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Controlled Activities Regulations: Revised Proposals for General Binding Rules

Thank you for the opportunity to comments on the revised proposals for general binding rules prior to making these regulations. The proposals for regulations have undergone a significant revision process, and therefore this formal public consultation is particularly welcome.

1. Summary

1.1 The Scottish Environmental LINK's Freshwater Taskforce welcomes the Scottish Executive's attempt to simplify GBRs, and introduce higher flexibility to ensure effective and practical regulations. We already mentioned in our previous responses that we greatly welcome the introduction of 'soft licencing' instead of registration GBRs that would allow SEPA better control over small-scale activities that could have cumulative impacts on the water environment. Soft-licencing also allows SEPA to set site-specific conditions. The Freshwater Taskforce supports the introduction of non-registration GBRs to control very low risk activities, as this makes sense for both the regulator and those being regulated, and significantly reduces the regulatory burden. We further welcome the clarification of the relationship between GBRs and the requirements of the natural heritage obligations.

1.2 The LINK's Freshwater Taskforce is, however, concerned over the controls of certain activities proposed under non-registration GBRs, including some **engineering activities**. For example, the Freshwater Taskforce believes that dredging activities, works to control erosion and the construction of bridges (minor and temporary) can cause significant environmental harm to the water environment and contribute to the effects of flooding. Permitting these activities to take place **without disincentives** could contradict the developing policies on sustainable flood management and changes in agricultural practice. The Scottish Executive should ensure **integration with the developing sustainable flood management and agricultural policies**, and this may require some specific GBRs being given further consideration in near future. The Scottish Executive is in the process of establishing a new committee on

flood issues (the Flood Issues Advisory Committee 'FIAC'), which will look at the flooding issues in Scotland and provide advice to the Scottish Executive. **The Freshwater Taskforce would encourage the Scottish Executive to put these GBRs to the Committee, which can in turn discuss their implications on flooding and the developing flood policy.**

1.3 We are further concerned how some GBRs that specifically apply to the 'river, burn or a ditch' (such as the construction of a temporary bridge and works to control erosion) would apply to wetland habitats and other aquatic habitats associated with a 'river, burn or a ditch'.

1.4 We are concerned that the changes to the GBR 1 (weir operation) could **impede the ability of fauna** (other than migratory fish) **to migrate to suitable habitats** once the impacts of climate change become apparent.

2. The revised regime

Activities to be controlled under GBRs without prior registration **must not have the capacity to cause environmental harm**, whether on their own or cumulatively. The decision about which activities should be regulated under GBRs must be based on risk assessment, and not as a result of cost-cutting exercise.

3. Granting consents to controlled activities in Protected Areas (p. 4)

We particularly welcome the clarification of granting consents that could affect the status of Protected Areas (SACs, SPAs, Drinking Waters, SSSIs). However, we are still concerned how these regulations apply to locally important sites, such as BAP habitats. The introduction of GBRs without registration for activities such as small-scale bank reinforcements, revetments, dredging, and the construction of minor bridges could jeopardise the well being of these sensitive eco-systems and cause deterioration in status. Furthermore, in determining a licence and carrying out its functions SEPA would be required to take account of BAP habitats by virtue of the biodiversity duty in the Nature Conservation (Scotland) Act 2004. SEPA may need guidance from the Scottish Natural Heritage as to how this should be carried out.

4. Other activities (p. 8)

The Freshwater Taskforce is unclear as to how these 'other activities' will now be regulated. While we understand that a discharge from septic tanks and sewage system now requires registration or a licence it is not clear how other activities will be regulated.

5. General comments on Engineering Activities and their impact on flood risk management

We are greatly concerned over the use of GBRs without prior registration to control **a number of engineering activities that could have significant impact** on the ecology of the water environment, including dredging activities, construction and maintenance of minor bridges and works to control erosion. While we understand that these are small-scale activities, and that proper regulation could create an unreasonable regulatory burden, we believe that other mechanism should be put in place to discourage these activities from taking place.

5.1 Impacts of small-scale engineering activities and integration with other policies

We argue that these activities can have **significant impacts on hydro-morphological structure of the riverbank and affect biological communities**. Through cumulative impacts (for example, small scale (but intensive) bank reinforcements and channelising of small streams on agricultural land) they can also increase the risk of flooding downstream. We believe that these GBRs must be integrated with other relevant policies to ensure no contradictions between objectives and priorities. This is especially important in the light of changing flooding policy to ensure more sustainable and catchment-based approach to flooding and as an adaptation strategy to climate change impacts. This type of control is potentially conflicting with the development of sustainable flood policy, agricultural policies, and the reform of the CAP. Farmers should be strongly discouraged from contributing to the flooding and diffuse pollution problem and encouraged to restore/remedy small watercourses as described below.

Recently there has been a lot of development in the field of flood policy in Scotland. The whole process of dealing with flooding in Scotland is changing towards looking at the **flood processes** rather than just dealing with the outcome and consequences of flooding.

The Scottish Executive should ensure **integration with the developing sustainable flood management and agricultural policies**, and this will require some specific GBRs requiring further consideration in near future. Scottish Executive is in the process of establishing a new committee on flood issues, which will further look at the problems of flooding in Scotland and advice the Scottish Executive on solutions. **The Freshwater Taskforce would encourage the Scottish Executive to put these GBRs to the new Flood Issues Advisory Committee, which can in turn discuss their implications on flooding and how best integrate with the developing flood policy.** The outcome of such review could be a best management practice guidance, which will permit these activities taking place as long as the guidance is followed.

5.2 Generation of local floods and changing agricultural policy

Agriculture policy in Scotland is changing and it has been recognised that future policy requires better integration with other land use policy, particularly those areas of recent legislation that require significant input from farmers (such as the Water Environment and Water Services (Scotland) Act 2003). Public subsidy through the Rural Development Plan together with the increased funding and grant rate to local authorities for flood defence schemes could be used to help farmers/landowners deliver effective flood management for the taxpayer. It has been recognised that the shift in the role of land use sector towards delivering wider public services is inevitable. Most types of flood are generated in the upper and middle reaches of river catchments. However, we require good knowledge and understanding of local flood processes to deal with the risk of flooding effectively. Due to the nature of flooding, there is an important role in this context for land users and particularly for farmers. Multiple, small works in river catchments will alter the rate of run-off and have a substantial mitigating effect on flooding further downstream, while also reducing impacts of diffuse pollution. Examples of works are: the restoration of bogs/wetlands, reconnection of the burn/river with its floodplain, modification of hill drains, de-ditching and re-introduction of meanders, planting of riparian woodlands, control of cattle poaching to reduce bank erosion, and restoration of riparian meadows. **There is clearly the need to integrate policies, provide a more long-term solution and take a co-ordinated approach to deal with the flood risk by looking at the processes that lead to flooding and addressing the root of the problem.**

6. Comments on specific General Binding Rules

6.1 GBR 1: Weir operation

- We welcome the simplification and clarification of works, which are covered by this regulation. However, we would like to emphasise that any passive weirs/caulds that are not in use should be considered for remedial/restoration works under WFD.
- We are further concerned over the implications of the recent changes to this GBR to **only include migratory fish in the remit of this GBR**. The new revised adaptation policies to climate change impacts currently being consulted by the Scottish Executive specifically mention the need to allow wildlife migrate to a more suitable habitat. Changes made to this GBR could impede the natural distribution of freshwater fauna to a more suitable habitat. While we understand that currently there is no clear evidence to quantify the impact of small weirs on the distribution of small fish and aquatic invertebrates, we believe it is important that the **Scottish Executive seeks advice from the experts** on this issue. This approach would be consistent with the precautionary principle

built into the Water Framework Directive and uncertainties we currently face in our understanding of climate change impacts on aquatic eco-systems.

- We are further concerned over the wording of one of the rules, more specifically the 'point at which the dam is located is at a level at which migratory fish would not reasonably be expected to seek passage'. We believe that this wording creates confusion rather than clarification.

6.2 GBR 2: Abstractions

- We support the introduction of GBRs to control small-scale abstractions and other water resource activities. We especially welcome the new duty on water users to use water efficiently, and the new condition to ensure minimal water leakage. We are still slightly concerned over the cumulative impacts of this activity, especially in catchments already at risk from low water levels.

6.3 GBR 3 and 4: Wells, boreholes and other works and associated abstractions

- We have no specific comments.

6.4 GBR 5: The dredging of a river, burn or ditch

- We are concerned how this GBR will apply to **wetland habitats** and other aquatic habitats associated with a 'river, burn or a ditch'. We would like to seek clarification on this issue.
- We are further concerned over the impact of such activities on the hydro-morphology of small rivers and burns. River dredging could lead to an increased risk of flooding, as mentioned in the previous text, and can have devastating impacts on the ecology of freshwater fauna.

6.5 GBR 6: Bridge construction, maintenance and removal works

- Minor bridges can be responsible for localised flooding. This occurs most often when the bridges are built with too little clearance for the flow. Professional advice should be sought in each case as to the required dimensions of the bridge. When debris becomes trapped underneath them, the resulting blockage forces the water around the bridge and out of the river channel. An example of this happened this summer in Menstrie, Clacks, when a tree became wedged under a farm bridge during a flood. The tree had passed under several other bridges safely before encountering the minor bridge. Several houses were flooded and access via the bridge was closed for several days. Our concerns about this GBR are further

explained in the general comments on engineering works in section 5 of this document.

6.6 GBR 7: The laying of a pipeline or cable

- We are concerned how this GBR will apply to **wetland habitats** and other aquatic habitats associated with a 'river, burn or a ditch'. We would like to seek clarification on this issue.

6.7 GBR 8: Works to control the erosion of a bank of a river, burn or ditch using revetments

- These activities are fundamentally destructive to the ecosystems and functions of small streams. For example, these activities regularly damage sand martin colonies on the river Tweed. Furthermore, the rehabilitation of these watercourses is vitally important to the restoration of wetlands and wet meadows. These small watercourses, if restored, have a significant role in the catchment approach to sustainable flood management and in controlling diffuse pollution where it is a problem. The widening and simplification of this GBR is of a great concern to us, since it allows the repair of existing bank protection works and other activities that impact on the ecology of the water environment. The Freshwater Taskforce recommends that this GBR is improved and brought in line with the developing sustainable flooding policy by attaching a condition applicable to agricultural and other rural land use by which the **repair of existing bank protection work should only take place where the flood bank protects the livelihood of the farmer/landowner**. Where the land is at significant risk of flooding (1 in 5 year risk of flooding), the farmer/landowner should consider rehabilitation/restoration of this land to its natural function through an application for a grant under LMCs/other provisions.

6.8 GBR 9

- No specific comments

6.9 GBR 10 and 11

- LINK welcomes the introduction of GBR to control surface water outfalls. We welcome the requirements for the construction of a suitable SUD system to treat discharge from all new sites.

If you have any further queries about this submission, please do not hesitate to contact me.

Sincerely

Andrea Johnstonova

The Convenor of the LINK's Freshwater Taskforce