several have been revised for clarity.

OTHER ACTIVITIES

Following the April 2004 consultation and comments received on the level of risk associated with the activities listed below, it is no longer considered appropriate for the GBR mechanism to control the following activities:

- gravel extraction from dry gravel beds of watercourses
- construction of croys
- boulder placement for fisheries enhancement
- diversions of watercourses
- discharges from septic tanks and sewage systems

As the GBRs have been simplified to such an extent, it is also no longer appropriate for oil storage to be controlled by GBR provisions. There will therefore be free-standing regulations to cover this activity.

ANNEX A:

SCHEDULE 2
General Binding Rules

PART I

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>1. The operation of a weir that:</p> <p>(a) is not associated with an abstraction;</p> <p>(b) is not capable of being operated to control the water level upstream of the weir;</p> <p>(c) does not result in the creation of a height differential between the upstream and downstream water surfaces of more than one metre; and</p> <p>(d) was constructed before 1st April 2006.</p>	<p>(a) the weir shall not impede the free passage of migratory fish except during periods within which, for reasons unconnected with the design or operation of the weir, the flow of the river at the point at which the dam is located is at a level at which migratory fish would not reasonably be expected to seek passage.</p>
<p>2. The abstraction of less than 10 m³ in any one day.</p>	<p>(a) there shall be a means of demonstrating that the abstraction is less than 10 m³ in any one day, such as a means of measuring the rate of the abstraction or a means of demonstrating that the maximum volume that could be abstracted cannot exceed 10 m³ in any one day; and</p> <p>(b) water leakage shall be kept to a minimum by ensuring all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a state of good repair.</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
<p>3. The construction or extension of any well, borehole or other works by which water may be abstracted, or the installation or modification of any machinery or apparatus by which additional quantities of water may be abstracted, where such works are:</p> <ul style="list-style-type: none"> (a) not intended for the purpose of abstraction; or (b) intended for the abstraction of less than 10 m³ in any one day; or (c) intended for the abstraction of less than 150 m³ in any period of one year, and the purpose of the abstraction is either: <ul style="list-style-type: none"> (i) to test for the yield of the borehole or well or the hydraulic properties of the aquifer; or (ii) to sample the water quality. 	<ul style="list-style-type: none"> (a) subject to paragraphs (b) and (c), the construction of the well or borehole shall be such as to avoid the entry of water of a different chemical composition into the body of groundwater; (b) drilling fluids may be introduced into the well or borehole if necessary to facilitate the drilling of the well or borehole provided this does not result in pollution of the water environment; (c) potable water may be introduced into the well or borehole to test the hydraulic properties of the aquifer; and (d) if the well or borehole is not being used for abstraction, it shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.
<p>4. The abstraction from a borehole, and any subsequent discharge of the abstracted water, where the total volume of water abstracted is less than 150 m³ in any period of one year and the purpose of the abstraction is either:</p> <ul style="list-style-type: none"> (a) to test the yield of the borehole or well or the hydraulic properties of the aquifer; or (b) to sample the water quality. 	<ul style="list-style-type: none"> (a) the abstraction shall not cause the entry of water of a different chemical composition into the body of groundwater; and (b) if the borehole is not being used for abstraction, it shall be back-filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.

<i>Column 1</i> Activity	<i>Column 2</i> Rules
<p>5. The dredging of a river, burn or ditch that:</p> <p>(a) has an average width of less than one metre along the stretch to be worked, as measured at the bottom of the channel; or</p> <p>(b) has been artificially straightened or canalised along the length which is to be worked.</p>	<p>(a) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(b) the bed of the channel adjacent to each bank of the river, burn or ditch shall be left undisturbed;</p> <p>(c) all reasonable steps shall be taken to prevent the transport of sediments disturbed by the works into waters beyond the worked stretch;</p> <p>(d) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the emergence of the juvenile fish;</p> <p>(e) all reasonable steps shall be taken to avoid increased erosion of the bed or banks of the river, burn or ditch as a result of the works;</p> <p>(f) the works shall not result in the heightening of either bank.</p>
<p>6. (i) The construction and maintenance of a minor bridge over a river, burn or ditch; or</p> <p>(ii) the construction, maintenance or removal of a temporary bridge over any river, burn or ditch that has a channel width of less than 5 metres.</p>	<p>(a) vegetation on any bank of the river, burn or ditch shall be removed or modified only to the extent necessary to carry out the works;</p> <p>(b) the works shall not prevent the free passage of migratory fish or other fauna;</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
	<p>(c) the works shall not result in the narrowing of the channel width nor the heightening of either bank;</p> <p>(d) if necessary, a temporary culvert may be installed to facilitate the works. The culvert shall not extend more than 10 metres along the length of the river, burn or ditch and shall be removed on completion of the works;</p> <p>(e) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the emergence of the juvenile fish;</p> <p>(f) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of the bed or banks of the river, burn or ditch;</p> <p>(g) as far as reasonably practicable within 12 months of the commencement of the works, the bed and banks of the river, burn or ditch shall be reinstated to at least their condition prior to the commencement of the works; and</p> <p>(h) for temporary bridges, as far as reasonably practicable within 12 months of the removal of the bridge, the bed and banks shall be reinstated at least to their condition prior to the commencement of the works.</p>
<p>7. The laying of a pipeline or cable by boring beneath the bed and banks of a river, burn or ditch.</p>	<p>(a) the bed and banks shall not be altered as a result of the works other than in accordance with paragraphs (b) and (c);</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
	<p>(b) vegetation on any bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification; and</p> <p>(c) as far as reasonably practicable within 12 months of the commencement of the works, the banks of the river, burn or ditch shall be reinstated at least to their condition prior to the commencement of the works.</p>
<p>8. Works to control the erosion of a bank of a river, burn or ditch using revetments.</p>	<p>(a) all reasonable steps shall be taken to ensure that the works do not result in increased erosion of either bank of the river, burn or ditch;</p> <p>(b) the works shall not result in the destabilisation of the bed of the river, burn or ditch upstream or downstream of the works;</p> <p>(c) vegetation on either bank of the river, burn or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification;</p> <p>(d) revetments shall be constructed from one or more of the following: vegetation; geotextiles; or non-grouted stone rip-rap;</p> <p>(e) the length of any revetment shall be no more than 10 metres;</p> <p>(f) where stone rip-rap is used for a revetment, the rip-rap shall be placed at the toe of the bank;</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
	<p>(g) except for the purpose of repairing an existing revetment no bank protection works shall be undertaken within 5 channel widths or 50 metres (whichever is the greater) of any existing bank protection works on either bank of the river, burn or ditch;</p> <p>(h) the works shall not result in the heightening of either bank;</p> <p>(i) the works shall not be undertaken during periods in which fish are likely to be spawning in the river, burn or ditch nor in the period between any such spawning and the emergence of the juvenile fish;</p> <p>(j) the revetments shall be maintained in the state of repair required to avoid increased erosion of the banks or destabilisation of the bed.</p>
<p>9. Operating any vehicle, plant or equipment for the purposes of undertaking activities 5, 6, 7 or 8.</p>	<p>(a) any vehicles, plant or other equipment shall only operate in water where it is impracticable for them to operate on dry land;</p> <p>(b) the refuelling of vehicles, plant and other equipment shall be undertaken at least 10 metres from any surface water;</p> <p>(c) any static plant or equipment used within 10 metres of surface water shall be positioned on a suitably sized and maintained impervious drip tray with a capacity equal to 110 % of the capacity of the fuel tank which is supplying the tank or equipment;</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
	<p>(d) any vehicle, plant or other equipment used in or near surface water shall not leak any oil;</p> <p>(e) the washing of vehicles, plant or other equipment shall be undertaken at least 10 metres away from any surface water and water from such washing shall not enter any surface water;</p> <p>(f) vehicles, plant or equipment shall not be operated in a river, burn or ditch during periods in which fish are likely to be spawning in the river, burn or ditch nor during the period between any such spawning and the subsequent emergence of the juvenile fish.</p>
<p>10. Discharge of surface water run-off from a surface water drainage system to the water environment from construction sites, buildings, roads, yards or any other built developments.</p>	<p>(a) the discharge shall be from a surface water drainage system that is equipped and operated to avoid pollution of the water environment;</p> <p>(b) the discharge shall not contain any trade effluent or sewage;</p> <p>(c) the discharge shall not result in the destabilisation of the banks or bed of the receiving surface water;</p> <p>(d) subject to point (e), the discharge shall not contain any surface water run-off from any construction sites, buildings, roads, yards or other built developments the construction of which is completed after 1st April 2006, unless:</p> <ul style="list-style-type: none"> • those developments are drained by a SUD system equipped to avoid pollution of the water environment; or

<i>Column 1 Activity</i>	<i>Column 2 Rules</i>
	<ul style="list-style-type: none"> • the run-off is from a development that is a single dwelling and its curtilage; <p>(e) the discharge shall not contain any surface water run-off from:</p> <ul style="list-style-type: none"> • fuel delivery areas and areas where vehicles, plant and equipment are refuelled; • vehicle loading or unloading bays where potentially polluting matter is handled; or • oil and chemical storage handling and delivery areas; <p>constructed after 1st April 2006;</p> <p>(f) all facilities with which the surface water drainage system is equipped to avoid pollution, including oil interceptors, silt traps and SUD system attenuation, settlement and treatment facilities, shall be maintained in a good state of repair; and</p> <p>(g) all reasonable steps shall be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment is prevented from entering the drainage system.</p>

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Rules</i>
11. Discharge into a surface water drainage system.	<p>(a) oil, paint, paint thinners, pesticides, disinfectants or other pollutants shall not be disposed of by tipping into a surface water drainage system or onto any surface that drains into a surface water drainage system; and</p> <p>(b) any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid pollution of the water environment shall not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system.</p>

PART II

1. In this Schedule:

“channel width” means the straight-line distance that is between opposite bank-tops of a river, burn or ditch and which spans the bed of a river, burn or ditch, including any exposed bars and vegetated islands;

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

“oil” means any kind of oil and includes fuel oil, waste oil and hydraulic oil;

“revetment” means a modification to a bank of a river, burn or ditch that increases the resistance of the bank to lateral erosion;

“rip-rap” means irregular shaped stones placed along a bank of a river, burn or ditch for the purpose of increasing the resistance of the bank to erosion;

“sewage” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968;

“surface water drainage system” means a system, such as a SUD system, that is used to collect and drain surface water run-off from premises and transport it to, and discharge it into, the water environment. A drainage system may include, among other things, any surface water sewers and associated inlets, outfalls, gullies, manholes, oil interceptors, silt traps, and attenuation, settlement and treatment facilities;

“temporary bridge” means any bridge which will be removed within a period of 12 months beginning with the date on which its construction commences;

“trade effluent” has the same meaning as in section 59 of the Sewerage (Scotland) Act 1968.



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.