

APPENDIX 11.1 – LEGISLATION, POLICY AND GUIDANCE

1 LEGISLATION AND POLICY

1.1.1 The assessment has taken into account the requirements of the Water Framework Directive (WFD) (2000/60/EC)¹, which was transposed into Scots law as the Water Environment and Water Services (Scotland) Act 2003 (the ‘WEWS Act’).² The WEWS Act is supported by the Water Environment (Controlled Activities) (Scotland) Regulations 2011³ – more commonly referred to as the Controlled Activity Regulations (CAR).

1.1.2 The controlled activities are defined within the WEWS Act 2003 and are modified by CAR. Those activities relevant to this assessment are:

- engineering activities in the vicinity of rivers, lochs and wetlands that are likely to have a significant adverse effect upon the water environment;
- activities liable to cause pollution; and
- any other activities that directly or indirectly are liable to cause a significant adverse effect upon the water environment.

1.1.3 Scottish Planning Policy (SPP)⁴ (June 2014) provides further guidance on the requirement to protect aspects of the environment and paragraph 194 states that the planning system should “*promote protection and improvement of the water environment, including rivers, lochs, estuaries, wetlands, coastal waters and groundwater, in a sustainable and co-ordinated way.*”

1.1.4 This is reinforced by paragraph 202, which states “*The siting and design of development should take account of local landscape character. Development management decisions should take account of potential effects on landscapes and the natural and water environment, including cumulative effects. Developers should seek to minimise adverse impacts through careful planning and design, considering the services that the natural environment is providing and maximising the potential for enhancement.*”

¹ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy [online]. Accessed 11/02/2021. Available at: <https://eur-lex.europa.eu/eli/dir/2000/60/oj>

² Water Environment and Water Services (Scotland) Act 2003 [online]. Accessed 11/02/2021. Available at: <http://www.legislation.gov.uk/asp/2003/3/contents>

³ The Water Environment (Controlled Activities) (Scotland) Regulations 2011 [online]. Accessed 11/02/2021. Available at: <http://www.legislation.gov.uk/ssi/2011/209/contents/made>

⁴ Scottish Government (2014) Scottish Planning Policy [online]. Accessed 11/02/2021. Available at: <https://www.gov.scot/publications/scottish-planning-policy/>

1.1.5 National Planning Framework 3 (2014)⁵ recognises the importance of the water environment at paragraph 4.11 “*Climate change means that sustainable management of the water environment is not just a national opportunity, but a global issue*”.

1.1.6 In addition to the above, the following were also considered:

- The Groundwater Daughter Directive (2006/118/EC);⁶
- The Priority Substances Directive (2008/105/EC);⁷
- The Water Environment (Drinking Water Protected Areas) (Scotland) Order 2013;⁸ and
- Flood Risk Management (Scotland) Act 2009.⁹

The Water Framework Directive (2000/60/EC)

1.1.7 Directive 2000/60/EC of the European Parliament and Council established a framework for community action in the field of water policy. This Directive is also known as the WFD and came into force on the 22 December 2000. The WFD requires EU member states to aim to reach good chemical and ecological status in inland and coastal waters. The WFD is designed to enhance the status and prevent further deterioration of aquatic ecosystems and associated wetlands, to promote sustainable water use, to reduce pollution of water and to ensure progressive reduction of groundwater pollution. The WFD established a strategic framework for managing the water environment and requires a management plan for each river basin to be developed every six years. In cases where good status/potential cannot be achieved by 2015, a provision is given under Article 4.4 of the WFD extending the deadline to 2021 or 2027. The date has been extended to 2027 in respect of a large number of waterbodies. Within Scotland, the competent authority for delivering the Directive is the Scottish Environment Protection Agency (SEPA).

⁵ Scottish Government (2014) National Planning Framework 3 [online]. Accessed 11/02/2021. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2014/06/national-planning-framework-3/documents/00453683-pdf/00453683-pdf/govscot%3Adocument/00453683.pdf>

⁶ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration [online]. Accessed 11/02/2021. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:372:0019:0031:EN:PDF>

⁷ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council [online]. Accessed 11/02/2021. Available at: <https://eur-lex.europa.eu/eli/dir/2008/105/oj>

⁸ The Water Environment (Drinking Water Protected Areas) (Scotland) Order 2013 [online]. Accessed 11/02/2021. Available at: <http://www.legislation.gov.uk/ssi/2013/29/contents/made>

⁹ Flood Risk Management (Scotland) Act 2009 [online]. Accessed 11/02/2021. Available at: <http://www.legislation.gov.uk/asp/2009/6/contents>

The Groundwater Daughter Directive (2006/118/EC)

1.1.8 Directive 2006/118/EC of the European Parliament and Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (Daughter to 2000/60/EC), also known as the Groundwater Daughter Directive (2006/118/EEC) was developed in response to the requirements of Article 17 of the WFD (2000/60/EC). The Groundwater Daughter Directive specifies measures to prevent and control groundwater pollution such as providing criteria for the assessment of good groundwater chemical status and provides criteria for the identification and reversal of significant and sustained upward trends and for defining a baseline status.

The Priority Substances Directive (2008/105/EC)

1.1.9 Directive 2008/105/EC of the European Parliament and Council of 16 December 2008 on environmental quality standards in the field of water policy, amended and subsequently repealed Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amended Directive 2000/60/EC of the European Parliament and Council. It is also known as the Priority Substances Directive (2008/105/EC) and was developed in response to the requirements of Article 16 of the WFD (2000/60/EC). The Priority Substances Directive requires the identification of priority substances to set Environmental Quality Standards (EQSs) for the concentrations of the priority substances in surface waterbodies and to review periodically the list of priority substances.

Water Environment and Water Services (Scotland) Act 2003

1.1.10 The WEWS Act 2003 aims to protect the water environment and to establish community action in the field of water policy. Protection of the water environment relates to prevention of further deterioration and enhancing the status of aquatic ecosystems, promoting sustainable water use, reduction in pollution of groundwater, and contributing to mitigating the effects of floods and droughts. The WEWS Act 2003 also established river basin management planning. Under river basin management plans, key waterbodies in each catchment are monitored and their baseline status recorded. These waterbodies are also assigned a target status and the progress to meeting these target statuses is reviewed.

The Water Environment (Controlled Activities) (Scotland) Regulations 2011

1.1.11 The CAR requires activities that may affect the water environment to be authorised by SEPA. This includes discharges, disposal to land, abstractions, impoundments and engineering works. In 2013, changes were made to CAR (2011) under the Water

Environment (Controlled Activities) (Scotland) Amendment Regulations 2013.

The Water Environment (Drinking Water Protected Areas) (Scotland) Order 2013

1.1.12 The Water Environment (Drinking Water Protected Areas) (Scotland) Order 2013 (WEDWPA Order 2013) came into force on 11 March 2013 and identified waterbodies used for the abstraction of drinking water as required by section 6(1) of the Water Environment and Water Services (Scotland) Act 2003. By doing so it identified Drinking Water Protection Areas (DWPAs), which include surface water and groundwater bodies. The WEDWPA Order 2013 revoked the Water Environment (Drinking Water Protected Areas) (Scotland) Order 2007.

Flood Risk Management (Scotland) Act 2009

1.1.13 The Flood Risk Management (Scotland) Act 2009 (FRM Act 2009) was enacted on 16 June 2009, repealing the Flood Prevention (Scotland) Act 1961. The FRM Act 2009 includes measures for a framework for co-ordination and co-operation between organisations involved in flood management and details additional responsibilities for SEPA, Scottish Water and Local Authorities in relation to flood management. The FRM Act 2009 also required SEPA to provide an assessment of flood risk and measures to assist in the preparation of flood risk management plans.

East Ayrshire Local Development Plan 2017¹⁰

1.1.14 The East Ayrshire Local Development Plan was adopted in April 2017. The following policies relate to the water environment:

- Policy ENV 11: Flood Prevention
- Policy ENV12: Water, air and light and noise pollution

¹⁰ East Ayrshire Council (2017) East Ayrshire Local Development Plan [online]. Accessed 15/03/21. Available at: <https://www.east-ayrshire.gov.uk/Resources/PDF/E/EALDP-Adopted-2017-Vol-1.pdf>

2 GUIDANCE

2.1.1 The Proposed Development will be undertaken in accordance with the guidance and codes of best practice specified in **Table 1** to limit the potential for disturbance or contamination of water resources.

Table 1 Good practice guides and guidance documents to protect water resources
Good practice guides and guidance documents
GPP1 Understanding your environmental responsibilities - good environmental practices ¹¹
GPP2 Above Ground Oil Storage Tanks
PPG3 Use and design of oil separators in surface water drainage systems
GPP4 Treatment and disposal of wastewater where there is no connection to the public foul sewer
GPP5 Works and Maintenance In or Near Water
PPG6 Working at Construction and Demolition Sites
PPG7 Safe storage - The safe operation of refuelling facilities
GPP8 Safe Storage and Disposal of Used Oils
GPP13 Vehicle washing and cleaning
PPG18 Managing fire water and major spillages
GPP21 Pollution Incident Response Planning
GPP22 Dealing with spills
GPP26 Safe storage - drums and intermediate bulk containers
PPG 27 Installation, decommissioning and removal of underground storage tanks
SEPA WAT-SG-26 Good Practice Guide – Sediment Management ¹²
SEPA WAT-SG-29 Good Practice Guide – Construction Methods
SEPA WAT-PS-06-02 Position statements - Culverting of Watercourses
SEPA WAT-PS-10-01 Assigning Groundwater Assessment Criteria for Pollutant Inputs ¹³
SEPA LUPS-GU4 SEPA Guidance Note 4: Planning Advice on Windfarm Developments
SEPA LUPS-GU31 SEPA Guidance Note 31: Guidance on Assessing the Impact of Windfarm Development Proposals on Groundwater Abstractions and Groundwater Dependent Terrestrial Ecosystems ¹⁴
Forestry Commission UK forestry standard: the governments' approach to sustainable forestry 2017 ¹⁵

¹¹ NetRegs Guidance for Pollution Prevention (GPPs) - Full list [online]. Accessed 11/02/2021. Available at: <https://www.netregs.org.uk/environmental-topics/pollution-prevention-guidelines-ppgs-and-replacement-series/guidance-for-pollution-prevention-gpps-full-list/>

¹² Scottish Environment Protection Agency (2020) Engineering Guidance [online]. Accessed 11/02/2021. Available at: <https://www.sepa.org.uk/regulations/water/engineering/engineering-guidance/>

¹³ Scottish Environment Protection Agency (2020) Groundwater [online]. Accessed 11/02/2021. Available at: <https://www.sepa.org.uk/regulations/water/groundwater/>

¹⁴ Scottish Environment Protection Agency (2017) Land Use Planning System SEPA Guidance Note 31 (LUPS-GU31): Guidance on Assessing the Impacts of Windfarm Development Proposals on Groundwater Abstractions and Groundwater Dependent Terrestrial Ecosystems. Version 3 [online]. Accessed 11/02/2021. Available at: <http://www.sepa.org.uk/media/144266/lups-gu31-guidance-on-assessing-the-impacts-of-development-proposals-on-groundwater-abstractions-and-groundwater-dependent-terrestrial-ecosystems.pdf>

¹⁵ Forestry Commission (2017) The UK Forestry Standard [online]. Accessed 11/02/2021. Available at: <https://www.gov.uk/government/publications/the-uk-forestry-standard>

Table 1 Good practice guides and guidance documents to protect water resources

Good practice guides and guidance documents

<p>Construction Information Research and Information Association (CIRIA) C532 Control of Water Pollution from Construction Sites¹⁶</p> <p>CIRIA C741 Environmental good practice on site guide¹⁷</p> <p>CIRIA C750 Groundwater control - design and practice¹⁸</p> <p>CIRIA C753 SuDS manual¹⁹</p> <p>CIRIA C786 Culvert, screen and outfall manual²⁰</p>
--

¹⁶ Construction Information Research and Information Association (2001) C532 Control of Water Pollution from Construction Sites [online]. Accessed 11/02/2021. Available at: <https://www.ciria.org/ProductExcerpts/C532.aspx>

¹⁷ Construction Information Research and Information Association (2015) C741 Environmental good practice on site guide [online]. Accessed 11/02/2021. Available at: <https://www.thenbs.com/PublicationIndex/documents/details?Pub=CIRIA&DocID=309502>

¹⁸ Construction Information Research and Information Association (2016) C750 Groundwater control - design and practice [online]. Accessed 11/02/2021. Available at: <https://www.ciria.org/ItemDetail?iProductCode=C750&Category=BOOK&WebsiteKey=3f18c87a-d62b-4eca-8ef4-9b09309c1c91>

¹⁹ Construction Industry Research and Information Association (2015) C753 The SuDS Manual [online]. Accessed 11/02/2021. Available at: https://www.ciria.org/Memberships/The_SuDs_Manual_C753_Chapters.aspx

²⁰ Construction Information Research and Information Association (2019) C786 Culvert, screen and outfall manual [online]. Accessed 02/11/2021. Available at: <https://www.thenbs.com/PublicationIndex/documents/details?Pub=CIRIA&DocID=328474>