



c/o 1<sup>st</sup> Floor  
191 West George Street  
Glasgow  
G2 2LD

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Water Division  
Scottish Executive  
Area 1-H North  
Victoria Quay  
Edinburgh  
EH6 6QQ

Dear Sirs

**Diffuse Water Pollution from Rural Land Use: Consultation on proposed Regulations relating to General Binding Rules**

The UK Environmental Law Association (UKELA) is the UK forum which aims to make the law work for a better environment and to improve understanding and awareness of environmental law. Its members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non lawyers and has a broad membership.

The UKELA Scots Law Working Party, which I convene, focuses on environmental law in Scotland. The Working Party has considered the above consultation paper and has the following comments.

Referring to the consultation questions:

1. Yes, we consider that a set of national GBR's with the option of further controls in certain areas seems a sensible approach. However, any set of GBR's will have to be accompanied by effective monitoring and enforcement. There is a danger that the persons carrying on the relevant controlled activities will not even be aware that the GBR's apply to them. What steps will be taken to publicise the GBRs?

Also there is a danger that even if persons are aware that GBR's apply to them, since they will also be aware that they are in the lowest risk form of regulation, there is little chance of any enforcement against them, and therefore they need not overly worry about compliance.

2. The appropriate types of further control measures will depend on the circumstances. The general approach of choosing between targeted GBR's or registration with conditions seems a sensible one, so long as it is applied in a proportionate manner. The guiding principle should be that the lightest level of regulation to achieve the necessary environmental objectives is applied in each area. Some activities will be susceptible to area-targeted GBR's. Others will not and will therefore require to be regulated via registration with conditions.
3. We are not qualified to offer an opinion on this question.



4. Again, this is a largely technical question and much will depend on how the proposed GBR's are enforced, however, we do have a number of drafting suggestions in relation to the GBR's, which follow below.
5. Again, we are not qualified to comment on this question. We do however wonder how "lightly contaminated yard water" will be distinguishable from slurry, given especially that with changing weather and stocking patterns the content of this material may change frequently. In these circumstances and given this potential uncertainty farmers may require to have slurry storage facilities on hand in any event, so it is questionable whether there will be any real cost saving for them here.

We have the following comments on the drafting of the GBR's (reference is to the numbering of the GBR's).

- 1.2(i) Should there be a "such" before "well" on the last line? Or is the inorganic fertiliser condition to apply to all wells, springs and boreholes, whether or not they are used for public or private water supply?
- 1.2(iv) Should this condition apply when there is any level of risk of flooding etc, no matter how low that risk? Or should it be qualified by "material" or "significant" or the like?
- 1.4 Without any guidance on what constitutes "reasonable steps" this condition will be difficult to enforce. Will there be guidance on the GBRs' implementation?
- 1.5 Again, "suitable" seems quite vague. This could be made more specific by tying the maintenance to the instructions of the manufacturers of the equipment. Also is the concern with this equipment really whether it operates efficiently? This seems to be a rather wider concept than what we imagine the main concern would be i.e. whether the equipment leaks fertiliser, and efficiency of water use.
- 1.6 Again, guidance will be required as to what constitutes "reasonable steps" if this condition is to be enforceable.
- 2.1(ii) In relation to footnote 7, why should this apply only to a spring? Is a well or borehole not also capable of being used for drinking water related purposes?
- 3.1 The words "shall be tilled for cropping" should be moved to a new paragraph after paragraph 3.1(iii).
- 3.2(i) Should this condition only apply to cropped land near water? What does the winter "follow"? Should the wording be "the winter following harvest"?
- 3.5 Guidance will be required in relation to what is "appropriately" designed if this condition is to be enforceable.
- 3.6 Guidance will be required in relation to what steps are "reasonable" in order for this condition to be enforceable.



- 4 This controlled activity seems to overlap with the existing GBR10. The fit of the two GBR's should be made clear. Otherwise there is potential for confusion where an activity might fall under both controlled activities.
- 4.2(i) This condition should make it clear that the reference is to the buffer areas required under GBR 3.4.
- 4.5 Is it acceptable to carry out maintenance work on the ditches once the juvenile fish have emerged and are in the ditch? On current drafting this condition allows this.
- 6.1(ii) This condition would allow pesticides to enter the water environment via a treatment system, which although designed to prevent pollution by pesticides, might not actually successfully do so, e.g. as a result of inadequate maintenance.
- 6.2 Guidance will be required in relation to what constitutes an appropriate risk assessment. In the last sentence, when is this limit to be specified? Who by? Clearly the sentence is meaningless as it stands.
- 6.3 Please see our comments at 1.5 above.
- 6.5 Should this apply to plants as well as trees?

#### Definitions

2. Have you considered whether slurry is likely to be held to be waste and therefore subject to waste management licensing? After "legislation", "is" should be replaced by "are".
4. A definition of forestry would probably be helpful here.
5. It is not clear whether this footnote only applies to sub-paragraph (iv) or the whole of paragraph (i).

As a general comment, there may be circumstances where the setting of fixed distances in the various GBRs is not appropriate given potential variations in ground conditions. For example, 2.2 states that "Livestock feeders shall be positioned at least 20 metres from any river, burn, ditch, pond, wetland, or coastal waters". If, however, a livestock feeder is positioned 10 metres down a steep slope from a stream and separated by a fence it is difficult to see how this could be problematic, yet it would be prohibited by GBR 2.2. This could be solved by the insertion of a further condition disapplying the relevant GBR distance requirement where it is clear that circumstances mean that there is no risk to the water environment.



Since UKELA did not receive a copy of the consultation direct, I should be grateful if you would add my details to you and your colleagues' list of standard consultees. I should be particularly grateful if you were able to add those details to a central list for all environment consultations: thus far, despite my best efforts, it has not been possible to achieve this.

Please do not hesitate to contact me if you wish to discuss any of the above or if you would like any further information about UKELA and the Scots Law Working Party.

Yours faithfully

Gordon McCreath

Convenor - UKELA Scots Law Working Party