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**WAT-G-031**

**EASR Guidance: Engineering Permit Application Guide**

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# 1. Purpose

This document provides information and guidance for anyone applying for:

* A new engineering permit level activity.
* A variation to an existing engineering permit.

These permits are issued under the Environmental Authorisation (Scotland) Regulations 2018, as amended (EASR).

This guidance explains why engineering activities require authorisation and a provides summary of the process we will use to assess engineering permit applications.

Detailed technical guidance is set out within WAT-G-030 EASR Guidance Engineering Meeting Good Practice, our Activity Guides and other supporting guidance documents.

# 2. Engineering Activities- Overview

Engineering activities are the carrying out of building or engineering works or works, (other than impounding works):

* In inland surface waters (including wetlands).
* In the vicinity of inland surface waters or wetlands where those works have or are likely to have significant adverse impact on the water environment.

## 2.1 Why do engineering activities have to be regulated?

Engineering activities are subject to authorisation via General Binding Rule, registration or permit as required by EASR according to the generic level of risk from the type and scale of the activity.

All engineering activities and any associated construction works, such as access and temporary crossings, can pose risks of harm to the water environment or to the interests of users of the water environment. These risks will vary depending on scale of the activity and the proposed location.

Such works can harm habitats in rivers, lochs and wetlands, affecting fish and other aquatic wildlife like invertebrates, plants, birds and mammals. They can block migrating fish, disturb spawning, cause water pollution from oils, concrete and sediments, and negatively impact activities like angling, kayaking and swimming. Engineering can also erode nearby land. Authorisation is needed to ensure activities don’t harm the water environment and its users.

When considering your designs, making an application for authorisation and carrying out your methods of working you should understand these risks and follow good practice (see [4.1.3 Good Practice Test](#_3.3_Good_Practice)).

When determining a permit application, we will carry out a number of tests and assessments to ensure impacts are minimised. If the impacts are significant, we will only grant authorisation if the benefits to the economy, society or environment outweigh the negative effects.

Note flood risk is not assessed as part of a Permit application under EASR (see [section 5 Flood Risk](#_6._Flood_Risk))].

## 2.2 Do the regulations apply to me?

The engineering activities which require a permit application are set out on our web site.

For the purposes of authorisation and guidance we have grouped engineering activities into the following categories:

* Bank works.
* Channel modifications.
* Crossings.
* Instream and In loch structures.
* Sediment management.
* Other engineering activities.
* Removal of existing structures.

There are some situations where authorisation is sometimes required, these are:

* Maintenance or replacement of existing structures.
* In the vicinity of inland surface waters.
* Engineering activities significantly adversely affecting wetlands.

There are also some engineering activities and situations that do not require authorisation these are set out on our website.

Permits are issued to a specific ‘authorised person’ who is legally responsible for complying with the permit’s conditions. Complying with these conditions helps protect the water environment and the interests of other users of the water environment.

## 2.3 Understanding and minimising risks to the water environment

Carrying out permit level engineering works and any associated construction and temporary works (e.g. access routes and temporary crossings) can pose risks to the water environment and the interests of other users of the water environment.

To reduce these risks, it is important to understand these risks and demonstrate to us that you are following good practice in your designs and working methods. The main principles of good practice are:

* Designing solutions that address the root cause of the problem.
* Choosing the best practical environmental option, after considering a range of options.
* Taking all reasonable mitigation to minimise or prevent harms.

You should familiarise yourself with the risks from the activity types you are applying for by referring to the relevant activity guides, meeting good practice and the supporting guidance.

# 3. Pre-application Discussions

We encourage you to have pre application discussions with us before submitting an application.

Having good pre application discussions will reduce the risks of an application either being rejected for being incomplete, at the wrong level of authorisation, require amendment, or being refused for not meeting the relevant assessment criteria. They can also be used to discuss and promote good practice to minimise impacts on the water environment.

Before making an application, please read all our relevant guidance for activities you wish to apply for and speak to us if you are not clear. We will steer you to the right guidance and authorisation requirements and help you understand the likely conditions you will have to comply with. Pre application discussion is strongly encouraged for all larger scale or long duration projects due to their complexity and duration.

Good pre-application discussions can:

* Save you money, by identifying a solution which costs less to apply for and implement.
* Identify solutions which have a lower environmental impact.
* Result in your application being determined more quickly, once submitted.

Particular attention should be given to:

* The need for the engineering works and the causes of any problem being addressed.
* Working out the best option.
* The design and planning of the works, working methods and mitigation to minimise risks to the water environment and the interests of other users of the water environment.
* The number and type of activities, the application requirements and charges.

# 4. Making a Permit Application

To make a valid permit application you should:

* Complete the relevant application forms and including all relevant supporting information\*.
* Follow the relevant supporting guidance for the activities being applied for.
* Check and submit the correct the application fee.

\*Supporting information includes:

* Providing a non-technical summary of your proposals.
* Relevant drawings as set out within our guidance WAT-G-035 EASR Guidance: Drawings for Permit level water activities.
* Photographs.
* Any required technical reports.

Permit applications may take up to four months to determine. This may be extended if additional information and assessments are required.

Please allow sufficient time to obtain authorisation to carry out the engineering activity and associated construction works.

Accelerated applications, where we may determine applications in a shorter time frame can be made under specified emergency situations (as set out in Regulation 63 EASR). Guidance on this is available on our web site. [Reg 63 EASR].

It is your responsibility to determine whether you require and obtain permissions with any other legislative requirements. This includes planning permission, consents from Nature Scot in relation to protected sites and species and consents from Historic Environment Scotland in relation to historic monuments, listed building and structures etc.

## 4.1 What we do with your application

Once an application for a permit level activity is received, we will carry out, a number of checks and assessments to:

* Check the application is valid.
* Assess the potential impacts on the water environment.
* Assess whether the interests of any other users of the water environment may be impacted.

The following assessments and tests may be carried out:

1. Validation.
2. Conservation Assessment.
3. Good Practice Test.
4. Environmental Standards Test.
5. Fish Impacts Assessment.
6. Other Users of the Water Environment.
7. Public Consultation.
8. Additional Details/ Further Information.
9. Derogation.
10. Determination.

Not all assessments are required in every case. Some are carried out dependent on outputs of others and some may take place at the same time as each other. The conservation assessment, environmental standards test and the Good Practice test are carried out in all cases.

If your application is granted, we will authorise the activity subject to conditions. These conditions are set to ensure protection of the water environment. This includes protecting, enhancing and preventing further deterioration of the status of aquatic ecosystems and promoting sustainable water use.

Where potential impacts are significant, we will only grant authorisation where they are balanced by positive contributions the activity makes to the economy, society or the environment.

A summary of the assessments we may carry out is provided below:

### 4.1.1 Validation

Your application will be checked to see if it is a valid application. A valid application must have:

* All relevant parts completed.
* Be signed and dated.
* Any associated supporting documentation (drawings, photographs, reports etc) must be included.
* The correct application fee will have been paid.

If any of these are incomplete, the application will be considered invalid and will likely be returned to you.

### 4.1.2 Conservation Assessment

This assessment is carried out in accordance with WAT-G-008 EASR Guidance: Assessment of impact on Protected areas from inland water activities. It assesses whether the activity on its own or in combination with other activities is:

* Likely to have a significant effect on the qualifying interests of any river or freshwater loch SAC or SPA.
* Likely to damage any water dependent, notified feature of any river or freshwater loch SSSI.

The assessment involves:

* A location screening check to see if the activity is in or near one of these areas.
* Further assessment, where the activity is in or near one of these areas to determine if the proposal could have a likely significant adverse effect.
* If likely a significant adverse effect is concluded, an appropriate assessment, including further discussion with the applicant and consultation with Nature Scot, will take place.

### 4.1.3 Good Practice Test

The Good Practice Test is carried out for all permit level engineering applications and must be passed for us to grant the application.

The Good Practice test is carried out to ensure that any new engineering proposals are a sustainable use of the water environment.

The Good Practice Test involves assessing your application to see if you have:

* Demonstrated the need for carrying out the activity.
* Identified and appraised options for carrying out the activity.
* Provided Justification of the selected option.
* Shown you will used all reasonable mitigation to minimise impacts.

The test is passed if the proposed works have a justified need, represent the best practical environmental option, and use all reasonable mitigation. This test involves a degree of judgement. There is no standard answer to fit all cases due to the highly variable nature of proposals and local situations.

Further details on this test and the information you need to provide are set out in our guidance WAT-G-030 EASR Guidance: Engineering: Meeting Good Practice.

### 4.1.4 Environmental Standards Test

The environmental standards test is carried out in all cases and evaluates the likely impacts the proposed activities will have on the morphological condition of the affected watercourse or loch. There are three types of environmental standards test:

* The local standards test (usually carried out over a 500-metre reach).
* The single activity limit test.
* The waterbody scale test.

These tests are conducted, on both a local and waterbody scale, using our latest assessment of the morphological condition of a watercourse or loch and are assessed to determine the impact the proposed activities will have on the morphology.

The tests use the condition limits, relative hazards and processes as set out within Schedule 3 to Scotland River Basin District (Standards) Directions 2024, and The Solway Tweed River Basin District (Standards) (Scotland) Directions 2024.

The output of these tests are also used to in our conservation assessment and to help determine whether to directly consult with the pubic or other users of the water environment.

### 4.1.5 Fish Impacts Assessment

The scope of the fish impacts assessment will vary according to the applied for the activity, the specific location and the information submitted with the relevant application forms. The assessment will look at three main issues:

* Timing in connection with fish spawning and fry development and emergence.
* Fish migration – assessing whether a proposed new structure or temporary works could cause impacts on fish migration (both up and down for all fish species).
* Assessment of mitigation proposals and preventing other harms to fish.

Further details on this can be found in our Guidance WAT-G-032 EASR Guidance Fish Protection.

### 4.1.6 Other Users of the Water Environment

In addition to potential impacts on morphology and aquatic ecology, engineering activities may also have impacts on the interests on other users of the water environment (third parties), such as recreation, angling and fishery interests kayaking and boating, swimming, public access other water activities such as abstractions etc. We will assess your application to:

* Identify potential other users of the water environment.
* Assess whether these interests may be affected.
* Decide whether we need carry out direct consultation with relevant parties.

Direct consultation with third parties will be carried out in accordance with our public participation statement available on our web site.

### 4.1.7 Public Consultation

Public consultation is carried out in line with our public participation statement (available on our web site).

We will publicly consult on those applications for permits and substantial variations to existing permits, which due to their nature or location have a higher likelihood of environmental impact and community impact.

The decision to publicly consult also depends on the outcome of other tests and assessments such as the environmental standards test.

Where public consultation is required, this may take the form of an advertisement in local newspapers, via project websites or social media etc. We will, in conjunction with you choose the best way to advertise your application.

Where public consultation takes place, we will put the permit application on our website subject to commercial confidentiality and national security directions.

### 4.1.8 Additional Details / Further information

Where there is uncertainty on the likely impacts (such as where a new or novel technique is being proposed or where a proposal is complex), we may request further information and or seek to consult other authorities and the public to gather additional views.

Ideally pre application discussions will have already taken place to establish the likely information we will require to determine your application.

If we require additional information to be submitted to determine your application, we will serve a notice under EASR Reg 37 (1) setting out the information required and the period within which it must be provided.

### 4.1.9 Derogation

A derogation assessment is applied where an application proposal is likely to result in any of the following significant adverse impacts on the water environment:

* Cause deterioration of morphological quality, at the local scale (500 metre reach), and has attracted relevant third-party representation.
* Fails a Single Activity Limit (SAL).
* Threatens to deteriorate the status of a waterbody.
* Threatens the achievement of an RBMP objective.

We have a general presumption against granting authorising to proposals which are likely to result in significant adverse impacts. However, we will consider authorising such proposals by providing a derogation from complying with environmental standards if:

* The proposal's benefits to human health, human safety or sustainable development outweigh the benefits of protecting the water environment; and
* Compliance with the requirements of other legislation relevant to the protection of the water environment (such as the legislation governing Protected Areas) will not be compromised.

In some cases, depending upon the site-specific issues, temporary environmental harm may be outweighed by benefits (such as, economic benefits or creation of important employment opportunities), examples may include new public flood defence schemes, public drinking water works, works to sustain vital transport routes such as railways or developments.

Note that each derogation assessment is made on a case-by-case basis.

### 4.1.10 Determination

Once all the tests and assessments have been completed a final decision will be made whether to grant or refuse your application, considering any responses received from consultees.

Granted permit applications will be subject to conditions, set to prevent harm to the water environment and the interests of other users of the water environment. The permit will be issued to an authorised person, who must ensure the authorised activity(ties) are carried out in accordance with the conditions.

If we conclude you application should be refused, we will likely contact you to give you an opportunity to revise your proposal or withdraw your application. If your revised submissions do not satisfy our concerns, then your application will be refused.

Reasons for refusal include, but are not limited to:

* Breaching of environmental standards (i.e. Environmental Quality Standards) which would compromise achieving the Water Framework Directive Objectives.
* Adverse impacts on other users of the water environment.
* There are alternative sustainable and efficient water uses available.
* The nominated Authorised Person on the application form cannot ensure that the activity will be carried on in accordance with, and to the extent authorised by, the authorisation.

# 5. Flood Risk

SEPA’s regulatory duties for Engineering Activities under EASR do not control flood risk.

There are, however, some circumstances where flood related matters can inform the determination of a EASR Engineering permit application. These include:

* Where the justification, required as part of the Good Practice Test, for high impact engineering includes benefits to flood risk management e.g. installation of properly designed flood defence structures to protect a community from flooding.
* Where an application is subject to a derogation test. an assessment of the balance between negative and positive impacts of the proposal (considering a wide range of social, environmental and economic factors) will be undertaken. This may include changes in the flood risk (increases or decreases in risk) from the proposal.

Local Authorities are the primary authority for controlling flood risk in Scotland. SEPA does provide flood risk advice to planning authorities relating to proposed development, but the planning authority will set the conditions considered appropriate to mitigate flood risk when planning permission is granted.

Although flood risk is not regulated by SEPA’s, we will promote or encourage sustainable flood risk management when assessing applications. See our Flooding web pages for further details.

# 6. Summary

A summary of the key points is set out below:

* The term ‘Engineering activity’ applies to all engineering, building or other works (except impounding works) in inland surface waters (including wetlands) and works in the vicinity of inland surface waters which pose a risk of significant adverse impact.
* Authorisation for ‘Engineering activities’ is required under The Environmental Authorisation (Scotland) Regulations 2018 as amended, (EASR).
* The Engineering activities which are subject to authorisation and those activities and situations where authorisation is not required are set out on our web site.
* Engineering activities can cause harm to the water environment by physical damage, pollution, harm to fish and other wildlife, spread of invasive species and impacts on other users of the water environment.
* When carrying out any work in or near the water environment potential harms should be avoided or minimised.
* Pre application discussions are strongly encouraged before submitting an application.
* Application forms for Engineering Permit level activities are available on our web site activity pages.
* Application fees and other charges for each activity are set out on the web site activity pages.
* Applications for engineering permits may take up to four months to determine.
* You must make a valid application and submit sufficient supporting information.
* To determine your application, we will carry out a number of tests and assessments.
* Applications may require consultation with the public and other parties to determine if interests of other users of the water environment may be impacted. See our Public Participation Statement.
* Permit applications will only be granted where: good practice is met; there is adequate environmental capacity and where other users of the water environment are not adversely impacted.
* Applications are likely to be refused where there is a likely significant adverse impact or where your activity is not considered a sustainable use of the water environment.
* Granted permits will be issued to an authorised person and contain conditions relating solely to the construction or carrying on of the activity.
* Compliance with the conditions will prevent further deterioration, protect and enhance the status of aquatic ecosystems and ensure resources are used in a sustainable way.
* You are responsible for obtaining permissions required under any other legislation.

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