

# Information

## **NEW CONTROLS ON SEPTIC TANKS – BRIEFING NOTE**

### **Background**

Prior to 1st April 2006 the Control of Pollution Act 1974 (“COPA”) required consents from the Scottish Environment Protection Agency (“SEPA”) to be in place for all sewage discharges to surface waters such as burns, rivers, lochs or the sea. SEPA did not however generally require any consent for discharges to soakaways.

### **The New Controls**

The Water Environment (Controlled Activities) (Scotland) Regulations 2005, which came into force on 1st April 2006, require SEPA to authorise all controlled activities – included amongst which are discharges from septic tanks. **All discharges from septic tanks whether to surface waters or soakaways require either to be registered or licensed** as follows:-

- (a) registration is required for (i) new sewage discharges from domestic properties serving a population equivalent of 15 or less and (ii) sewage discharges existing prior to 1st April 2006 from domestic properties serving a population equivalent of 50 or less; and
- (b) licences are required for (i) new sewage discharges from domestic properties serving more than a population equivalent of 15 and (ii) sewage discharges existing prior to 1st April 2006 from domestic properties serving a population equivalent of more than 50.

Population equivalent is calculated by attributing a population equivalent of 5 to every house up to and including three bedrooms in size served by the septic tank. Thereafter a population equivalent of one is added for each additional bedroom.

### **Does the Existence of Planning Permission for a Development have an Impact?**

It is irrelevant whether planning permission exists – there is still a requirement to register with SEPA or obtain a licence for any septic tank.

## **How Long Does Registration/Obtaining a Licence Take?**

SEPA has 30 days to process a registration. For licences the period is 4 months.

## **What is the Position with respect to Septic Tanks Consented under COPA?**

The Consent should have been transferred automatically by SEPA to a registration or licence i.e. no action should be needed.

## **What if a Septic Tank has not been registered?**

This is an offence. The maximum penalties for conviction following summary proceedings (without a jury) are a fine of up to £40,000 and/or up to 6 months imprisonment. Although SEPA have indicated that they expect that the lack of registration will normally be picked up as part of the house sale process (by the purchasers' solicitors asking for copies of all registrations or licences) it is nevertheless open to SEPA to require registration at any time.

## **Does Registration Protect against Claims for Pollution?**

No. If the discharge causes pollution enforcement action may still be taken by SEPA even if a registration is in place.

## **New Houses**

If it is not possible to connect to the public sewage system then the options are to discharge to a soakaway or to surface water. SEPA discourages the latter but will allow it in limited circumstances if discharges are environmentally acceptable – SEPA recommend early contact with SEPA. For discharges to a soakaway proper design is essential and is policed by the local authority building standards department – SEPA will require a building standards application reference number before they will process registration of an application.

## **Costs of Registration/Licences**

Registration of a single septic tank discharge serving a population equivalent of 15 or less costs £94 (or will cost £97 if application is to be made in the period from 1st April 2007 to 31st March 2008) or £70 if the online registration facility is used. For licences, fees are variable and start from £542. Whether registration is using hard copy forms or on-line forms the latest web version of the SEPA forms should be used in either case. Registration forms are available at

[http://www.sepa.org.uk/pdf/wfd/regimes/appforms/discharge\\_reg.pdf](http://www.sepa.org.uk/pdf/wfd/regimes/appforms/discharge_reg.pdf).

## **Comment**

A purchaser must ensure that all relevant registrations or licences have been obtained and/or be aware of the consequences of any absence of these. It would be prudent for a seller in a prospective sale to put in hand obtaining any registrations/licences to ensure that any sale is not held up as a result of the absence of these.

## **Turcan Connell January 2007**

This note is intended as a brief summary of selected features of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 insofar as they pertain to septic tanks. No responsibility can be accepted for any action taken in reliance of 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.