

ANNEX A



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

UK Environmental Law Association

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Hendry

Forename

Sarah

2. Postal Address

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3. Permissions - I am responding as...

Individual / **Group/Organisation**
 Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

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

Please tick as appropriate Yes No

UKELA (the UK Environmental Law Association) welcomes the opportunity to respond to this consultation. The response has been prepared by the Scottish water law subgroup in consultation with the working party on Scottish environmental law. UKELA seeks *inter alia* to influence the development of Scots environmental and water law by responding to key consultation papers.

In general, most of the amendments proposed seem reasonable and helpful. In particular, anything that can clarify and strengthen the rules on protection of the water environment, and contribute to the management of diffuse pollution, should be welcome. This would include extending some of the rules relating to NVZ's across the whole of Scotland (para.4.1.1).

There are one or two specific comments and queries.

“Buffer strips” are mentioned in relation to the proposed revision of GBR 18 (fertilisers). Accepting that the note to Annex 3 of Commission Regulation 73/2009 specifies that “GAEC buffer strips must respect... *at least* the requirements... relating to fertiliser...” (my emphasis), nonetheless the normal use of the term applies to strips of uncultivated land (ie GBR 20), and the note does not preclude this use of the term.

Given that 2m is a very narrow width (in terms of the scientific literature) for buffer strips properly so-called under GBR 20, and the many revisions to that width in draft versions of these rules, this might be an opportunity to revise that width upwards for all relevant GBRs, whilst clarifying that, eg, a buffer crop (for further uptake of nutrients and reduction in soil run-off, for example willow planting) will be permissible.

In relation to pesticides, GBR 23, given the changes at EU and UK level and the intention to withdraw the Code of Practice, this additional specification is welcome. Indeed, given the nature of the potential hazard, a rule rather than best practice guidance is more appropriate. However, given that fertilisers must not now be stored within 10m of a watercourse etc., organic fertilisers must not be applied within 10m of a watercourse etc and inorganic fertilisers remain with a 2m prohibited zone, it seems inconsistent to prevent pesticide contamination only within 1m of the watercourse etc.

Whilst appreciating that para (f) of the proposed revised GBR 23 does address “drift” as well as application, both the 1m rule and the exceptions to rules (f)(vi) and (f) (vii) seem to leave open a potential for hazard.

In terms of storage, para (i) specifies only surface water. It might be more appropriate to include ditches and wetlands as is the case for fertiliser storage in GBR 18.

In relation to the proposed amendment to GBR 20, and cultivation, whilst supporting the clarification relating to measurement from the top of the bank, again this presents an opportunity to revise the width of the buffer strip to at least 5m, which in turn should also apply to pesticides and inorganic fertilisers.

In the proposed revisions to GBR 18, (p.3, 4.1.1), we assume that the second GBR specified under paragraph (c), although numbered (ii), is in fact an amendment to paragraph (c)(iii), and that the GBR specified under paragraph (d), although numbered (i), is in fact an addition to the GBRs already in force under that paragraph. The numbering used could be interpreted

as meaning that the specified new paragraph (d)(i) is to replace all the four existing rules under paragraph (d). This is potentially very misleading.

We would also note generally the use of varying terms in different GBRs: 'ditch, surface water, wetland' in some; 'loch, river, burn' in others. This could usefully be rationalised.

Finally, we would note the very short consultation period. We appreciate the statutory minimum but would prefer something closer to the Scottish Government policy of 12 weeks in order to collate a fuller response.