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POLICY AND SUPPORTING GUIDANCE ON PROVISION OF WASTE WATER DRAINAGE IN SETTLEMENTS

This position statement sets out SEPA's policy principles¹ on the provision of waste water drainage within and outwith settlements served by a strategic sewerage system. The document also provides supporting guidance for implementation of these policy principles.

The policy principles in this document will eventually be included in SEPA's Policy on Development Planning and the Water Environment, which is currently under development. The supporting guidance will be further developed and eventually included in our Regulatory Methods and Supporting Guidance documents, in particular:

- RM-03 Regulation of Sewage Discharges to Surface Waters
- RM-04 Regulation of Indirect Sewage Discharges to Groundwater
- RM-22 Planned Deterioration, Refusal and Appeal
- Supporting Guidance on Development Planning Consultations for Water Use Activities (*under development*)

¹ The policy principles were agreed by SEPA's Main Board on 25 July 2006.

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BACKGROUND

SEPA believes that sewerage provision should be strategically planned and maintained to support the sustainable development of communities and protection of the environment².

The current lack of capacity in the public sewerage system is a major factor preventing or delaying new developments in some areas. This issue was addressed in the Ministerial Statement on essential investment objectives for Scottish Water made to Parliament on 9th February 2005. This confirmed the objective for Scottish Water to provide sufficient strategic capacity to meet all estimated new housing development and the domestic requirements of commercial and industrial developments.

The statement confirmed that developers should provide the remaining investment required to allow the drainage of new developments via the public sewerage system (above the reasonable costs contribution from Scottish Water). Developers may now face large funding demands to obtain a connection to the public sewerage system. This may provide a financial incentive for developers to install an independent (private) drainage and treatment system with a direct discharge to the water environment. This has the potential to undermine the intent of the Ministerial Statement.

If a private sewerage system is allowed, the individual house owners are usually required to maintain it and provide for the long-term renewal of these assets. This increasingly fragmented sewerage system within urban areas will, in SEPA's view, lead to a long-term failure to maintain or replace assets leading to environmental harm and public health risks. The result will impact upon quality of life in urban areas and will undermine urban regeneration and growth by preventing further connections to, and expansion of, the public sewerage system.

INTRODUCTION

The provision of a sustainable drainage infrastructure is integral to improving and maintaining a good quality water environment. While SEPA can move some way towards this using our primary legislative powers, our interaction with land use planning processes is one of the key tools to ensuring strategic drainage issues are addressed. The planning process involves environmental, social and economic factors which provide the basis for the promotion of sustainable development.

In particular, the principle of the Urban Waste Water Treatment Directive (UWWTD) is to provide collecting systems for all agglomerations greater than 2000 population equivalent unless this would produce no environmental benefit or would involve excessive cost. In such cases other systems which achieve the same level of environmental protection must be used.

The UWWTD does not prohibit the installation of private waste water treatment plants per se. However, the requirement to provide collecting systems has been passed to Scottish Water, a public authority, under the 1994 Regulations. SEPA considers that the fragmentation of the strategic public network of collecting systems by private sewage systems is not compatible with the principles of the UWWTD nor does it provide a long term sustainable solution to waste water drainage provision.

² Currently in Scotland, the public water authority Scottish Water is the predominant provider of strategic sewerage systems. Therefore, for the remainder of the document the concept of a strategic sewerage system will be referred to as the public sewerage system. SEPA would not oppose a strategic sewerage system provided by an equivalent water utility.

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AIM

This document provides the policy principles and guidance to which SEPA will operate when it is consulted on a development proposal. It sets out how SEPA will approach discussions with developers, local authorities and Scottish Water to ensure whenever possible eventual connection to the public sewerage system and to support sustainable development of communities.

Sections 1 to 3 describe SEPA's approach to developments within settlements already drained by a public sewerage system. Section 4 describes the approach in small settlements with no or partial public sewerage infrastructure where private individual drainage systems, e.g. septic tanks, predominate.

1 PROMOTING CONNECTION TO THE PUBLIC SEWERAGE SYSTEM

To ensure sustainable development of communities and protection of the environment, sewerage provision should be strategically planned and maintained. This represents the best environmental option and the most sustainable long-term solution.

To achieve this SEPA will work to the following policy principles.

Policy Principle 1

Where a settlement is served by a public sewerage system, it is SEPA's opinion that new developments should connect to the public sewerage system. SEPA will therefore promote connection and appropriate upgrade to the public sewerage system. This is subject to Policy Principles 4 and 8.

Policy Principle 2

Through the consultation process for all appropriate development plans, SEPA will promote the inclusion of policies which require development proposals to connect to the public sewerage system.

Policy Principle 3

SEPA will oppose development in or close to a settlement served by a public sewerage system which proposes individual / private waste water drainage arrangements. This is subject to Policy Principle 4.

In applying Policy Principles 1 - 3, SEPA recognises that there is a gradation from major urban areas where the proliferation of private sewerage systems is clearly undesirable through to very small settlements where the dispersed nature of the communities may allow private provisions without adverse health, amenity or environmental impacts. Additionally, it is recognised that the UWWTD has specific requirements regarding provision of a collecting system for agglomerations greater than 2000 population equivalent.

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Guidance³

- i) In settlements with a population greater than 2000 population equivalent, SEPA will expect new developments within or close to⁴ the settlement boundary identified in the local plan to connect to the public sewerage system and will object to the development of private sewerage systems within these areas.

- ii) In settlements with a population below 2000 population equivalent, SEPA may object to the development of private sewerage systems on a site specific basis, taking into account:
 - Development plan context (for example, scale of proposed development over plan period);
 - Settlement population (the greater the population, the greater the case for public infrastructure for the settlement);
 - Settlement dispersion (the less dispersed, the greater the case for connection to public sewerage system);
 - Scale of proposed development (the larger the development, the greater the case for public / strategic infrastructure to service it);
 - Investigation of and ability to connect to the public sewerage system;
 - Unacceptable risk of proliferation of private systems within the vicinity of the settlement;
 - Capacity to combine with other developments to fund connection to public sewerage system;
 - Level of existing public sewerage provision within the settlement;
 - Risk of undesirable impacts.

Independent of the points above it must be noted that SEPA will not authorise private treatment systems where there is no capacity in the water environment. Similarly SEPA will expect new developments to connect to the public sewerage system where there is capacity for new connections.

- iv) SEPA will object to local planning authority Development Plans, as detailed in guidance above (i.e. in all cases for settlements with population equivalents over 2000, and on a site specific basis for settlements with population equivalents below 2000), unless they contain a policy to the effect that:
 - Connection to the public sewerage system will be a prerequisite of all development within or close to urban areas and other sewered areas. Temporary provision of private sewerage systems may be allowed where connection to the public sewerage system has been agreed in the current Quality and Standards investment period.

³ Note: Where connection to the sewer has been refused by Scottish Water, a developer may appeal this decision. They should contact Scottish Water or the Water Industry Commission for Scotland for further information on the relevant provisions of the Sewerage (Scotland) Act 1968 (as amended) relating to the duty of Scottish Water to provide public sewers, right of occupiers to connect to the sewer and right of appeal for refusal of connection.

⁴ 'Close to' means within the area served by the collecting system or within a distance outwith that makes connection to the public sewerage system reasonably practicable. (This distance may vary depending upon site specific geographical or physical characteristics). Further guidance on this will be developed.

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- v) SEPA's strong preference is for discharges from industrial sites to be connected to the public sewerage system. However, a proposal for private discharge from a single industrial site which has the technical expertise to manage waste water treatment will be considered under the relevant regulatory legislation. SEPA's planning response will be considered on a site by site basis taking this policy and guidance into account.

Points (i) to (iv) are subject to the provisions of section 2.

2 FLEXIBLE APPROACH TO CONSTRAINED SITES

Investment in water infrastructure by Scottish Water is being delivered through a rolling programme of work. SEPA recognises that immediate connection to the public sewerage system is therefore not always possible. In order to minimise the effects this might place on proposed development SEPA will implement the following policy principle.

Policy Principle 4

SEPA will not oppose interim solutions in areas with a constrained sewerage system where appropriate upgrade of the system has been agreed. Such temporary solutions, which include individual/private treatment systems, shall not have an unacceptable impact on the water environment.

Guidance

- i) SEPA will not object to the use of temporary private sewerage systems in constrained sewered areas under the following circumstances:
- Connection to the public sewerage system is currently not permitted because there is no capacity but Scottish Water has confirmed that investment to address this constraint has been specifically allocated within its current investment programme; and/or
 - Expected developer pro-rata contributions are confirmed by Scottish Water / local authority to allow work to start on the removal of the constraint.
- ii) Where these circumstances apply, SEPA recommends that the following planning requirements be applied:
- Where the temporary systems include elements that will be adopted by Scottish Water or another 'responsible person'⁵ then those elements must be designed and built to a standard which will allow that adoption;
 - Temporary systems must be designed to allow connection to a public sewerage system in the future. Typically this will mean providing a drainage line up to an appropriate point of connection;
 - A planning condition is imposed requiring connection to the public sewerage system when planned capacity has been implemented and a connection can be made.

⁵ The Water Environment (Controlled Activities) (Scotland) Regulations 2005 requires that a responsible person is identified to ensure compliance with licence conditions. A "responsible person" may, in legal terms, be a natural person (i.e. an individual) or another legal person (i.e. a registered company, a corporation established by statute or charter, or a partnership). SEPA has a position statement on requirements of a responsible person for multi-ownership sites.

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- iii) Where a development is proposed in a constrained area and there is no agreement on how a sustainable drainage solution can be achieved, SEPA will object to planning permission.

3 AVOIDING DEVELOPMENT CONSTRAINTS

Potential development constraints, in relation to the provision of appropriate drainage infrastructure, can be minimised through the promotion of sustainable development principles and open communication. SEPA will work with Scottish Water and the local planning authority to maximise the available capacity for new developments to connect to the public sewerage system and avoid the development constraints whenever possible.

To support this approach SEPA will work to the following policy principles.

Policy Principle 5

SEPA will work with Scottish Water, as detailed in the Memorandum of Understanding 'Management of Development Constraints Caused by Sewerage Systems and Waste Water Treatment Works', to assess the constraints and allow connection to the public sewerage system whenever possible whilst ensuring protection of the water environment.

Policy Principle 6

SEPA will engage with the land use planning process to ensure that proposed developments do not compromise environmental quality or fragment the public sewerage system.

Policy Principle 7

SEPA will engage with Scottish Water and the planning authorities, on a regular basis, to review development constraints and available environmental capacity.

Guidance

- i) SEPA has a Memorandum of Understanding (MoU) with Scottish Water to ensure that both organisations work together to maximise the environmental and infrastructure capacity. This will allow connection to the public sewerage system, avoid development constraints and promote retention of a strategic sewerage system. The MoU involves a commitment by Scottish Water and SEPA to hold joint meetings to review existing development constraints.
- ii) As part of the MoU, SEPA and Scottish Water have undertaken a national joint review of Scottish Water waste water treatment assets considered to be constrained. This has identified additional capacity at a wide range of settlements. The data on each asset can be used for the basis of discussions to identify and manage growth potential with Local Authorities, Scottish Water, and key stakeholders.
- iii) Where constraints are due to problems with the infrastructure, Scottish Water will assess whether further connections can be made. Where constraints are a consequence of SEPA's discharge licence, SEPA will re-assess whether additional environmental capacity can be allocated without causing deterioration in water quality class. If environmental flexibility exists SEPA will review the licence to allow for further development.

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- iv) Local Plans have an important role in directing development to certain settlements or certain locations within settlements. They can also set the scale of development to facilitate the development of infrastructure. SEPA will therefore work with local planning authorities and Scottish Water to ensure that Local Plans identify developments that can be accommodated within the capacity of existing and proposed public sewerage infrastructure.

4 DEVELOPMENT IN SMALL SETTLEMENTS WITH NO OR PARTIAL PUBLIC SEWERAGE INFRASTRUCTURE

Development proposals in small settlements with limited or no sewerage infrastructure should be supported by the provision of drainage infrastructure appropriate to the location and scale of the development. SEPA will work to the following policy principle to achieve this.

Policy Principle 8

SEPA will not oppose environmentally acceptable private sewerage provision for dispersed housing in small settlements with limited or no public sewerage system. Proposals for larger scale developments will be assessed on a site by site basis considering the drainage scheme presented.

Guidance

- i) SEPA will not object to the private provision of sustainable sewerage systems within the countryside provided there is no environmental risk including the impacts of cumulative development.
- ii) SEPA's preference, where there is no risk to groundwater, is for discharges to be made to land rather than to water, and use of passive systems which require a low level of maintenance.
- iii) In small settlements where no or limited public sewerage infrastructure exists, it would be unreasonable to expect development of strategic infrastructure unless the proposed development itself is of sufficient scale to warrant it. This will be assessed on site by site basis.
- iv) Where a settlement has grown to significant scale but has not yet developed public sewerage infrastructure, SEPA will expect the Local Plan to make provision of infrastructure a prerequisite of development.

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ANNEX - SUPPORTING INFORMATION

1 The Planning System

SEPA operates subject to a number of general requirements, which are not specifically set out in the legislation that it implements. For example, Scottish Ministers have issued guidance to SEPA on its duties to have regard to sustainable development in making its decisions.

Other requirements, especially from European Directives, are not the single responsibility of one agency or authority. For example, the Water Framework Directive (WFD) and the transposing legislation, the Water Environment Water Services (Scotland) Act 2003 place a duty on SEPA, and other public authorities, to promote sustainable water use and to ensure the water environment achieves good ecological status.

As a statutory consultee under the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 SEPA will use the planning process to highlight and further its wider responsibilities for sustainable development and water use.

SEPA's role as a statutory planning consultee is to bring to the attention of the local planning authority any material considerations related to SEPA's interests which may have an impact on the planning decision. This includes any potential environmental impacts associated with a proposed development and advice on measures to ensure that such impacts are minimised.

SEPA considers that the pollution control regulatory regime cannot adequately address proliferation of private systems in sewered areas. However, the planning regime provides an appropriate strategic mechanism to address connection to a strategic waste water drainage network in settlements and urban areas.

In the longer term the River Basin Management Planning will be provide an additional means through which to achieve sustainable water use. Planning Authorities have been designated as responsible authorities and will have to carry out their statutory functions in a way that secures compliance with the plan's objectives.

2 Urban Waste Water Treatment Directive, 91/271/EEC

Article 3 of the Urban Waste Water Treatment Directive requires provision of a collecting system (i.e. sewer network) for agglomerations unless this would produce no environmental benefit or would involve excessive costs, and the alternative system provides the same level of environmental protection. In such cases SEPA must decide whether other systems achieve the same level of environmental protection.

The Urban Waste Water Treatment Directive was transposed in Scotland by the Urban Waste Water Treatment (Scotland) Regulations 1994 (as amended) (UWWTR). Scottish Water's obligation under regulation 4 of UWWTR supplements its existing obligations under the Sewerage (Scotland) Act 1968 (as amended) to provide public sewers, and the Scottish Executive is responsible for enforcing compliance with these requirements.

3 Sewerage (Scotland) Act 1968 (as amended)

Scottish Water has a duty to provide such public sewers as may be necessary for effectually draining its area of domestic sewage, surface water and trade effluent and to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of its sewers. Scottish Water also has a duty to take its public sewers to such a point or points to enable the owners of premises to

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connect to the public sewer. The right to connect drains and private sewers to the public sewerage system is given to owners, with a right of appeal to the Scottish Ministers given to the owner if Scottish Water refuses.

The duties are qualified to the extent that they do not require Scottish Water to do anything 'which is not practicable at reasonable cost'. An appeal can be made to Scottish Ministers against Scottish Water's proposals for provision of sewerage or determination of reasonable cost.

It is up to the property owner or developer to apply to Scottish Water for connection to the public sewer and, if refused, appeal to Scottish Ministers. In addition, the owner / developer may request the Scottish Ministers to require Scottish Water to provide a collecting system in compliance with the UWWTR.