

1	<p>Are there any other regulatory measures relating to the spreading of sewage sludge to land that you feel should be considered for inclusion in the Regulations?</p> <p>Yes No Please give us your views</p>
	<p>No.</p> <p>There are no other regulatory measures relating to the spreading of sewage sludge to land that Scottish Water feels should be considered for inclusion in the Regulations. Any additions and/or amendments to the proposals should be based on evidenced risks to Scotland. Decisions should not be based on the need to simply replicate actions taken elsewhere, either in the UK or overseas.</p> <p>As advised in Section 7.2.1 of the consultation document, Scottish Water’s response to Question 1 includes the following comments on Schedule 18 of the draft Regulations:</p> <p><u>Part 1, Paragraph 3 (Interpretation: General)</u></p> <p>Scottish Water would support further review of the definition of terms throughout the draft regulations to ensure consistency and accuracy. Many of the meanings, particularly those for water and wastewater-related terms, contain inaccuracies, are outdated, are unnecessarily repeated in different schedules, and/or are contradictory. There may even be missing definitions. The Scottish Government’s current review of water, wastewater and drainage policy and the proposed revision of the Urban Wastewater Treatment Directive (UWWTD) will be critical to informing the relevance and accuracy of the definitions in the Environmental Authorisation (Scotland) Regulations (EA(S)R). It is noted that the publication timelines of each of these key pieces of legislation may not be aligned currently to allow a straightforward co-ordination of definitions. However, Scottish Water would strongly recommend that the Scottish Government and SEPA carry out a detailed review of the definitions <u>prior</u> to EA(S)R coming into force to fully understand which terms are relevant for inclusion in the regulations, what meanings are appropriate for Scotland and what process will be followed to ensure harmonisation across all Scottish legislation. Scottish Water would welcome inclusion in that review.</p> <p>With specific reference to Schedule 18, a selection of examples of definitions that cause Scottish Water concern is listed below:</p> <ul style="list-style-type: none"> • A definition for ‘wastewater treatment plant’ is missing. • The use of ‘sewage’ instead of ‘wastewater’ is outdated. • The term ‘sustainable urban drainage system’ is not used in Schedule 18 and is, therefore, not relevant to this section. Also, the meaning is different to the definition provided in Schedule 9, Part 2, Paragraph 1(1). • Limiting the definition of ‘surface water’ to runoff from impermeable surfaces within the curtilage of premises is not appropriate as rainwater/urban run-off enters the wastewater networks from areas outside curtilages too i.e. roads.

There is also duplication of this term, with a different meaning quoted in Regulation 2(1).

- The term 'residual' in the definitions of 'sewage sludge' and 'septic tank sludge' is not appropriate. In the current UWWTD, 'sludge' means '*residual sludge, whether treated or untreated*'. Schedule 18 includes a separate definition for treated sewage sludge and, therefore it is not appropriate to use the term 'residual' to describe only untreated sewage sludge.
- The definition of 'use' appears to only relate to sewage sludge. This word can be applied to other wastes, so Scottish Water would suggest the definition is deleted. The only time the word appears to be used in relation to sewage sludge is in the meaning of 'treated sewage sludge'. So, Scottish Water would suggest this is amended as follows: '*...to reduce its fermentability and the health hazards resulting from ~~its~~ use applying it to land for the purpose of soil improvement.*'

Part 2, Paragraph 4 (Authorisations: General)

Scottish Water would welcome discussion with the Scottish Government and SEPA about adding a sub-paragraph to Part 2, Paragraph 4. The aim would be to require authorisations for waste applications to land to include a condition that ensures Scottish Water is aware of applications in Drinking Water Protected Areas (DWPAs). It is important to monitor and understand any potential impacts on drinking water sources and inclusion of a condition in an authorisation could address a gap where waste is applied to land. SEPA currently shares information on activities related to disposal of sheep dip in DWPAs and Scottish Water is keen to see this practice continue and to see how it could also be applied to other activities that could have an impact on drinking water.

Sub-paragraph (b) refers to 'surface water'. Clarification is needed on whether this term has the definition set out in Regulation 3 (i.e. runoff) or if it relates to the definition of 'surface water' as set out in Regulation 2(1) of Part 2 of the 2018 Regulation, as per the proposed amendments i.e. 'surface water' means inland water (other than groundwater), transitional water and coastal water.

Part 2, Paragraph 5 (Authorisation Conditions: Soil Concentrations)

Scottish Water notes that the proposed maximum permissible concentration of cadmium in soil is significantly lower than the current limit set out in the Sludge (Use in Agriculture) Regulations. It is understood that the aim of this change is to reduce the risk of cadmium accumulating in grain. An initial assessment of Scottish Water's historical samples shows that a small number exceed the new limit, and these are concentrated in a few areas of Scotland. It is possible that the reason for these exceedances is geological. If background cadmium levels are high enough to restrict applications of biosolids, then this could have a significant impact on the available landbank in localised areas (e.g. Western Isles). Scottish Water would welcome consideration of crop type, as well as pH, in setting the maximum allowable cadmium limits. For example, in areas where no grain is grown, it may be acceptable to have a higher concentration.

Part 2, Paragraph 7 (Authorisation Conditions: Soil Sampling)

Scottish Water would support a review of sub-paragraph (a)(i) which requires soil samples to be taken a maximum of 12 months in advance of the first application to an area of land. It is noted that the aim of this condition is to apply a consistent approach across all waste applications to land. Scottish Water would suggest that for wastes that have a more variable quality, and where a recent baseline may be necessary to assess the subsequent impact of the application on the soil, it may be appropriate to have recent soil sample results. Treated sewage sludge has little variability in terms of quality and the application process is subject to a number of variables e.g. weather or cropping, that may lead to a delay in spreading activities. This may cause soil sample results to become ‘out of date’ and breach the one-year limit. Therefore, Scottish Water would advocate for soil samples to be taken a maximum of 24 months in advance of the first application of treated sewage sludge.

Part 2, Paragraph 9 (Authorisation Conditions: Records)

Scottish Water is concerned about the onward use of the data relating to the recipients of waste and the place where it has been used. This is noted in the response to Question 12 related to the public register.

2	<p>Do you agree that this carbon capture activity should be an environmental activity in the Regulations?</p> <p>Yes</p> <p>No</p> <p>Please give us your views</p>
<p>Yes.</p> <p>Scottish Water agrees that carbon capture activities should be regulated to ensure that environmental risks are appropriately managed and supports the inclusion of such activities, beyond those related to geological storage, in the Regulations.</p> <p>Further clarity is required on the definition of ‘<i>from any other source</i>’ in Paragraph 71 of Chapter 5, Part 3, Schedule 26. Scottish Water would expect that the scope will be limited to industrial and technological carbon capture and storage where it takes place within defined installations. It is important that this is not extended to other forms of carbon capture where it may occur outside a defined installation. For example, Scottish Water would not expect the scope to include some of the novel technologies that are emerging around “carbon cure” concretes, where the curing processes over time leads to the absorption and long-term capture of carbon dioxide. Equally, the use of materials such as biochar should be covered by other authorisations for application to land as a soil improver with ancillary benefits in carbon capture. Whilst it appears that the capture of carbon in nature (woodland, peatland etc) is not included in this list, it would be helpful if it could be explicitly stated that natural carbon capture, which is already regulated through appropriate codes and other environmental legislation and agencies e.g. woodland creation, peatland restoration, land management, is excluded.</p> <p>The term ‘capture’ is not defined in the draft Regulations and Scottish Water believes this is necessary to fully understand the scope of the activity i.e. storage only or storage and use.</p>	

Scottish Water would also welcome additional clarification on the extent to which onward use of captured CO₂ is to be regulated under this legislation. There may be emerging technologies that are able to utilise captured carbon dioxide from industrial and waste processes for use in food production (greenhouses, ripening, carbonated drinks). As this is not “storage” and may be a more sustainable way to capture and make use of GHG emissions rather than generate CO₂ directly, regulatory controls should encourage this as part of the circular economy.

It is important to note that carbon capture is an area with numerous developing technologies and much more innovation is expected in this area. Scottish Water is exploring how it may minimise emissions from processes such as wastewater treatment, and this requires very early-stage primary research and innovation with academics and research bodies, which may involve technology trials at our sites. It would be beneficial if Paragraph 1(4)(a)(iii) was amended to allow research and development activities to be carried out at places that are not solely used for research, development and testing (i.e. to include operational sites). It is critical that early innovation is not constrained.

Scottish Water also seeks clarification on the reference that is used in Paragraph 71. Should this be Paragraph 28(11) of Chapter 6, Part 4, Schedule 20, instead of Paragraph 46(11)?

3	<p>Do you agree non-waste anaerobic digestion should be an environmental activity in the Regulations?</p> <p>Yes No</p> <p>Please give us your views</p>
----------	--

Yes.

Scottish Water supports the requirement for non-waste anaerobic digestion activities to be authorised as this will bring consistency to managing environmental risk.

The consultation states in Section 2.4.3 that it is proposed “*to add the anaerobic digestion of non-waste biomass as another emissions activity...so that this activity requires an authorisation*”. Paragraph 72 in Chapter 5 of Schedule 26 appears to relate to this proposal. However, Scottish Water notes that it refers to “*anaerobic digestion...unless carried out as part of an activity included in Chapter 5 of Schedule 20*” i.e. the scope is not limited to non-waste biomass. Clarity is therefore required on whether the proposed activity in Schedule 26 includes anaerobic digestion of *all* wastes and non-wastes that do not meet the threshold criteria set out in Schedule 20, rather than just non-waste biomass. It is also not clear if there is any minimum threshold below which an authorisation is not required. Any exclusions should be set out in Schedule 26.

4	<p>Do you agree any combustion plant on the same site that generate electricity and aggregate to 1 MWth (Megawatt Thermal Input) or more should be an environmental activity in the Regulations?</p> <p>Yes No</p>
----------	---



	<p>Please give us your views</p>
<p>Yes</p>	<p>Scottish Water broadly supports the inclusion in Schedule 26 of combustion plants that generate electricity and aggregate to 1MWth or more at the same location. However, it is important that this schedule is amended to include activities that are excluded and/or exempt; Schedule 27 offers concessions for other combustion plant and to ensure a consistent regulatory approach across all generators, similar provisions also need to be made available for this new activity.</p> <p>Scottish Water would welcome consideration of exclusions/exemptions for all standby and back-up generators (stationary and mobile) that are required to ensure the statutory provision of potable water and wastewater services, including those generators providing back-up power to data centres. This should apply to the Scottish Mainland, as well as the islands, because unreliable power supplies and long delays in restoring power are not confined to islands; they can be experienced in some mainland areas too.</p> <p>If wholesale exclusions/exemptions are not possible, then clarity is needed on what type of plant is included in the aggregation calculation. Scottish Water uses 'standby' and 'back-up/emergency' generators and these can be 'stationary' or 'mobile'. Most of the time these generators are not operational, and consideration should be given to excluding them from the aggregation rule. In addition, there may be a need to define 'emergency'; occasionally a back-up generator could be operating in anticipation of a power cut (i.e. operating when power is available). Some power supplies are known to have a high risk of failure in certain weather conditions and back-up generators can be switched on in anticipation of possible failure to ensure protection and continuity of water supply services.</p> <p>Scottish Water would support an operating hours exemption of 1,000hours for plant on the Scottish Mainland and the islands.</p> <p>It would be beneficial to define 'the same site'.</p>
<p>5</p>	<p>Should the scope be expanded to all combustion plants on the same site that aggregate to 1 MWth (Megawatt Thermal Input) or more including those that generate heat (e.g. boilers)? Yes No Please give us your views</p>
<p>No</p>	<p>Consideration should be given to built-in heat recovery as this will reduce the thermal input, even though technically the plants could still be above 1 MW thermal rated capacity. As an example, the thermal input of a Scottish Water site is >1 MW thermal when various combustion plants are aggregated. These include two CHP engines rated at 638 kW and 475 kW thermal. However, heat recovery from the boilers will reduce this by at least 50%.</p>

6	<p>For combustion plant (or plants) on the same site that generate electricity and aggregate to 1 MWth (Megawatt Thermal Input) or more, located in the highlands or on the islands are there plans in place to upgrade the plant or to replace it with renewable / low carbon technology / carbon capture usage and storage?</p> <p>Yes No Don't know Please give us your views</p>
<p>Yes</p> <p>Scottish Water has a renewables programme that offsets electricity consumption from its assets across Scotland including hydropower, wind and solar PV. In addition, air source heat pumps have also been installed at various sites to provide heat to buildings and there is a programme to develop heat from sewers and convert it into useable heat. Batteries have been considered for providing emergency power, but the business case has not been met so far to enable Scottish Water to invest in these and move away from diesel generators. None of these opportunities are restricted to the Highlands and Islands.</p>	
7	<p>How should ammonia emissions from intensive livestock farms be controlled in future? This could include a regulatory basis, the provision of advice, or information and examples of good practice or other means.</p> <p>Please give us your views</p>
<p>N/A</p>	
8	<p>What considerations should be taken into account when considering future control or management of ammonia emissions from intensive livestock farms? Such considerations may include specific issues relating to farm type, size or other matters related to management of emissions such as costs.</p> <p>Please give us your views</p>
<p>N/A</p>	
9	<p>Do you have any comments on the proposal to amend the existing public consultation requirements in the 2018 Regulations so that SEPA may require pre-application public consultation in relation to permit applications or applications for variations to permits in certain circumstances?</p> <p>Yes No Please give us your views</p>
<p>Yes</p> <p>It is proposed to amend Schedule 1 by adding a new Paragraph 1A. This will enable SEPA to require any person who is planning to apply for a permit, or a variation to an existing permit, to engage in a pre-application consultation process where the public is likely to be affected by the proposed activity or variation.</p>	

Scottish Water seeks confirmation that where Regulation 63(1) (accelerated applications) applies, then Paragraph 1A, Schedule 1 does not apply.

Scottish Water seeks clarification on who is responsible for leading the pre-application engagement process. Currently, SEPA's [Public Participation Statement](#) sets out how SEPA will involve the public and other interested bodies in its decisions on environmental authorisations. Clarification is required on whether the scope of this document will be revised to include responsibilities for the applicant to engage with the public and, if so, details of those responsibilities should be consulted on prior to being confirmed.

Scottish Water also seeks confirmation that further guidance will be provided on the requirements for a pre-application engagement process. This should include, for example, the stage of the pre-application discussion that SEPA would anticipate commencing public consultation and should include details of all the *'steps that SEPA considers appropriate'* to ensure complete transparency of the expectations and avoid any ambiguities. This will help clarify what evidence needs to be submitted with the application to ensure SEPA does not decline it under Paragraph 2(2) of Schedule 1. The guidance should also provide examples of the certain activities mentioned in the consultation document which, *'due to their nature or location, are of significant public interest or which SEPA's experience shows that early engagement would be beneficial to the application process'*. Specifically, Scottish Water would welcome more details on what qualifies as *'significant public interest'* and what *'locations'* might trigger a requirement for pre-application engagement. It would also be helpful if the guidance sets out who is responsible for establishing the appropriate groups for public consultation and community engagement. It is currently not clear if this would be solely the applicant's responsibility or if SEPA would instruct consultation with specific parties. Where the pre-application engagement could be combined with the planning system process, further guidance is required on where this would be appropriate.

Scottish Water expects SEPA to consult on any document that will set out further details of the pre-application consultation requirements and welcomes confirmation of when such a consultation is planned for publication.

Where Scottish Water is already undertaking an activity that will now need an authorisation under the new Regulations e.g. application of sewage sludge to land, it is important to note that this activity will need to continue throughout any consultation period, should SEPA require a pre-application public consultation. Scottish Water would welcome further guidance on the practicalities of navigating such a situation.

Scottish Water agrees that it is disproportionate to require public consultation for all activities regulated by the 2018 Regulations and supports, in principle, the proposal to amend Paragraph 7(3)(b) in Schedule 1. Scottish Water does, however, question the revised wording and wonders if there would ever be a scenario where SEPA would authorise an activity that *'is likely'* to cause significant environmental harm.



10	<p>Do you have any comments on the proposal to simplify the call-in procedure provisions in the 2018 Regulations so as to remove the requirement that SEPA directly notify those who have made third-party representations of a proposed determination of a permit application or variation and the associated timing provisions which prevent SEPA from finally determining the application or variation until the elapse of the statutory time periods?</p> <p>Yes No Please give us your views</p>
No	
11	<p>Do you have any comments on the proposed amendment to provide for a procedure for issuing revocation notices where an authorised person has died or no longer exists?</p> <p>Yes No Please give us your views</p>
Yes	
<p>Scottish Water supports the proposal to amend Regulation 31 to enable SEPA to issue a revocation notice where an authorised person has died or no longer exists (e.g. a dissolved corporate body). To ensure transparency, clarification is needed on the process that SEPA will follow to conduct a '<i>reasonable enquiry</i>' to confirm an authorised person no longer exists and it would also be helpful to know if any statutory timeframes will apply to the process.</p>	
12	<p>Do you have any comments on the proposed amendment to the provisions in respect of the public register required to be maintained by SEPA?</p> <p>Yes No Please give us your views</p>
Yes	
<p>It is proposed to amend Regulation 38 so that information on the register about any permits/registrations, and any conditions of those permits/registrations, are evidence of those authorisations and conditions for the purpose of court proceedings, unless there is evidence to the contrary. It is also proposed to allow a 'certified extract' from the register to be admissible without further proof in evidence in any proceedings. Scottish Water has no objection to the information in the register being used as evidence in court provided the accuracy can be guaranteed. Scottish Water would welcome more information on how the register will be populated with information related to historical applications and variations, particularly considering the impact of a recent cyber-attack on SEPA's records. Further information is also required on how the register will be kept up to date. The Regulations appear to already include some timescales for updating the register for notifications (Regulation 12); it is not clear if similar timescales apply to registrations and permits. It is critical that users of the public register, particularly court proceedings, are clearly</p>	

informed of any potential limitations on the accuracy of the information contained in the register.

Scottish Water would welcome a minor addition to the amendment of Regulation 69(1)(l) so that it is an offence to '*intentionally*' cause false information or, information falsely purporting to be a copy or reproduction of information, to be contained in the public register. This would align with some of the other offences in Regulation 69 which refer to deliberate actions to falsify statements/information and/or to deceive.

In addition to the comments on the proposed amendments, Scottish Water would like to highlight the following points:

Register Format

The Regulations set out the information that must be included in the register and require this to always be available to the public at no cost. The register is allowed to be kept in any form, including electronic form, and Scottish Water would welcome an amendment to require the register to be kept in a form that is robust, secure, accurate, user-friendly and accessible to a wide range of users. Clear categorisation, search functionalities and easy navigation are crucial.

National Security

It is noted that Regulation 45 of the existing Environmental Authorisation (Scotland) Regulations (EA(S)R) sets out exclusions from the register for information that affects national security. There are no amendments to this Regulation in the proposed draft Regulations.

Scottish Water seeks confirmation that information related to abstraction activities is covered by Regulation 45. This data is already treated as highly sensitive, and it is critical that it is included in the exclusion.

The Water Industry (Scotland) Act 2002 (Directions in the Interests of National Security) Order 2002 already establishes Scottish Water's role in relation to national security. This is supported by Scottish Government directions and guidance* relating to the publication of sensitive water company information which state that abstraction data must not be released into the public domain. Additionally, to recognise a gap in the existing Water Environment (Controlled Activities) Regulations 2011, lengthy discussions between representatives from the UK Government, SEPA, DWQR and Scottish Water led to a protocol being developed to manage the sharing of abstraction data and restricting public access.

It is of critical importance that the transfer of abstraction activities into the EA(S)R benefits from an exclusion in the public register on the basis of national security reasons. If the existing directions are not sufficient to exclude abstraction activities under Regulation 45, Scottish Water would welcome confirmation that an application can be made to the Secretary of State and/or the Scottish Ministers for issue of a direction that would allow the exclusion to apply. Consideration may need to be given to potential impacts on other legislation, such as that related to Freedom of Information Requests and Environmental Information Requests.

* The directions and guidance relating to the control of sensitive information are protectively marked as 'Official-Sensitive' and, therefore, details cannot be included in this response. However, Scottish Water can share these directly with the Scottish Government consultation team if required.

Personal Information

Scottish Water expects that any information relating to staff members (e.g. names, addresses, phone numbers, email addresses etc.) will not be included in the register.

Scottish Water notes that the provisions for the public register (i.e. Table 1 in Schedule 3) already require the following information to be made available to the public:

- Any information relating to the monitoring of emissions or other parameters held by SEPA and provided by an authorised person in compliance with a condition of an authorisation.
- Any other information given to SEPA in compliance with a condition of a permit or registration, or a general binding rule, or a notice.

It is also noted that in Regulation 39, SEPA is excluded from including information in the register which would allow identification of a person who has made a representation and has not asked for it to be made public.

Scottish Water would like to request a similar exclusion to cover all personal information relating to locations where sewage sludge has been applied to land i.e. farmers' names, farm names, addresses and field identifiers. The people to whom this data relates will not have had an opportunity to confirm their consent, or otherwise, for this information to be made public and so the default should be that approval has not been granted. This would align with Regulation 11(2) of the Environmental Information (Scotland) Regulations 2004 which allows Scottish public authorities to not make this type of personal data available.

Scottish Water also notes that the 2018 Regulations already provide exclusions for commercially confidential information and would welcome more guidance on the type of information that would meet the criteria for this category. The water industry and several other bodies/groups believes that this data is commercially sensitive – see below for some examples of relevant position statements:

European Parliament Committee on Agriculture and Rural Development (Oct 2018) – *Concrete operating data, such as the buyers of sewage sludge in this case, should not be publicly available. Data protection must be ensured. Publishing farmers' data may lead to harassment by environmentalist groups even if the farmer's activities are wholly legal. Such publication may cause farmers to be pilloried. The authorities must have the data available internally for the purposes of monitoring compliance with requirements and regulations.*

European Federation of Water Services (EurEau) (Dec 2018) – *Names and addresses of the recipients of the sludge and the place where the sludge is to be used are commercially sensitive data for the farmers concerned. Putting this information in the public domain distorts competition, as the use of other organic and*



inorganic fertilisers does not require the same level of transparency. Farmers using biosolids would be pushed to choose fertilisers which allow them to keep their fertiliser-use data confidential. Data disclosure requirements from agriculture should be holistic. EurEau is in favour of opening all fertiliser and pesticide use data to the public, as this could enhance the protection of water resources. Opening only scattered data concerning sewage sludge use does not offer tangible added value but risks lowering the willingness for sewage sludge application on farmland. This is contrary to the goal of increasing the recycling of nutrients.

13	<p>Do you have any comments on the minor amendments as set out in Annex D (in the consultation document) for the common framework: minor changes relevant to all activities?</p> <p>Yes No Please give us your views</p>
-----------	--

Yes

It is proposed to amend Regulation 9 by clarifying that ‘resources’ includes energy and water. Scottish Water would also welcome inclusion of waste in the definition of ‘resources’.

It is proposed to amend Regulation 22(3) by adding ‘*or varying*’ to clarify that SEPA may include any conditions it thinks fit when varying, as well as granting, a permit. Scottish Water seeks clarification of the term ‘*it thinks fit*’ and would welcome confirmation that any conditions would only be included in this way following consultation and agreement with the Operator. A similar amendment is proposed for Regulation 33 which will allow SEPA to include conditions as it thinks fit in any standard conditions. However, Regulation 34 requires SEPA to consult when determining or revising standard conditions. Scottish Water seeks a similar requirement to consult prior to inclusion of any conditions in the granting or varying of a permit.

It is proposed to amend Regulation 24 by allowing SEPA to recover costs for carrying out a review of the conditions of a permit, which can be done at any time. Scottish Water seeks clarification on the circumstances that could lead SEPA to review the conditions of a permit and seeks confirmation if a fee will always be applicable.

It is proposed to amend Regulation 54 to allow SEPA to serve notices electronically. Scottish Water broadly supports this proposal and would welcome an additional amendment to sub-paragraph (2) that requires SEPA to establish the correct postal address, in advance of serving a notice by post. This would mirror the requirement in the new sub-paragraph 2A to agree the electronic address prior to serving a notice by email. Clarification is also sought on the definition of ‘48 hours’ in sub-paragraph (5). It is not clear if it refers to working hours i.e. 2 working days. If not, then it is possible that 48 hours is not long enough for a notice to actually be ‘received’ e.g. electronic notices sent on a Friday may not be read until the following Monday, or possibly Tuesday if there is a public holiday. Also, for notices served by post, 48 hours is a short time frame for an item to navigate the postal service, particularly when deliveries may be affected by public holidays, busy periods, such as the festive

period, or strikes. It also does not allow sufficient time for a postal notice to reach the correct team in Scottish Water if it has been sent to the wrong office (see point above about agreeing the postal address in advance of issue of a notice). Clarification is also sought on what is meant by '*unless the contrary is shown*'. For postal notices, it may be difficult to identify and track the exact hour an item was sent and received. For notices served electronically, if there is an IT issue, the recipient may be unaware that a notice has been issued.

It is proposed to amend Regulation 64 to allow SEPA to recover costs for consolidating a permit. Scottish Water welcomes the consolidation of licences as this makes it clear which conditions are in force. However, Scottish Water strongly objects to SEPA-initiated consolidations being a chargeable item. Fees will have already been paid for the variations that form part of the consolidation process and this, therefore, means that the operator will be charged twice for the same activity.

Schedule 1

Several amendments are proposed for Schedule 1. Where those amendments relate to public consultation requirements, Scottish Water's feedback is included in the response to Question 9 of this consultation.

It is noted that Paragraph 13, Schedule 1 is amended to allow SEPA to recover costs for carrying out a SEPA-initiated variation under Regulation 25. A similar amendment is proposed to Regulation 24, to allow SEPA to charge for reviewing the conditions of a permit. For consistency, Scottish Water would suggest that instead of amending Paragraph 13, the amendment should be made to Regulation 25. Scottish Water would welcome further guidance on the circumstances which could lead SEPA to review permits under Regulation 24 and initiate variations under Regulation 25. It is also expected that the future consultation on SEPA's charging scheme will include details on the costs that could be recovered and the circumstances under which this cost recovery process would occur. Scottish Water has many licences covering the same types of activities (e.g. WwTW, sewer networks) and any review or SEPA-initiated variation that would affect common conditions in these licences could have a significant cost impact. Scottish Water would expect SEPA engagement prior to any decisions to review or vary licences in this way to ensure that the financial implications are well understood and agreed in advance.

In Paragraph 15, sub-paragraph (1)(a)(v), it is proposed to substitute '*which adversely affect*' with '*or otherwise preserve*'. Scottish Water notes that the resulting sentence no longer makes sense following this substitution:

'A surrender notice must specify any steps which SEPA considers must be taken by the authorised person to remove any equipment, plant, articles, waste or substances associated with the activity ~~which adversely affect~~ or otherwise preserve the amenity of the authorised place and surrounding area'.

As mentioned in the response to Question 1, Scottish Water would support further review of the definitions of terms throughout the draft Regulations to ensure that they are consistent with other legislation and consider the recent review of water,



wastewater and drainage policy. It would be helpful if the interpretation of all terms was captured in a single section of the Regulations, rather than having several sections with definitions. This would avoid unnecessary duplication and eliminate the risk of some terms having different meanings e.g. surface water and different terms having the same meaning e.g. treatment and waste treatment – see point below.

With specific reference to the amendment of Regulation 2(1), the following points are made:

- The term ‘sewage’ should be replaced with ‘wastewater’.
- The meaning of the term “recovery” is very similar to the meaning of the term ‘waste recovery’ in Schedule 11. Is it necessary to include both definitions in the Regulations?
- The meaning of the term ‘treatment’ is identical to the meaning of the term ‘waste treatment’ in Schedule 11. Is it necessary to include both definitions in the Regulations?
- The meaning of the term ‘treatment’ is different to the meaning of the same term in Paragraph 2 of Schedule 17 (Waste Batteries). Consideration should be given to amending the term and/or definition to avoid confusion.

14	Do you have any comments on the minor amendments as set out in Annex D (in the consultation document) for the minor changes relevant to radioactive substances activities? Yes No Please give us your views
No	
15	Do you agree with or have comments on the proposed changes to Schedules 8 and 9 for radioactive substances activities? Yes No Please give us your views
No	
16	Do you have any comments on the new General Binding Rules (nos. 7 and 35) for water activities in Schedule 9 and the water activities in Schedule 10 in the draft Regulations? Yes No Please give us your views
Yes	
<u>General Binding Rules – Schedule 9</u>	
<i>New GBRs</i> GBR 7 covers temporary bridges and other structures where these are not regulated by a registration or permit. Scottish Water seeks clarity on whether this GBR applies to emergency works. This type of activity may need to take place when fish are likely	

to be spawning or during the period between such spawning and the subsequent emergence of juvenile fish (which is an excluded activity under the GBR).	
17	Do you have any comments on the minor amendments relevant to water activities as set out in Annex D (in the consultation document)? Yes No Please give us your views
No	
18	Do you have any comments on the activity “industrial emissions activities” or on the technical requirements in Schedules 19 to 24 in the draft Regulations? Yes No Please give us your views
Yes	
<p><u>Schedules 19 & 22</u></p> <p>Scottish Water would strongly support greater clarity around the definitions for ‘<i>waste incineration plant</i>’ and ‘<i>waste co-incineration plant</i>’ set out in Schedule 19. Both definitions refer to the thermal treatment of waste, including reference to thermal treatment processes such as pyrolysis and gasification, and are caveated by ‘<i>if the substances resulting from the treatment are subsequently incinerated</i>’.</p> <p>Two points should be noted: firstly, that the thermal treatment of waste may be for the purpose of recovery of valuable resources, not only the treatment of waste for disposal; secondly and separately, bioresources generated from water and wastewater treatment offer considerable scope for recovery of valuable resources and merit consideration within the EA(S)R to ensure there is a clear permitting route to enable recovery of value.</p> <p>Technological advancements since the implementation of the Industrial Emissions Directive (IED), from which these definitions have been taken, mean that many advanced thermal treatment processes are different from conventional incineration as they happen in the absence of oxygen, or under very controlled oxygen conditions, with the process designed to capture any gas generated for use within the process itself, to contribute to energy neutrality of the treatment. Often such processes, such as pyrolysis, gasification and other carbonisation methods, may be deployed specifically with the intention of producing new output materials, whether they be solids, liquids or gases. These materials may have valuable onward uses, within the circular economy. It could, therefore, be potentially very damaging if processes, such as pyrolysis and gasification, were linked only to ‘<i>incineration</i>’ e.g. objections to planning applications. Scottish Water envisages that these technologies will be key to the strategy for sewage sludge management in the future and there is a concern that any association with ‘<i>incineration</i>’ will inhibit, and potentially prohibit, necessary research and development activities and subsequent implementation of these processes.</p>	



Examples to illustrate this point:

- Some pyrolysis plants allow the balance between the solid and gaseous outputs to be adjusted, so that the production of the biochar (solid) is energy neutral, as the gaseous emissions (syngas) are captured within the process and utilised for energy production as part of the process. The biochar has onward value in its own right and the gas utilisation makes recovery process financially viable.
- Other advanced thermal conversion processes produce a solid product (e.g. a hydrochar) which might be gasified in a secondary process step to recovery energy.
- Liquefaction processes to make a bio-crude oil and produce a gas which is used to generate the energy to operate the process.

All of these advanced thermal conversion processes are intended to generate new output materials that have value; the energy is either recovered within the process and/or used to generate new output materials. They also have the additional benefit that temperature and pressure applied within these processes provides destruction of organic pollutants.

Scottish Water would welcome consideration of a new term (such as “*carbonisation plant*”) and an associated definition for advanced thermal treatment technologies which treat organic waste material and have a primary focus on producing materials for onward recovery; such a term should include application to bioresources. It is accepted that any new category would be subject to a permit, under these draft regulations. Where an advanced thermal treatment process does include a combustion step, consideration should be given to excluding it from the definition of incineration/co-incineration plants when the main intent of the process is to produce recoverable outputs. These amendments would support delivery of circular economy ambitions for Scotland. The term “*waste incineration plant*” should only be retained for the treatment of waste for the purpose of disposal.

Scottish Water also notes that research, development and testing activities are excluded from being ‘industrial emissions activities’, unless the activity does not solely focus on improving the incineration process at an incineration/co-incineration plant treating more than 50 tonnes of waste per year. As previously mentioned, advanced thermal treatment technologies are seen as a critical part of the future management of wastes arising from water and wastewater treatment works. It is, therefore, important to consider including these activities in the exclusion to reduce the risk of severely impacting innovation in these areas.

19	Do you have any comments on the additional technical requirements in Schedule 25 in the draft Regulations? Yes No Please give us your views
-----------	--

Yes

Paragraph 2(a) of Part 1 of Schedule 25 states that a specified activity includes the “*burning of fuel in combustion plants which generate electricity on the same site with*”



<p><i>an aggregated rated thermal input of 1MW or more</i>". Paragraph 2(b) then requires that the activity must have a rated thermal input exceeding 20MW. Scottish Water seeks confirmation that this means that generators with an aggregated thermal input of less than 20MW are not a specified activity under Schedule 25.</p>	
20	<p>Do you have any comments on the industrial activity carrying out "other emissions activities" Schedule 26 in the draft Regulations? Yes No Please give us your views</p>
<p>Yes</p> <p>Scottish Water's views on the activities set out in Part 3, Paragraphs 1, 71 and 72 are captured in the responses to Questions 4, 2 and 3 respectively.</p>	
21	<p>Do you have any comments on the activity "operating a medium combustion plant" in Schedule 27 in the draft Regulations? Yes No Please give us your views</p>
<p>No</p>	
22	<p>Do you have any comments on the activity "operating a petrol vapour recovery activity" in Schedule 28 in the draft Regulations? Yes No Please give us your views</p>
<p>No</p>	
23	<p>Do you have any comments on this general binding rule 1, from Schedule 9, Chapter 4, Low Emission Activities in the draft Regulations? Yes No Please give us your views</p>
<p>Yes</p> <p>Scottish Water notes that crushing and screening activities are included in Schedule 26, Chapter 3, Paragraphs 39, 40 & 41. It is not clear if there is potential regulatory overlap between this Schedule and the GBR set out in Schedule 9, Chapter 4 and further clarity may be required to ensure operators fully understand which authorisation level applies to their activity.</p>	
24	<p>Do you have any comments on the minor amendments relating to PPC activities as set out in Annex D (in the consultation document)? Yes No Please give us your views</p>



No	
25	Do you agree that the regulations adequately capture waste activities? Yes No Please give us your views
Yes	
<p>It is noted that the proposed definition of '<i>waste management activity</i>' does not refer to '<i>controlled waste</i>'. It is also noted that the consultation document states it is not necessary to refer to the definition of '<i>controlled waste</i>' for the purpose of waste permitting and that it is not proposed to repeal the definitions for this term in the Controlled Waste Regulations 1992.</p> <p>Scottish Water would like to highlight that as well as being relevant to the carrying out of waste collections by local authorities, the definition of controlled waste applies to sewage and septic tank sludges which are '<i>treated, kept or disposed of within the curtilage of a sewage treatment works as an integral part of the operation of those works</i>'. This means that management of indigenous sludges does not require a waste authorisation.</p> <p>Scottish Water welcomes the proposal to retain the Controlled Waste Regulations 1992 and seeks confirmation that the intent of these Regulations, in relation to sewage and septic tank sludges, will be reflected in the revised EA(S)R.</p>	
26	Do you have any comments on the geographical extent in the draft Regulations? Yes No Please give us your views
Yes	
<p>It is proposed to define waste management activity as activities taking place '<i>in or on land, or in the vicinity of land when connected with a waste management activity taking place on land</i>'. Scottish Water understands the aim of this definition is to limit the geographical scope to maintain a clear boundary between SEPA's regulatory role and that of Marine Scotland. To have clarity on the location of this boundary, it will be necessary to define '<i>vicinity</i>'.</p>	
27	Do you have any comments on the requirements applying all waste management activities (Schedule 11) in the draft Regulations? Yes No Please give us your views
Yes	
<p><i>Paragraph 2</i> Scottish Water would prefer to see all scope exclusions included in Regulation 3. Currently, exclusions related to transport on the same premises and extractive waste</p>	

areas/facilities are in Schedule 11 and only the householder exclusion is listed in Regulation 3.

Paragraph 3

Scottish Water would support a review of all definitions throughout the proposed draft Regulations and would prefer to see a single Interpretation section, rather than several throughout the document, to minimise the risk of duplication or contradiction. The following points are made:

- The term ‘emission limit value’ is defined in Paragraph 3(1) of Schedule 11 and it states that this meaning applies to Schedules 11 to 18 and Schedule 22. The same definition is repeated in Schedule 19 (Part 1, Paragraph 3). To avoid this duplication, could Paragraph 3(1) of Schedule 11 be amended to apply the meaning to Schedules 11 to 19 and Schedule 22 instead?
- The term ‘emission limit value’ is also defined in Paragraph 3 of Schedule 27. The definition in this schedule is different to that provided for the same term in Schedules 11 and 19. Consideration should be given to using a different term, or amending the definitions, to avoid confusion.
- The term ‘prevention’ is defined in relation to the waste hierarchy in Paragraph 3(1) of Schedule 11 and it is stated that this applies to Schedules 11 to 18 and Schedule 22. In Schedule 13 (Landfill Activities), the term ‘prevention’ is used in relation to avoidance of environmental pollution. Is it appropriate to apply the meaning set out in Schedule 11 to this use of the term?
- The meaning of the term “waste recovery” is very similar to the meaning of the term ‘recovery’ in Part 1, Regulation 2(1). Is it necessary to include both definitions in the Regulations?
- The meaning of the term ‘waste treatment’ is identical to the meaning of the term ‘treatment’ in Part 1, Regulation 2(1). Is it necessary to include both definitions in the Regulations?
- Paragraph 3 contains meanings for all terms related to the waste hierarchy, except ‘disposal’. It is noted that ‘disposal’ is defined in Regulation 2(1). If a single Interpretation section cannot be included in the EA(S)R, then a consistent approach needs to be adopted for repetition of definitions.
- The terms ‘hazardous waste’ and ‘non-hazardous waste’ are used in Schedule 11 but are not defined in this Schedule. It is also noted that there are different definitions for ‘hazardous waste’ in Schedule 12, Paragraph 1(2) and Schedule 22, Paragraph 3(1).

Paragraph 7

Scottish Water seeks clarification that the Regulations do not include any requirements for record-keeping in relation to authorisations for non-hazardous waste.

28	<p>Do you have any comments on the requirements applying to landfill activities (Schedule 13) in the draft Regulations?</p> <p>Yes</p> <p>No</p> <p>Please give us your views</p>
-----------	---



Yes	
Paragraph 9 includes a definition for ' <i>municipal waste</i> ' with a list of excluded wastes which includes waste from ' <i>septic tanks and sewage network and treatment, including sewage sludge</i> '. Scottish Water would welcome inclusion of wastes from water treatment works in the exclusion list.	
29	Do you have any comments on the requirements applying to hazardous waste mixing and treatment of waste oil (Schedule 12) in the draft Regulations? Yes No Please give us your views
No	
30	Do you have any comments on the requirements for management of separately collected recyclable waste and for operating a materials facility (Schedule 14) in the draft Regulations? Yes No Please give us your views
No	
31	Do you have any comments on the requirements for the management of waste motor vehicles (Schedule 15) in the draft Regulations? Yes No Please give us your views
No	
32	Do you have any comments on the requirements applying to the management of WEEE (Schedule 16) in the draft Regulations? Yes No Please give us your views
No	
33	Do you have any comments on the requirements applying to the management of waste batteries (Schedule 17) in the draft Regulations? Yes No Please give us your views
No	
34	Do you have any comments on draft GBRs 1 to 4? Yes No



	Please give us your views
Yes	<p>Scottish Water supports the introduction of GBR 2 to authorise temporary storage of waste at a place owned or occupied by the person who produces that waste. Scottish Water would welcome consideration of the following points:</p> <ul style="list-style-type: none"> • GBR 2 applies to all waste types, up to a limit of 50m³. There may be potential overlap where a higher level of authorisation is required (e.g. storage of asbestos) and clarification is, therefore, required to ensure that operators are fully aware of any circumstances where the GBR does not cover an activity. • Confirmation is required that this GBR will authorise storage of wastes on a Scottish Water site where those wastes have arisen from the activities of a contractor working on behalf of Scottish Water. • The maximum amount of waste that can be stored at any one time under this GBR is 50m³. For solid wastes, it might be more appropriate to specify a tonnage threshold, rather than a volumetric threshold, as this metric is easier to measure and assess compliance against. • It would be beneficial to define 'secure place' in the Regulations.
35	<p>Do you have any comments on the minor amendments relating to waste activities as set out in Annex D (in the consultation document)? Yes No Please give us your views</p>
Yes	<p><u>GBRs</u></p> <p><i>General</i> Scottish Water would welcome inclusion of 'reservoir' in the list of '<i>river, burn, ditch or loch</i>' throughout the GBRs to ensure that they are applicable to all water bodies. It is noted that the term 'loch' is not defined in Schedule 9, but it is defined in Schedule 10 as '<i>a body of standing inland water</i>'. If Schedule 9 is amended to include this meaning, then it may not be necessary to refer to reservoirs in the GBRs, provided the definition states '<i>a body of standing inland water, whether natural or man-made</i>', or similar.</p> <p>Scottish Water would welcome inclusion of definitions for the terms 'bank' and 'outfall' in Part 2 of Schedule 9.</p> <p>Scottish Water would like clarification on whether emergency works are covered by the GBRs, particularly when these activities may need to be completed during periods of time when fish are spawning and/or juvenile fish are emerging.</p> <p><i>Specific</i> Feedback related to new GBR7 is included in response to Question 16.</p>

In GBR 10, it would be beneficial to clarify how the area threshold of 30 hectares is assessed to determine where the GBR applies, or a higher-level authorisation is required. Many housing developments are split into phases for delivery and there may be regional source control treatment for these which bring the area served by these facilities below the 30ha threshold. It would also be beneficial to define '*industrial estates*' in GBR10. Until now, Scottish Water has been referring to the definition provided in SEPA's [CAR Practical Guide](#); it would be helpful if this was defined in EA(S)R.

GBR 18 excludes the storage of fertiliser where it is regulated as a waste activity under these Regulations. It is Scottish Water's understanding that the storage of sewage sludge will be authorised by a registration or permit for the use of waste on land for the purpose of soil improvement. This would mean that GBR 18 does not apply to sewage sludge and Scottish Water would welcome removal of all references to sewage sludge storage from the GBR and the associated definitions. Specifically, this would relate to GBR 18(c), (j), (k) and the definition of '*dewatered*'.

GBR 32(a) contains a potential typographical error: '*dirty years*' should perhaps read '*dirty yards*'.

End of document