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Water Use

# **Regulatory Method (WAT-RM-49)**

## **CAR 2011 Emergency Provisions and Accelerated Determination**

Version: v3

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### Update Summary

Version	Description
v1	First issue for Water Use reference using approved content from the following documents: <i>P1_WAT-RM-49 Emergency Provisions 2011 Guidance v6</i>
v2	Updated to clarify charging requirements, verbal authorisation procedures (issuing & recording) and general Reg 18 methods.
v3	Updated to clarify no appeal process and need to consult RRT constitution

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## 1. Key Points & Process Flowchart

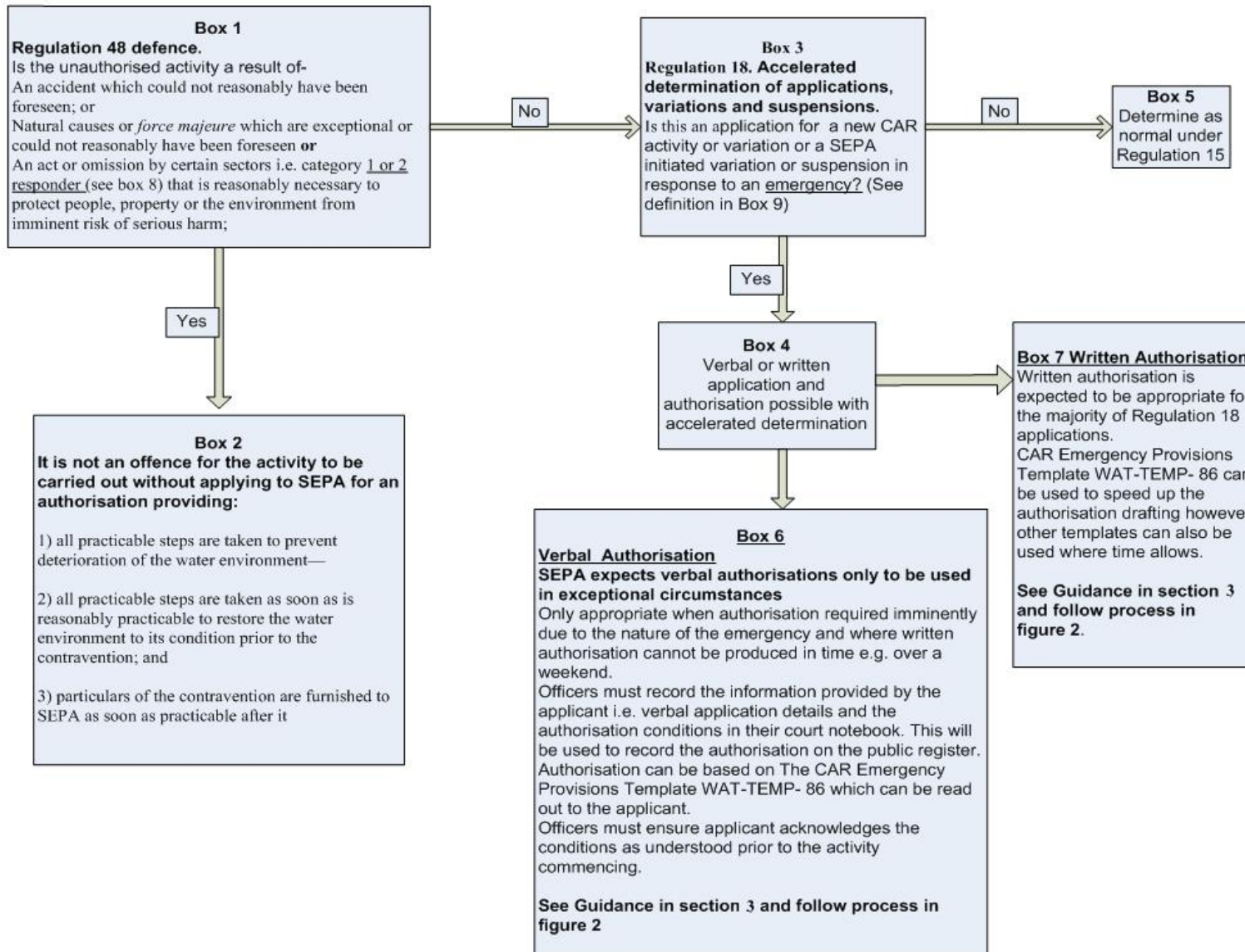
The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR 2011), which came into force on 31 March 2011, introduce 2 new regulations which are relevant in emergency situations:

- Regulation 48 which provides a defence for unauthorised activities which are the result of an accident, natural causes, force majeure or carried out by certain persons as long as they satisfy specified conditions.
- Regulation 18 accelerated determination for new **applications or variations and suspensions** which need to be implemented, in a shorter period of time by reason of “emergency”. “Emergency” is given a very specific meaning in Regulation 18(8) see figure 1 Box 9.

This guidance helps to explain when these new regulations apply and identifies the appropriate process for issuing the licence/variation/suspension (as appropriate).

**A general overview of these new provisions is shown in Figure 1.**

**Figure 1 CAR 2011 Emergency Provisions Process Flowchart**



**Box 8: Regulation 48 Category 1 or 2  
Responder Definition**

**Category 1**

Local authorities

Emergency services

A fire authority.

The Scottish Ambulance Service Board.

Health Board

The Scottish Environment Protection Agency

**Category 2**

Utilities in electricity, transport, communications  
and Scottish Water

**Box 9 : Emergency Definition under Regulation 18**

**An event or situation which threatens serious damage to human welfare i.e.**

- (a) loss of human life,
- (b) human illness or injury,
- (c) homelessness,
- (d) damage to property,
- (e) disruption of a supply of money, food, water, energy or fuel,
- (f) disruption of a system of communication,
- (g) disruption of facilities for transport, or
- (h) disruption of services relating to health

**An event or situation which threatens serious damage to the environment i.e.**

- (a) contamination of land, water or air with biological, chemical or radio-active matter, or
- (b) disruption or destruction of plant life or animal life.

**An event or situation SEPA is instructed to treat as an emergency by Scottish Ministers**

## 2. The Defence Provision – Regulation 48

The defence provisions detailed in Regulation 48 apply to unauthorised activities carried out as a result of an accident, natural causes or force majeure OR unauthorised controlled activities carried out by Category 1 or 2 responders (See Figure 1 Box 8) to protect people, property or the environment from imminent risk of serious harm. The latter defence only applies where the unauthorised controlled activity is reasonably necessary and SEPA would expect it to only be relevant for the immediate actions taken at the scene of an incident to protect people, property or the environment from imminent harm.

The operator must be a category 1 or 2 responder as defined in Box 8 (in Figure 1), and needs to be responding to an imminent risk.

Those carrying out controlled activities that fall within this defence (Figure 1, Box 1) must comply with the conditions in Figure 1 Box 2 i.e.

- 1) all practicable steps must be taken to prevent deterioration of the water environment,
- 2) all practicable steps must be taken as soon as is reasonably practicable to restore the water environment to its condition prior to the contravention; and
- 3) SEPA must be informed of the particulars of the activity as soon as practicable after the event.

Where time allows, the operator may seek advice on the most appropriate mitigation from SEPA or a third party with appropriate experience and expertise.

### **IMPORTANT**

Please note that the responsible person or operator e.g. the fire brigade will need to take advice, in advance, on which activities will be covered by the defence so that they are aware what action can be taken in an emergency situation. SEPA have therefore highlighted the introduction of this regulation to certain sectors e.g. the fire brigade, Scottish Water and Local authorities to enable them to seek advice.

The responder should satisfy themselves that the defence applies prior to carrying out the activity. If SEPA disagrees however they are entitled to issue an enforcement notice or to refer the matter to the Procurator Fiscal.

### 3. Accelerated Application and Determination - Regulation 18

Regulation 18 provides for accelerated determination of **applications for new controlled activities, variations, and suspensions**. This regulation would be applicable where Regulation 48 does not apply but where an activity has to be carried out within hours, days or weeks and cannot reasonably wait for the normal registration or licence determination period.

The operator or responsible person must be responding to an emergency as defined in Figure 1 Box 9, and can be anyone i.e. they may or may not be a Category 1 or 2 responder as defined in Box 8. The normal levels of authorisation in the Practical Guide apply.

Due to the urgency of these activities Regulation 18 allows written but also **verbal** application and authorisation. The use of this accelerated procedure must not be abused e.g. used where poor planning of routine maintenance has occurred– please discuss this with your local Legal Team where time permits.

The **verbal application** enables application to be made for example by phone or on site. It will need to be clear from the information provided by the applicant why the activity is an emergency as defined in Figure 1 Box 9.

**Verbal application** should only be necessary where permission is required imminently and there is not sufficient time to send SEPA a paper application or even an e-mail or fax with the necessary details. The applicant must provide sufficient information to enable SEPA to process the application i.e. activity(s) applied for, responsible person (licence only), contact details, billing address, site details and activity details, site and activity NGR, variation details and must assure SEPA that the conditions in the pro forma authorisation or varied conditions can be met. The name of a responsible person must also be identified as well as details of the mitigation that will be provided to limit the impact.

In terms of CAR 2011, notification of grant of authorisation under Regulation 18 may also be written or verbal, however **verbal authorisations** should be very rare.

A **verbal authorisation** will be exceptional and should only be issued where permission is required imminently i.e. within a few hours due to the nature of the emergency or where written authorisation is impracticable out of office hours. In many cases temporary solutions will already be or can be put in place such as the closure of small roads where a bridge has collapsed, tankering away of sewage or the provision of alternative electricity supply. This delay will provide an opportunity for a written authorisation to be issued and therefore verbal authorisation will usually be unnecessary. **See Examples section.**

Where an application fits the criteria above and a verbal authorisation is to be issued this should be agreed and given by a Unit Manager. [WAT-TEMP-86:](#)



[CAR Emergency Provisions Pro Forma](#) can be read out to the applicant adding the site specific details.

Officers must record the information provided by the applicant i.e. verbal application details and the authorisation conditions in their court notebook. This will be used to record the authorisation on the public register. The details must be acknowledged, verbally or written, as understood by the operator prior to the controlled activities commencing.

The **written application** can arrive by fax, e-mail, post etc. and must contain sufficient information for SEPA to determine it e.g. activity(s) applied for, responsible person, contact details, billing address, site details and activity details, site and activity NGR. It is important that the application is recorded as a Regulation 18 application in CLAS. There is a tick box on the application form to highlight this to Registry.

A risk assessment to identify sensitive receptors should be carried out insofar as it is reasonably practicable to do so but where time is limited this should focus on assessing the justification and mitigation that is acceptable in the timescale. In some circumstances it may be inevitable that an adverse impact on the water environment will be caused however the applicant should discuss and identify what steps will be taken to mitigate the impacts. The agreed mitigation should be included as conditions in the authorisation and site specific conditions can be added to the CAR Emergency Provisions pro forma.

SEPA does not need to carry out formal consultation or advertising for Regulation 18 determinations however, where time allows, relevant parties should be consulted e.g. telephone discussion with SNH in protected areas.

**All applications and authorisations must be recorded on the public register. To ensure the correct internal procedures are followed please see figure 2.**

**Regulation 18 also applies to accelerated implementation of suspensions.** The date on which the suspension takes effect may be less than the 28 days required in terms of Regulation 29(2), but the remaining requirements for suspension of a licence will apply.

### Charging

Activities carried out under regulation 48 do not require to be authorised therefore charging is not applicable. Verbal authorisations granted under Regulation 18 will not incur an application fee; all other authorisations are charged in line with the current Water Environment (Controlled Activities) Fees and Charges (Scotland) Scheme. It is important that SEPA records all Regulation 18 applications, verbal and written and this is done through CLAS.

### Appeals

There is no appeal process associated with licences issued under Regulation 18.

## Examples

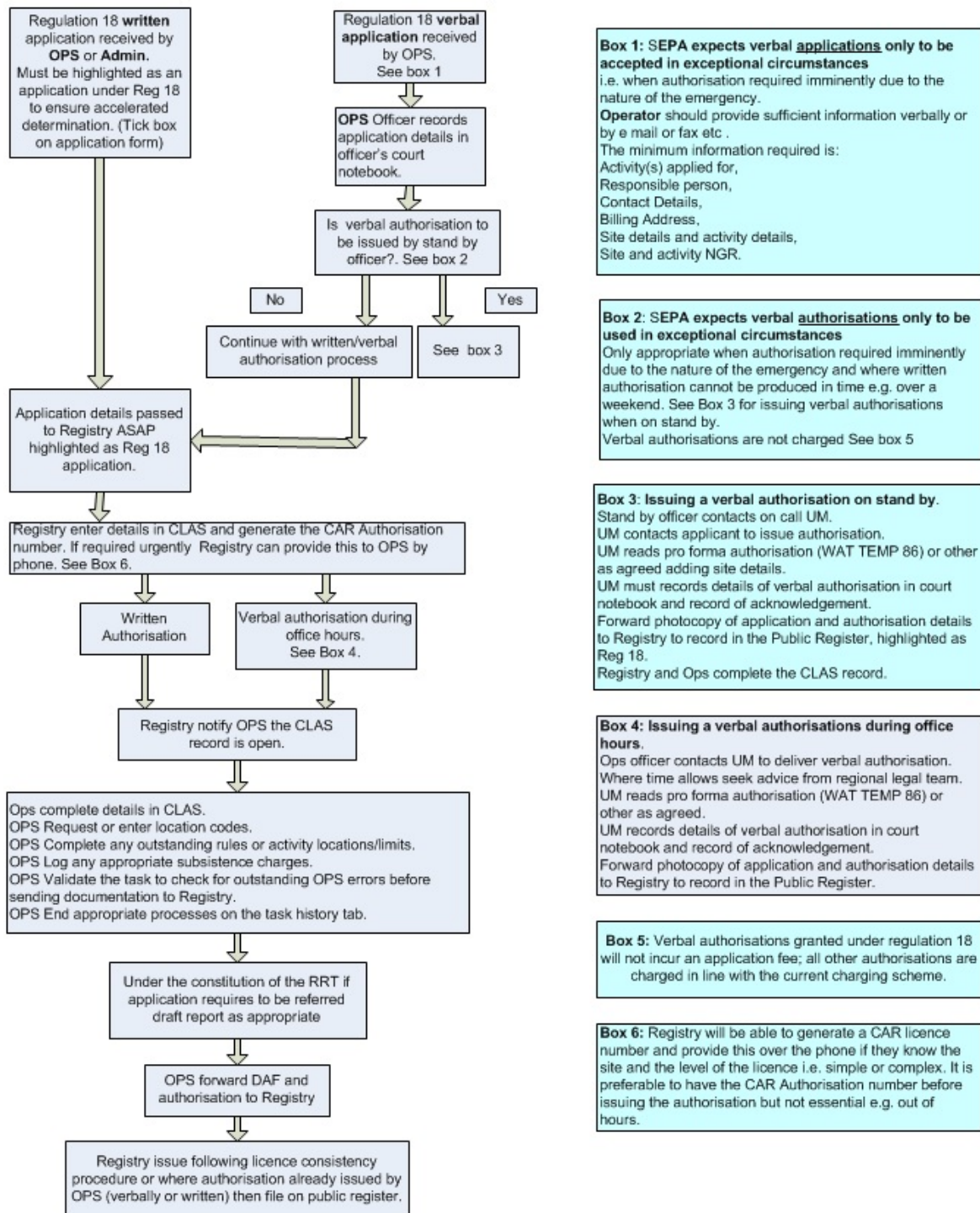
- Scottish Water want to increase the abstraction volume from an existing supply or abstract water from a new supply as a result of a drought situation. Droughts develop over a period of time during which Scottish Water monitor the available resource within a catchment and can predict when supplies will run low based on various rainfall scenarios. Scottish Water will be in contact with SEPA during this period and the possibility of alternative sources and their appropriateness will be discussed. As this is a developing situation and therefore can be reasonably foreseen it does not fall into Regulation 48. In such circumstances SEPA will require a written application and may determine it under Regulation 18.
- Fire Brigade wish to abstract water to deal with a fire and then to discharge the fire water and foam into a watercourse. No application required as category 1 responder and imminent risk of serious harm, defence in Regulation 48 is likely to be applicable see Figure 1 Box 1, provided mitigation conditions in Box 2 are met.
- Local Authority dealing with collapsed culvert which will result in a road closure. This is likely to fit within Regulation 18, Figure 1 Box 3 and the definition of an emergency i.e. an event or situation which threatens serious damage to human welfare i.e. (g) disruption to facilities for transport. Lack of maintenance does not exclude the use of this provision for this situation. There will however have to be a judgement here on the level of disruption caused and therefore how urgent the works are. A trunk road or small road that is the **only** access to a village is likely to threaten human welfare and therefore require verbal/written authorisation urgently however where other roads can be used and the impact on human welfare is small then there is likely to be time for written application and authorisation but still under Regulation 18.
- Flood water is eroding the river bank and a house is in danger of falling into the river. Works undertaken by Category 1 and 2 responders to protect the house during the flood would have a defence under Regulation 48 (Box 1). However once the flood has passed engineering works required urgently but without imminent risk to protect the house in the longer term can be dealt with as an accelerated determination (Regulation 18) allowing discussions to take place regarding the best options available and mitigation. It may be that the works carried out initially will protect the house for several months in which case a full determination and risk assessment may be possible including advertising if appropriate.
- At a sewage treatment works, the end of the outfall pipe has become blocked by sediment as a result of a flood event. The works is relatively small and to prevent the sewer pipe surcharging and untreated sewage running over some land and into the river, the operator has a tanker working to remove sewage from the works. This does not fit within Regulation 48 because there is not any imminent risk of serious harm due to the temporary set up with the tanker. If the sediment removal does not fit with the GBR for sediment removal at an outfall then an

authorisation is required. It would however be unreasonable to take 4 months to process the simple licence application for sediment removal to unblock the pipe but there is time to issue a written authorisation. Regulation 18 would apply and the operator should apply either by filling in an application form or by sending sufficient details by e mail or fax. SEPA could then use the pro forma [WAT-TEMP-86: CAR Emergency Provisions Pro Forma](#) to issue the authorisation promptly.

- A fault has been detected in an electricity cable which runs under a river. A temporary supply is in place and to replace the cable a plan has been drawn up to dam and over pump the river. There is a temporary solution in place and the required work is not imminent therefore there is time to issue a written authorisation which can be completed within a day or so under Regulation 18. This is a registration activity and the registration authorisation could ideally be issued quickly otherwise WAT-TEMP-86 CAR Emergency Provisions pro forma could be used.
- Carcass burial in the event of a notifiable disease outbreak. This is likely to fit within Figure 1 Box 3 and the definition of an emergency. Depending on the timeframe verbal authorisation can be given on site for a short time and followed up subsequently by an accelerated application and written authorisation. This written authorisation will need to remain in place for some time to allow control of the site over many years.

It is intended that when SEPA issues a Regulation 18 authorisation, the example can be added to this list to inform other staff. Please therefore discuss any examples with a member of the Operations National [Water Unit](#) or Water Legal.

**Figure 2 Process for Accelerated Determination of New Applications (Regulation 18)**



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