

Case ID: IESS.21.015

Description: Consideration of the licencing and enforcement regimes in respect of redundant weirs and structures in Scottish rivers

Case Summary

What was the issue?	A representation received by ESS asserted that the Scottish Environmental Protection Agency (SEPA) was not carrying out its responsibilities to ensure that river barriers over one metre in height are licenced.
What did ESS do?	ESS accepted the case for “pre-investigation.” We researched the relevant legislation and policy background, and sought information from SEPA and the organisation who made the representation.
What was ESS’ conclusion?	Although the matter is within our remit and satisfies our investigation criteria, we consider that it is more appropriate at this time to monitor the plans which have recently been put in place to remove the river barriers. Should implementation of these plans not be achieved, ESS will reconsider whether further action is required.

Background

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 are designed to protect freshwater habitats from actions which could cause damage, such as dredging, abstraction and modification. Under these regulations, weirs over one metre in height, including redundant weirs, must be considered a controlled activity and thus require SEPA to issue a licence to the owner or operator, or consider the activity to be unauthorised. These structures can create barriers for

migratory fish species, disrupting spawning and patterns of upstream or downstream migration. The preferred approach is for unused weirs to be removed to re-naturalise the habitat in line with Water Framework Directive (WFD) commitments. The WFD is EU legislation which was transposed into Scottish law through the Water Environment and Water Services (Scotland) Act 2003.

Summary of Concerns Reviewed by ESS

ESS received a representation concerning the effectiveness of SEPA's licensing regime for controlled activities in Scottish rivers. Specifically, there are numerous unlicensed weirs in Scottish river catchments and that ineffective licensing of structures in rivers can impact on efforts to improve river habitats. The outcome sought was for SEPA to ensure that all weirs were licenced so that action could be taken to assist in their removal.

The ESS criteria for investigation requires consideration of whether the matter arises from a significant or potentially significant incident concerning the environment. In this instance, ESS considered that significant harm to the environment, including protected sites and protected species, could arise from ineffective licensing or failure to meet WFD objectives for good water quality. The pressures on Scottish surface waters, preventing them from achieving 'Good' status include barriers to fish migration, and physical modification of waterways.

SEPA's response to ESS enquiries

As SEPA is the body responsible for licencing weirs, ESS requested reasonable assistance from them under their co-operation duties as set out in Section 23(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. In response to our enquiries, SEPA provided plans staged across the next five years, indicating how barrier removal or easement of the remaining structures would take place. These were developed in early 2022 by SEPA in accordance with Scotland's 3rd River Basin Management Plan, which was launched in Parliament by the Scottish Government in December 2021.

Assessment and conclusion

Although the representation focussed on the effectiveness of SEPA's licencing regime, ESS noted that the outcome sought was ultimately linked to the removal of river barriers.

During our enquiries we learned of the Scottish Government's commitment to remove all barriers by 2027 and we sought information from SEPA about how they intended to implement this. The information received from SEPA confirms that the removal of the barriers is a staged process and that, should their plan be successfully implemented, the ultimate outcome sought in the representation will be achieved.

In light of this, and given that SEPA's plans have been devised only relatively recently, ESS will monitor and engage with SEPA on the implementation of their plans through the various stages.

The first agreed review of progress will take place in December 2022. Should implementation not be achieved, ESS will reconsider whether further action is required.

August 2022