

Implementing the Water Environment and Water Services (Scotland) Act 2003:

Use of CAR 2011 emergency provisions

Policy Statement

March 2011

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1. INTRODUCTION

The Water Framework Directive (WFD) was introduced in 2000 to provide a comprehensive framework for protecting and improving the condition of the water environment across Europe. In Scotland, we have introduced an integrated legislative framework, via the Water Environment and Water Services (Scotland) Act 2003 (WEWS) and the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR), to transpose the WFD and facilitate the delivery of our vision for Scotland's water environment.

Through CAR, SEPA is required to control activities which may have an impact on the water environment, including abstractions, impoundments, discharges and engineering works in and near freshwater. Controlled activities must be authorised before they can be undertaken. For activities posing the greatest risk to the water environment, authorisation is given in the form of a water use licence.

An application for a water use licence can take up to 4 months to determine. This is because, under normal circumstances, decisions on activities posing a significant risk must rightly be informed by a proportionate but appropriately comprehensive risk assessment. An activity likely to have a significant adverse impact on the water environment may also have a significant affect on the interests of other users of the water environment. Advertisement of applications for such activities allows SEPA to obtain information to help it to assess the risks to the interests of third parties. The advertising process can add up to 8 weeks to the standard 4-month licence determination period.

In emergencies, the normal CAR process would create unacceptable delays. We have therefore introduced further provisions in CAR 2011 to ensure sufficient flexibility to respond to the need for swift but temporary action in such circumstances.

This policy statement sets out how these provisions will be used to support the achievement of Ministers' objective of striking the right balance between the protection of the water environment and other important policy objectives when emergency action is needed. It supports the Government's resilience agenda, enabling swift and appropriate responses to incidents, protecting the Scottish public and environment from potentially damaging impacts.

2. EMERGENCIES AND TEMPORARY DETERIORATION OF THE WATER ENVIRONMENT

An "emergency" for CAR purposes is defined by reference to its definition under the Civil Contingencies Act 2004; and thus includes any event or situation that threatens serious damage to human welfare or the environment. Emergencies in these terms range from situations requiring immediate action to those which build up over a period of several weeks. Most, if not all, require action to be taken more quickly than the normal CAR procedures allow.

Adverse impacts on the water environment resulting from an emergency, including those resulting from actions taken to try to prevent or mitigate serious damage, can be sufficiently extensive to cause temporary deterioration of the status of a water body. The WFD allows for such deterioration of status provided certain conditions are fulfilled. These conditions include the following:

- the circumstances resulting in the deterioration must be due to an accident that could not reasonably have been foreseen; or natural causes or force majeure that are exceptional (e.g. prolonged droughts or extreme floods) or could not reasonably have been foreseen;
- all practicable steps must be taken to prevent further deterioration in the status of the affected water body and avoid compromising the achievement of the objectives set for other water bodies;
- the measures to be taken in such circumstances must not compromise the recovery of the water body once the circumstances are over; and
- any impacts are reviewed annually (as a minimum) and addressed as soon as reasonably practicable in order to restore the body of water to its previous status.

In any emergency situation resulting in temporary deterioration of the water environment, we expect the above conditions to be fulfilled.

3. TYPES OF EMERGENCY SITUATION

The time available to make decisions can vary considerably depending on the type of emergency. For example, when there is an imminent risk of serious harm to people or the environment, dealing with that risk has to be the overriding priority of the emergency response. However, there will generally be a point at which imminent risks of serious harm have been brought under control and there is more time to consider options for minimising the risks to the water environment during the next phases of the emergency response.

Providing an appropriate framework for managing environmental risks in relation to different types of emergency requires a range of legal and practical solutions. The appropriate responses to emergency situations in which controlled activities may need to be promptly authorised, varied or suspended for a period of time can be grouped into three main types:

- **Type 1:** Actions by those bodies and organisations responsible for the emergency response to an incident and which are necessary for the purpose of protecting:
 - people from imminent risks of serious of harm (including death, injury and illness);
or
 - the environment from imminent risks of serious harm (including risks to the life and health of plants and animals and the fabric of buildings).
- **Type 2: Urgent remedial actions** in the aftermath of an accident, flood or other emergency that are necessary to make a site safe and to prevent significant disruption of important social or economic services (e.g. sewage treatment works, drinking water supply, key transport infrastructure; essential electricity generation and transmission facilities; etc). These actions may be carried out by the Fire and Rescue Services, local authorities, other public bodies or contractors.
- **Type 3:** Actions necessary to help manage or contain **potentially serious environmental problems** that are at significant risk of escalating. Such problems may include water shortages; outbreaks of exotic animal diseases (e.g. foot and mouth); the appearance of parasites or pests that pose a significant risk to fish stocks or crops; or action required to control invasive non-native species.

In a Type 1 situation, environmental risks will be managed as far as possible by incorporating environmental protection measures within the normal operating procedures of those bodies responsible for dealing with the emergency. This approach is supported by means of the defence provisions within CAR.

Type 2 situations typically cover a wider range of circumstances, as some remedial actions may require an urgent response, whereas others may allow a greater opportunity for detailed consideration to be given to the impacts on the water environment and its users. In Type 3 situations, there is typically more time than in other types of emergency to consider risks to the water environment and its users, as this type of situation generally escalates over a period of time. CAR makes provision for accelerated authorisation, variation or suspension of controlled activities to deal with these various needs, and is sufficiently flexible to allow SEPA to determine what sort of procedures to put in place, depending on the nature of the emergency.

Examples of emergency situations where the undertaking of controlled activities speedily may be necessary

- **fires**

It may be necessary in an emergency to abstract water from the water environment to extinguish a fire - and the efforts to extinguish the fire may result in pollutants being washed into the water environment.

- **flood events**

To minimise danger to human health and built property during a flood event, it may be necessary to take immediate action involving the carrying out of emergency engineering works in the water environment to reinforce flood defence structures or dams and protect key infrastructure. In the aftermath of such an event, it may be necessary to take swift action involving controlled activities in order to reinstate key economic and social services.

- **pollution incidents**

Following a pollution incident, to protect the water environment or water uses, such as drinking water supply, it may be necessary for urgent engineering works to be carried out (e.g. to repair a burst sewer in the water environment) or to install a temporary impounding structure to limit the spread of the pollutants.

- **accidents, including road, rail or air accidents**

Following an accident, it may be necessary for the emergency services to undertake engineering works in the water environment in order to facilitate the rescue of persons trapped at the scene. Once the immediate danger is over, action may be needed to make the area safe and restore important social and economic services. This may involve further controlled activities.

- **water shortages**

To maintain drinking water supplies during an exceptionally dry period, it may be necessary to supplement normal drinking water sources with temporary abstractions of water from different parts of the water environment.

- **outbreak of an animal disease or plant pest; or introduction of an invasive non-native species**

Urgent action involving controlled activities may be needed to: (i) contain or eradicate an outbreak of a disease that would have a serious affect on economically important crops, livestock or wild fish or shellfish; or (ii) prevent the introduction or spread of an invasive non-native species. For example, to tackle a disease that could decimate wild fish stocks it may be necessary to treat the disease or stop its spread by discharging suitable chemicals into the water environment. Action to deal with an outbreak of a disease of livestock, such as foot and mouth, may require the mass burial of animal carcasses, leading to a risk of pollutants entering the water environment.

4. PRACTICAL APPLICATIONS

4.1 Type 1 situation

CAR does not require prior-authorisation for activities that category 1 or category 2 responders reasonably need to take to protect people, property or the environment from an imminent risk of serious harm.

"Category 1 and 2 responders" comprise a wide range of public bodies and utility providers with responsibilities during emergencies. These include the fire and rescue services, local authorities, airport operators, harbour authorities and Scottish Water. The full list of responders is set out in the [Civil Contingencies Act 2004](#).

Where a responder needs to take action involving controlled activities to deal with an imminent risk, it must take all practicable steps to prevent deterioration of the water environment. To be effective, such steps need to be incorporated into the responder's normal operating procedures. For example, the fire and rescue services are expected to operate in line with the legislation and guidance set out in the following:

- [Fire \(Scotland\) Act 2005](#)
- [The Fire \(Additional Function\) \(Scotland\) Order 2005](#)
- [Fire and Rescue Manual Volume 2 – Environmental Protection 2008](#)

The Fire and Rescue Manual sets out in some detail the practical steps the fire and rescue services should take to minimise environmental harm.

Responders are also expected to continue to contact SEPA (itself a category 1 responder) at an early stage to ensure that the incident response team can take appropriate account of the potential impacts on the water environment.

4.2 Type 2 situation

Once the immediate danger to human life or the environment has passed it may be necessary in certain circumstances to then take action to make the area safe, restore essential services, etc. Such action may be undertaken by category 1 or 2 responders, other responsible bodies or their appointed contractors.

In those Type 2 situations in which when response time is limited, we expect authorisation from SEPA to be provided for by means of a simple, pro-forma authorisation, or, if needs be, verbally. In many cases, a pro-forma authorisation is likely to be based on standard conditions, however SEPA will be able to undertake such on-the-spot assessments and impose such site-specific conditions as it considers reasonably practicable in the circumstances. Accordingly, risks to the water environment will be taken into account as far as possible without compromising the ability to deal with the aftermath of the emergency in an effective and timely manner.

4.3 Type 3 situation

Type 3 emergency situations typically develop over a longer period of time than type 1 and 2 situations and the initial emergency response is focused on trying to prevent the situation from escalating. This also means that there is more time to consider how best to manage risks to the water environment and its users. Such emergencies include extended periods of no or limited rainfall that pose a serious threat to water supplies and outbreaks of animal or plant diseases.

We expect appropriate contingency plans to be prepared in advance of these emergency situations and the relevant responsible authorities to coordinate the production of these in consultation with SEPA. The plans should set out the different types of action that will be taken to deal with the developing emergency and how risks to the water environment in relation to those actions involving controlled activities will be minimised as far as reasonably practicable. Consultation with all relevant parties whose interests could be significantly affected will be a key step in developing the plans.

Where, in a type 3 emergency, effective management of the situation requires a more prompt regulatory response than the normal CAR process allows, SEPA will be able to utilise CAR's accelerated determination procedures to temporarily authorise, vary or suspend controlled activities. Where such accelerated determinations are necessary, the normal CAR advertisement and consultation procedures will not be required. However, we expect the responsible persons to carry out such direct consultation with those parties whose interests could be significantly affected as is reasonably practicable before action is taken.

Where a proposed action or set of actions is expected to be controversial, Ministers may issue a direction to SEPA, setting out how SEPA should use its powers to help deal with the emergency situation. Before issuing a direction, Ministers must take account of the emergency management plan; advice from SEPA and the lead body responsible for managing the emergency situation; and responses to any consultations with interested parties.

A number of emergency situations where these procedures may be applicable are described in Annex 1.

EMERGENCY SCENARIOS

Controlling the spread of salmon parasites

Gyrodactylus salaris is a small external parasite of salmon in freshwater which could potentially decimate fish stocks. Although the risk of inadvertent introduction of the parasite is assessed as very low, the consequences of introduction are very high for Scotland's salmon stocks and the rural jobs depending upon them. Action taken to deal with these parasites could potentially have a significant adverse impact on the water environment and its users, as it may be necessary to take action to erect barriers to prevent fish movements, suspend transfers of water between different river catchments or to treat infected rivers with toxic chemicals with a view to eradication.

The Scottish Government has produced a GS [contingency plan](#) which describes the key actions and organisations involved in dealing with any such outbreak. In order to minimise the risk of spread of *gyrodactylus salaris*, urgent action is likely to be beneficial where the parasite is identified in the following circumstances:

- near the mouth of a catchment;
- in or around a fish farm;
- below a natural or manmade barrier;
- in a coastal area with potential for low salinity bridges to neighbouring catchments.

In line with the steps set out in the GS contingency plan, it may prove necessary to consider the authorisation of new controlled activities such as the erection of barriers or discharge of chemicals; or vary or suspend existing authorisations such as abstractions. CAR can facilitate such management actions if considered necessary in line with Ministerial policy.

Managing invasive non-native species

As travel, trade, and tourism have increased, humans have facilitated the movement of plants and animals around the world, beyond natural barriers (such as oceans, mountain ranges and deserts). If plants and animals are introduced to areas which have similar environmental conditions to their native range, they have the potential to become established. As plants and animals are often introduced without their usual predators they can have an advantage over native species and may become invasive.

The Scottish Government's approach to invasive non-native species is guided by the internationally recognised 3-stage hierarchical approach. Its key principles are:

- Prevention – preventing the release of all non-native species should be given the highest priority as the most effective and least environmentally damaging intervention.
- Rapid response (eradication) – where prevention fails, early eradication or removal should be the preferred response.
- Control and containment – once a species has become widely established, full-scale eradication is possible or cost effective in only a minority of cases. However, if the invasive non-native species has negative impacts then it may be necessary to mitigate their impacts or control or contain the population.

CAR can facilitate emergency management actions if considered necessary in line with Ministerial policy.

Managing water shortages

Water is one of our most valuable resources, and in Scotland we are fortunate in that a sustained and widespread drought is very unlikely. However, from time to time, we do experience extended periods of low rainfall, usually fairly localised in extent, but which can result in very low flows in our rivers and very low water levels in our lochs and reservoirs. As a result of climate change the frequency of such periods may well increase. Fortunately, they are characterised by a relatively slow onset, and thus steps can be taken to help protect the water environment and sustain important water uses, such as drinking water supply, until wetter weather returns.

To ensure the appropriate steps are taken when such situations arise, we expect SEPA, in consultation with stakeholders, to develop plans describing the environmental measures likely to be required as a period of low rainfall becomes progressively more prolonged. We envisage that the plans will include a national plan setting out high level principles and actions; supplemented, where appropriate, by more detailed plans setting out specific local actions. The measures identified in the plans will be designed to meet our obligations to protect our water environment, including the needs of protected areas such as Special Areas of Conservation.

SEPA's action plans must complement the River Basin Management Plans and strike the right balance between the consequences of a lack of water for human and economic activities during prolonged dry weather and the need to maximise protection of our water environment. SEPA will be expected to work with Scottish Water to ensure its plans and those produced by Scottish Water in relation to public water supplies are coordinated and complementary.

Where action is needed during a period of low rainfall to protect the water environment or maintain public water supplies, SEPA will be able to temporarily authorise, vary or suspend controlled activities as appropriate.

Action required in the event of exotic notifiable animal disease

Much of Scotland's land is under agricultural production and the sector is responsible for many of Scotland's food exports. In rural areas the industry creates many economic, environmental and social benefits, with a large number of people directly employed in agricultural activities. Therefore as a matter of course, the Scottish Government promotes good practice measures to help minimise the risk of disease.

However in the event of an exotic notifiable animal disease, the Scottish Government has set out its strategy to deal with these diseases in its [Exotic Animal Disease Contingency Framework Plan](#). A notifiable animal disease is a disease named in section 88 of the Animal Health Act 1981 or an Order made under that Act. "Exotic" notifiable animal diseases are diseases not normally found in Great Britain. The diseases are listed as notifiable because of their potential for very serious and rapid spread, irrespective of national borders, and are of major importance in international trade or because they have serious socio-economic or public health consequences.

Animals infected with a notifiable infectious or contagious disease may excrete vast quantities of virus contaminating the environment and providing a potent source of infection either directly or indirectly for other susceptible animals. It is important therefore that they are killed as quickly as possible. Once an animal is killed new virus production stops. The carcasses of the killed animals must be destroyed. The decision on the disposal site and method will depend on a number of factors including disposal capacity and logistical issues.

The preferred hierarchy for disposal in Scotland is rendering/ incineration at approved and licensed premises; landfill; burial on farm; incineration on farm.

SEPA will advise on the suitability of disposal sites in Scotland. SEPA is also responsible for authorising disposal by landfill, and on farm burial/ incineration. For certain types of disposal, SEPA will use its powers under Scotland's waste legislation. However disposals on farm could have an impact on the water environment, particularly groundwater which is important for drinking water supplies. It is important that SEPA can give due consideration to the implications of such burials on public health and the water environment and the fast-track procedures can facilitate appropriate authorisation under CAR.



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