

Information

BRIEFING NOTE

Controls on Water Abstraction, Impoundment and Engineering Works

1. Introduction

The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the Regulations”) brought into force on 1st April 2006 new controls on abstraction, impoundment, engineering works in or near inland waters and revised controls on point source discharges.

The Regulations are aimed at implementing the Water Framework Directive, an ambitious piece of legislation requiring member states to attain good status for all surface and ground waters by 2015. According to SEPA almost half of Scotland’s waters are at risk of failing to achieve this standard.

2. Three Types of Control

The Regulations include three sets of controls:-

- Controls on abstraction and impoundment. No comprehensive controls existed prior to 1st April 2006 in Scotland in relation to abstraction or impoundment and, despite Scotland’s general abundance of water, localised droughts have been experienced. Abstraction is widely defined by the Regulations to include any activity whereby water is removed or diverted from the water environment, even if only temporarily, including removal of water from boreholes and removal or diversion of water to other parts of the water environment. Mains supplies from Scottish Water are not covered. Impoundment includes dams, weirs or other impounding works and any works diverting the flow of water in connection with the construction or alteration of any dam, weir or works relating to abstraction.
- Controls on works affecting the physical character of inland surface waters such as dredging a river or reinforcing river banks, creating flood protection works, carrying out fishery improvement works or erecting bridges in and around a river.
- The replacement of discharge consents (e.g. discharges to water courses from septic tanks under the Control of Pollution Act 1974) and groundwater authorisations with a new form of risk-based authorisation.

3. Different Levels of Control

With the stated aim of avoiding the imposition of a disproportionate regulatory burden on businesses, a three tier system of control has been devised with the appropriate regulatory tier depending on the perceived risk to the environment:

- Low Risk Activities. There is no requirement to contact SEPA. Activities are deemed to be authorised if carried out in accordance with published General Binding Rules (“GBRs”). Numerous activities are covered including (i) abstraction of no more than 10m³ of water (approximately 2200 gallons or the average water volume used by 50 people in a day) per day (ii) impounding rivers or streams by passive (as opposed to managed by using sluices or valves) weirs no more than 1m high that do not affect the passage of salmon or sea trout and (iii) erecting minor bridges with no construction mid-channel (i.e. with set-back abutments) or work in an already straightened river or ditch less than one metre wide. The published GBRs are relatively simple e.g. for abstraction of water of less than 10m³ per day the only conditions are that (i) there is a means of demonstrating that the maximum extracted volume cannot exceed 10m³ per day and (ii) water leakage is kept to a minimum.
- Medium Risk Activities. Registration with SEPA is required. A wide range of activities is covered including (i) abstraction of more than 10 and no more than 50m³ (approximately 11,000 gallons) per day and (ii) boulder placements associated with fisheries management.
- High Risk Activities. A water use licence is required from SEPA with specific conditions relating to the activities concerned. A multitude of activities are covered including (i) abstraction greater than 50m³ per day (ii) impounding rivers or streams by managed weirs less than 1m high and (iii) modifications to embankments of more than 50 metres in length on rivers.

Comment

The agricultural sector is affected by the abstraction control regime. SEPA has outlined, for a range of animals, the number of animals which would require to be watered to trigger registration – in the case of dairy cows and suckler cows the threshold would be 110 animals and 145 animals respectively.

So far as engineering works are concerned it should be noted that the Regulations only apply to engineering works taking place from 1 April 2006 – not to engineering works which existed before then.

4. Obtaining Authorisation

Necessary authorisation, whether by way of registration or water use licence or through compliance with GBRs (deemed authorisation) was required by 31st March 2006. Application forms and associated guidance notes can be obtained from SEPA’s Website – see <http://www.sepa.org.uk/wfd/regimes/application.htm>. On receiving an application and after carrying out a risk assessment SEPA will have discretion to issue a different level of authorisation (e.g. to require compliance with a GBR where registration is unnecessary in that location or to impose licence conditions in particular water bodies where there are greater pressures). A detailed Charging Scheme sets out the fees which will be payable under various circumstances – see <http://www.sepa.org.uk/wfd/regimes/charging.htm>. Registration charges are one-off charges. Annual subsistence charges are only applicable in the case of licences.

Comment

If you plan to carry out or continue to carry out any of the regulated activities, including abstraction, it is necessary to assess whether the Regulations will affect you. If you are carrying out activities which were previously unregulated e.g. abstraction, SEPA will not necessarily contact you and the onus is on you to take steps to comply.

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This note is intended as a brief summary of the Water Environment (Controlled Activities) (Scotland) Regulations 2005. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.