Scottish Environment Protection Agency
Buidheann Dìon Àrainneachd na h-Alba

Water Use Supporting Guidance (WAT-SG-18)

CONTROL OF PLANTS IN OR NEAR TO WATER

Version: v1
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Every day SEPA works to protect and enhance Scotland's environment, helping communities and businesses thrive within the resources of our planet.

We call this **One Planet Prosperity**

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Update Summary

Version	Description
v1	First issue for Water Use, establishing process for controlling plants in or near to water

Table of Contents

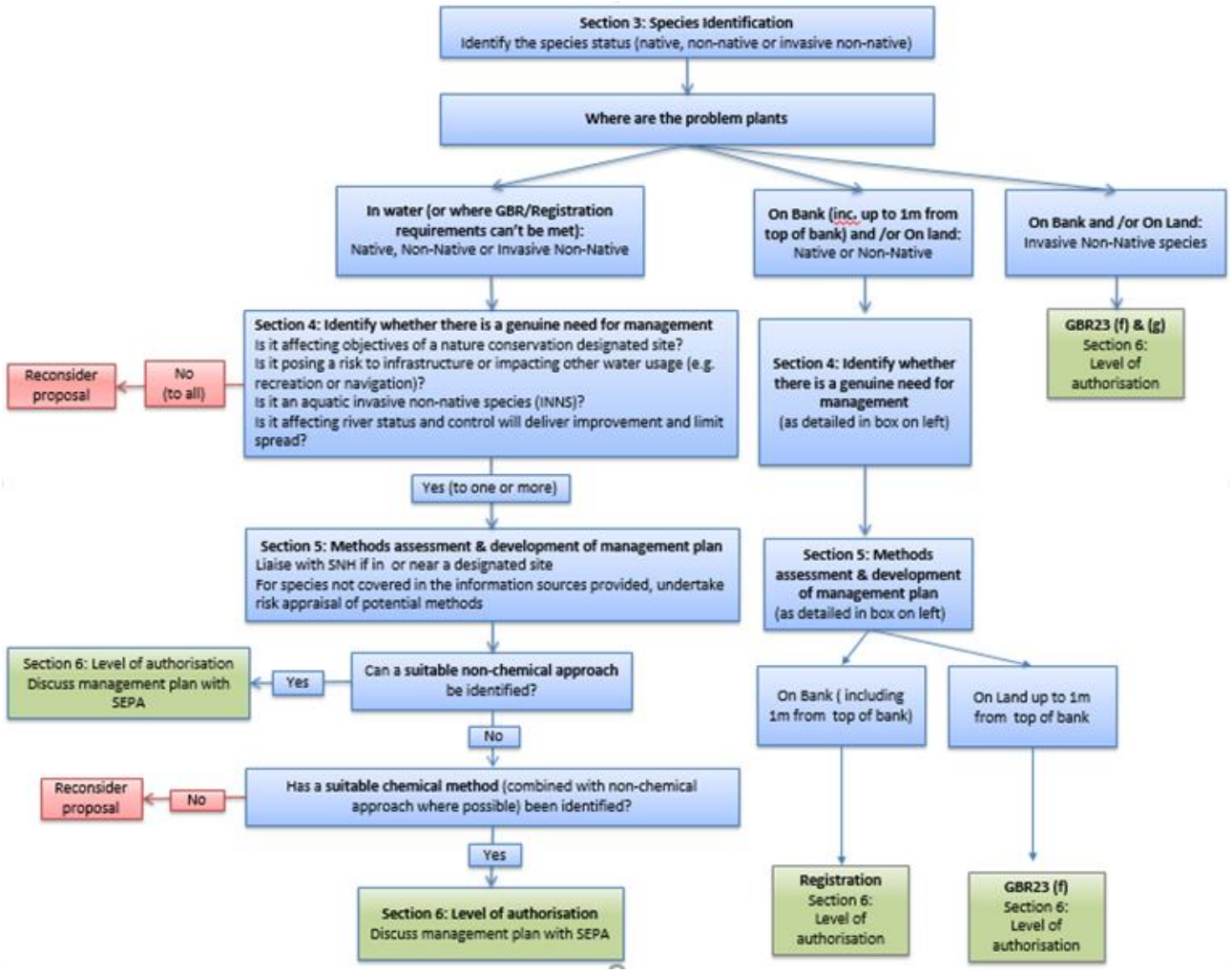
1. Key Points

There are occasions when plant growth in or near water is considered a problem, and there is a desire to undertake control. It is important to ensure control is appropriate, to identify suitable control methods and to ensure that the water environment is protected.

This guidance aims to help identify the appropriate approaches to control plants in or near water. Following the decision support flowchart (in section 2 below) and supporting guidance (sections 3-6) will allow anyone to:

- identify plant species;
- identify the need for management;
- assess available management options
- develop an appropriate management plan; and
- identify any level of CAR authorisation required (i.e. GBR, registration or licence).

2. Decision support flowchart



3. Species identification

It is important to know what species are being considered for management as different approaches are appropriate for different types of plants.

Invasive non-native species (INNS)

Invasive non-native species, sometimes referred to as 'invasive alien species', are those non-native species that have the ability to spread rapidly and become dominant in an area or ecosystem, causing adverse ecological, environmental or economic impacts. **For the purposes of CAR the species considered as INNS are those listed as 'high impact' by** UKTAG.

For help identifying INNS, there are factsheets and images on the GB non-native species secretariat website.

Non-native species

A species is considered non-native if it is present in a place outwith it's native range; this applies to species which are native to some parts of the UK or Scotland, but not others (for example, those which are native to the mainland but not to all islands). If there is any uncertainty about the status of the species concerned, there is advice on the Native species range pages of the NatureScot website.

Native species

These are any species within their native range. If in doubt NatureScot can advise on identification of terrestrial plants; SEPA can advise on the identification of freshwater plants.

Invasive Non-Native Species on land

If the problem is one of the invasive non-native species listed below and will be controlled on land (that is, on the bank of the river or loch) please move directly to Section 6 of this guidance.

Japanese Knotweed
(*Fallopia japonica*)

Japanese Knotweed/Giant Knotweed hybrid
(*Fallopia x bohemica*)

Giant Hogweed
(*Heracleum mantegazzianum*)

Himalayan Balsam
(*Impatiens grandiflora*)

Rhododendron
(*Rhododendron ponticum and hybrids*)

Gunnera

(*Gunnera tinctoria and Gunnera manicata*)

American Skunk cabbage

(*Lysichiton americanus*)

Where this species occurs in water, please continue to work though this guidance from Section 5

Images: Giant hogweed, Rhododendron and Gunnera, RPS Group; Japanese knotweed, Trevor Renals; Himalayan balsam, GBNNSS

For all other species, please move on to Section 4 to continue to work through this guidance.

4. Identify whether there is a genuine need for management

Once the problem plant species have been identified, assess the need for management. Factors that should be considered would include:

- Are the plants Invasive Non-Native Species (INNS) and will control be effective in limiting their spread? (See UKTAG high impact list). Are the plants compromising the achievement of an objective established in a RBMP for a waterbody (check whether the river is classified as below good status by checking Scotland's Environment map)
- What is the impact of the excessive plant growth: is it damaging an important habitat, for example compromising the achievement of the objective for a site designated for nature conservation (check for the presence of Sites of Special Scientific Interest, Special Protection Areas, Special Areas of Conservation and RAMSAR on Scotland's Environment map)? Is it posing a risk to infrastructure or is it impacting on the use of the water for navigation or recreation?
- Why has the problem occurred: has a management plan been developed to identify and assess any underlying reasons for the excessive plant growth together with, any steps taken to date to tackle the underlying reasons?

If you answer 'yes' to either of the first two bullet points above, you have established a genuine need for management and should continue to Section 5.

If you answer 'no' to all of the above, you will need to reconsider your proposal for action, particularly where herbicides are to be applied to water. For the treatment of plants on land near water, while the risk to the water environment will be less it is important to understand why the excessive plant growth is occurring and why it needs to be tackled.

5. Methods assessment and development of an operating plan

Once it has been established that there is a genuine need for control of a plant in or near the water, the potential methods to undertake this should be assessed. As well as considering the need for management, the final decision as to whether or not to take action also needs to take account of the potential risks associated with taking the action, the effectiveness of control and the benefits which can be expected from controlling the plants.

- What will the impact of control be on other aspects of the ecosystem? Will non-target species be harmed or other water users affected?
- What will happen after treatment - will areas of bankside be left bare of vegetation and prone to erosion, will the removal of the plant make room for another more damaging one to take hold?

Risks to the environment will generally be greater where controls involving herbicide are chosen and in particular where herbicide is applied to the water itself as opposed to controlled applications to plants growing on land. As such the 'test' or 'threshold' as to whether control is required or not would be expected to be greater where herbicide is to be applied to the water or where vulnerable receptors such as drinking water abstractions or protected habitats are present.

5.1 Methods assessment

1. What is the extent of the problem? Evidence needs to be collected to demonstrate the scale and extent.
2. What is the minimum action required? It must be demonstrated that the proposal comprises the minimum action needed to achieve its aims.
3. What methods are available to control the species? Most species have a number of control options (e.g. physical removal or shading, nutrient removal, chemical control).

All available methods should be considered, in isolation or in combination, to identify which is the most suitable. Any assessment should demonstrate that the options have been fully assessed. Chemical control should only be used alone where other methods (alone or in combination with chemical methods) would not generate an appropriate outcome or would not be practical in the given circumstances.

Information on methods for controlling some non-native or invasive non-native species can be obtained from a suitably qualified advisor and/or aquatic weed management specialist (BASIS qualified). In addition, there is information given in the sources below.

Control of freshwater invasive species

- Floating pennywort Hydrocotyle ranunculoides
- Water primrose Ludwigia species
- New Zealand pigmyweed Crassula helmsii
- American skunk cabbage Lysichiton americanus

Methods for controlling or eradicating aquatic invasive species

- Water Fern Azolla filiculoides
- Parrot's feather Myriophuyllum aquaticum (and other Myriophyllum species)
- Curly pondweed Lagarosiphon major
- Canadian pondweed Elodea canadensis
- Nuttall's pondweed Elodea nuttallii
- Common Cord-grass Spartina anglica
- Carolina fanwort Cabomba caroliniana

GB non-native species secretariat (GB NNSS) provides control guidance for a number of species, such as:

- New Zealand Pygmyweed (Crassula helmsii),
- Parrots feather (Myriophyllum aquaticum), and
- Water Fern (Azolla filiculoides).

5.2 For species where there is no easily identifiable approach

Where no appropriate method can be identified for the species in question, or for similar relevant species, it is expected that the applicant will undertake a full risk appraisal of all pertinent methods (as identified by the information sources in section 5.1 above).

The risk appraisal should consider known methods for other species to ascertain whether any of them are appropriate to the situation being dealt with, following the principles laid out in sections 5.3 and 5.4.

5.3 Attempt to identify suitable non-chemical methods

The best environmental option for removal of the species needs to be identified. SEPA considers non-chemical methods are the most preferable, where practical.

When a non-chemical method is identified, a management plan should be developed and discussed with SEPA. The majority of methods are not expected to require an application to SEPA, especially where any work in or around watercourses meet the requirements of General Binding Rules.

5.4 Consideration of other methods

Where no suitable non-chemical method has been identified a method which incorporates chemical use may be considered. A suitable chemical method using a product approved by the Chemical Regulations Division (CRD) for use in or near water (aquatic use), A suitable chemical method using a product approved by the Chemical Regulations Division (CRD) for use in or near water (aquatic use), where the product is used in such a way as to not cause a breach of the relevant Environmental Quality Standard or Drinking Water Standard.

The applicant should demonstrate unequivocal evidence that the chemicals are necessary as part of a management plan. Any proposal for the use of chemicals should also demonstrate efforts to minimise their use and maximise their effectiveness where possible through combined chemical and non-chemical methods, or by the use of targeted chemical application techniques (other than spraying) where these can be identified during the methods assessment.

The management plan should consider the potential damage to non-target plant and animal species from use of the chemical and justify any damage in relation to the benefit gained from removing the problem plant (e.g. protection of EU objective in a protected area, or improvement in status of the river or loch); this will require liaison with SNH in the case of protected areas.

5.5 Is the product approved by the CRD?

All herbicide/pesticide products used in the UK must be authorised for their specific use by the CRD. It is not within SEPA's remit to grant authorisation for use of any individual herbicide/pesticide product.

Products approved for aquatic use can be found by searching the Pesticide registration.

6. Level of Authorisation

6.1 CAR Level of Authorisation to control plant species in and around water with chemicals

The control of plant species in or near water with herbicide will require an Authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR)[1]. It is always prudent to assess all options prior to applying for chemical use to control these species and this will be discussed in any pre-application discussions.

N.B. The CAR authorisation for herbicide application cannot be used for eradicating algae

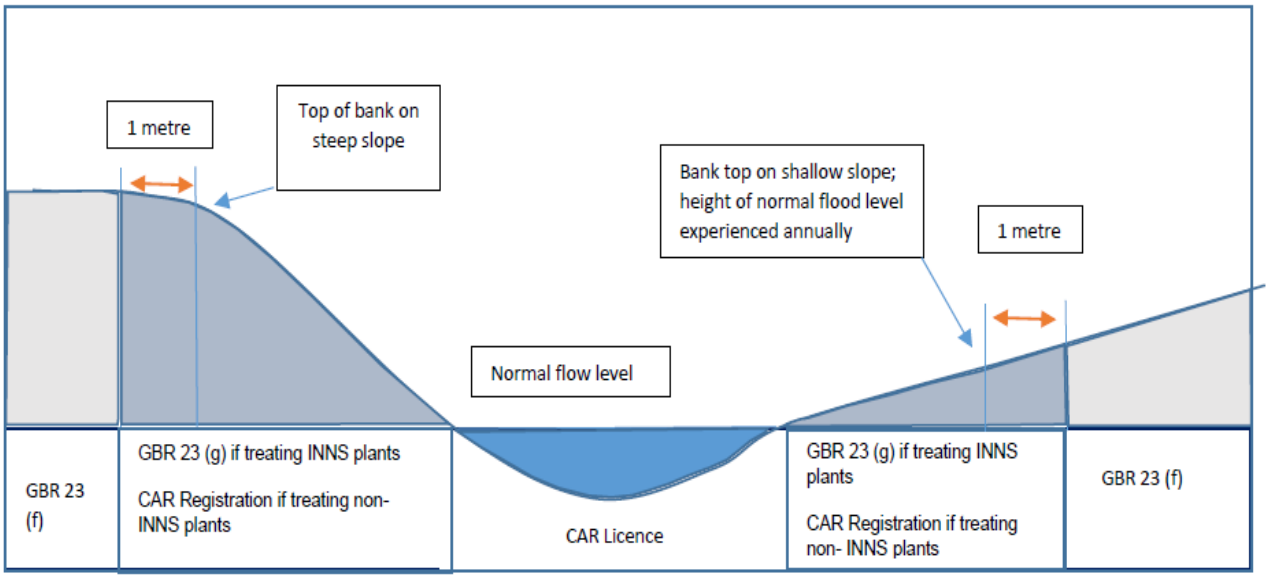
Table 1 Level of authorisation

Herbicide use	Level of Authorisation
On land over 1m from bank top – any species	GBR23 (f)
On the bank and within 1m of the top of the bank of a river, burn or loch or 1m of the shore line[2] in relation to a transitional or coastal water to control Invasive Non Native Species (INNS); e.g. Japanese Knotweed, Himalayan Balsam, Giant Hogweed, Rhododendron, Gunnera and American Skunk Cabbage	GBR23 (g)
On the bank and within 1m of the top of the bank of a river, burn or loch or 1m of the shore line in relation to a transitional or coastal water to control plants other than INNS	Registration
In water to control any plant	
Where the GBR or Registration requirements cannot be met – e.g. within 250m of a potable water surface water abstraction point.	Licence

[1] CAR Practical Guide - https://www.sepa.org.uk/media/34761/car_a_practical_guide.pdf

[2] Shoreline – the shoreline is defined as the mean high water springs tide mark. In practical terms this can be determined from consulting an Ordinance Survey map.

Figure 1 Level of authorisation and location of top of bank



6.2 General Binding Rule

General Binding Rule 23 sets out rules which are needed to be complied with in relation to the storage and application of pesticides that are plant protection products. There are also rules about handling the product and equipment. The following paragraphs highlight specific sections.

In order to control any species by using chemicals on land that is at least 1m from the bank top, **General Binding Rule 23(section f)** will apply

In order to control INNS plants on the banks and up to 1m from the top of the bank of the watercourse, if chemical use is considered to be the most appropriate method then **General Binding Rule 23(section g)** allows for the use of a suitably approved product (i.e. specifically approved for use in or near water (aquatic use)). There is no requirement to contact SEPA.

NB: GBR 23 (g) may also be used to treat emergent invasive non-native plants where the herbicide will not enter the water environment. This could be achievable using very controlled application techniques e.g. by using direct injection or a weed wiper.

Note for roads, railway lines and other infrastructure GBR 23 does not provide for the treating of all plants but only provides for the treating plants of INNS. Due to this limitation

a regulatory position allowing the treating of all plant on roads, railway lines and other infrastructure has been adopted by SEPA which clarifies how this will be applied to the treatment of roads near to watercourses and to bridges and other infrastructure near to or over water – see Annex 1.

6.3 Registration

A registration application to SEPA will be required where herbicide is applied on the banks and land up to one metre from the bank top to control plants other than the INNS listed in section 3. The registration application form can be found in the list of SEPA application forms.

NB: The Registration could also be used to control herbicide application to treat emergent plants (which are not INNS) or tree stumps where the herbicide will not enter the water environment. This could be achievable using very controlled application techniques e.g. by using direct injection, plugs or a weed wiper.

One registration to apply herbicide within 1 metre of a watercourse can cover a number of treatment areas providing the level of assessment required will not significantly increase and the land is managed or operated as one. For example several treatment areas on one farm or nature reserve could be included within one registration providing the level of assessment required will not increase significantly. If the areas are managed separately or are distinct to the extent that separate assessments would be required, separate registration applications should be completed.

Cross-compliance rules – On farmland it is important to note that the requirements of cross compliance prohibit the application of pesticides within 2 metres of the top of the bank of surface waters unless spot treating injurious weeds or invasive species. Certain other species can be treated with the consent of Scottish Ministers.

6.4 Licence

A licence application to SEPA will be required where it is proposed that herbicide be used to control plants in the water (ponds, lochs, rivers coastal areas or wetlands) or other circumstances where the conditions of the GBR cannot be met. The licence application forms – Form A and Form M - can be found in the list of SEPA application forms.

Any herbicide use will result in the Environmental Quality Standard (EQS) being exceeded at the point of application if the efficacy of the active ingredient is to be effective. Any licence application will need to highlight a zone to apply herbicide, a zone to treat the target species and a buffer zone beyond the last target species. The buffer zone shall be as small as practicable (definitely no more than 10m) beyond the last target species. The EQS will be exceeded in the area of the target species but must be less than the EQS beyond the buffer zone.

Specifically, the application process would need to assess one or more of the following questions in the affirmative:

Table 2 Application/determination questions

		Yes	No
1	Is the plant an invasive non-native species in the Scottish Government Directions (i.e. on the UKTAG high impact list or waiting list?		
2	Is the use of the chemical necessary for the purposes of addressing a plant that is compromising the achievement of the objective for a site designated for nature conservation (e.g. SSSI, SPA, SAC, RAMSAR)? Check for the presence of Sites of Special Scientific Interest, Special Protection Areas, Special Areas of Conservation and RAMSAR on Scotland's Environment map. It is recommended that SNH are consulted before a management plan is developed in or near a designated site.		
3	Is the use of the chemical necessary for the purposes of addressing a plant that is compromising the achievement of an objective established in a RBMP for a waterbody? Check if the river is classified as below good status by checking Scotland's Environment map		
4	Is the use of chemicals necessary to allow navigation or to maintain another authorised controlled activity?		
		If yes to any of the above proceed to questions 5 and 6	If no to all four questions above reconsider why action is required
5	Is the use of chemicals so necessary that all alternative practical non-chemical methods have been adequately considered and discounted?		
6	Are the benefits of taking this action outweighing any adverse impact on the water environment?		

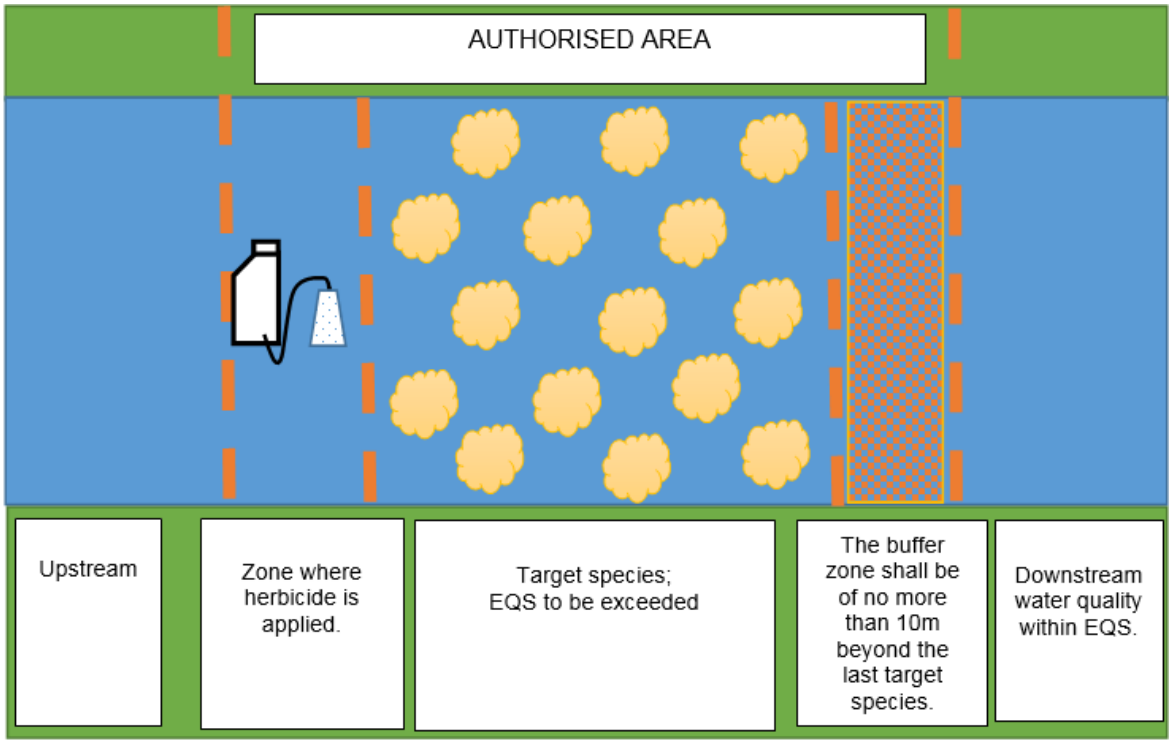
It must be noted that it is the applicant's responsibility to ensure that the herbicide product, that is intended to be used as part of the operator plan, has been authorised for their specific (aquatic) use by the CRD (see Pesticide registration)

Any application would need to demonstrate how other control methods are being used in combination with the use of chemicals, and demonstrate that chemical use is sustainable.

In regards to the aspects of the plan involving chemical use, the determination will be based on compliance with the Environmental Quality Standard (EQS) outwith of the

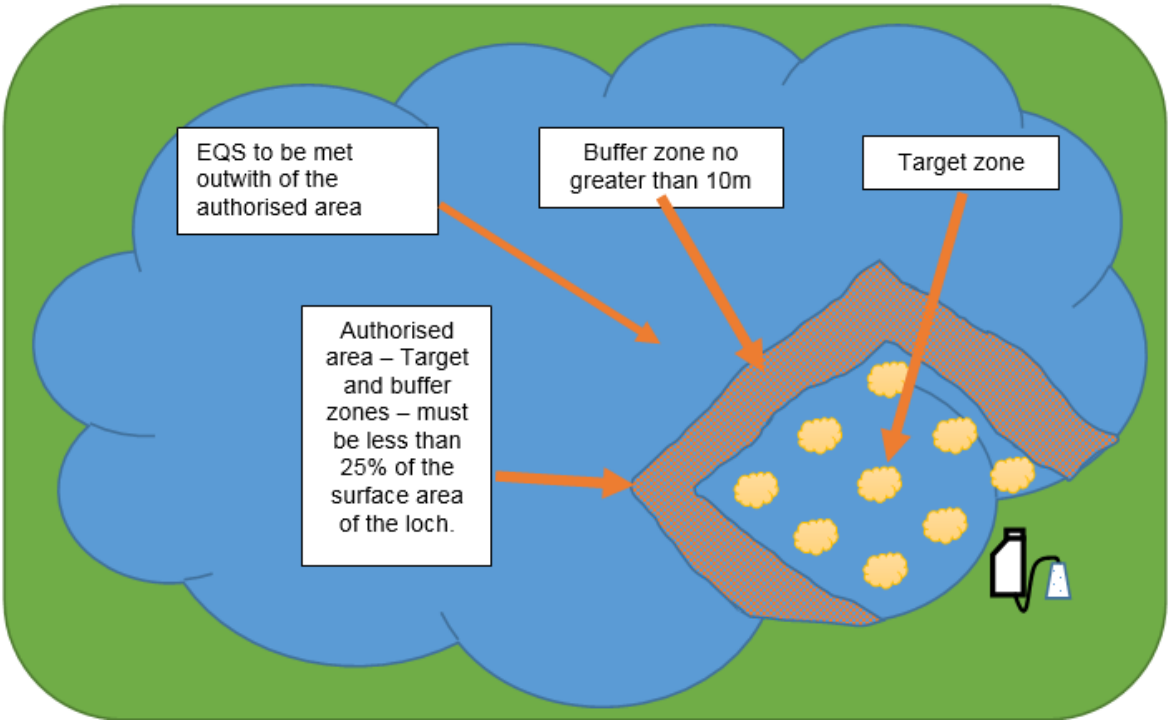
authorised area. The authorised area will comprise of a zone to apply herbicide, a zone to treat the target species and a buffer zone beyond the last target species. The buffer zone shall be of no more than 10m beyond the last target species. The EQS will be exceeded in the area of the target species but must be less than the EQS beyond the buffer zone. This may lead to multiple applications in conjunction with non-chemical treatments.

Figure 2 Authorised area in rivers



For lochs a buffer zone of 10m would be applied beyond the last target species. However, each application will also be limited to no more than 25% of the total surface area of the loch.

Figure 3 Authorised area in lochs



7. SEPA Assessment[3]

7.1 CAR Level of Authorisation to control plant species in and around water with chemicals

Table 3 Level of authorisation

Herbicide use	Level of Authorisation
On Land over 1m from bank top any species	GBR23 (f)
On the bank and within 1m of the top of the bank of a river, burn or loch or 1m of the shore line in relation to a transitional or coastal water to control Invasive Non Native Species (INNS); e.g. Japanese Knotweed, Himalayan Balsam, Giant Hogweed, Rhododendron, Gunnera and American Skunk Cabbage	GBR23 (g)
On the bank and within 1m of the top of the bank of a river, burn or loch or 1m of the shore line in relation to a transitional or coastal water to control plants other than INNS	Registration
In water to control any plant Where the GBR or Registration requirements cannot be met – e.g. within 250m of a potable water surface water abstraction point.	Licence

* Guidance in relation to determining the 'top of the bank' can be found in SEARS SG 004: Compliance with Diffuse Pollution Regulations & Guidance Notes on Completion of Inspection Form

7.1.1 General Binding Rule

Compliance with **GBR23(f)&(g)** using a suitably approved product (i.e. specifically approved for use in or near water (aquatic use)). SEPA involvement to provide guidance where requested or if operator found not to be complying with the GBR. SEPA will use the appropriate enforcement powers if necessary.

7.1.2 Registration

Checking the Registration Application Form

[3] Shoreline – the shoreline is defined as the mean high water springs tide mark. In practical terms this can be determined from consulting an Ordinance Survey map.

The Registration application form asks a number of basic questions to allow SEPA to assess the application. The following sections aim to help the officer to assess each section of the form.

a) Activities to be authorised

The application form requires that the applicant provides details of other control methods that have been considered. As control with herbicides should only be used where other non-chemical methods have been discounted, if the applicant has not given adequate consideration to other methods the application should be refused.

The location of the areas (upstream and downstream national grid reference) to be treated should be recorded and the name of the surface water provided. The application should include a map/plan of the proposed treatment area.

Using the location information provided it should be possible to check if the treatment area is within a drinking water protected area, Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) or Special Protected Area (SPA).

- If treatment area is within or could impact on a SSSI Scottish Natural Heritage (SNH) will be consulted.
- If treatment area is within or upstream of a SAC or SPA, SNH will be contacted to establish if the activity is likely to have a significant effect.
- If the treated area is within a surface water drinking protected area Scottish Water will be consulted via protectdwsources@scottishwater.co.uk.
- If there are any known private drinking supplies nearby, ensure the treatment area is not within 250 metres upstream of the abstraction point.

b) Details of Herbicide and method of application

(i) Herbicide Product

No herbicide/pesticide may be used unless it has been formally approved by the CRD for that particular use. In regards to treating plants in or near water the pesticide product must be specifically approved for aquatic use. Products approved for aquatic use can be found by searching the Pesticide register. The database is regularly amended (i.e. some products may have had their approval withdrawn) and therefore regular enquiries should

be made to ensure that the particular product is still approved for the specific use. The simplest method of checking is to open the CRD database, select ‘Aquatic Use Permitted’ under the ‘Aquatic Use’ tab and click on ‘Get Results’. This should produce a list in excess of 100 products in alphabetical order which are approved for aquatic use. Make sure the product the applicant wishes to use appears on this list.

(ii) Adjuvant

An adjuvant is a substance (other than water) that does not have any significant pesticidal properties itself but is sometimes added to a pesticide solution to enhance the effectiveness of the pesticide itself, so if one is to be used it is important to ensure it is approved for aquatic use. Adjuvants for use in UK allows you to enter the name of the adjuvant to check that the list of crops or situation where the product can be used includes ‘land immediately adjacent to aquatic areas’ or similar wording.

(iii) Method of application

The method used to apply the herbicide can have a significant influence on the potential risk posed by the activity. Applications using hand held equipment where the herbicide is applied directly to the plant generally present the least risk of herbicide drifting or impacting on non-target plants or areas. Applications which include the use of boom sprayers or air assisted sprayers should be refused due to the increased risk of herbicide entering the surface water from using such equipment in close proximity to the water.

(iv) Name the plants to be controlled and indicate their percentage cover

To allow SEPA and others, such as SNH to consider the potential impact of the activity on the site it is important to know what species of plants are to be treated and their percentage cover. For example applications to treat protected plants within a SSSI are unlikely to be approved, likewise applications which would target 100% of the vegetative cover of a river bank may result in increased erosion risk. In such cases SEPA would wish to understand what measures would be put in place to mitigate the erosion risk and consider this risk against the need for / benefits of treatment.

Bank erosion is more likely to occur on the outside of bends on fast flowing parts of rivers where the river will have sufficient energy to erode parts of the bank.

It is important to note that the Cross-compliance rules prohibit the application of pesticides within 2 metres of the top of the bank of surface waters unless spot treating injurious* weeds or invasive species. Certain other species can be treated with the consent of Scottish Ministers.

For plant species other than INNS or injurious weeds*, SEPA shouldn't give permission (i.e. process a registration or issue a licence) without first referring the farmer to their local RPID area office because even if a farmer has permission from SEPA he/she would still be in breach of GAEC 1 of cross compliance if they didn't have prior consent from RPID.

*'Injurious weeds' are species specified in the Weeds Act 1959: Spear Thistle (Cirsium vulgare (Savi) Ten), Creeping or Field thistle (Cirsium arvense (L.) Scop.), Curled dock (Rumex crispus L.), Broad-leaved dock (Rumex obtusifolius L.) and Common Ragwort (Senecio jacobaea L.).

7.1.3 Licence

A licence application to control plants in or near water needs to demonstrate the following:

- The plant(s) are causing an environmental problem (as defined in Section 4)
- An "integrated management plan" assessing all management options have been considered both individually and in combination
- The use of herbicide is a viable option in combination with other management options to control the plant

This can be assessed by reference to the applicant demonstrating yes to one of the first four questions in table 2 section 6 (above).

Once it has been identified that the plant is causing an environmental problem, an assessment is required as to why control is necessary. This is done by comparing the perceived benefits with the possible costs and consequences (such as damage to non-target plants and animals).

The applicant must submit a viable "operating plan" detailing all of the control mechanisms planned to be used on the site with the licence application. This should include evidence that the applicant has considered and selected the appropriate methods identified in section 5.1 (above).

The licence application will need to demonstrate that the applicant has:

- assessed that the proposed control mechanisms would not significantly affect the water environment,
- assessed the impact on other users of the water environment, and
- taken steps that would ensure efficient and sustainable water use.

It must be noted that it is the applicant's responsibility to ensure that the herbicide product, that is intended to be used as part of the operator plan, has been authorised for its specific (aquatic) use by the CRD (see section 6.2).

Any application would need to demonstrate how other control methods are being used in combination with the use of chemicals, and demonstrate that chemical use is sustainable. In regards to the aspects of the plan involving chemical use, the determination will be based on compliance with the Environmental Quality Standard (EQS) outwith of the authorised area. The authorised area will comprise of a zone to apply herbicide, a zone to treat the target species and a buffer zone beyond the last target species. The buffer zone shall be of no more than 10m beyond the last target species. The EQS will be exceeded in the area of the target species but must be less than the EQS beyond the buffer zone. See diagram 1 in section 6.

For lochs the authorised area needs to be the area of target species plus a buffer zone of a maximum of 10m beyond the target area. In addition, the authorised area must be limited to no more than 25% of the total surface area of the loch. See diagram 2 in section 6.

It is important to note that the Cross-compliance rules prohibit the application of pesticides within 2 metres of the top of the bank of surface waters unless spot treating injurious* weeds or invasive species. Certain other species can be treated with the consent of Scottish Ministers.

For plant species other than INNS or injurious weeds*, SEPA shouldn't give permission (i.e. process a registration or issue a licence) without first referring the farmer to their local RPID area office because even if a farmer has permission from SEPA he/she would still be in breach of GAEC 1 of cross compliance if they didn't have prior consent from RPID.

*'Injurious weeds' are species specified in the Weeds Act 1959: Spear Thistle (Cirsium vulgare (Savi) Ten), Creeping or Field thistle (Cirsium arvense (L.) Scop.), Curled dock (Rumex crispus L.), Broad-leaved dock (Rumex obtusifolius L.) and Common Ragwort (Senecio jacobaea L.).

7.1.4 Environmental Service

The Water Environment Charging Scheme defines Environmental Service as ‘the carrying out, operation or maintenance of any activity which is in the view of SEPA, solely for the benefit of the environment, not being for commercial purposes or in implementation of a statutory duty or condition of an authorisation’.

There may therefore be circumstances where the use of an herbicide could be considered an environmental service. This would include instances where plants are being treated with herbicide with the intention of restoring or improving a habitat.

Annex 1: SEPA Position Statement

SEPA Position Statement - Application of herbicide on or beside roads and rail lines

Purpose

This position statement sets out how SEPA will regulate the application of herbicide along roads with grates, central reservations with under drainage and over bridges/ culverts.

Background

Since 1 January 2018, stricter controls have applied to the application of herbicide within 1 metre of any river, burn, ditch or loch under GBR 23 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

GBR 23 authorises the (storage and) application of pesticides that are plant protection products, subject to a number of rules.

The rule at GBR 23(g) allows pesticide used for the sole purpose of controlling INNS (invasive non-native plant species) to be applied in, onto or over ground or allowed to drift onto or over ground that is within 1 metre of any river, burn, ditch, wetland or loch (as measured from the top of the bank) where the pesticide is specifically approved for aquatic use (and is applied in accordance with the approval), subject to strict controls. These include the rule that no pesticide can enter the river, burn, ditch, wetland or loch, and that the ground on or over which the pesticide is applied cannot be an impermeable surface which drains directly to a surface water drainage system unless measures are taken to minimise the risk of pesticide entering the drainage system.

The rule at GBR 23(f) prohibits the application of any pesticide (other than pesticide used for the sole purpose of controlling INNS) in, onto or over ground or allowed to drift onto or over ground that is within 1 metre of any river, burn, ditch, wetland or loch (as measured from the top of the bank).

GBR23(f) also prohibits the application of any pesticide (other than pesticide used for the sole purpose of controlling INNS) in, onto or over ground or allowed to drift onto or over ground that has an impermeable surface which drains directly into a surface water drainage system, unless measures are taken to minimise the risk of pesticides entering the drainage system

GBR23(f) also prohibits the application of any pesticide (other than pesticide used for the sole purpose of controlling INNS) in, onto or over ground or allowed to drift onto or over ground along roads, railway lines, permeable surfaces or other infrastructure, unless measures are taken to minimise the risk of pollution of any river, burn, ditch, wetland, loch, transitional water, coastal water or surface water drainage system.

In any case, under GBR23(h), the application of any pesticide under GBR 23 has to be carried out in such a way, and at such times, that the risk of pollution of any river, burn, ditch, wetland or loch is minimised, and in particular that pesticide must not be applied during rainfall or during conditions when there is a risk that spray will drift or be blown outwith the target area.

Under CAR, if a controlled activity is being carried on and there is no GBR which applies to that activity, or any of the rules applicable to that GBR cannot be satisfied, it is a criminal offence for any person to carry on that activity without a registration or a licence.

This means, for example, that those who regularly apply herbicide to roads with gulleys, central reservations, road verges, filter trenches, bridges and bridge decks over or beside rivers, culverts and roads over culverts, and rail tracks and areas adjacent to rail tracks which are within 1 metre of a river, burn, ditch, wetland or loch are not covered by GBR 23.

SEPA position

SEPA will not normally take enforcement action when herbicides are applied to any road, railway line or other infrastructure within 1 metre of a river, burn, ditch or loch, as measured from the top of the bank, or within 1 metre of a wetland, provided the following conditions are met:

- The activity is carried out in accordance with the rules of general application set out in the Schedule 3 to the Water Environment (Controlled Activities) (Scotland) Regulations 2011, at GBR 23 (a), (b), (c), (d), (e), (h), (i) and (j);
- Measures are taken to minimise the risk of pollution of any river, burn, ditch, wetland, loch, transitional water, coastal water or of pesticides entering any surface water drainage system

Additionally, the activity must not result in pollution to the water environment or harm to human health.

This position statement applies only in Scotland. The terms of this position statement may be subject to periodical review and be changed or withdrawn in light of technological, regulatory or legislative changes, future government guidance or experience of its use. SEPA reserves its discretion to depart from the position outlined here and to take appropriate action to avoid any risk of pollution or harm to human health or the environment.

References

SEPA documents

- Scotland's Environment map SEPA (https://map.environment.gov.scot/sewebmap/)
- SEARS SG 004: Compliance with Diffuse Pollution Regulations & Guidance Notes on Completion of Inspection Form
- SEPA application forms SEPA (https://www.sepa.org.uk/regulations/authorisations-and-permits/application-forms/)
- Water Environment hub SEPA (https://www.sepa.org.uk/data-visualisation/water-environment-hub/)

External documents

- Adjuvants for use in UK HSE website (https://secure.pesticides.gov.uk/adjuvants/Search.aspx)
- UKTAG high impact list UKTAG (https://www.wfduk.org/tagged/alien-species)
- Control of freshwater invasive species Conservation Evidence (https://www.conservationevidence.com/synopsis/index)
- Cross-compliance rules Scottish Government, Rural Payments and Services (https://www.ruralypayments.org)
- GB non-native species secretariat (GB NNSS) (https://www.nonnativespecies.org)
- General Binding Rules under The Water Environment (Miscellaneous) (Scotland) Regulations 2017 (legislation.gov.uk)
- Methods for controlling or eradicating aquatic invasive species (https://www.crew.ac.uk/publication/)
- Native species range NatureScot (https://www.nature.scot/)
- Pesticide registration HSE (https://secure.pesticides.gov.uk/pestreg/ProdSearch.asp)