

## **EAST AYRSHIRE COUNCIL**

### **DEVELOPMENT SERVICES COMMITTEE - 29 JUNE 2004**

#### **CONSULTATION PAPER: THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES)(SCOTLAND) REGULATIONS 2004**

##### **Report by Executive Director of Development and Property Services**

### **1. PURPOSE OF REPORT**

- 1.1 To advise the Committee of the contents of the Scottish Executive Environment Group's consultation paper Controlled Activities Regulations, which sets out the main provisions of the Water Environment (Controlled Activities)(Scotland) Regulations 2004, and any planning implications of these Regulations.

### **2. BACKGROUND**

- 2.1 On 23 October 2001 the Development Services Committee considered the consultation paper 'Rivers, Lochs and Coasts: The Future for Scotland's Waters' which set out the Scottish Executive's ideas on the implementation of the EC Water Framework Directive (WFD) in Scotland. Responses to this consultation paper, including those of the Council, were used to inform a further consultation paper 'The Future for Scotland's Waters – Proposals for Legislation' which put forward what the Scottish Executive considered should be the basis of legislation under the WFD. This second paper was considered by the Development Services Committee at its meeting on 07 May 2002 and a formal response made to the Scottish Executive by the Council. The Water Environment and Water Services (Scotland) Act 2003 (WEWS) has since become operative.
- 2.2 The Water Environment (Controlled Activities)(Scotland) Regulations 2004, on which the Council's views are now being sought, set out the Scottish Executive's proposals on key aspects of implementation of the above Act.

### **3. CONTENT OF CONTROLLED ACTIVITIES REGULATIONS**

- 3.1 Under the Controlled Activities Regulations the Scottish Executive intend introducing a new system of simple and flexible controls based on an assessment of risk posed to the water environment so that a balance can be achieved between the requirement to protect and improve the ecological status of the water environment and the social and economic interests of those who depend on it. These controls will be a key tool in achieving the environmental objectives identified in future River Basin Management Plans.  
(A report on Scottish River Basin Management Strategy appears elsewhere on this agenda).
- 3.2 The Controlled Activities Regulations set out transitional arrangements for their introduction and how the new regime will relate to existing environmental legislation. The control regimes must be in place by December 2009 and operational by December 2012. However, the Scottish Executive intends phasing in the regimes over a two year period from April 2005. From October 2005, SEPA will review the authorisations and begin to identify requirements operators will have to meet by 2012.

3.3 The paper outlines proposed control regimes which the Scottish Executive consider are required to enable WEWS to be effectively implemented, as follows:-

- (i) Point Source Discharge
  - the Regulations will include replacement provisions for the existing consenting system under the Control of Pollution Act 1974; Combined Storm Overflows (CSOs) are included under point source discharges.
- (ii) Abstraction and Impoundment
  - new controls are needed to deal with the environmental impacts caused by changes to the flow of water and the physical modifications of dams and other structures;
  - most existing abstractions are not covered by any legislation and this can lead to over-abstraction of water. Impoundments can have serious effects on the hydrology and marine life of rivers. The Scottish Executive considers the current measures for controlling abstraction and impoundment, which are enshrined in a number of regulations, do not fully meet the requirements of the WFD.
- (iii) Building and Engineering Works
  - the Town and Country Planning (Scotland) Act 1997, Environmental Assessment Regulations and other related legislation respectively provide statutory controls over river engineering works, protection for designated conservation sites and species and powers for local authorities to build flood/sea defences. The Scottish Executive considers that the above current regulations relating to building and engineering works do not sufficiently meet the requirements of the WFD and intend that any revised controls should be flexible enough to cover the many different types of activities that can have an impact on the physical quality of aquatic habitats.

3.4 The proposed Regulations have been designed to address perceived deficiencies in existing legal provisions for protection of the water environment without requiring landowners to obtain a full licence from SEPA. The Regulations will rely on risk assessments by SEPA of proposed activities under a system of General Binding Rules. A list of the range of activities to which these rules would apply forms the Appendix to this report.

3.5 Under the Regulations SEPA will carry out a review of authorisations at least every 6 months.

3.6 The consultation paper notes that no single piece of legislation deals comprehensively with diffuse pollution and that current measures do not fully satisfy the requirements of the WFD. Because of the complexities of regulating diffuse pollution it is proposed that a separate system of controls be developed during the coming year. These proposals will be of particular relevance to planning as they may have implications for the location of new housing and other developments. On receipt of proposals for control of diffuse pollution a report will be prepared for consideration by a future Committee.

## **4. PLANNING IMPLICATIONS**

- 4.1 As referred to in Section 3 above the Planning Acts currently regulate many building and engineering operations relating to the water environment. Any such proposals requiring planning permission may also require to be the subject of Environmental Assessments through which the views of SNH, SEPA and other relevant bodies would be obtained. Such assessments will assist SEPA in reaching decisions through General Building Rules under the new Regulations.
- 4.2 Overall, however, it is considered there is a general weakness in the new regulations in that they depend on operators informing SEPA through applications for limited operations that might affect the water environment. It would seem possible, because of the minor nature and large number of such registrable activities under the regulations, that many operators might not apply to SEPA for such registration. SEPA would have to consider whether their enforcement powers under the regulations would be sufficient to deal with such defaults in applications from operators. Any defaults could have serious implications in terms of the provisions of the Local Plan and Ayrshire Local Biodiversity Action Plan regarding promotion of the Council's policies and objectives on nature conservation and environmental protection. The views on planning matters set out below therefore presume effective monitoring of all activities of the water environment by SEPA can be achieved under the proposed regulatory framework.
- 4.3 Under Policy ENV 19 of the Adopted East Ayrshire Local Plan, the Council will presume against any developments which have an adverse effect on watercourses by increasing levels of pollution, or have a detrimental impact upon water quality, aquatic habitats for wildlife or recreational amenity and have an adverse effect on groundwater or major aquifers. It is considered that SEPA's proposed risk analysis under the new Regulations would not conflict with Policy ENV 19 in respect of development proposals. It is also noted that the social and economic interests to be included in any risk assessment by SEPA under the new Regulations would meet consideration of recreational amenity issues relating to the water environment, which would include, for example, potential development of riparian core Paths as part of the Council's Access Strategy. The provisions of Local Plan Policy ENV 10 in terms of protection of sensitive habitats and natural heritage resources from inappropriate development would also have to be borne in mind by SEPA in reaching such decisions.
- 4.4 Under the Water Framework Directive there are powers of derogation where less stringent environmental objectives are acceptable in certain cases where human activity or natural conditions may prohibit feasible achievement of required water standards under Article 4 of the directive. The new Regulations will enable such derogations to be given effect so that socio-economic needs can be taken into account.
- 4.5 Under Proposal PROP 16 of the Local Plan, in considering applications for new development, the Council will consult SEPA to ensure such proposals accord with their Groundwater Protection Strategy. Any risk assessment by SEPA of development proposals under the proposed new Regulations would necessarily take account of the Groundwater Protection Strategy.
- 4.6 Under Proposal PROP 18 of the Plan the Council will, in conjunction with SEPA, prepare trigger maps for consultation between the two bodies, on flood related matters pertaining to development. The proposed new Regulations should, through SEPA's risk assessments, enable a more accurate determination of the effect on flood risk of those water environment activities not requiring licensing.

- 4.7 Some building and engineering operations not requiring planning permission, such as vegetation removal and management, can, as acknowledged in the paper, pose a significant risk to the structure and condition of bank zones and the ecology of streams in terms of the removal of in-stream vegetation. These features are identified in the Water Framework Directive (WFD) as key components of river ecosystems. It is considered that the new Regulations will allow an appropriately sensitive appraisal of those proposed water environment activities not requiring licensing by SEPA such that the provisions of the Local Plan and Ayrshire Local Biodiversity Action Plan in terms of nature conservation policies and objectives can be met.
- 4.8 The provision under the Regulations for SEPA to carry out a regular review of authorisations should ensure that the quality of the water environment is maintained. However, this may have implications in terms of potential requirements for modifications of existing building and engineering works, including impoundments, were these are proven to have adverse environmental effects. It is unclear what compensation rights developers, including the Council or landowners would have, should authorised development/activity sanctioned by SEPA prove unacceptable or impractical in terms of the WFD.
- 4.9 It is not possible at present to determine whether the proposed Regulations and General Binding Rules will adversely affect East Ayrshire in terms of extending the number of CSOs that are unsatisfactory. Neither is it currently possible to identify those CSOs that will require further resources other than those identified by Scottish Water under its Q & S III proposals. These issues will be pursued by the Planning, Development and Building Standards Division in its preparation of the Local Plan alteration.

## **5. LEGAL IMPLICATIONS**

- 5.1 None.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 None.

## **7. RECOMMENDATIONS**

- 7.1 It is recommended the Committee;
- i) agree that the Head of Planning, Development and Building Standards respond to the Scottish Executive in the terms set out in Section 4 of this report.

**James Lavery**  
**Executive Director of Development and Property Services**  
2 June 2004

### **LIST OF BACKGROUND PAPERS**

1. Consultation Paper: 'The Water Environment (Controlled Activities)(Scotland) Regulations 2004'. (Scottish Executive Environment Group, April 2004).
2. Report by Director of Development Services to Development Services Committee 23 October 2001 – Rivers, Lochs and Coasts: The Future for Scotland's Waters.

For further information please contact: Julian Thorpe on 01563 - 576789

Implementation Officer: Alan Neish

## **APPENDIX**

Activities to be registered under General Binding Rules under proposed controlled Activities Regulations:-

### **Building and Engineering**

Croys  
Ditch clearing, dredging and de-silting activities  
Boulder placement for fisheries enhancement  
Gravel extraction from dry gravel beds of watercourses  
Bank reinforcement  
Pipeline or communication cables crossings  
Open channel watercourse diversions  
Bridging culverts  
Vegetation removal and management  
Use of vehicles in water (incorporated into all relevant GBRs)

### **Abstractions**

Abstractions >10 & <30 m<sup>3</sup>/day  
Abstractions >30 & 50 < m<sup>3</sup>/day  
Abstractions > 60 & 100 m<sup>3</sup>/day

### **Impoundments**

Unmanaged weirs between 0.3 and 1m high  
The operation of managed lochs which can raise or lower water level of the loch by up to 1m

### **Point source discharges**

Discharge from passive secondary sewage treatment of a load with a population equivalent of between 15 and 50 persons  
Discharge from a septic tank treating a load with a population equivalent of up to 15 persons  
Discharge from small mechanical sewage treatment plant treating a population equivalent of up to 50 persons  
Discharge from a low risk combined sewer overflow  
Oil storage.