

## **POLICY NOTE**

### **THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) AMENDMENT REGULATIONS 2021**

#### **SSI 2021/412**

1) The above instrument is made in exercise of the powers conferred by section 20 and 36(2) of, and schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003. The instrument is subject to negative procedure.

#### **Policy Objectives**

2) The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR”) (as amended) provide a regulatory framework for controlling activities which could have an adverse effect on Scotland’s water environment, including abstraction, impoundments, engineering, dredging, surface water drainage, and pollution.

#### **Consultation**

3) As a matter of good practice, regular reviews are carried out to identify any policy or legislative changes which may be required to further protect the water environment. On this occasion, we proposed to incorporate The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (“SSAFO”) into CAR.

4) Between 20 January 2021 and 13 April 2021 the Scottish Government, in accordance with section 21 of the Water Environment and Water Services (Scotland) Act 2003, consulted on a draft set of proposed amendments to further amend CAR and introduce some new measures, with the aim of protecting the water environment.

5) There were 43 responses to the consultation. There was a mixed response to some of the proposals. The comments in the consultation responses were taken into consideration and a number of the proposed rules redrafted.

#### **Regulatory Amendments**

6) The Regulations make amendments to the table in Schedule 3 (General Binding Rules) (“GBRs”) to CAR. An activity in column 1 of the table is authorised if it is carried out in accordance with the rules in column 2, which correspond to that activity.

7) In addition to the consolidation of SSAFO, the regulations update controls over the storage and application of organic materials, with the following key aims:

- to update existing controls for the storage of slurry and silage;
- to introduce controls over the storage of materials associated with energy production from anaerobic digestion;
- to propose new requirements regarding more targeted and efficient application of slurry and liquid digestate.

8) The amendments to existing GBR 18 and six new activities (29-34) will provide further protection of the water environment from agricultural activities along with supporting Scotland's air quality and climate change targets.

9) The consultation also contained proposals for minor revisions to various existing GBRs in the interests of clarity and effectiveness. The changes made to existing activities 5, 6, 8, 9, 10, 14, 15, 22, 25, 27, and 28 are mostly to clarify the requirements within the activity.

10) The key amendment to activity 18 is in respect of a phased move to low emission precision method application of slurries and digestate. Precision application will protect water quality and air quality, and benefit climate change by reducing greenhouse gas emissions

11) Activity 29 consolidates SSAFO rules on the making and storage of silage in bales or bulk bags as a GBR

12) Activities 30 and 33 relate to the treatment of lightly contaminated silage and slurry through a constructed farm wetland.

13) Activities 31 and 32 relate to consolidation of SSAFO rules on the storage of silage and slurry as GBRs.

14) Activity 34 introduces controls over the storage of liquid digestate, a by-product of the energy production process using anaerobic digestion.

15) The consolidation of SSAFO provisions into CAR includes the removal of an exemption for silage and slurry stores constructed prior to September 1991.

### **Transitional Periods**

16) The precision application rules in activity 18 have transitional periods of up to 5 years, with splash plates for all but smaller farms banned after 1 year.

17) Rules 31, 32 and 34 on the storage of silage, slurry and digestate have transitional periods of 2 years for stores currently regulated by SSAFO and 4 years for previously exempt stores.

### **Revocations**

18) The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 are revoked.

### **Financial Effects**

19) Many of the changes are points of clarification or consolidation of existing legislation.

20) A partial BRIA was published alongside the consultation.