



## Water Environment (Controlled Activities) (Scotland) Regulations 2011

# Guidance for Transport Infrastructure Projects (WAT-SG-93)



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## Update Summary

| Version | Description  |
|---------|--|
| v1      | First issue available as PDF on SEPA website to Oct 2017.  |
| v2      | Joint SEPA/Transport Scotland Document outlining process Guidance for Large Road / infrastructure projects (Updated doc created from v1 PDF) |
| v3      | Updated to include reference to Construction site licence and planning related comments  |

### 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. Purpose of document

This document has been produced jointly by the Scottish Environment Protection Agency (SEPA) and Transport Scotland to provide guidance on the requirements of the *Water Environment (Controlled Activities) (Scotland) Regulations 2011* (CAR) in relation to major construction, improvement or maintenance works relating to transport infrastructure.

This guidance aims to promote engagement between SEPA and Transport Scotland to ensure that the necessary authorisations under CAR can be secured at the correct point in the project cycle.

**Transport Scotland** is the national transport agency for Scotland and is accountable to Parliament and the public through Scottish Ministers, with a budget of around £2 billion per year. Transport is a vital feature of the Scottish Government's focus on increasing sustainable economic growth, and transport investments and policies have major impacts on the economy, people, and the environment.

Transport Scotland is committed to ensuring CAR is applied effectively throughout the planning, design, construction, and maintenance of projects.

It is intended for this guidance to be used by SEPA and Transport Scotland staff, consultants and contractors. It identifies the requirements of CAR that may apply to projects and highlights key points that should be considered in the design process which Transport Scotland undertakes.

The key aims of this guidance are to:

- promote early consideration of the requirements of CAR during the development process for roads projects;
- to ensure engagement between SEPA and Transport Scotland to reduce the risk of authorisations being refused or significantly delayed at the later stages.

The guidance focuses on examples related to road projects but the principles may be regarded as applicable to other transport infrastructure projects e.g. rail.

**Important Note :** While this guidance is written specifically in relation to CAR, this guidance does not preclude the requirement to meet other legislative controls, for examples your proposals may still require to obtain any necessary permission from local planning authority, SNH, etc – See section 9 for other considerations.

## 2. Introduction

The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) came into force in April 2006, making it a requirement for specified activities which may have an impact on the water environment to be authorised by SEPA. The regulations were then updated in 2011 and have subsequently also been amended in 2013 and 2017

Some of the activities controlled by the CAR regulations are likely to be carried out as part of services Transport Scotland deliver during the construction and maintenance of transport infrastructure projects. It is therefore essential that Transport Scotland, and their consultants and contractors, give consideration to the requirements of the regulations

This document provides key points to be considered to ensure CAR requirements are met during the planning, design, construction, and maintenance of a transport infrastructure project. Some of the topics covered are:

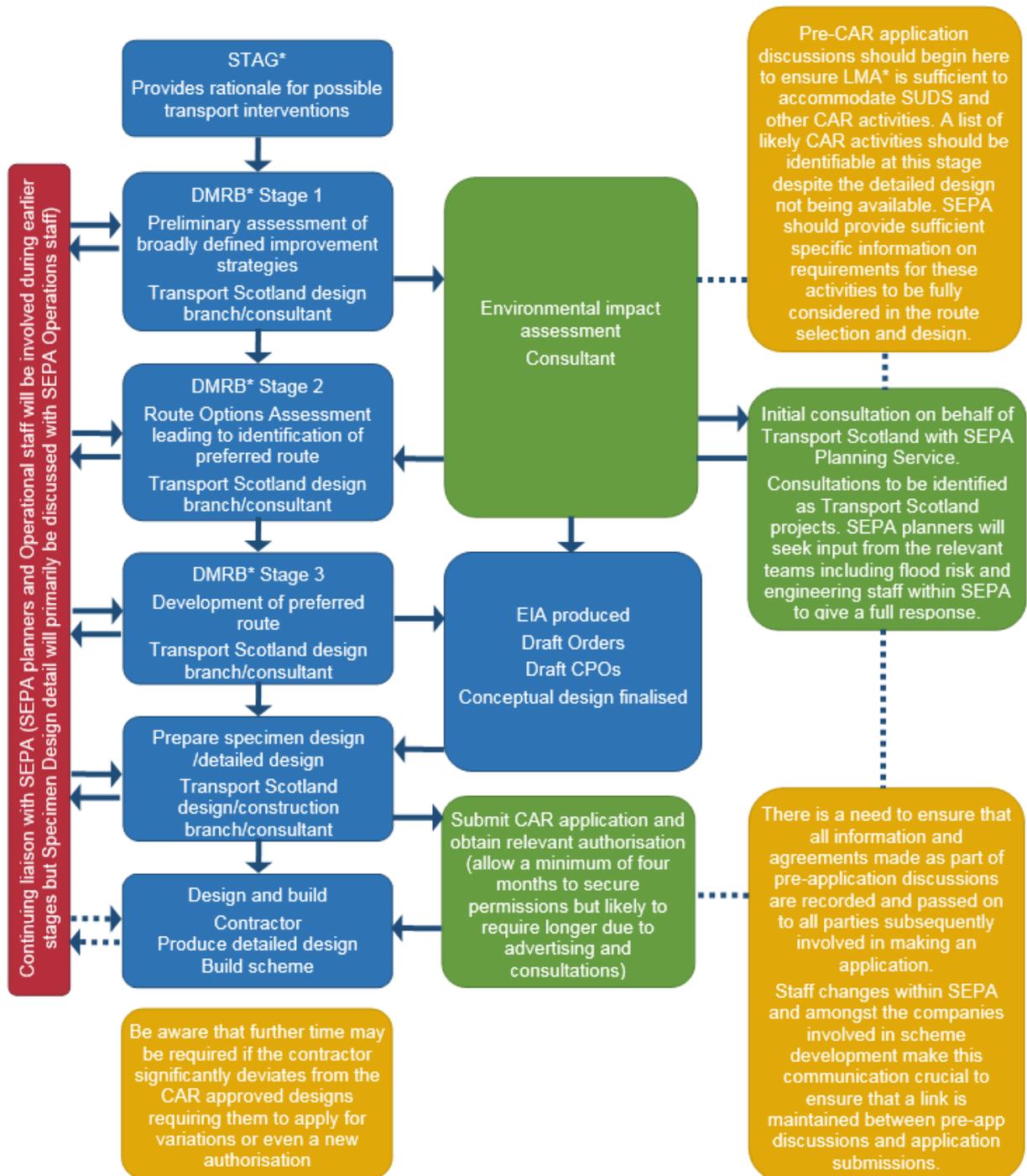
- linking the CAR and roads development processes;
- consultation with SEPA;
- types of CAR authorisations that can be issued;
- meeting CAR requirements;
- summary of the key stages of the authorisation process under CAR;
- advice on how to complete an application;
- submitting an application;
- modifications to a licence.

There are a number of guidance documents produced by SEPA which give detailed information on these topics, and links to these are provided within the text, and a list is included in the reference section.

### 3. CAR and the project development process

Figure 1 outlines the key stages in the development of a road project and shows the points at which SEPA should be consulted. It highlights the potential impacts of a project on the water environment, and possible CAR requirements that should be considered at the early stages of the project.

**Figure 1 Linking CAR requirements with the road development process**



\* (STAG) Scottish Transport Appraisal Guidance  
 \* (DMRB) Design Manual for Roads and Bridges  
 \* (LMA) Land made available

## 4. Consultation with SEPA

Consultations should be sent directly to the Planning Service at the *SEPA office* in the area where the project is situated. Planning Service staff will ensure that all relevant SEPA departments are consulted. Their comments are then included within a written response, and generally provided within 14 days. provides more information on SEPA's role as a consultee.

Consultations regarding projects for which SEPA's comments are sought should be sent directly to the Planning Service (*planning.infrastructure@sepa.org.uk*). Planning Service staff will ensure that all relevant SEPA departments are consulted. Their comments are then included within a written response, and generally provided within 14 days. *LUPS-GU1: SEPA's role in development management and similar consultations* provides more information on SEPA's role as a consultee.

In the early stages of a project, an initial consultation with SEPA will occur before the design is sufficiently developed, this is to allow the CAR authorisation process to begin. It is recognised that this can make it difficult to ensure that all issues relevant to ensuring an authorisation can be granted have been fully agreed between Transport Scotland and SEPA at this stage. Early discussion of the requirements of CAR will, however, help to highlight any issues which require to be addressed as the design process progresses.

It is also important to ensure that liaison with SEPA continues to take place at key stages throughout the design process to ensure that the requirements of CAR continue to be addressed.

Although the initial consultation with SEPA will be carried out via the Planning Service, when the design is sufficiently advanced to allow the CAR application process to begin, the relevant SEPA team in the geographical area where the project is located should be contacted for pre-application discussions.

## 5. Meeting CAR requirements

### 5.1 Ensuring sufficient land is made available

One of the key issues that can arise on projects is ensuring that sufficient land is made available as part of the design process to allow the requirements of CAR to be accommodated in the scheme design.

Rivers are naturally dynamic and often follow an irregular course. Where a project necessitates a change to this, then the proposed alteration needs to recreate the natural dynamics as far as possible, and if the space to accommodate alterations is limited, this may not be achievable and the requirements of CAR will be difficult to meet.

Transport Scotland is required to follow the legislative procedures laid out in the Roads (Scotland) Act 1984 which, in certain circumstances, require that a road order is published before a project can proceed. In addition, the purchase of land for the construction of projects is generally subject to the compulsory purchase order (CPO) process. As such, difficulties in meeting the requirements of CAR within the land made available for the project can arise if an agreement on the CAR requirements has not been reached, at least in principle, prior to the legislative processes being completed. Land requirements to meet the CAR obligations should therefore be considered at an early stage in the development of the project.

Failure to identify sufficient land prior to the completion of the design and publication of a road order or a CPO has resulted in difficulties in meeting the CAR requirements in previous Transport Scotland road projects. Example 1 below highlights a typical issue that may arise.

#### Example 1: Typical CAR requirements

The preferred route selected for a road improvement project requires a river to be diverted, but the implications of this in terms of the CAR requirements have not been agreed with SEPA as part of the design process. In order to minimise the amount of land required from the landowner and to deliver the project, the specimen design accommodates the diversion of the river along the shortest route and the associated CPO only allows for the purchase of sufficient land for this diversion route. During subsequent discussion with SEPA to secure a CAR authorisation, it is agreed that the diversion is required and justified in accordance with requirements of CAR. However, SEPA consider that the route selected is not appropriate as it will result in a shortening and straightening of the river resulting in unnatural morphology, and potential flooding and erosion problems. In order to secure an authorisation under CAR, SEPA advises that the new channel needs to mimic the shape of the original channel as far as reasonably practical in terms of length, width, slope and meandering shape. In order to accommodate this, further land will require to be made available for the river diversion, if the necessary CAR licence is to be secured.

In addition to ensuring that the quantity of land made available is sufficient, it is important to consider its suitability for the intended use. (Note: In addition there may also be flood risk considerations in certain locations with regards to the land which may require an FRA to inform design). Example 2 below highlights two typical issues that may arise.

**Example 2: Land made available**

Sufficient suitable land should be made available for the provision of construction and final SUDS. SEPA would not normally advocate the siting of SUDS on the functional floodplain and alternative areas should be considered.

Where SUDS are to be sited on the floodplain there may be other considerations and risks associated with this given that it will become inundated during flood events and may be unable to function during this period.

## 5.2 General considerations for all controlled activities

Before carrying out any controlled activity, consideration should be given to whether it is absolutely necessary or if other viable options are available which could avoid the need to impact the water environment. If a controlled activity is necessary and justified in the circumstances, then the option which will result in the least impact, whilst still fulfilling the technical requirements of the project, should be sought. In seeking to identify the potential impact on the water environment it is essential to consider the natural dynamics of the river system, and specific attention should be given to how the river behaves at the specific location (flow, sediment movement etc).

## 5.3 Specific considerations for typical controlled activities

This section provides information on the key considerations for the most common controlled activity types associated with infrastructure projects. Further guidance in specific relation to flood risk for these activities can be found in SEPA's *CAR Flood Risk Standing Advice*.

### 5.3.1 River diversions and realignments

Diverting a river can be a difficult and unpredictable activity which can result in considerable impact. It is therefore recommended that it should be avoided if possible. Should a river diversion be the only option, then there are likely to be significant CAR implications and the following points should be considered during the design stage.

### Box 1: Considerations for river diversions and realignments

- The new route should allow the river to behave in the same way as the existing route e.g. flow rates, carrying capacity.
- The new route should reproduce the natural shape of the river e.g. length, width, slope.
- Consideration should be given to the natural banks and bed material in the existing channel and this should inform the design of the new channel e.g. riparian planting, bed sediment size.
- The design should ensure equivalent or improved ecological value within the new channel.

Note: It should be ensured that any channel design does not increase the risk of flooding, either upstream or downstream or adversely interrupt the ability of the flood plain to store and/or convey flows.

Flooding, erosion and sedimentation are some of the problems which can result from a poorly designed diversion. Full consideration of the above points should help reduce the risk of these occurring.

Reference documents are available on the *River Restoration Centre* website, which provides advice on good practice for channel design.

## 5.3.2 Culverts

Culverts are frequently used during infrastructure projects for crossings (both temporary and permanent) and land gain. SEPA does not advocate the use of culverts for land gain and discourages this practice. The document *WAT-PS-06-02: Culverting of watercourses* contains details of SEPA's policy and further advice.

The use of culverts for permanent crossings is also discouraged by SEPA and, alternative crossing methods, which will lessen the impact, should always be preferable, unless culverting is the only suitable option. More information is available in *WAT-SG-25: Good Practice Guide - River Crossings*.

Where the use of culverts is the only option, the following points should be fully considered during the design stage.

**Box2: Considerations for culverts**

- A bottomless arch culvert should be used where possible to allow a natural bed to establish within the culvert.
- The length, width, alignment and slope of the culvert should be comparable to the section of watercourse being altered to alleviate problems with erosion and aggradation.
- To avoid increased erosion of the watercourse immediately downstream of the culvert, the exit should not have a hydraulic drop.
- A culvert should always be designed to ensure that the structure does not become a barrier to fish and mammal passage.
- Consideration should be made with regards to sediment continuity throughout structure.

Note: It should be ensured that any culvert does not increase the risk of flooding, either upstream or downstream. In terms of design it should be adequately sized to convey minimum flood flows of a 1 in 200 year event.

In line with SEPA's position outlined in *CAR – A Practical Guide*, culverted crossings on minor watercourses (i.e those that do not appear on 1:50,000 OS map) will not normally require authorisation.

Additional information on legislative requirements relating to culverting, as well as environmental, hydrological and maintenance considerations can be found in the *Culvert Design and Operation Guide* (Report C689), which can be obtained from CIRIA.

### 5.3.3 Bridges and crossings

Bridges and crossings are usually unavoidable for large infrastructure projects, either on a permanent or temporary basis. *WAT-SG-25: Good Practice Guide - River Crossings* provides guidance on crossings. Some of the basic considerations for the appraisal of the impact of crossings on the water environment are outlined below.

**Box 3: Considerations for bridges and crossings**

- The need to limit the amount of temporary and permanent crossings should be considered during route selection.
- Where a crossing is necessary, it should be designed to minimise the impact on the water environment. Section 5 in the aforementioned good practice guide will assist in making this decision.
- If possible, crossings shall span the watercourse and have set back piers so that both the bed and natural banks can be maintained.

Note: A crossing should always be designed so that it does not increase the flood risk, either upstream or downstream of the structure.

### 5.3.4 Bank protection

Bank protection is another common controlled activity which may be required as part of infrastructure projects. *WAT-SG-23: Good Practice Guide - Bank Protection*

provides further information. Where bank protection is necessary, the following points should be fully considered during the design stage.

**Box 4: Considerations for bank protection**

- Consideration should be given to whether bank protection is necessary. Not all erosion is unnatural or undesirable since it contributes to the natural sediment balance of a river system.
- The cause of the erosion should be established before making a decision on what action is required. If the erosion is a result of poor land management then alternative solutions to bank protection may be more appropriate e.g. grazing combined with poor vegetation cover along banks can cause severe poaching and erosion which could be resolved through fencing off cattle and planting up banks.
- If bank protection is deemed necessary, the amount of protection should be minimised and as 'green' as possible e.g. consider willow spilling or geotextile solutions in preference to gabions or hard rock.
- The natural dynamics of the watercourse should be considered when deciding on the most appropriate solution e.g. gabions often fail as bank protection when placed in inappropriate areas resulting in undercutting and collapse of the structure.

### 5.3.5 Sediment management

In order to construct new structures, it is sometimes necessary to dredge existing over silted channels. *WAT-SG-26: Good Practice Guide - Sediment Management* provides detailed guidance on the impacts of poor sediment management.

Some basic considerations for sediment management are outlined below.

#### Box 5: Considerations for sediment management

- If sediment removal is necessary, it must be ensured that no designated sites or protected species will be impacted by the works.
- Where the sediment removed is placed on the adjacent banks, it should not result in the heightening of these banks.
- Where sediment is being removed from the bed, every effort should be made to restrict this removal away from the toe of the banks since this can lead to destabilisation.
- Sediment entrainment from the sediment removal activities should be restricted to the immediate working area and suspended sediments should not be allowed to migrate downstream during the works. This can be achieved by adopting good construction methods e.g. silt curtains, working in dry areas where possible.
- Any project design should always consider on-going maintenance requirements to ensure the need for long-term sediment management is avoided.

### 5.3.6 Construction Site Sustainable drainage systems (SUDS)

Sites require to manage the water run-off from their sites during the construction phase. Further information on requirements can be found in *WAT-SG-75: Sector-specific Guidance - Construction Sites*.

#### Box 6: Considerations for construction SUDS

- It is important to identify key receptors on site and adopt a suitable surface water management plan.
- Ideally final SUDS should not be used during the construction phase of the development.

### 5.3.7 Final Sustainable drainage systems (SUDS)

SUDS are usually required as part of infrastructure projects and are subject to varying levels of control under CAR. The guidance documents *SUDS for Roads* and *WAT-RM-08: Sustainable urban drainage systems (SUDS)* provide detailed information.

Some of the key considerations for final phase SUDS during the early stages of a roads project are outlined below.

#### Box 7: Considerations for final SUDS

- SUDS requirements and the number of treatment levels appropriate to each area of the project should be identified at an early stage in the process.
- The land needed to accommodate SUDS requirements should be considered as part of the design criteria.
- The suitability of the land designated to accommodate SUDS requirements should be assured prior to agreeing its use for this purpose e.g. land on the flood plain or unstable made ground may be unsuitable for ponds.

### 5.3.8 Dewatering activities

Dewatering activities can be required as part of an infrastructure project, either as a temporary construction requirement or as part of the ongoing operation.

During the construction phase, the abstraction of groundwater will be regulated under CAR via General Binding Rules (GBRs), registration or licence, as any other abstraction would be. Details of the levels of authorisation required can be found in *CAR – A Practical Guide*. SEPA has an obligation to ensure that both aquifers and surface waterbodies are not adversely impacted through the authorisation of groundwater abstractions. SEPA will assess applications to determine all potential impacts and the document *WAT-RM-11: Licensing groundwater abstractions including dewatering* details this determination process.

Once the final, passive drainage system (such as a pipe network to collect run off and seepage) is in place, the activity will be treated as land drainage works and as such no further authorisation will be required.

#### Box 8: Considerations for dewatering activities

- The chemical composition of the abstracted water must not be altered prior to its discharge to the water.
- For abstractions of groundwater greater than 50 m<sup>3</sup> per day, the application will need to be accompanied by a water features survey. This will enable SEPA to identify any nearby sensitive receptors that may be affected by abstraction. Details of the water features survey – areas to be assessed, features to be identified etc – are provided in the SEPA publication *An applicants guide to water supply boreholes*.

## 6. Levels of authorisation under CAR

Refer directly to *CAR – A Practical Guide*, WAT-RM-02: *Regulation of Licence-level Engineering Activities*, WAT-RM-08: *Sustainable urban drainage systems (SUDS)* and WAT-SG-75: *Sector-specific Guidance - Construction Sites* for more detailed information on CAR requirements and the assessment process.

There are three levels of authorisation under CAR to allow a proportionate and risk-based approach to regulation:

- **General Binding Rules** represent standard rules for specific low risk activities. There is no need for an application to be made or to contact SEPA providing the operator can comply with the rules.
- **Registrations** are available for relatively low risk activities where no technical assessment is required. The determination period for these is 30 days.
- **Licences** are required for activities deemed to be a higher risk. In order to reflect the varying degree of risk, there are two levels of licensing (simple and complex), to ensure a proportionate approach. This is also reflected in the fee structure, as complex licences for higher risk activities incur a higher fee. SEPA is required to carry out a technical assessment of each licence application, for which there is an initial four month determination period. This time-scale often requires to be extended in response to formal information requests and advertising requirements.

The CAR practical guide explains which type and scale of activities fall under each level of authorisation and should be consulted when considering CAR requirements of the project. Each controlled activity is subject to one of these levels of authorisation, and the relevant authorisation needs to be obtained prior to carrying out the activity.

## 7. CAR authorisation processes

This section gives an overview of the SEPA process for dealing with a CAR application. It also covers possible modifications which can be made to an existing licence.

### 7.1 Obtaining a CAR licence

There are several key steps involved in the licensing process, all of which are summarised in Table 1 below.

**Table 1 Key steps involved in processing an engineering licence under CAR**

| Workflow steps                                     | Comments  | Determination period   |
|--|---|--|
| Pre-application discussions                        | Fees, assessment requirements, levels of authorisation etc.   |  |
| Receive application                                | Check fee and ensure sufficient information and correct level of authorisation.                               |  |
| Technical assessment                               | Reg 14 information requests used where more information required to carry out assessment.                     | Information requests STOP the clock (time period usually discussed and agreed with applicant).   |
|  | Technical determination tests (see RM02 for details).   |  |
| Advertising and consultation (where required)      | Only applications that fail the environmental standards or may adversely impact third parties are advertised. | Advertising STOPS the clock (SEPA will send notice to advertise within 14 days of receiving a valid application then the clock will stop for a max 56 days providing no representations are made. The 56 days includes the 28 days for the operator to place the advert and a further 28 days advertising period). |
| Authorisation and conditions                       |   |  |
| Assessing monitoring requirements (where required) | Larger projects sometimes require monitoring and are therefore subject to subsistence fees.                   |  |

Four months plus any additional time for stopping the clock.

## 7.2 Completing the CAR application form

There are several CAR application forms available which should be completed using the applicable supporting guidance document. See *CAR application forms* for all of the application forms and associated guidance.

Infrastructure projects often have multiple activities which require authorisation under CAR. These activities could fall under any one of the three levels of authorisation detailed in Section 6.

The CAR application system is flexible and allows for activities to be authorised to fit in with the programme of works for the roads project. As many associated activities as possible should be applied for at the same time and authorised within one licence document. This will allow for a collective technical assessment of the impacts and will provide a cost saving to the applicant through multiple activity discounts. Details of application fees are highlighted in *Charging schemes and summary charging booklets*.

It is accepted that this may not always be practicable and, if necessary, it is possible to stagger the application process to coincide with phases of works. In such instances, SEPA would still have regard to the earlier licences when processing the later applications, so that the project impacts were looked at collectively.

### Example 3: Applications for activities

A project is to be constructed over several years and involves works that will affect three water bodies at three distinct locations during three clearly defined phases. In this instance, it would be appropriate to split the project up into three licence applications and obtain three separate licences specific to the distinct phases of the construction.

For lower level authorisations such as registrations, it is preferable that these form part of the overall licence application for a project. It is accepted that in some situations it may be necessary to apply for such registrations separately due to timing constraints, and the need to carry out some of these activities in advance of the main licence application being processed. It should be noted that where a registration level activity is included within a larger project licence, the activity will not be subject to more stringent conditions than if it were issued as a single registration.

## 7.3 Submitting a CAR application

As shown in Table 7.1, the standard determination period for a licence is four months, although this can be significantly more if information requests, consultations or advertising are required. Where no representations are made, the extension to the four month period for advertising will not exceed 56 days. If representations are received and objections are made to Scottish Ministers, the determination period can be delayed further. See guidance document *WAT-RM-20: Advertising and Consultation* for more information on the advertising procedure.

It is important to ensure that the application is submitted in sufficient time to allow processing and issue of the authorisation prior to it being required for the project to progress to the next stage. This can prove difficult for some roads projects due to

information on the final detailed design not being available until later in the project timetable. Lack of information on the design of the works related to the controlled activities can make it extremely difficult to determine the impact of the activity. If the impact cannot be determined with a degree of certainty, then full authorisation under CAR cannot be issued.

To manage contractual risk, Transport Scotland's objective is to ensure the CAR authorisation process for any transport project is complete, and all required registrations or licences for the specimen design are agreed and in place before a project is tendered for construction. This objective can be achieved by ensuring the final specimen design provides sufficient detail to allow an application to SEPA for all required registrations or licences well before tendering for construction.

The details of the discussion and agreement of the CAR requirements between SEPA and Transport Scotland at key stages of the design development (as described in Figure 1) should consider this objective throughout to ensure it can be achieved.

The selected contractor may not be obliged to construct the road in accordance with the final specimen design, but they will be made aware that any significant alterations will require to be agreed with SEPA, and may require a variation to the existing authorisation or submission of a new application.

SEPA will endeavour to make the conditions contained within the CAR authorisations for road projects as flexible as possible so that minor alterations to the approved design can be accommodated, without the need to vary the licence.

Where an application for variation is required, sufficient time should be allowed as the determination period is comparable with a new application i.e. four months.

## 7.4 Modifying an existing CAR licence

CAR authorisation can be varied and/or modified for a variety of reasons after they are issued. *WAT-RM-09: Modifications to CAR authorisations* provides more detailed information on the different types of modification and the associated procedures.

Each of the modifications is subject to different statutory timescales. These timescales are summarised in Table 2 below.

**Table 2 Timescales for modifications**

| Activity                     | Statutory time limit | Comments  |
|------------------------------|----------------------|---|
| Review                       | No time              | Can be carried out anytime following issue of authorisation                                   |
| Operator initiated variation | Four months          |   |
| SEPA initiated variation     | No time              | Min three month lead in time for variation to take effect following issue of variation notice |
| Licence transfer             | Two months           |   |
| Licence surrender            | Two months           |   |

### 7.4.1 Reviews and variations

SEPA will periodically review authorisations. CAR allows a review to be varied out at any time following issue of the authorisation. SEPA may carry out a review for a variety of reasons including, but not exclusively, to ensure:

- protection of the water environment;
- protection to other water users;
- consistency in licence requirements across SEPA.

The outcome of a review may be one of the following:

- no change to authorisation;
- variation of authorisation required;
- require operator to apply for variation.

For infrastructure projects, it is likely that the responsible person may wish to apply for a variation to their licence conditions. (Note: 'responsible person' means the person who is responsible for securing compliance with the terms of a water use licence and includes a body corporate, limited liability partnership and Scottish partnership). These variations could be relatively minor in nature (administrative variations) or more significant i.e. technical variations which require environmental assessment work by SEPA. Information on which variations fall into each of these categories and all modifications which can be made to an authorisation can be found in the SEPA guidance document *WAT-RM-09: Modifications to CAR authorisations*.

## 7.4.2 Transfer of an authorisation

A responsible person can apply jointly with another person to transfer a licence (in whole or in part) to the other person. Applications to transfer authorisations will not be advertised, but SEPA may request further information or carry out investigations as it considers necessary. CAR licences for roads projects may need to be transferred to different responsible persons during the project timeline. Although Transport Scotland will endeavour to secure full CAR authorisation before the tender process is complete, they may require the appointed contractor to take on the responsible person status for the licence, since they will be carrying out the works authorised by the licence.

## 7.4.3 Surrender of an authorisation

Where an activity has ceased, CAR allows for the surrender of a licence by the responsible person, either in part or in full. Many of the licence conditions contained within an engineering licence for roads projects will expire following completion of the engineering activity. Where monitoring is required, this will only be for a limited period.

## 7.5 Responsibility for compliance of licence

The *Water Environment (Controlled Activities) (Scotland) Regulations 2011* defines a 'responsible person' as the person who is responsible for securing compliance with the terms of a water use licence. The responsible person is identified in the water use licence and can be a body corporate or an individual.

SEPA acknowledges that some works permitted by a CAR licence may not be carried out by the responsible person named in the licence, particularly on large infrastructure projects where sub-contracting is common. Where a responsible person has been identified in a water use within a licence, they are responsible for securing compliance with the conditions of that licence. SEPA will look to the named responsible person when there is a breach of licence conditions, and will take appropriate enforcement action.

## 8. Emergency works under CAR

The *Water Environment (Controlled Activities) (Scotland) Regulations 2011* introduced:

- a defence under regulation 48 to allow certain persons to carry out controlled activities without authorisation as long as they satisfy specified conditions; and
- accelerated application and determination under regulation 18 providing the need is justified as an 'emergency' as defined under regulation 18(8).

More information on the emergency provisions under CAR can be found in the SEPA guidance document *WAT-RM-49: CAR 2011 Emergency Provisions and Accelerated Determination*. Transport Scotland is a Category 2 responder under the Civil Contingencies Act 2004.

### **Example 4: Emergency works**

A collapsed culvert which results in a road closure is likely to fit within regulation 18 and the definition of an emergency i.e. an event or situation which threatens serious damage to human welfare such as disruption to facilities for transport. Lack of maintenance does not exclude the use of this provision for this situation. A judgement will, however, be made 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.

## 9. Other legislative considerations

### 9.1 Environmental impact assessment (and planning permission)

Transport infrastructure projects taken forward by Transport Scotland will generally require assessment under *The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017*.

SEPA is a consultation authority for EIA developments. When consulted we will identify the issues that we would like to see considered in the EIA report. In addition to the CAR issues already covered in this document, this could include flood risk, peat management, waste management and impacts on the water environment (including ground water dependent terrestrial ecosystems). Guidance on planning issues can be found on the *Planning Guidance* page of SEPA's website.

Most projects will not be subject to a separate planning application. When the Road Order is made the project will be deemed to have planning permission. When consulted SEPA's planning service will consider transport infrastructure projects in the same way as any other planning consultation.

### 9.2 Waste issues

All infrastructure projects will generate waste materials which will be required to be managed in accordance with legislative requirements. Guidance on waste legislation can be found under *Waste Regulations* on SEPA's website.

### 9.3 Contaminated land

Consideration should be given to the nature of historical land use through which the development will take place, and the likelihood of historical sources of contamination being present. Where appropriate, investigation should be undertaken to assess the risks from contamination and to assist in the identification of remediation actions. The land should be suitable for use following development and a definition of this term is given in Planning Advice Note 33 and the *Environmental Protection Act 1990* (Part IIA Contaminated Land). In most instances the local authority is the lead regulator for land contamination, either through Part IIA of the Environmental Protection Act or through the development control process. The relevant local authority should be consulted at an early stage to ensure that any potential issues are identified.

SEPA provides an advisory role to local authorities in the assessment of risks of pollution to the water environment from historical contamination. The approach to assessing whether significant pollution is occurring is given in the water use position statement *WAT-PS-10-01: Assigning groundwater assessment criteria for pollutant inputs*. SEPA's contaminated land specialists should be contacted for site specific advice.

If any of the land has a formal statutory designation as contaminated land or a special site under Part IIA, then there may be specific remediation requirements

that the development has to achieve. Early consultation with the local authority or SEPA, in the case of special sites, is recommended.

## Annex I: Controlled activities options appraisal

Table to assist options appraisal for the controlled activities in a roads project.

Table 3 below provides a list of possible controlled activities to assist with appraisal of roads options as detailed against DMRB Stage 2 in Figure 1.

| <b>Table 3 List of Controlled Activities</b> |  |  |
|--|--|--|
| <b>Option reference</b>                      | <<E.g. option A >>   |  |
| <b>No. of controlled activities</b>          | << Insert total number of controlled activities expected to be required if this option is successful>> |  |
| <b>Activity category</b>                     | <b>Name of watercourse and NGR</b>   | <b>Description and length/size of activity (m)</b> |
| <b>River diversions and realignments</b>     |  |  |
| <b>Culverts</b>                              |  |  |
| <b>Bridges and crossings</b>                 |  |  |
| <b>Bank protection</b>                       |  |  |
| <b>Sediment management</b>                   |  |  |
| <b>Construction SUDS</b>                     |  |  |
| <b>Final SUDS</b>                            |  |  |
| <b>Dewatering and abstractions</b>           |  |  |
| <b>SUDS</b>                                  |  |  |

## Annex II: Frequently asked questions

This part highlights some of the key enquiries about the CAR implications for roads projects. Each of the questions below serves as a quick reference. Where more information is required on any of these points, the operator should contact the relevant SEPA staff at the local *SEPA office*.

### **Q.1 How long does it take to get a licence?**

The normal statutory period to determine an application is four months. Smaller or simpler licences may be authorised within this period. Large, complex or contentious licences may involve consultation with other agencies, public advertisement and further information requests, which can all increase this period to more than four months. If all the required information is provided at the application stage then this can help minimise delays by reducing the need for SEPA to request further information.

### **Q.2 How much information is required by SEPA to ensure a licence can be issued?**

SEPA cannot pre-judge an application or issue permission or a refusal before a full assessment of a licence application has been made. Guidance can, however, be provided to applicants on good practice which is likely to meet the requirements of CAR and the type of information that will be required to support the application. Pre-application discussions can help by highlighting key issues such as the status of the water-body and providing an indication of the available capacity for further engineering activities but the final decision can only be taken after determination of an application. In general, where an activity has a high potential to result in an adverse impact, then more information will require to be submitted.

### **Q.3 How much will a licence cost?**

Since roads projects are large, often involving several separate activities over several phases, they are likely to be considered large project based applications (i.e time and materials). Information on this is available in *Charging schemes and summary charging booklets*. Discounts are given where individual activities are incorporated into one licence application, resulting in reduced administration costs, although the need to make a technical assessment of the impacts for each activity remains.

### **Q.4 How do I ensure that I apply for the correct level of authorisation?**

There are three levels of authorisation, as detailed in Section 6. *CAR – A Practical Guide* gives further guidance on which types and scale of activity fall within each of the different authorisation categories.

## Q.5 What is the difference between an associated and a dependent activity?

Associated activities are multiple activities which are related to each other through being part of one body of works and/or project. Even though associated activities attract separate charges they qualify for multiple activity fee discounts when applied for under a single licence as part of a single project.

A dependent activity is an activity, which in the opinion of SEPA, is required for the structural integrity of the primary activity. The dependent activity is inextricably linked to a primary activity and it would be unfair for this to be charged as a separate activity. Dependent activities will be authorised as part of the primary activity and details of these should be submitted with any application since the impacts still require assessment. They will not be subject to additional application fees and will not require a separate authorisation. An example to illustrate the difference between 'associated' activities and 'dependent' activities is detailed below.

### Example 5: Associated and dependant activities

A bridge is to be constructed with several metres of bank reinforcement attached to the structure at each bank. The primary activity is the bridge construction and, if the bank reinforcement is necessary for the structural integrity of the bridge, then the bank reinforcement can be regarded as a dependent activity.

If the bank reinforcement is of a much longer length than is required to provide structural integrity to the bridge then the main purpose will be regarded as bank protection rather than structural support then the activity cannot be regarded as being dependant and will be charged as an associated activity.

## Q.6 Why is it important to ensure sufficient land is made available for meeting CAR requirements?

As explained in Section 5.1, making enough land available to accommodate the requirements of CAR is vital to ensuring that an authorisation can be issued. For example, a river diversion should have enough land available to allow the shape, length and slope to mimic the natural channel processes as much as possible, which may include several meanders rather than confining the river along a straight line, which would take up less land. It is also important to ensure that the land made available is suitable for the intended purpose e.g. that it is geotechnically suitable as a location for a SUDS pond.

## Q.7 How do I calculate the proportion of groundwater in my abstraction?

There is a calculation which you can carry out to work this out. This is provided in *WAT-RM-11*, Annex 1.

## **Q.8 What should I do with the water once it has been abstracted?**

Section 7 of *WAT-RM-24: Pumping Test Methodology* outlines the environmental risks surrounding the discharge of abstracted groundwater, the disposal options, and issues which should be considered.

## **Q.9 Can Scottish Natural Heritage (SNH) be involved in the early stages to ensure the requirements of the habitats legislation are considered?**

Yes, they can. It is up to the developer if they wish to involve SNH and SEPA. SNH and SEPA would advise early consultation with all stakeholders. In respect of the issue of CAR authorisations, SEPA will communicate with SNH and give consideration to any conservation issues raised but the decision as to whether a CAR authorisation can be issued will be made by SEPA.

## 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/regulations/water/guidance/](http://www.sepa.org.uk/regulations/water/guidance/)).

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.

### Key SEPA References

- *WAT-PS-06-02: Culverting of watercourses*
- *WAT-PS-10-01: Assigning groundwater assessment criteria for pollutant inputs*
- *WAT-RM-02: Regulation of Licence-level Engineering Activities*
- *WAT-RM-08: Sustainable urban drainage systems (SUDS)*
- *WAT-RM-09: Modifications to CAR authorisations*
- *WAT-RM-11: Licensing groundwater abstractions including dewatering*
- *WAT-RM-20: Advertising and Consultation*
- *WAT-RM-24: Pumping Test Methodology*
- *WAT-RM-49: CAR 2011 Emergency Provisions and Accelerated Determination*
- *WAT-SG-23: Good Practice Guide - Bank Protection*
- *WAT-SG-25: Good Practice Guide - River Crossings*
- *WAT-SG-26: Good Practice Guide - Sediment Management*
- *WAT-SG-75: Sector-specific Guidance - Construction Sites*

### Other References

- *An applicants guide to water supply boreholes* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *CAR – A Practical Guide* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *CAR application forms and associated guidance* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *CAR Flood Risk Standing Advice* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *Charging schemes and summary charging booklets* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *Culvert Design and Operation Guide* CIRIA C689 (2010)
- *Environmental Protection Act 1990, Part IIA Contaminated Land* ([www.legislation.gov.uk/](http://www.legislation.gov.uk/))
- *LUPS-GU1: SEPA's role in development management and similar consultations* (Guidance note 1, Land use planning system) ([www.sepa.org.uk](http://www.sepa.org.uk))
- *Planning Guidance* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *River Restoration Centre* ([www.therrc.co.uk](http://www.therrc.co.uk))
- *SEPA offices* ([www.sepa.org.uk](http://www.sepa.org.uk))

- *SUDS for Roads* Good practice manual ([www.scotsnet.org.uk](http://www.scotsnet.org.uk))
- *The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017* SSI 2017/137 ([legislation.gov.uk](http://legislation.gov.uk))
- *Waste Regulations* ([www.sepa.org.uk](http://www.sepa.org.uk))
- *Water Environment (Controlled Activities) (Scotland) Regulations 2011* SSI 209 NetRegs ([www.netregs.org.uk](http://www.netregs.org.uk))

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