



Water Use

Regulatory Method (WAT-RM-20)

Advertising and Consultation

Version: v7.3

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Update Summary

Version	Description
v1.0	First issue for Water Use reference using approved content from the following documents: <i>RM20 - Consultation and Advertisement.doc</i> <i>RM_20_Consultation_and_Advertisement (Rev1).doc</i>
WAT-RM-20_A	Interim guidance issued separately to supersede section 4 of WAT-RM-20 pending final review of WAT-RM-20.
v2.0	Complete document review, incorporating new step-by-step procedure, CLAS steps and coverage of call-in process (previously in separate document WAT-RM-20-A: Interim Guidance). Also includes more detailed guidance on when to advertise (Appendix 1), when and whom to consult (Appendix 2).
v2.1	Step 4(iii) letter details clarified, Step 7 CLAS procedure modified
v3	Updated for CAR 2011, some revisions to process details & order
v4	Steps 3&4 revised to reference new consolidated <i>WAT-FORM-31</i>
v5	Step 5 timescale reduced to 28 days (per CAR 2011), doc links now open in QP direct, new ref added (Appendix1) to <i>SW-1-P</i>
v6	Appendix 1&2 content now included as Sect 2&3. No text changes.
v6.1	Remove flood management refs in Note 3 (Figs 1&2), Step 9, Table 1
v7	Consultation requirements under CAR revised, figs 1 & 2 updated.
v7.1	Section 5, Step 3(ii) revised.
v7.2	Fig1 updated – add ref to RBMP objective in breach clause.
v7.3	Minor changes to correct consultee name, all fisheries now <i>www.fms.scot</i>

Notes

References: Linked references to other documents have been disabled in this web version of the document. See the References section for details of all referenced documents.

Printing the Document: This document is uncontrolled if printed and is only intended to be viewed online.

If you do need to print the document, the best results are achieved using Booklet printing or else double-sided, Duplex (2-on-1) A4 printing (both four pages per A4 sheet).

Always refer to the online document for accurate and up-to-date information.

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1. Key Points

This regulatory method applies to **all** applications under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR). It sets out the formal procedure for the advertising (under Regulation 13) and consultation (under Regulation 12) on any:

- application (under regulation 7) for a **new registration**
- application (under regulation 8) for a **new licence**
- application (under regulation 24) for **(technical) variation** of an existing licence
- application (under regulation 27) for **surrender** of a licence, and
- proposed **SEPA-initiated variation** (under regulation 22) of an existing licence

All these are referred to in this document by the single term “proposal”.

The document is for use mainly by the **Coordinating Officer (CO)** and the **Registry Officer (RO)** handling the proposal, and covers:

- Criteria used to judge when a proposal should be advertised
- Criteria used to judge when and what other public bodies to consult
- Links to documentation to be used for advertising and/or consultation
- How to deal with the responses received as a result of advertising and/or consultation

2. When to Require Advertising

The CO should determine whether a proposal requires advertising by following the guidance below.

When considering new applications or applications to increase existing activities, please refer to section 1 and, where relevant, section 3.

When considering variations to existing activities to bring about improvements to the water environment, please refer to section 2 and, where relevant, section 3.

NOTE: When dealing with any **Scottish Water** abstraction applications, you must also adhere to *SW-1-P: Management of Scottish Water Abstraction Data*.

1. New applications or applications to increase existing activities

SEPA will normally only require applications to be advertised where the proposed controlled activity is likely to have a 'significant adverse impact on the water environment'. In most cases, a significant adverse impact will be indicated where a proposal would be likely to cause a breach of an environmental standard¹. The following sections provide guidance on how to identify where exceptions to this are appropriate, including:

- not requiring advertising even though the proposed activity is likely to cause a breach of a standard
- requiring advertising even though the proposed activity is not expected to cause a breach of a standard

Before making either type of exception to the normal position on advertising, you should obtain agreement from your unit manager.

Figure 1 sets out the steps you should consider in deciding whether to require advertising of new applications, including applications to increase existing discharges.

1.1. Deciding that advertising is unnecessary because third party interests will not be affected

If there is a reasonable likelihood that a proposal would cause a breach of an environmental standard (or condition limit²), it should normally be advertised.

¹ For brevity, where used in this guidance the term 'environmental standard' includes both environmental standards and condition limits. These are set for a wide range of pollutants; other aspects of water quality, such as temperature and dissolved oxygen levels; water flows and levels; morphological characteristics, including barriers to fish migration; and the composition and abundance of water plants and animals.

² In relation to proposed engineering works in rivers, the assessment length for assessing whether morphological condition limits would be breached is 500 metres.

However, in some circumstances you may be confident that such a breach will not significantly affect any third party interests. If so, advertising is unnecessary and you can proceed to determine the proposal taking account of the likely impact on the water environment according to the guidance set out in *WAT-RM-34: Derogation Determination - Adverse Impacts on the Water Environment*. However, this exception does not apply if the breach would cause deterioration in the status of the water body: all such applications must be advertised.

The types of proposal where you are most likely to be able to confidently rule out the need for advertising are those:

- where the adverse impacts on the water environment are spatially very limited or of short duration;
- the affected part of the water environment is very small (eg a small burn or a small lochan) and/or already degraded and not planned to be restored;
- the characteristics of the surrounding land-use mean that the part of the water environment is unlikely to be visited by other users of the water environment (eg for recreation).

The following considerations should be taken into account when deciding if you are confident that third party interests will not be affected by a proposal:

- Wildlife conservation interests
 - Are you confident that the part of the water environment that would be affected is not of recognised importance for wildlife conservation (eg a designated site) or, if it is, that either (a) the proposal is unlikely to have a significant adverse impact on the features of conservation interest; or (b) it is likely to have a significant adverse impact and, as a result, SEPA does not consider there is scope to authorise the works as proposed?
- Recreation interests
 - Are you confident that the affected part of the water environment is not of potential importance for recreation (e.g. because it is a small or heavily engineered burn in an industrial area / intensive farming area / commercial forestry area and away from recreational routes)? See also note 4 below.
 - Are you confident that fisheries interests will not be impacted because the affected part of the water environment is not accessible to the relevant fish species, or if it is accessible, those fish species (including their migration) will not be affected by the proposal and the relevant district salmon fishery board agrees with this view?
- Interests of other operators of controlled activities
 - Are you confident that other controlled activities are not dependent on the affected part of the water environment or that, if they are, those activities will not be adversely affected by the proposal?
- Built heritage interests
 - Are you confident that the affected part of the water environment is not of potential importance for the protection or appreciation of built heritage interests (ie there are no listed structures, scheduled ancient monuments, etc) or, if it is, Historic Environment Scotland or the local authority (as appropriate) has confirmed that those interests will not be affected by the proposal?

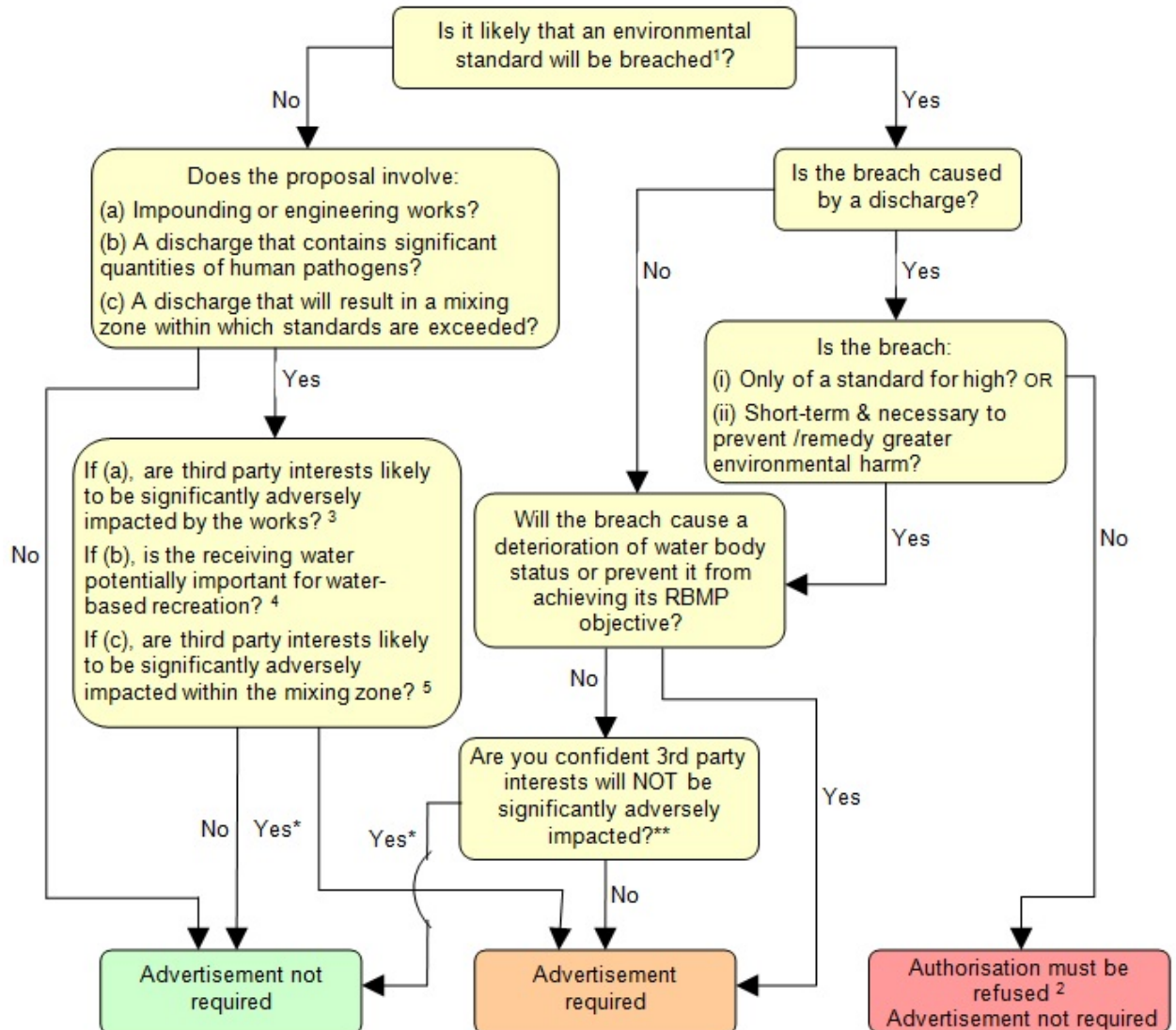
- Landscape interests
 - Are you confident that the affected part of the water environment is not of potential importance to the quality of areas identified for their landscape importance (eg national scenic areas, local authority areas of landscape importance, national parks, designed landscapes, etc)³ or, if it is, that the relevant public authority (ie SNH, local authority, Historic Environment Scotland) has confirmed that those interests will not be affected by the proposal?
- Earth heritage interests
 - Are you confident that the affected part of the water environment is not of potential importance for the conservation of natural geomorphological or geological features (eg designated as an SSSI or World Heritage site; identified as a Regionally Important Geomorphological or Geological Site or as a Geological Conservation Review site) or, if it is, that SNH has confirmed that those interests will not be affected by the proposal?

If there is reasonable doubt or no clear justification for not advertising, then the proposal should be advertised.

The reason for deciding to advertise or not to advertise should be recorded in the working file.

³ Few proposals are expected to significantly affect landscape interests. Examples might include large new reservoirs in national scenic areas.

Figure 1 Advertising of new applications, including increases to existing activities



* Unit Manager approval required

** “Deciding that advertising is unnecessary...” Section 1.1

Note 1: Discharges and mixing zones

An environmental standard is breached by a discharge if the breach occurs beyond the edge of the mixing zone (as determined according to SEPA’s standard methods)

Note 2: Proposed discharges that would cause pollution

SEPA cannot normally consider authorising any proposed discharge that would cause pollution.

The exceptions to this are proposals where the downgrade would be:

- (i) from high to good status only; or
- (ii) short-term and necessary to prevent or remedy greater environmental harm (eg to manage risks posed by non-native invasive species)

Where there is no scope to authorise a proposal (ie because neither of the above apply) and the application will therefore be refused, you should not require advertising of the proposal.

Note 3: Advertising impounding or engineering works that would not breach an environmental standard

Impounding works and engineering works that would not breach environmental standards (including morphological condition limits and standards for river continuity for fish migration) are unlikely to have a significant adverse impact on the water environment or on the interests of other users of the water environment unless:

- (i) the part of the water environment that would be affected by a proposal is of particular importance; and
- (ii) the characteristics that make it important could be adversely affected by the works

Examples include works:

- (a) likely to adversely affect the ability to use the water environment for recreation, including fishing, swimming, kayaking etc, where the site may currently be important for recreation
- (b) likely to affect built heritage interests by altering or impinging on a listed structure or ancient monument
- (c) that could directly or indirectly damage protected species or habitats whose status is such that their conservation could be significantly compromised even by works that do not breach standards and SEPA believes there is scope to authorise the works, taking account of the balance of positive and negative impacts
- (d) that may significantly adversely impact on the interests of operators of other controlled activities.

Note 4: Proposed discharges likely to contain human pathogens

If a proposed discharge (eg a sewage discharge) is likely to contain human pathogens (eg *Escherichia coli* (e-coil) and/or intestinal enterococci) in quantities that could affect the health of those exposed to it, the interests of recreational users of the water environment could be significantly affected.

For discharges to designated bathing waters, this risk is automatically taken into account by assessing whether the discharge would result in a breach of the applicable bacterial standards. In other cases, SEPA has to determine whether or not:

1. the discharge could contain significant quantities of human pathogens (ie whether it could raise concentrations of pathogens in the receiving water to levels that could adversely affect the health of anyone coming into contact with that water); and
- 2 the receiving water is important for water-based recreational activities likely to involve contact with the water (eg surfing)

This information will enable SEPA to decide whether the proposal would have significant adverse impacts on the interests of recreational water users⁴. Advertising enables SEPA to take into account evidence from third parties about the importance of the receiving water for water-based recreational activities.

Note 5: Risks to third party interests within the mixing zone

Discharges that do not breach environmental standards are unlikely to significantly affect the interests of third parties unless:

- (i) there will be a mixing zone within which standards are breached; and
- (ii) third party interests are reliant on the quality of water in the mixing zone

Third party interests reliant on the quality of water in the mixing zone include:

- (a) the interests of operators of other controlled activities
- (b) commercial or recreational users of the part of the water environment lying within the mixing zone of the discharge

⁴ For guidance on how to make this assessment, see *WAT-RM-13: Regulation of Microbiological Discharges*

2. SEPA- or operator-initiated variations to bring about improvements to the water environment

SEPA will normally only require advertising of proposed variations aiming to bring about improvements to the water environment if the proposals are insufficient to enable the achievement of good status environmental standards.

The following sections provide guidance on how to identify exceptions to this where advertising is appropriate even though the proposal is expected to enable the achievement of good status standards.

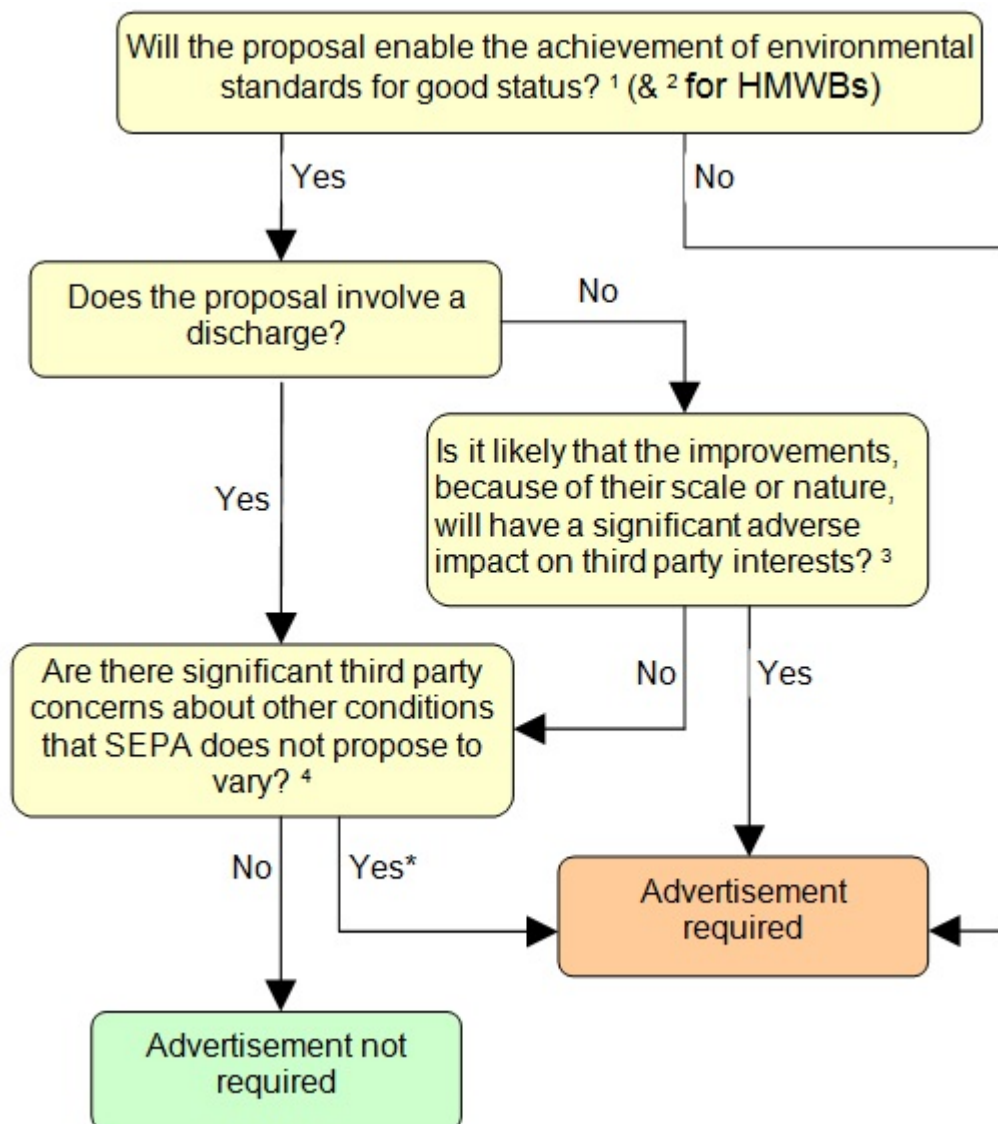
Before making an exception to the normal position on advertising, you should obtain agreement from your unit manager.

Figure 2 below sets out the steps you should consider in deciding whether to require advertising of a proposed variation relating to an environmental improvement objective.

Such variations may be operator-initiated or SEPA-initiated. They will generally be part of a licence review process intended to deliver the environmental improvements necessary to achieve the objectives of the river basin management plan.

These objectives include achieving:

- good status for water bodies by a specified deadline (2021 or 2027);
- the standards required to achieve the objectives for protected areas (eg a Natura 2000 protected area).

Figure 2 Advertising of proposals relating to environmental improvements

* Unit Manager approval required

Note 1: Deciding what to do where there are multiple pressures preventing the achievement of an environmental standard

Some waters that need improvement are affected by a number of pressures (eg multiple irrigation abstractions). In such cases, you should require advertising if the proposal you are considering does not represent a sufficient and proportionate contribution by the operator to reducing the impact of the pressures on the water body or bodies concerned.

Note 2: Good status standards and improvements to heavily modified water bodies

There are no set numeric environmental standards defining the modified water flows and levels or morphological conditions necessary to achieve good ecological potential in heavily modified water bodies. Instead, SEPA has to make judgements about what improvements - by means of mitigation measures - are practicable without significant adverse impacts on:

- (i) the use for which the water body has been designated (eg flood protection, hydroelectricity generation, drinking water supply)
- (ii) the wider environment

Proposals for improvements to heavily modified water flows and levels or morphological conditions should normally be advertised. This allows SEPA to take account of third party views when making judgements about the level of mitigation that is practicable without significant adverse impacts.

There may be occasional exceptions that might not require advertising. For an exception, the following must apply:

- (a) the proposed improvement would achieve a good status standard for flows, levels or morphological conditions
- (b) mitigation of other impacts of the designated use have previously been considered and dismissed as being impracticable or to have a significant adverse impact on that use or the wider environment.

Where these conditions apply, a decision on whether or not advertising is required should be made following the relevant steps set out in Figure 2.

Note 3: Abstractions and impounding works - advertising when good status standards will be achieved

Restoring the water environment to good status may sometimes have significant impacts on third party interests that were not possible to identify and consider when the environmental improvement objective was initially set in the river basin management plan. These impacts may result where:

- (i) the controlled activities necessary to implement the improvements (eg engineering works) cause significant disturbance
- (ii) other interests depend on, or benefit in some way from, the impacted condition of the water environment.

For example, the removal of structures such as small dams and weirs may have implications for:

- (a) built heritage interests
- (b) wildlife conservation interests
- (c) recreation (eg fishing)
- (d) landscape interests
- (e) the interests of other operators of controlled activities.

The following improvements have the greatest potential to affect other interests:

- (1) substantial engineering works in the water environment
- (2) major alterations to the water flows or levels of heavily modified water bodies (ie flows and levels associated with impounding works).

Improvements to discharges or to abstractions other than those associated with impounding works would not be expected to have significant impacts on third party interests.

Note 4: Third party concerns about other conditions of a licence

In some cases, SEPA may be aware of outstanding concerns about conditions of a licence that do not need to be varied to achieve the required environmental improvements. This may be because of a history of discussions with the third party or complaints received. A technical variation of a licence for the purpose of delivering environmental improvements should be used as an opportunity for such other concerns to be considered. Administrative variations should not be used in this way. Relevant concerns might include the timing of freshet releases from dams to support recreational fishery interests or conditions intended to protect wider conservation interests. Third party concerns over the allocation of capacity to the activity are not relevant in this context providing the operator is using water efficiently. For example, a concern by a third party developer that he is being prevented from carrying on a controlled activity because there is insufficient environmental capacity to accommodate it without breaching environmental standards is not a relevant concern.

Where agreement has been reached between the operator and the third parties on a relevant concern and the appropriate conditions to put this agreement in place have been included in the proposed variation, advertising is not required.

3. Other cases where proposals should be advertised

This section describes additional cases where advertising may be appropriate. Before deciding to require advertising for the reasons described below, you should obtain agreement from your unit manager.

3.1. Operator-initiated variations to conditions benefiting third party interests

Some licences have conditions that are there to protect or benefit the interests of third parties. For example, some licences relating to hydropower operations specify particular days of the week on which freshets have to be released. Changes to such conditions may adversely impact third party interests even though they do not have any consequences (positive or negative) for the ecological quality of the water environment.

Conditions on which third party interests may be reliant are most likely to relate to:

- the timing of controlled activities (eg when they are undertaken or when their effect is greatest or smallest);
- mitigation intended to off-set impacts on third party interests (including the provision of information about the timing of the activity).

3.2. Deviation from the use of published methods and standards when determining proposals

In making some determinations, SEPA may consider it appropriate to use methods or standards that deviate from published methods and standards. For example, this may be because a novel pollutant is proposed to be discharged and no environmental standard has been identified in Ministerial directions to SEPA, regulations or other relevant and authoritative publications.

Proposed controlled activities should be advertised where deviation from the published methods and standards is likely to make a material difference to the outcome of the determination.

3. When and Whom to Consult

SEPA will consult with public authorities on applications where it considers the proposal is likely to have a significant adverse effect on the water environment or interests of other users.

The Table below identifies the circumstances under which SEPA should consult other public bodies. A single proposal may fit into more than one category in the table.

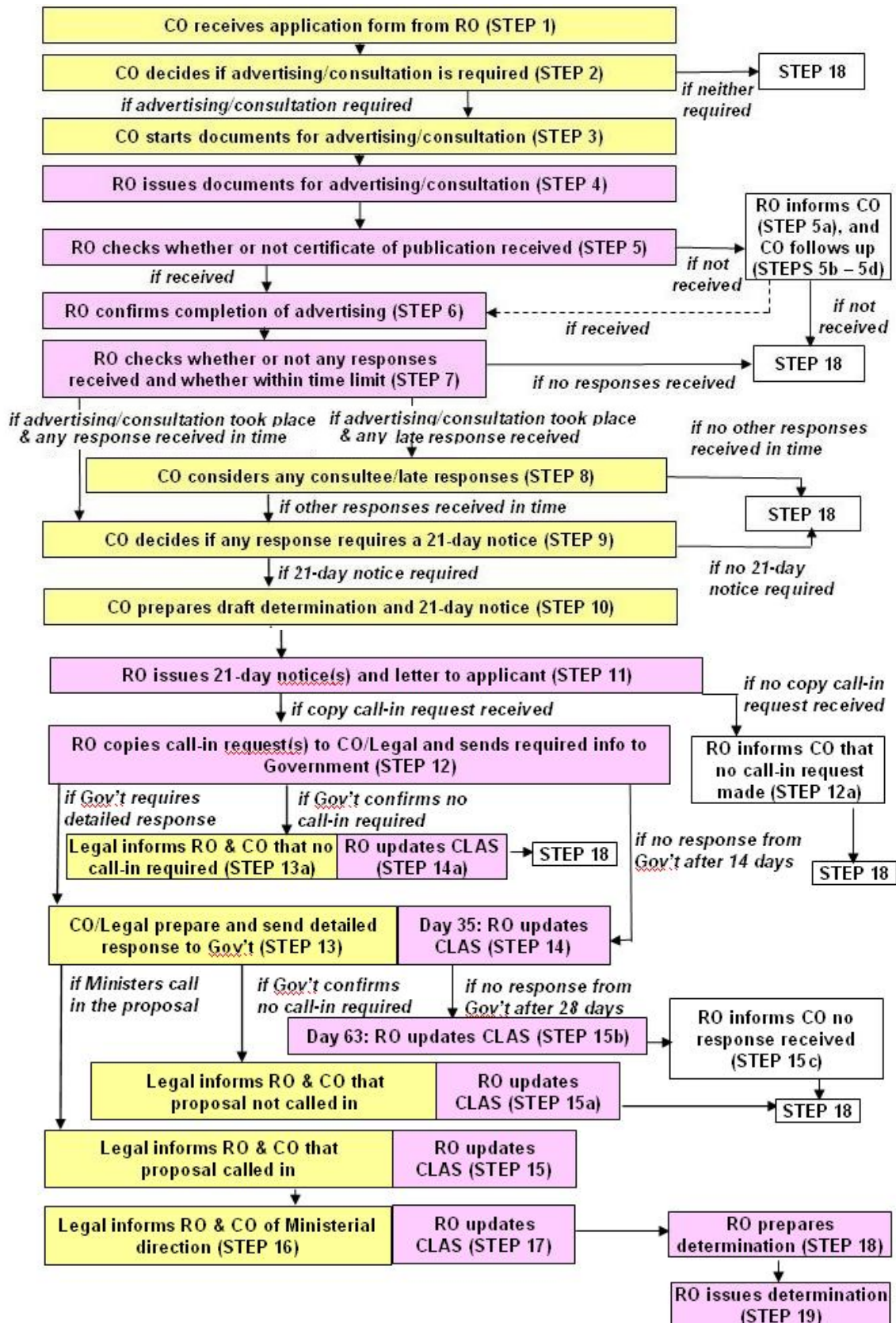
When consulting another public body, the CO should make clear to that body the information being sought and the reason for seeking that information. Further guidance is provided in *WAT-SG-67: Assessing the Significance of Impacts - Social, Economic, Environmental* in relation to information relevant to SEPA's assessments of the impact of proposals on a range of factors.

Table 1 Activities requiring consultation

Activity	Consultee
Proposals likely to have a significant adverse effect on a protected area for shellfish (shellfish growing water)	Scottish Ministers - Marine Scotland Food Standards Agency
Proposals likely to have a significant adverse effect on nature conservation sites – see <i>Nature Conservation Procedure</i> for details of when to consult Note: If consulting with SNH under Nature Conservation must also consult under CAR (use <i>WAT-LETT-86</i>)	Scottish Natural Heritage
Proposals likely to have a significant adverse effect on the quality of an actual or planned abstraction from a drinking water protected area	Scottish Water Local authority (protective services/environmental health)
Proposals likely to have a significant adverse effect on fish or fisheries (including proposals likely to affect fish migration)	<i>Fisheries Management Scotland</i> Scottish Ministers - Marine Scotland (where there is no relevant DSFB or fisheries trust)
Proposals likely to have a significant adverse effect on recreation interests	Scottish Natural Heritage Local authority (access officers) Sportscotland
Proposals likely to have a significant adverse effect on visual amenity	Scottish Natural Heritage Local authority (landscape advisors)
Proposals likely to have a significant adverse effect on designated landscapes	Scottish Natural Heritage Local authority (landscape advisors) Historic Environment Scotland (for proposals likely to affect sites on the Inventory of Gardens and Designed Landscapes)
Proposals likely to have a significant adverse effect on built heritage interests	Local authority Historic Environment Scotland
Proposals to discharge to a canal or waters feeding a canal, or to abstract from waters feeding a canal ⁵	<i>Scottish Canals</i>
Proposals likely to have a significant adverse effect on the nutrient level of Marine Waters and for activities also authorised by Marine Scotland.	Marine Scotland

⁵ Any 3rd party abstraction from a canal is the responsibility of *Scottish Canals* and the application should come from them.

4. Process Summary



5. Process Detail

CO = Coordinating Officer

RO = Registry Officer

STEP 1	RO/CO	CO Receives Application from RO
1		Registry pass application to CO
NEXT STEP		STEP 2

STEP 2	CO	decides if advertising / consultation is required
2(i)		CO decides if the proposal requires formal advertising / consultation with public authorities
CLAS:		End task "Advert Required" process with either "Advert Required" or "Advert Not Required" <i>NB If "Advert Required" is the outcome, this will automatically generate the "Send Advert Notice" process in Task History</i>
NEXT STEP	If advertising / consultation required	STEP 3
	If neither advertising nor consultation required	STEP 18

STEP 3	CO	starts documents for advertising / consultation
3(i)	CO completes specified sections (including Appendix 1) of WAT-LETT-05	<p><i>SEPA will inform the applicant using a standard letter (WAT-LETT-05) giving notice of the requirement to advertise and specifying the required form and wording for the advertisement.</i></p> <p><i>WAT-LETT-05 also includes a pro-forma certificate of publication, which the applicant must complete, identifying where and when the advertisement was placed, and return to SEPA, along with a copy of any advertisement, within 28 days of SEPA serving notice of the requirement to advertise. The RO will use that information to determine whether any third party representation is received timeously or not (see STEP 7 below).</i></p> <p><i>The CO collates the further information about the application that SEPA must make available during the period of advertising. This will include, where relevant, the summary results of any assessments SEPA undertook to decide that the proposal is likely to have a significant adverse impact on the water environment (the summary risk assessment form should be completed - WAT-FORM-31: CAR Risk Assessment Form.)</i></p>
3(ii)	CO completes WAT-FORM-05 and relevant sections of WAT-LETT-04 and/or WAT-LETT-86.	<p><i>The CO should decide on the relevant consultees (see When and Whom to Consult) and complete the consultation needs form (WAT-FORM-05) and relevant sections of a cover letter (WAT-LETT-04 and/or WAT-LETT-86) to be sent to each consultee, explaining the 21-day time period for responses. (Note: If consulting SNH for likely significant adverse effect on SSSI under section 15 of Nature Conservation (Scotland) Act 2004, the time period is extended to 28 days)</i></p>
3(iii)	CO forwards the following to Registry, where relevant:	<ul style="list-style-type: none"> • WAT-FORM-05 and draft WAT-LETT-04 and/or WAT-LETT-86 • Draft WAT-LETT-05 and copies of the further information about the application • Copies of completed summary Risk Assessment Form (WAT-FORM-31) for upload to the website.
CLAS:	n/a	
NEXT STEP	STEP 4	

STEP 4	RO	completes and issues documents for advertising / consultation
4(i)	RO completes: a) WAT-LETT-05, partially completed by CO, and b) 'CAR Advertising and 3rd Party Appeal Check Sheet' and places in "forward on" box for checking on relevant date.	
4(ii)	RO completes WAT-LETT-04 and/or WAT-LETT-86 started by CO for each consultee. WAT-LETT-04 and/or WAT-LETT-86 should be issued before or at least the same time as WAT-LETT-05.	
4(iii)	RO issues all required documents and updates CLAS.	
4(iv)	RO uploads to the relevant web page a PDF copy of full application including any plans, maps, supporting information together with the completed Risk Assessment Form (<i>WAT-FORM-31</i>) from CO.	
CLAS:	If "Send Advert Notice" process started by CO: Overwrite Start Date with date of issue of WAT-LETT-05 plus 2 days If WAT-FORM-05 supplied by CO: Create "Statutory Consultee" process for each consultee indicated by CO	
NEXT STEP	After notice of advertising issued and consultation process started	<i>STEP 5</i>

STEP 5	RO	checks whether or not certificate of publication received
5(i)	At end of 28-day period (or later agreed date under <i>STEP 5(b)(i)</i> or <i>5(c)(i)</i> below) RO checks 'CAR Advertising and 3rd Party Appeal Check Sheet' and Public Register file to see whether or not the duly completed certificate of publication (and copies of 2 adverts) have been received.	
CLAS:	n/a	
NEXT STEP	If certificate of publication received	<i>STEP 6</i>
	If no certificate of publication received	<i>STEP 5a</i>

STEP 5a	RO	notifies CO that no certificate of publication received
5a(i)	RO contacts CO to confirm that no certificate has been received.	
CLAS:	n/a	
NEXT STEP		<i>STEP 5b</i>

STEP 5b	CO	contacts applicant to discuss placing adverts
5b(i)	<p>CO contacts applicant to confirm whether or not advertisements have been placed in Edinburgh Gazette and local paper:</p> <p>(i) If both adverts have been placed, CO requests that pro-forma certificate of publication is duly completed and forwarded with copies of adverts to Registry by new agreed deadline.</p> <p>(ii) If both adverts have not been placed, CO agrees new deadlines for placing advert(s) and submitting certificate of publication (and copies of adverts).</p> <p>(iii) If applicant is reluctant to advertise, CO advises applicant that without advertising, application is likely to be refused.</p> <p>(iv) For SEPA-initiated variations SEPA can, where necessary advertise the variation and recover the costs it reasonably incurs in doing so. Therefore for SEPA initiated variations where the applicant fails to comply with a notice to advertise, the CO, in consultation with the Unit Manager, decides whether SEPA should advertise and recover its costs</p>	
CLAS:	n/a	
NEXT STEP	If adverts already placed and new deadline for submitting certificate of publication agreed	<i>STEP 5c</i>
	If both adverts not placed but new deadlines for advertising and submitting certificate of publication agreed	<i>STEP 5c</i>
	If applicant refuses to advertise or SEPA requires to advertise and recover costs	<i>STEP 5d</i>

STEP 5c	CO	notifies Registry that new deadline(s) agreed
5c(i)	CO records agreed new deadlines for advertising and/or submitting certificate of publication on working file and notifies Registry.	
CLAS:	n/a	
NEXT STEP		<i>STEP 5</i>

STEP 5d	CO	notifies applicant that application likely to be refused (or in the case of a SEPA initiated variation, decides whether SEPA will advertise)	
5d(i)	<p>CO informs applicant in writing that application likely to be refused (subject to RRT approval) unless the requirement to advertise is complied with.</p> <p>In the case of a SEPA initiated variation that SEPA requires to be advertised:</p> <ul style="list-style-type: none"> • CO advises Registry whether SEPA has decided to advertise the proposal; • Where SEPA has decided to do so, CO prepares advertising notice and passes to RO who places the advert • CO prepares cost recovery notice and passes to Registry for issue • RO issues cost recovery notice to the responsible person 		
CLAS:	n/a		
NEXT STEP	If certificate of publication duly received		<i>STEP 6</i>
	If certificate of publication not received - prepare to refuse (subject to RRT approval)		<i>STEP 18</i>

STEP 6	RO	confirms completion of advertising	
6(i)	RO copies certificate of publication to CO for working file, and updates CLAS and 'CAR Advertising and 3rd Party Check Sheet'		
6(ii)	RO uploads PDF copy of the latest published advert to relevant web page		
CLAS:	<p>End "Send Advert Notice" process with latest date of placement of advert</p> <p><i>NB This will automatically generate the "Advert Placement" process in Task History with a start date of the latest date of placement of advert and an end date of 28 days later.</i></p>		
NEXT STEP			<i>STEP 7</i>

STEP 7	RO	checks whether or not any responses received and whether or not within 28 days of last advert
7(i)	At least 28 days after last date of advert placement, RO checks 'CAR Advertising and 3rd Party Appeal Check Sheet' and Public Register file for responses, checks if responses were made within 28 days after last date of advert placement, and updates CLAS.	
7(ii)	Either RO places all responses on the public register (unless a request has been made not to) and copies them to the CO, indicating whether or not they were received within time-limit. Or RO notifies CO if no responses at all were received.	
7(iii)	If consultation responses received from Public Authorities, RO to upload PDF copies of these to relevant web page on date of receipt (for advertised applications only) and copies to CO.	
CLAS:	End each "Statutory Consultee" process with "Response Received" or "Response Not Received", as applicable. For any late consultee response, add comment stating 'outwith time-limit' to "Statutory Consultee" process. Create and end "Representation from 3rd Party" process in Task History for each response received and end the process with either "Received within time" or "Not received within time".	
NEXT STEP	If advertising took place and any response received within time limit	<i>STEP 9</i>
	If advertising took place and any response received outwith time limit	<i>STEP 8</i>
	If no responses received	<i>STEP 18</i>

STEP 8	CO	considers any consultee/late response(s) received
8(i)	CO takes account of any responses received after time-limit (where advertising took place) and records considerations on working file.	
	The CO should still consider any late responses when determining the application, but the weight given to any late response will depend on how significant its contents are and how late it is received.	
CLAS:	n/a	
NEXT STEP [CO]	If no other responses received within time-limit	<i>STEP 18</i>
	If other responses received within time-limit	<i>STEP 9</i>

STEP 9	CO	decides if any response requires a 21-day notice
9(i)	CO considers any response received on time and decides if it is a 'third party representation' or merely provides information.	
	<p><i>Where any response raises any issue or provides any information relevant to the determination of an application, the CO should ensure that the issue and/or information is considered, and that the consideration is recorded on the working file.</i></p> <p><i>However, SEPA distinguishes responses that raise issues (positive or negative) about the proposal from those that provide useful factual information, without passing comment. Only the former are considered to be 'third party representations' in terms of CAR, thereby triggering the 21-day notice provisions (provided they were made on time – see STEP 7 above). Thus any third party who has simply provided information to SEPA and passed no comment on the merits of the proposal need not be sent a 21-day notice (so a third party who raises concerns about a proposed controlled activity increasing the risk of flooding to their property would not be sent a 21 day notice. Remember, CAR is not to be used as a mechanism to control flooding).</i></p> <p><i>Where the CO decides that any response does not require a 21-day notice, this should be recorded on the working file.</i></p>	
CLAS:	n/a	
NEXT STEP	No 21-day notice required	STEP 18
	21-day notice required	STEP 10

STEP 10	CO	produces draft determination and 21-day notice
10(i)	CO produces draft schedule(s) to licence/notice of refusal/ variation/ surrender and completes specified parts of WAT-LETT-78 (21-day notice).	
	<p><i>After completing the determination process, including where necessary, submission to the relevant Regulatory Review Team, the CO should ask the RO to serve 21-day notice of the proposed determination on any third party (including consultees) who responded within the time-limit following advertising.</i></p> <p><i>The CO should prepare the draft notice (WAT-LETT-78), including an explanation of how each third party representation has been taken into account.</i></p> <p><i>If less than 62 days remain on the clock for determining the application, the CO should seek an extension to the determination period from the applicant.</i></p>	
CLAS:	n/a	
NEXT STEP		STEP 11

STEP 11	RO	completes and issues 21-day notice(s) and letter to applicant re draft determination
11(i)	On receipt of relevant paperwork from CO, RO completes 21-day notice for each third party or consultee who responded on time and issues with relevant draft schedule(s) using first class postage. RO completes certificate of posting and obtains countersignature from second RO or Admin officer witnessing posting.	
11(ii)	RO produces <i>WAT-LETT-66</i> (letter to applicant re draft determination) and issues with relevant draft schedule(s) and copy of 21-day notice(s).	
11(iii)	RO updates 'CAR Advertising and 3rd Party Appeal Check Sheet' and places in "forward on" box for checking on relevant date.	
CLAS:	Create ONE "Send 21-day Notice(s)" process with start date 2 days after date of posting	
NEXT STEP	If copy call-in request received	<i>STEP 12</i>
	If no copy call-in request received	<i>STEP 12a</i>

STEP 12	RO	copies call-in request(s) to CO/Legal and sends required info to Government
12(i)	RO updates CLAS and copies call-in request(s) to CO and Legal as soon as each one is received.	
12(ii)	RO sends Gov't copies of original third party representations, 21-day notices and draft licence/notice of refusal/variation/surrender.	
12(iii)	RO updates 'CAR Advertising and 3rd Party Appeal Check Sheet' and places in "forward on" box for checking on relevant date.	
12(iv)	At end of 21-day period RO checks 'CAR Advertising and 3rd Party Appeal Check Sheet' and Public Register file in case any copies of other call-in requests to Ministers have been received (and repeats 12 (i), (ii) and (iii) as necessary).	
CLAS:	On last day of 21 day period and not before, end "Send 21-day notice(s)" process with "Call-in request made to Scottish Ministers" <i>NB This will automatically generate the "Ministerial 14 Day Consideration" process in Task History, which does not stop the clock.</i>	
NEXT STEP - CO / LEGAL	If Gov't requests detailed response	<i>STEP 13</i>
	If Gov't confirms no call-in required	<i>STEP 13a</i>
NEXT STEP - RO	If informed that detailed response requested or if no communication from Gov't after 14 days	<i>STEP 14</i>

STEP 12a	RO	confirms to CO that no call-in request made to Ministers
12a(i)	On last day of 21 day period RO updates CLAS and confirms to CO that no call-in request was made and that they have 14 days to produce DAF and issue licence/ notice of refusal/ variation/ surrender. (No substantive changes may be made at this stage, i.e. only typos in draft licence/ notice may be corrected.)	
CLAS:	On last day of 21 day period and not before, end "Send 21-day notice(s)" process with "No call-in request made to Scottish Ministers"	
NEXT STEP		<i>STEP 18</i>

STEP 13	CO/Legal	prepare and send detailed response to Gov't
13(i)	Legal notifies RO and CO that request for detailed response received from Government and copies it to CO.	
13(ii)	CO drafts, within 1 week* of request, letter containing detailed justification of proposed determination, attaching copies of report to RRT (or decision document) and extract minute of RRT.	
13(iii)	Legal finalises letter within 1 week* of receiving draft from CO.	
13(iv)	*If Gov't requests detailed response more than 14 days after end of 21-day period, Legal should agree shorter timescales for providing detailed response with CO and, if necessary, the Gov't.	
CLAS:	n/a	
NEXT STEP		<i>STEP 14</i>

STEP 13a	Legal	informs RO and CO that no call-in required
13a(i)	Legal confirms to RO and CO that they have 14 days to produce DAF and issue final licence/notice of refusal/variation/surrender. (No substantive changes may be made at this stage, i.e. only typos in draft licence/ notice may be corrected.)	
CLAS:	n/a	
NEXT STEP		<i>STEP 14a</i>

STEP 14	RO	updates CLAS
14(i)		On last day of 14-day period RO updates CLAS and 'CAR Advertising and 3rd Party Appeal Check Sheet' with new end date for determination period (i.e. add 28 days).
14(ii)		(If Legal informs RO of detailed response request after end of 14-day period, no action by RO needed: proceed to next step as shown below.)
CLAS:		On last day of 14-day period and not before, end "Ministerial 14 Day Consideration" process with "Detailed response requested" (even if no Gov't communication has been received after 14 days). <i>NB This will automatically generate the "Ministerial 28 Day Consideration" process in Task History, which stops the clock for a period of 28 days</i>
NEXT STEP	If informed that proposal called in	STEP 15
	If informed that proposal not called in	STEP 15a
	If nothing heard after 28 days	STEP 15b

STEP 14a	RO	records in CLAS that no call-in required
14a(i)		RO updates CLAS and 'CAR Advertising and 3rd Party Appeal Check Sheet'
14a(ii)		(If Legal informs RO that no call-in is required after end of 14-day period, use STEP 15a instead.)
CLAS:		End "Ministerial 14 Day Consideration" process with "No Call In" <i>NB This will automatically restart the clock.</i>
NEXT STEP		STEP 18

STEP 15	RO	records in CLAS that proposal called in
15(i)		RO updates CLAS
CLAS:		End "Ministerial 28 Day Consideration" process with "Call-In" <i>NB This will automatically generate the "Scottish Ministers Determination" process in Task History with an expected number of days of 999 as this stops the clock until the Ministers have determined the proposal themselves.</i>
NEXT STEP		STEP 16

STEP 15a	RO	records in CLAS that proposal not called in
15a(i)		RO updates CLAS and 'CAR Advertising and 3rd Party Appeal Check Sheet'
CLAS:		End "Ministerial 28 Day Consideration" process with "No Call-In" <i>NB This will automatically restart the clock.</i>
NEXT STEP		STEP 18

STEP 15b	RO	records in CLAS that no response received
15b(i)	On last day of 28 day period RO checks with Legal that no communication has been received from the Ministers, updates CLAS and 'CAR Advertising and 3rd Party Appeal Check Sheet'	
CLAS:	On last day of 28-day period and not before, end "Ministerial 28 Day Consideration" process with "No communication" <i>NB This will automatically restart the clock.</i>	
NEXT STEP		<i>STEP 15c</i>

STEP 15c	RO	informs CO that no response received
15c(i)	RO confirms to CO that they have 14 days to produce DAF and issue final licence/notice of refusal/variation/surrender. (No substantive changes may be made at this stage, i.e. only typos in draft licence/ notice may be corrected.)	
CLAS:	n/a	
NEXT STEP		<i>STEP 18</i>

STEP 16	Legal	notifies CO/RO of Ministerial direction when received
16(i)	Government will notify Legal of final decision on a called in application. Legal to notify RO and CO of final decision.	
16(ii)	CO and Legal to follow Ministerial direction and submit DAF and issue licence/ notice accordingly within 14 days.	
CLAS:	n/a	
NEXT STEP		<i>STEP 17</i>

STEP 17	RO	records Ministerial direction in CLAS
17(i)	RO to update CLAS	
CLAS:	End "Scottish Ministers Determination" process with "SEPA issue" or "SEPA do not issue", as applicable	
NEXT STEP		<i>STEP 18</i>

STEP 18	RO	prepares determination
18(i)	CO prepares either Notice of Refusal/Schedule of Conditions and DAF and forwards to Registry as per licence consistency	
18(ii)	CO copies the completed Decision Document (WAT-FORM-28) to Registry. WAT-FORM-28 should contain the following information concerning the application: <ul style="list-style-type: none"> • SEPA's decision, • the main reasons for it, • the matters considered in making it, and • where the application is granted, details of any measures which will be taken to prevent, mitigate, remedy, or offset that significant adverse impact 	
CLAS:	CO to make sure that all relevant CLAS steps apart from Registry steps have been completed by validating CLAS	
NEXT STEP		<i>STEP 19</i>

STEP 19	RO	issues determination
19(i)	RO prepares front notice and arranges signature of determination as per licence consistency	
19(ii)	Once signed determination has been received for issue by registry RO to ensure PDF version of final licence is uploaded to relevant web page on date of issue along with PDF of final Decision Document (WAT-FORM-28) which should also be placed on Public Register	
CLAS:	RO to update status, status date and issue date, validate and authorise CLAS	
NEXT STEP		END

References

NOTE: Linked references to other documents have been disabled in this web version of the document.

See the Water >Guidance pages of the SEPA website for Guidance and other documentation (www.sepa.org.uk/water/water_regulation/guidance.aspx).

All references to external documents are listed on this page along with an indicative URL to help locate the document. The full path is not provided as SEPA can not guarantee its future location.

- *SW-1-P: Management of Scottish Water Abstraction Data*

- *WAT-RM-34: Derogation Determination - Adverse Impacts on the Water Environment*

- *WAT-SG-67: Assessing the Significance of Impacts - Social, Economic, Environmental*

- *WAT-FORM-05: CAR Consultation Needs Form*

- *WAT-FORM-31: CAR Risk Assessment Form*

- *WAT-LETT-04: Letter to Formal Consultee (non-SNH)*

- *WAT-LETT-05: Letter Confirming Receipt and Need for Advertisement*

- *WAT-LETT-66: Letter to Applicant re 3rd Party Draft Determination Notice*

- *WAT-LETT-78: 21-day Notice Letter*

- *WAT-LETT-86: SNH Consultation Letter*

- *Fisheries Management Scotland* (www.fms.scot)

- *Nature Conservation Procedure* (SEPA Intranet)

- *Scottish Canals* (www.scottishcanals.co.uk/), Trading name for *British Waterways* in Scotland - www.britishwaterways.co.uk)

- *Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006, SSI 553* (www.ecolex.org)

- End of Document -