

**WAT-G-074**

**EASR Guidance: Protecting and improving water quality**

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# Purpose and Scope

This guidance sets out how SEPA will seek to ensure that, in relation to water quality:

* Significant adverse impacts on the water environment are prevented.
* All reasonable steps are taken to promote sustainable water use based on the long-term protection of available resources.

# Water environment risk factors

The risks to the water environment posed by a discharge depend on a number of factors, including:

* The characteristics of the discharge.
* The capacity of the water environment to accommodate (i.e. assimilate) the discharge without significant adverse impacts.

# Environmental standards to assess impact

SEPA uses environmental standards to help it assess whether a proposed activity could exceed the capacity of the water environment to accommodate it. If a proposed activity is predicted to breach an environmental standard, environmental capacity is expected to be exceeded and significant adverse impacts are likely.

Environmental standards define the environmental conditions needed to support a particular ecological quality in surface water or maintain groundwater resources in good condition. Other standards are used to define the water quality necessary to safeguard water uses, such as drinking water supply, bathing and shellfish production.

The majority of the environmental standards used by SEPA in assessing risks to the water environment are set out in:

* The Scotland River Basin District (Standards) Directions 2024.
* The Solway Tweed River Basin District (Standards) (Scotland) Directions 2024.

These directions are collectively referred to as the “Standards Directions 2024". They apply to different parts of Scotland but the standards set out in them are identical. Updates to the Standards Directions are made from time to time to take account of improvements in scientific understanding of the conditions needed to protect the water environment. Other standards, such as those for designated Bathing Waters, are set out in legislation such as The Bathing Waters (Scotland) Regulations 2008.

Standards have not been set for every possible pollutant that SEPA may need to control to protect the water environment. Where a standard is not specified in the Standards Directions, SEPA will:

* Apply a standard established elsewhere by a peer-reviewed process, if such a standard is available. This might be a standard that has been established by another country or an international body, such as the World Health Organisation; or
* Where practicable, undertake the assessments needed to derive a suitable standard itself.

Some standards are set out in WAT-G-072 EASR Guidance: Environmental standards for discharges to surface waters.

# How does SEPA assess the risk to the water environment

A change in environmental conditions that causes a breach of an environmental standard is called "deterioration". Where deterioration or its wider consequences is sufficiently extensive to affect the status of a water body, it is called "deterioration of status". Preventing deterioration contributes to preventing deterioration of status by avoiding concentrations of damage that could cumulatively adversely affect the status of a water body.

Assessing the risk to the water environment posed by a proposed discharge involves:

* Comparing the existing condition of the water environment with the applicable environmental standard to determine the environmental capacity - the difference between the current condition of the water environment and the applicable environmental standard.
* Assessing whether the proposed discharge can be accommodated within that capacity and without a significant risk that an environmental standard will be breached.

# SEPA’s principles for avoiding deterioration

1. SEPA will seek to avoid deterioration of any environmental condition.

SEPA will seek to avoid deterioration of any environmental condition. For example, if water quality in a watercourse is moderate but water flow conditions are good, SEPA will seek to maintain the good water flow conditions and prevent further deterioration of water quality. This ensures that additional stress on aquatic plants and animals is prevented and that the potential for restoration to a good condition is not further compromised.

Similarly, if water quality is worse than good in relation to one pollutant but good in relation to others, SEPA will normally seek to maintain good water quality for those other pollutants. However, in some limited circumstances, a breach of an environmental standard for a pollutant may not result in further adverse impacts or compromise the potential for improvement. Typically, for this to be the case, the water environment would have to be in a badly polluted condition with little or no prospect of improvement in the foreseeable future. For example, this might be the case for waters badly affected by polluted mine waters.

1. **The maximum capacity that SEPA allocates will be less than the theoretically available capacity.**

To ensure protection of the water environment, the maximum capacity that SEPA allocates to a proposed activity is less than the theoretically available capacity. This is because:

* Environmental quality can fluctuate as a result of pressures that cannot be precisely controlled (e.g. diffuse sources of pollution etc). This means that allocating all the estimated capacity would pose a significant risk of an environmental standard being breached as a result of such uncontrollable fluctuations.
* There is always some uncertainty in any estimate of available capacity. A balanced approach is needed to ensure that over-estimates do not result in deterioration inadvertently resulting from authorisation decisions.
1. **SEPA will take into account if all appropriate measures are being taken to promote sustainable water use based on the long-term protection of available resources.**

SEPA considers that a proposed water activity constitutes **“sustainable water use”** if it:

* Will not result in a significant adverse impact on the water environment.
* Will not compromise achievement of an environmental improvement objective specified in the relevant river basin management plan.

SEPA will also consider that a proposed water activity constitutes “sustainable water use” if is reasonably likely to result in a significant adverse impact on the water environment or compromise the achievement of an environmental improvement objective **but**, in SEPA's judgement:

* Its benefits to human health, the maintenance of human safety or sustainable development would outweigh that impact and any resulting negative social, economic or environmental consequences.
* There are no significantly better environmental options that would not entail disproportionate cost.

SEPA considers that **“sustainable water use based on the long-term protection of available resources”** is important to ensure water activities do not unnecessarily:

* Increase the risk of deterioration (i.e. the risk of a breach of an environmental standard).
* Constrain opportunities for future development by using more environmental capacity than is needed.

A water activity is sustainable if all reasonable and proportionate steps have been taken to minimise the demands it places on environmental capacity. The appropriate steps will depend on:

* Whether or not pressure on capacity is placing the water environment at risk of deterioration.
* The activity's demand on capacity relative to the available capacity.

**Table 1: Expected steps to promote sustainable water use based on the long-term protection of available resources**

| **Circumstances** | **Steps** |
| --- | --- |
| All situations | Connect to the existing public sewer to provide the protection to the water environment, unless such connection is technically infeasible or disproportionately expensive. |
| Pressure on capacity is negligible or sufficiently light that the water environment would not be placed at risk of deterioration | Basic, low cost, good practice measures to limit demand on capacity. |
| Pressure on capacity is placing the water environment at potential risk of deterioration | All practicable steps to minimise use of capacity, including: * Application of best available techniques; and
* Use of reasonably practicable better environmental options to avoid the need for the activity or reduce its demand.
 |

A proposed activity will have a "negligible" effect on capacity where the demand it would place on capacity would:

* Represent only a tiny fraction of the available capacity (e.g. such as a small discharge with large dilution); and
* Be so much smaller than the uncertainty in SEPA's best estimate of the available capacity that its effect would not normally be discernible.

Where necessary to promote sustainable water use based on the long-term protection of available resources, SEPA will include relevant authorisation conditions when granting permits or registrations.

# How SEPA allocates capacity for discharges to watercourses

For registration level discharges, we have developed risk assessed standard conditions to adequately protect the water environment. Therefore, we do not need to follow the bespoke approach described below.

Waters that are close to a class boundary may be vulnerable to fluctuations in pressures that cannot be precisely controlled. Waters may also be at risk of deterioration because of an existing upward trend in the concentrations of pollutants. SEPA uses its monitoring and modelling data to assess existing water quality and available capacity. On the basis of these assessments, SEPA can categorise the existing risk of deterioration. The risk is categorised as "red", "amber" or "green" as described in sections 6.1, 6.2 and 6.3.

## 6.1 Red RAG status

### 6.1.1 What is red RAG status?

A "red" risk of deterioration (a "red" RAG status) indicates that there is a high likelihood that an environmental standard could be breached in the near future because:

* There is so little environmental capacity (less than 3%) remaining that even small fluctuations in environmental quality could lead to the breach of a standard. For example, these fluctuations may result from diffuse source inputs that are not possible to control with any precision or
* A significant adverse trend is expected to breach an environmental standard within 6 years.

### 6.1.2 What is our approach to authorising discharges where the watercourse is at red RAG status?

Proposed activities should normally be refused authorisation if:

* The part of the watercourse they would affect is already at significant risk of deterioration i.e. its RAG status is red; or
* The activity would result in the watercourse becoming at significant risk of deterioration (i.e. changing from a green or amber RAG status to a red RAG status).

SEPA may make exceptions to the above where:

* The proposed activity would place negligible additional demand on environmental capacity and all basic, low cost, good practice measures will be taken to limit demand on capacity. Basic, low cost, good practice measures depend on the nature of the discharge. For sewage, secondary treatment is normally required, though septic tank treatment may be acceptable where there is very large dilution. The sewage discharge standards required will be set out in your permit.
* The applicant frees up capacity. For example, by reaching agreement with other operators to sufficiently reduce existing demand and or offers to do so with respect to activities for which the applicant is the operator, such that, should the proposal be authorised, the RAG status would be green or amber.
* SEPA considers that the proposed activity meets the following conditions for authorising activities likely to have a significant adverse impact on the water environment:
	+ The discharge will not (i) cause deterioration of a surface water body to a status worse than good; (ii) cause deterioration of the status of a body of groundwater; or (iii) compromise the future achievement of a River Basin Management Plan objective for a water body; and
	+ Is for the purposes of a new sustainable human development activity.

The circumstances under which discharges causing a significant risk of deterioration can be authorised are extremely limited and the norm in such circumstances will be refusal.

## 6.2 Amber RAG status

### 6.2.1 What is amber RAG status?

An "amber" risk of deterioration (an "amber" RAG status) is when:

* The remaining environmental capacity is between 3% and 20%; or
* A significant adverse trend is expected to breach an environmental standard within 6 to 12 years.

### 6.2.2 What is our approach to authorising discharges where the watercourse is at amber RAG status?

SEPA will normally require applicants to demonstrate that they have taken all practicable steps to minimise demand on environmental capacity, including use of best available techniques where:

* The part of the watercourse the activity would affect is considered by SEPA to be potentially at risk of deterioration (i.e. its RAG status is amber); or
* The activity is likely to result in a part of the watercourse becoming potentially at risk of deterioration (i.e. changing from green RAG status to amber RAG status).

The aim of SEPA's regulatory discussions with the applicant in the latter case will be to find ways, wherever reasonably possible, of avoiding the water moving to amber RAG status. The steps to be demonstrated will include application of best available techniques and, where relevant, consideration of better environmental options. Refer to WAT-G-046 Assessing significantly better environmental options. Where appropriate, SEPA will specify the taking of such steps as conditions of authorisation.

SEPA may make exceptions to the above requirement where:

* The proposed activity would place negligible additional demand on environmental capacity and all basic, low cost, good practice measures will be taken to limit demand on capacity.
* The applicant frees up capacity. For example, by reaching agreement with other operators to sufficiently reduce existing demand and or offers to do so with respect to activities for which the applicant is the operator, such that, should the proposal be authorised, the RAG status would be green (See Section 8).

If existing water quality is amber and the discharge using Best Available Techniques (BAT) measures is predicted to result in red RAG or the status is downgraded, we will normally then refuse an application, unless treatment standards tighter than BAT can keep the discharge in amber.

If existing quality is amber and the discharge using BAT measures is predicted to keep the water quality in amber, then we will authorise the discharge at BAT standards.

## 6.3 Green RAG status

### 6.3.1 What is green RAG status?

A green RAG status means that the part of the water environment is not at any significant risk of deterioration. This means:

* There is more than 20% of the capacity remaining and
* No trend or there is a trend but it will not cause an adverse impact for > 12 years.

### 6.3.2 What is our approach to authorising discharges where the watercourse is at green RAG status?

SEPA will authorise activities that are consistent with the maintenance of a green RAG status provided all basic, low cost, good practice measures are taken to avoid unnecessary or excessive use of capacity.

SEPA will aim in doing so to ensure that the water environment is maintained in a condition well within its green RAG status so as to retain capacity for future sustainable development. If remaining in green is not possible using ‘basic, low cost, good practice measures’, then the water quality can be allowed to move into amber, as long as BAT standards are used. The amber / red boundary must not be breached.

## 6.4 Capacity for phosphorus in watercourses

When estimating the available capacity for phosphorus in watercourses, we may take account of monitoring information on the condition of bottom-living algae called diatoms as well as the concentration of reactive phosphorus. This is because there is considerable variability in the sensitivity of sites to nutrient enrichment. Damage resulting from nutrient enrichment can be present at sites where concentrations of reactive phosphorus are consistent with the environmental standards for good or even high status. Relying on information on phosphorus concentrations alone could over or underestimate capacity.

# New discharges to water bodies that are less than good status for water quality

## 7.1 Scope

The approach described is this section should be used when considering proposed discharges where:

* The existing water quality is currently less than good; and
* There is a river basin management plans (RBMP) improvement objective for those conditions because the status of the water body is less than good or the achievement of an environmental objective for a protected area is being compromised.

Improvement objectives are set out in the RBMPs. They apply to those parts of the water environment where:

* Existing breaches of environmental standards are sufficiently extensive to result in the status of a water body being less than good; or
* The achievement of an environmental objective for a protected area is being compromised.

Typically, the achievement of an improvement objective will require a reduction in demand on capacity from those regulated activities contributing to the breach of the relevant environmental standard or standards. The principal improvement objective for Scotland's water environment is the achievement of good status. To secure the achievement of this objective, SEPA will ensure that, as a minimum, demand on capacity is sufficiently reduced for water quality:

* To comply with the environmental standards for good status; and
* Where relevant, for the RAG status of the affected part of the water environment to be better than red for good status.

However, SEPA also has a duty to act in the way best calculated to contribute to the achievement of sustainable development. Delivery of the minimum improvement target described above will not provide capacity for sustainable development. Where reasonable and proportionate, taking account of the likelihood of future demand for capacity, SEPA will aim to secure improvements that achieve a green RAG status towards the mid-point of the class.

When requiring improvements, SEPA will expect the operators of the relevant activities to demonstrate that, as a minimum, they are taking all basic, good practice measures to limit their demand on capacity. In some cases, such measures may sufficiently reduce existing demand on capacity to achieve good status and deliver a green RAG status. Where basic, good practice measures are insufficient to deliver a green RAG status, SEPA will consider whether requiring all practicable steps to minimise demand on capacity should be required, including best available techniques. In doing so, SEPA will take account of:

* The likely future demand on capacity, considering the location, etc of the affected waters (e.g. in remote areas, future demand may be unlikely).
* The confidence in its estimate of capacity; and
* The likely cost to the operators.

SEPA will not require improvement to a green RAG good status unless it considers that the potential benefits to sustainable development are likely to outweigh the additional costs to the operators.

Where waters are subject to an improvement objective, authorising further activities could mean greater reductions in existing uses of capacity being required to achieve the improvement objective than would otherwise be the case. A proposed activity would not have to cause a breach of an environmental standard for this to be so. For example, authorising an activity could change existing water quality from the upper end of moderate status to the lower end of moderate status. This might mean that measures that would previously have improved water quality to good status would no longer be sufficient to do so.

SEPA may only authorise a proposed activity that will compromise the timely achievement of an improvement objective if it judges that the requirements for derogating from that objective's achievement are satisfied. This includes assessing whether the benefits of the proposed activity would justify derogation.

## 7.2 SEPA’s approach to improvement

Typically, the achievement of an improvement objective will require a reduction in demand on capacity from those water activities contributing to the breach of the relevant environmental standard or standards.

The principal improvement objective for Scotland's water environment is the achievement of good status. To secure the achievement of this objective, SEPA will ensure that, as a minimum, demand on capacity is sufficiently reduced for water quality:

* To comply with the environmental standards for good status; and
* Where relevant, for the RAG status of the affected part of the water environment to be better than red for good status.

However, SEPA also has a duty to act in the way best calculated to contribute to the achievement of sustainable development. Delivery of the minimum improvement target described above will not provide capacity for sustainable development. Where reasonable and proportionate, taking account of the likelihood of future demand for capacity, SEPA will aim to secure improvements that achieve a green RAG status towards the mid-point of the class.

When requiring improvements, SEPA will expect the operators of the relevant activities to demonstrate that, as a minimum, they are taking all basic, good practice measures to limit their demand on capacity. In some cases, such measures may sufficiently reduce existing demand on capacity to achieve good status and deliver a green RAG status. Where basic, good practice measures are insufficient to deliver a green RAG status, SEPA will consider whether requiring all practicable steps to minimise demand on capacity should be required, including best available techniques. In doing so, SEPA will take account of:

* The likely future demand on capacity, considering the location, etc of the affected waters (e.g. in remote areas, future demand may be unlikely);
* The confidence in its estimate of capacity. SEPA will not require improvement to a green RAG good status unless it considers that the potential benefits to sustainable development are likely to outweigh the additional costs to the operators.

## 7.3 Deciding if there would be sufficient capacity to achieve the improvement and accommodate the proposal

SEPA will not consider a proposal as likely to compromise an improvement objective where:

1. The proposed activity would place only a negligible additional demand on capacity; or
2. The work of identifying and agreeing measures to improve the water environment (e.g. reviews of water use permits; Scottish Water investment planning aimed specifically at freeing up sufficient capacity to accommodate sustainable economic growth) is sufficiently advanced that it is clear and demonstrable that the improvement that will be delivered will exceed the minimum improvement target and free up sufficient capacity to accommodate the proposed activity.

Where (b) applies, SEPA may authorise the activity provided that:

1. Doing so before the improvement measures are implemented will not cause, or pose a significant risk of, further deterioration (i.e. breach environmental standards or change the RAG status to red); and
2. It is satisfied that appropriate steps to promote sustainable water use based on the long-term protection of available resources will be taken by the applicant.

The steps referred to in point (ii) above should be determined according to the principles set out in Section 5 and 6 as applicable. For example, the RAG status of the water environment will be treated as being amber if:

* The improvement measures are only expected to improve existing conditions into the amber RAG status zone of the target status class (normally good status); or
* In the interim prior to the improvement measures being taken, the RAG status in the current class is amber or would change to amber as a result of the proposal.

Where either of the above applies, and taking account of the interim nature of the risk if only the second applies, the applicant would be expected to take all practicable and proportionate steps to minimise demand on capacity, including best available techniques.

## 7.4 Options where there is insufficient capacity to achieve the improvement objective and accommodate the proposal

This section applies where planned improvement measures are not expected to free up sufficient capacity to accommodate the proposal. In such cases, SEPA will work with the applicant to determine whether:

1. Further steps could be taken by the applicant in time to sufficiently reduce the proposed activity's demand on capacity, or the demands on the capacity concerned of other activities operated by the applicant (if any), before the deadline for achieving the improvement objective (e.g. by upgrading the proposed level of treatment before the improvement deadline, etc);
2. The proposed activity could be time-limited to cease before the deadline for achieving the improvement objective (e.g. by connecting to a regional treatment system etc); or
3. The applicant has reached agreement with other operators to make sufficient additional reductions in their existing demand for the proposal to be accommodated. Where such an agreement has been made, SEPA will take account of it in accordance with Section 8.

Where the applicant makes a proposal satisfying the requirements of point (a) or (b) above, SEPA will normally grant authorisation, subject to:

1. Appropriately time-limited conditions of authorisation; and
2. Being satisfied that the appropriate steps to ensure promote sustainable water use based on the long-term protection of available resources will be taken by the applicant.

The steps referred to in point (ii) above should be determined according to the principles set out in Sections 5 and 6,. Where the options described at (a), (b) and (c) above do not apply, SEPA will consider whether the proposal could be authorised using a derogation assessment to determine the adverse impacts on the water environment. See WAT-G-041 EASR Guidance: Derogation determination – Improvements to the water environment.

## 7.5 Summary of the steps SEPA will follow for new discharges to water bodies of less than good water quality status.

Does the proposal make a negligible demand on capacity?

* If Yes, SEPA will authorise.
* If No, are there planned improvements expected to move water quality into good status and free up sufficient capacity to accommodate the proposed activity?
	+ No, there are no such planned improvements, SEPA will refuse – since we can’t derogate to less than good status using ​WAT-G-041 ​EASR Guidance: ​Derogation determination – Improvements to the water environment.
	+ Yes, there are such planned improvements, SEPA will authorise taking into account guidance set out in this section.

# Taking account of proposals to free up capacity

This section applies where:

* The applicant has reached agreement with other operators to make sufficient additional reductions in their existing demand for the proposal to be accommodated; or
* The applicant is offering to reduce demand on capacity from one or more other activities affecting the part of the water environment concerned and for which the applicant is the operator.

and

* Without implementing the reduction, there would be insufficient capacity to accommodate the proposal without deterioration, or without a significant risk of deterioration; or
* Without implementing the reduction, the proposal would compromise the achievement of an improvement objective.

When determining an application, we can take account of agreements or offers meeting the following criteria:

* The agreement or offer must relate to other authorised point source discharges that are placing demand on capacity in the same part of the water environment that would have to accommodate the proposed activity.
* The agreement or offer must not be to improve compliance with existing conditions of authorisation. However, where there is evidence that non-compliance is the reason why there is insufficient capacity to accommodate a proposed activity, SEPA will programme appropriate enforcement action to secure compliance.
* The information in the agreement or offer must be sufficient in conjunction with data held by SEPA about the relevant part of the water environment to allow SEPA to determine the effect of the agreement on capacity.
* Where an improvement objective applies, the agreement or offer must be to make bigger reductions in demand (i.e. by taking additional measures) than would be required to achieve the improvement target.
* The agreement or offer must be capable of being given legal effect by variation to the conditions of authorisation for the other activities (e.g. revised emission limits or restrictions on the timing of activities; etc) or revocation/surrender of the authorisations for the other activities.

SEPA will not take account of agreements or offers relating to activities likely to be contributing to diffuse source pollution. This is because SEPA cannot reliably predict the effects of such agreements or offers and separate them from the effect of compliance with existing authorisation conditions (i.e. water general binding rules).

Where an agreement or offer meets the above criteria, SEPA will determine whether it would free up sufficient capacity to accommodate the proposed activity. Where SEPA considers that an agreement or offer would free up sufficient capacity, we will normally:

* Vary the authorisations for the other activities in accordance with the terms of the agreement.
* Authorise the proposed activity once the time period allowed for appeal against those variations has expired, subject to being satisfied that appropriate steps will be taken by the applicant to promote sustainable water use based on the long-term protection of available resources.

Where an agreement or offer would not free up sufficient capacity to accommodate the proposed activity, SEPA will apply a derogation assessment to determine whether the proposal can be authorised. In making this determination, it will take account of any effect that the agreement or offer would have on, as applicable, reducing:

* The adverse impact of the activity; or
* The extent by which achievement of the improvement objective would be compromised.

# Taking account of likely future development

The approach described in this section should be used where:

* Other activities that will require use of capacity are likely to be proposed in due course as a result of the following approved developments:
1. An area being zoned for development by a planning authority in a finalised local plan.
2. Planning permissions granted by a planning authority; and
* These other activities would be expected to place more than a negligible demand on capacity in the same part of the water environment as an activity in respect of which an application for authorisation has been made.

SEPA will normally allocate capacity in relation to the available capacity at the time an application is made. This approach is sometimes known as allocation on a "first come, first served" basis. Capacity is allocated in sequence according to the order in which applications are received.

Where other development has been approved by a planning authority, determination of water use permit applications on a first come, first served basis could result in:

* Too much capacity being allocated to the first received applications to enable activities associated with the other developments to be accommodated; or
* Later applicants having to bear much greater costs (e.g. of treatment) to operate within the remaining capacity.

To help secure sustainable development in such circumstances, SEPA will take account of the combined demand from the proposed activity and those activities it judges likely to be required as a result of the approved development.

To do this, SEPA will seek to:

1. Identify, before determining the application, whether or not there are approved developments that are likely to place demands on capacity in the same part of the water environment.
2. Estimate the likely demand on capacity of the combination of the activity to which the application relates and any regulated activities SEPA expects to be proposed because of the identified approved developments. Unless contrary information is available, for the purpose of producing this estimate SEPA will assume that only basic, good practice measures will be used to limit the demand of those other activities on capacity.
3. Compare the cumulative demand with the available capacity and apply the relevant principles described in sections 5 and 6.

## 9.1 Where the applicant is not seeking more than the maximum pro-rata share estimated for the proposed activity

SEPA will authorise the proposal, subject to it using no more than its maximum pro rata share of the available capacity. Where a RAG status is available, the available capacity excludes "capacity" in the red RAG status band.

For example, if the expected total population equivalent of all of an approved development is 1,000 and the application under consideration serves a population equivalent of 200 (20%), the maximum capacity allocated to it would be limited as follows:

* Where SEPA has calculated a RAG status, 20% of the remaining capacity to the amber/red RAG status boundary; or
* Where a RAG status has not been calculated, 20% of the total estimated available capacity.

However, in so far as reasonable and proportionate, SEPA will require the applicant to minimise the proposed activity's use of its maximum pro rata share. This will help safeguard capacity for future growth. Wherever possible, SEPA will aim to maintain a green RAG status with all the expected activities in operation.

## 9.2 Where an applicant is seeking more than the maximum pro rata share of capacity

Where the applicant is seeking more than the estimated maximum pro rata share of capacity, SEPA will:

1. Authorise a temporary greater use of capacity where it judges it reasonable and proportionate for the applicant to ratchet down the use of capacity in time to provide the necessary share of capacity for the further controlled activities. For example, in the case of a discharge, the applicant may be able to comply with progressively tightening of authorisation conditions by enhancing the performance of an existing treatment system or connecting into a regional treatment system.
2. Where it judges that providing for only a temporary greater use would not be reasonable or proportionate, authorise the proposal subject to all reasonably practicable steps being taken to minimise demand on capacity, including the use of best available techniques and consideration of better environmental options.

Where point (b) above applies, SEPA will conclude that it is unlikely to be possible to accommodate all the other expected controlled activities within the available capacity. If all the other expected activities were to be authorised, this would be likely to cause deterioration.

SEPA will advise the planning authority of the conclusions it has drawn after having considered every reasonable means of accommodating all the activities expected to result from the approved developments. This will include explaining that SEPA will refuse a proposal likely to result in deterioration, unless that proposal would meet the derogation requirements. Which activity or activities might have to be refused would depend on the sequencing of the applications to SEPA from the approved developments.

During the processing of each application, including the initial application, SEPA will seek to obtain such information as it judges reasonably likely to be needed in the event that it has to undertake an assessment of whether the derogation tests could be met.

SEPA will not seek to obtain such information unless it considers there is at least a potential for the activity to satisfy the tests. Where, because of the amount of capacity progressively allocated through application of the first come, first served approach, SEPA determines that a proposed activity would be likely to result in deterioration (i.e. breach a standard) or a significant risk of deterioration (i.e. a red RAG status), it will refuse authorisation unless:

* It determines that the proposed activity meets the conditions detailed in WAT-G-041 ​EASR Guidance: ​Derogation determination – Improvements to the water environment for authorising activities likely to have significant adverse impacts on the water environment; or
* It determines those conditions are met by one or more of the activities it has already authorised and which were activities considered in reaching the conclusions it communicated to the planning authority. In making such a determination, SEPA may consider the collective benefit of the activities in so far as the activities serve component parts of a discrete but wider development.

# Disclaimer

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