

**SEPA Position Statement to support the implementation of the Water Environment (Controlled Activities) (Scotland) Regulations 2011:**



**WAT-PS-07-03: Engineering in Artificial Inland Surface Waters**

THESE DOCUMENTS OUTLINE SEPA'S POSITION ON RIVER ENGINEERING ACTIVITIES. THEY PROVIDE A BASIS FOR INTERPRETING SEPA'S OBJECTIVES UNDER THE CONTROLLED ACTIVITY REGULATIONS (CAR), AND A BASIS FOR INTERPRETING AND IMPLEMENTING SEPA'S GOOD PRACTICE GUIDANCE. THEY PROVIDE A SUMMARY OF THE KEY REGULATORY ISSUES BUT DO NOT REPLACE DETAILED GOOD PRACTICE GUIDANCE.

Date	Jun 2013	Version	3.0
------	----------	---------	-----

## 1 POSITION STATEMENT

- SEPA promotes the view that although heavily engineered, Artificial Inland Surface Waters are important features of the Scottish landscape which support valuable aquatic ecology as well as providing habitat for migratory species and wildlife corridors for other species. SEPA will expect managers of Artificial Inland Surface Waters to fully consider how their operations impact upon such ecology while maintaining the function of the Artificial Inland Surface Water.
- An Artificial Inland Surface Water is defined as “a body of surface water created by human activity in a location where no significant water body existed before and which has not been created by the direct physical alteration, movement or realignment of an existing water body”.
- Artificial Inland Surface Waters include canals, lades, artificial canal feeders, artificially created ponds which are not directly linked to a natural waterbody and other artificial watercourses which do not appear on historic maps (e.g. abandoned lades)

NOTE: Land drains and SUDS ponds are not included within this definition.

IMPORTANT: Heavily Modified Water Bodies (HMWB) are not classified as Artificial Inland Surface Waters.

- SEPA will seek, as far as is reasonable and practical, the protection of the existing wildlife value and ecological potential of Artificial Inland Surface Waters, including their established aquatic habitats and the flora and fauna dependent upon them.
- SEPA will only require an authorisation for major works in Artificial Inland Surface Waters under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR). This would include activities such as dredging, major re-sectioning, realignment and culverting or removal/in-fill of artificial inland surface waters.
- General / routine maintenance works including dredging activities, weed-cutting and bank reinforcement undertaken on canal systems will normally be covered by conditions within any water resource licences issued for those systems. These licences should also contain conditions with relation to de-watering activities on canals for the purposes of enabling routine maintenance and other activities to be undertaken.

## 2 AIMS

- To inform staff, the general public and external stakeholders on the regulation of engineering activities on Artificial Inland Surface Waters.
- To ensure that the regulatory approach for dealing with Artificial Inland Surface Waters is consistent, fair and proportionate.
- To help maintain and enhance the ecological quality of Artificial Inland Surface Waters and protect biodiversity and wildlife corridors for migration of species where possible.
- To help protect the status and function of existing Artificial Inland Surface Waters for other water users. (e.g. third party interest for fisheries, angling clubs, water sports users).

### **3 REGULATORY GUIDANCE**

#### **3.1 INTRODUCTION**

Under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, building or engineering works in inland waters, which includes Artificial Inland Surface Waters, are controlled activities.

SEPA recognises that the risk to the environment from engineering works on these Artificial Inland Surface Waters is different to the impact of the same activities on natural waterbodies. With this in mind, SEPA has adopted a different regulatory approach to dealing with such activities in Artificial Inland Surface Waters as detailed in this position statement.

#### **3.2 CAR AND ENGINEERING IN ARTIFICIAL INLAND SURFACE WATERS**

SEPA will NOT normally require an authorisation for engineering activities in Artificial Inland Surface Waters other than dredging and other major activities as outlined by this position statement. However, where other surface water bodies are deemed to be at risk from the proposed engineering activities within the Artificial Inland Surface Water then SEPA may require authorisation.

Discharges from construction or contaminated water from Artificial Inland Surface Waters should be dealt with under the point source regime.

As more monitoring information and impact data comes to light during the regulation of the CAR regimes and with consultation from other organisations and bodies, SEPA may alter this position and extend the scope of direct regulation to other engineering activities on Artificial Inland Surface Waters if new information signifies this is necessary to ensure WFD objectives are met.

#### **3.3 REGULATORY DECISION GUIDANCE**

It is anticipated that the majority of activities being directly regulated for Artificial Inland Surface Waters (in particular with reference to canals and lades) will be captured under water resources, therefore engineering elements will be incorporated within any licence issued under this regime for an Artificial Inland Surface Water.

The following sections detail how engineering activities will be controlled.

##### **3.3.1 Maintenance of Existing Structures In Artificial Inland Surface Waters**

Engineering works such as bank and bed repairs, where the design and footprint of the structure remains the same, and equivalent materials are used shall be regarded as maintenance of an existing structure and therefore will not require authorisation by SEPA. SEPA will expect best practice to be followed when carrying out any of these activities to prevent pollution.

##### **3.3.2 Sediment management in artificial inland surface waters**

Sediment management activities will be subject to the registration level of authorisation.

Most canals will have an existing authorisation issued under the water resources regime. Where this exists, sediment management conditions should be detailed within the same authorisation. Depending on the scale and frequency of sediment management being carried out, SEPA may decide to incorporate a reporting condition within the authorisation which requires submission of the programme of works for these activities on an annual basis.

Where there is no existing authorisation for the artificial inland surface water, the operator carrying out the sediment management activity will have to apply for a registration.

**Table 1: Authorising Sediment Management Activities On Artificial Inland Surface Waters**

<b>Authorisation Status</b>	<b>Action</b>	<b>Fee</b>
Existing authorisation for Artificial Inland Surface Water with sufficient sediment management conditions	No application needed	No fee
Existing authorisation for Artificial Inland Surface Water with no sediment management conditions for proposed works	Where applicable, an application will be required for variation of existing licence to include registration conditions	Administrative variation fee
No authorisation exists	Registration application required	Registration fee

### 3.3.3 Disposal of Dredgings

It is understood that British Waterways (trading as Scottish Canals) often disposes of any dredgings from its canals on the banks of the canal. The disposal of these sediments is subject to waste management legislation and more information on compliance with these regulations is available from any SEPA office.

British Waterways carries out sediment disposal in line with its own codes of best practice. Providing the waste legislation is satisfied, best practice is followed and no significant environmental harm occurs from this activity, SEPA does not intend to directly regulate this activity along canals or other Artificial Inland Surface Waters under CAR. Please note that this position is only for Artificial Inland Surface Waters and does not include natural river systems, lochs or Heavily Modified Water Bodies (HMWBs).

### 3.3.4 Construction of New Artificial Inland Surface Waters

The construction of new Artificial Inland Surface Waters will not be subject to an authorisation under the engineering regime unless it is considered as impacting and /or being in the vicinity of an existing natural waterbody, or is constructed for the purposes of flood risk management (i.e. a flood bypass channel or detention basin constructed as part of a flood prevention scheme). The construction of all other new Artificial Inland Surface Waters may need to be authorised under the abstraction regime.

Artificial 'intake' channels are sometimes created to divert water from a watercourse for the purposes of a hydro scheme. Conditions relating to the construction and maintenance of these should be included as part of the water resource authorisation.

Exception: A pond or lake created by excavation below the pre-existing ground level (e.g. a dug pond or flooded quarry) are not included under the water resources impoundment regime and therefore would not be subject to an authorisation provided there is no abstraction. SUDS ponds should be regulated under the point source regime.

### 3.3.5 Construction of New Sections of Artificial Inland Surface Waters

Providing best practice is adhered to, in terms of pollution control, and no natural waterbody is being affected by the new section (i.e. only existing artificial inland surface water is affected), SEPA will not require a separate authorisation for this activity. However, depending on the scale and impact on current operations of the Artificial Inland Surface Water, SEPA may require an application for variation of any existing licence for that Artificial Inland Surface Water to incorporate the new section.

### 3.3.6 Removal, Realignment & Culverting of Artificial Inland Surface Waters

SEPA will only regulate these activities where the Artificial Inland Surface Water in question is considered to be of ecological value. This would include, but is not limited to SSSIs, SACs, SPAs, RAMSAR sites as well as other sites such as those with protected species e.g. Fresh Water Pearl Mussels.

Should you be in any doubt with regard to the ecological value of a particular Artificial Inland Surface Water please contact your local SEPA ecology specialist.

In these situations, where there is an existing licence for the Artificial Inland Surface Water, SEPA will require a variation of that licence to include conditions relating to the authorised activity. Where no licence exists to cover the Artificial Inland Surface Water, SEPA will require an application to cover the activity being carried out.

Where ecological value is not an issue and providing best practice is adhered to, in terms of pollution control, and no body of water other than the existing Artificial Inland Surface Water is being affected by the works, SEPA will not require a licence for this activity.

### 3.3.7 Construction of New Structures, Bank and Bed Reinforcement on Artificial Inland Surface Waters

Examples of structures which may be constructed under the engineering regime include, but are not limited to; pipe crossings, heat pumps, slipways, flow/gauging stations etc.

(Note: engineering structures do not include weirs and locks or turbines for hydroschemes– see Footnote)

Providing the proposed engineering activity does not significantly alter the existing footprint of the Artificial Inland Surface Water, it should be treated in the same way as those activities which fall under the maintenance section above. SEPA will expect best practice to be followed when carrying out any of these activities to prevent pollution and enforcement action may be taken where pollution occurs.

Where a licence exists for an Artificial Inland Surface Water and depending on the scale and impact on current operations of the canal from the new engineering activity, SEPA may require an application for variation of the existing licence.

The following criteria should be used in deciding whether an authorisation is required for these engineering structures:

1. If the engineering activity only impacts on the banks of the Artificial Inland Surface Water then an authorisation under the engineering regime will NOT normally be required, although SEPA will expect best practice to be followed when carrying out these activities to prevent pollution.
2. If the engineering activity impacts on the bed of the Artificial Inland Surface Water then an authorisation under the engineering regime will NOT normally be required. However, if the Artificial Inland Surface Water has identified ecological value which the structure could significantly impact then SEPA may wish to authorise the activity to protect any established ecology.

**Footnote:**

The construction and operation of any new impoundment such as a weir or hydroscheme retrofitted on an existing lade would normally be regulated under the Water Resources regime. However impoundments in canals and lades (including locks), which hold back flows within the canal or lade are classed as 'off-line' impoundments and therefore do not require an authorisation. (See CAR Practical Guide for further information)

## 4 USEFUL LINKS & DOCUMENTS

- *Scottish Canals* (<http://www.scottishcanals.co.uk/>)  
(Trading name for *British Waterways* in Scotland - [www.britishwaterways.co.uk](http://www.britishwaterways.co.uk))
- *CAR: A Practical Guide* ([www.sepa.org.uk/](http://www.sepa.org.uk/))
- *Ponds, Pools and Lochans: Guidance on good practice in the management and creation of small waterbodies in Scotland* ([www.sepa.org.uk/](http://www.sepa.org.uk/))
- *The SUDS Manual* CIRIA C697 (supersedes C521) (<http://www.ciria.org>)
- *WAT-SG-71: Sector-specific Guidance - Canals* ([www.sepa.org.uk](http://www.sepa.org.uk))