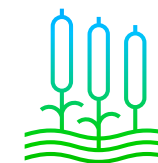




REWILDING FRESHWATER HABITATS



CORE TOPICS:

- The permissions, licences and authorisations that may be required to undertake rewilding of freshwater habitats.
- The potential legal liabilities that may arise from rewilding freshwater habitats in breach of these requirements, including for failure to obtain the relevant permissions, licences and authorisations.

KEY TAKEAWAYS:

- Planning permission may be required, which could include a flood risk assessment and (in rare cases) an environmental impact assessment. Rewilding on or near a protected site may be subject to additional restrictions and/or requirements.
- Controlled Activities Regulations authorisation may be required for works that involve the abstraction or impoundment of water, or engineering works on inland waters, unless the activity is exempt. Byelaws may also apply.
- Wildlife licences may be required if a project is likely to have a significant effect on a protected site or affect a protected species.
- A landholder could be held liable to neighbouring landholders for nuisance if rewilding activities cause flooding, subsidence or otherwise disturb neighbours' enjoyment of their land. A landholder can also be held liable to landholders up and downstream for breaches of their riparian obligations.
- A landholder has a duty of care to ensure that their land is reasonably safe for those exercising their access rights. The landholder must manage their land in a way that respects public access rights.

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1. INTRODUCTION

Freshwater habitats are diverse ecosystems that include rivers, streams, ponds, bogs, fens, marshes, reedbeds, wet meadows and wet woodlands. This note does not cover canals, to which specific rules may apply. Practical actions that can be taken to rewild these habitats include:

- creating new ponds or enlarging existing ponds;
- restoring watercourses and freeing rivers and streams (e.g. by removing dams, flood defences and other barriers);
- taking actions to reconnect rivers with their floodplains;
- allowing rivers to meander again;
- restoring peatlands and blanket bogs;
- removing land drains;
- ensuring the good health of the landscapes alongside watercourses (e.g. by restoring reedbeds and planting woodlands).

This note covers the main legal obligations and requirements that may apply to projects seeking to rewild freshwater habitats in Scotland and outlines areas of potential liability that could arise. It is important to note that multiple permissions, licences and authorisations may be required, particularly for larger-scale rewilding projects or projects located in or near protected sites or where protected species are present.

Certain activities which may be relevant to rewilding freshwater habitats are covered in other briefing notes, such as *Developing Land*, *Protected Areas*, *Liability to Visitors and Neighbours* and *Wildlife Reintroductions*. You can access these notes at [Rewilding Law Hub for Scotland](#). The Scottish Environment Protection Agency (SEPA) has also published general guidance on activities that may affect water, which sets out the responsibilities and rules to follow when dealing

with the water environment on or near your property.

Legal requirements vary between England, Wales and Scotland. This note focuses on Scotland only. The primary legislative frameworks applicable in Scotland are administered by SEPA and NatureScot. Engagement with other public bodies, particularly the relevant local authority, may also be necessary for some aspects of rewilding projects, for example if you are engaging in activities that require planning permission.

Worked examples showing how the legal requirements may apply to common rewilding water scenarios (e.g. removal of a weir, removal of land drains, creation of ponds and scrapes, re-meandering of a river and peatland restoration) can be found in Section 6 below. A checklist of key requirements to consider can be found in Section 7.

2. PLANNING CONSIDERATIONS

Planning permission may be required where the rewilding of a freshwater habitat constitutes development under Scottish planning rules. Where this is the case, an environmental impact assessment (EIA) or other assessments and permissions could also be required.

2.1 Planning permission

In Scotland, 'development' for planning purposes is defined as "the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land".¹

Where freshwater rewilding activities constitute a development, planning permission from the relevant local planning authority (LPA) will be required.

2.1.1 Permitted development rights

Permitted development rights automatically permit certain developments, meaning that a planning application will not be required. Use of these rights requires certain criteria to be met and in some cases prior approval from the LPA is required.²

Specific permitted development rights exist for certain agricultural works, sundry minor operations (such as the construction, maintenance or alteration of a fence) and forestry obligations, provided that, among other conditions, the works meet the size and scale limits and that the use of the development is consistent with the existing use of the property. Agricultural permitted development rights that may apply to rewilding projects include the carrying out of water management projects for the purposes of agriculture and the carrying out of works in connection with the improvement or maintenance of watercourses or land drainage works.³ Permitted development rights may also apply to peatland restoration works. This is subject to certain conditions, including the submission of a peatland restoration scheme to the planning authority and applying to the planning authority for a determination as to whether prior approval is required.⁴

Approaches taken by different LPAs vary regarding the types of permitted development rights and therefore rewilders should consult the relevant LPA before commencing work to confirm what is required. LPAs can issue an Article 4 Direction to disapply some or all of the permitted development rights in a specified area, provided the LPA has first obtained the approval of the Scottish ministers.

The examples in Section 6 below explore in more detail whether various common types of rewilding freshwater activities could count as 'development' for planning purposes and when it may be possible to rely on permitted development rights. For example, the removal of a weir seems likely to need planning permission. In contrast,

planning permission may not be required to remove land drains. But as approaches taken by LPAs differ on this point, rewilders should consult the relevant LPA before commencing work, to confirm what is required.

2.1.2 Local development plan

If a planning application is necessary, the LPA will assess it based on the planning policy framework, including the Local Development Plan (LDP).⁵ The LDP outlines the LPA's policies for land use and development for its area, which includes any policies for conservation of the natural environment. Planning decisions will be taken in accordance with the LDP unless material considerations allow for deviation from it. If you believe your project may require planning permission, it is crucial to review the LDP for your area, which will be available on the local authority website, to ensure compliance with local planning policies.

2.1.3 River Basin Management Plan

Where the rewilding project is within a river basin district, the relevant River Basin Management Plan should be consulted. This will explain how waters are to be managed and protected in that river basin district. The plan is used by LPAs to inform planning decisions.

There are three river basin districts within Scotland: Scotland, Solway Tweed, and Northumbria. The River Basin Management Plan for the Scotland river basin district is produced by SEPA on behalf of the Scottish Government. The Solway Tweed River Basin Management Plan is produced by SEPA in collaboration with the UK's Environment Agency. The Northumbria River Basin Management Plan is produced by the UK's Environment Agency in consultation with SEPA. River basin management plans can be accessed via the [SEPA website](#).

Further information on planning permission can be found in the [Developing Land](#) briefing note.

2.2 Environmental Impact Assessment

Rewilding projects should consider whether an EIA will need to be carried out as part of the application for planning permission. An EIA is typically only required for projects likely to have significant environmental effects such as heavy industry projects.⁶ Therefore, it is unlikely that an EIA would be required for most rewilding activities.

Possible activities that could require an EIA in relation to rewilding freshwater habitats include:⁷

- Water management projects for agriculture, including irrigation, and land drainage projects where the area of the works exceeds one hectare.⁸
 - Rewilding projects should consider the wider impacts of the proposal on hydrology and surrounding ecosystems.
 - Note that an EIA will not normally be required for routine water management projects undertaken for the purpose of agriculture.
 - It is possible that breaking up land drains could require an EIA if this fits the description and criteria above, although as already noted it is unlikely that an EIA will be required for activities involving rewilding freshwater habitats.
- Groundwater abstraction and artificial groundwater recharge schemes or works for the transfer of water resources between river basins, in each case provided the area of the works exceeds one hectare.
 - Rewilding projects should consider the wider impacts of the proposal on hydrology and surrounding ecosystems. This includes having regard for the impacts that such a development may have on environments distant from the project, especially with regard to wetlands and other similar sites where the habitat and species are particularly dependent on the aquatic environment.⁹

Where an EIA is required, it is typically submitted with the application for planning permission as an Environmental Statement. Therefore, the EIA should be completed prior to submitting the application. The LPA can advise on whether a project requires an EIA or, if still unsure, a screening opinion can be requested to clarify whether an EIA is required.

Further information on EIAs can be found in the [Developing Land](#) briefing note.

2.3 Protected sites

Protected sites in Scotland are areas designated to protect the country's natural and cultural heritage. The sites are categorised based on their significance and the type of protection they require. Rewilding activities may be limited by the legal framework that exists to protect these areas.

If a rewilding project is intended to take place within a protected area, or may impact a protected area, additional licences and consents may be required. Further information on protected sites and rewilding can be found in the [Protected Areas](#) briefing note.

2.3.1 Common designations

The most common designations in Scotland are Sites of Special Scientific Interest (SSSIs), National Nature Reserves (NNRs), National Parks, Marine Protected Areas (MPAs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Ramsar Sites and World Heritage Sites. Ramsar Sites are of particular relevance to freshwater rewilding projects. This is because they are wetlands of international importance, designated for protection under the Convention on Wetlands of International Importance (Ramsar Convention).

[Sitelink](#) can be used to identify these protected sites in Scotland.

2.3.2 Peatlands

Peatlands cover more than 20% of Scotland's land area. They also play an important role in flood risk management, agricultural land use and supporting environmental policies. Peatlands may be protected under the designations referred to above.

Policy 5 of the [National Planning Framework 4](#) sets out the Scottish Government's policy on peatlands as relates to planning applications. Where development requiring planning permission on peatlands is proposed, a detailed site-specific assessment will be required to review the condition of the soils, the likely effects of the development on the peatlands and the likely net effects of the development on climate emissions and loss of carbon.

2.4 Flood risk assessment

A Flood Risk Assessment (FRA) may be required if:

- (a) planning permission is required;¹⁰
- (b) the proposed development is on a site that is anticipated to be at flood risk.

Where an FRA is required, it is typically submitted with the application for planning permission. Therefore, the FRA should be completed prior to submitting the application. Failure to complete an FRA where one is required may result in the refusal of planning permission.

The [SEPA Flood Hazard and Risk Information Service](#) can be used to determine whether a flood risk exists and its level in the area of the proposed development. The service gives information for the long-term flood risk of an area, not for a specific property.

For planning purposes, a flood risk area means land with an annual probability of being flooded greater than 0.5%, which must include an appropriate allowance for future climate change.¹¹

Policy 22 of [National Planning Framework 4](#) states that LDPs should avoid development in areas at flood risk as a first principle. Should the development in such an area be found necessary, the applicant must demonstrate that all flood risks are managed, that floodplain capacity is maintained with no increased risk for others, that the development remains safe and operational during floods, that it uses flood-resistant materials and that it can adapt to climate change in the future. Proposed developments which create, expand or enhance opportunities for natural flood risk management will be supported under Policy 22.

SEPA has published [Technical Flood Risk Guidance for Stakeholders](#) to set out the requirements and a checklist for flood risk assessments. Note that this guidance is being updated and so may not accurately reflect recent policy changes.

If a rewilder is unsure as to whether an FRA is required, they should seek advice from SEPA.

3. CARRYING OUT WORKS ON INLAND SURFACE WATERS

Rewilding work carried out in or near any freshwater inland waters, including wetlands, may require authorisation from SEPA and could be subject to byelaws. This is to protect the environment and human health from potential harm.

For these purposes, inland surface waters are defined as: (a) all standing or flowing water on the surface of the land (other than transitional waters);¹² and (b) all groundwater, with the landward limits of coastal water.¹³

The Environmental Authorisations (Scotland) Regulations 2018 (EASR), as amended by the Environmental Authorisations (Scotland) Amendment Regulations 2025, set out which activities affecting the water environment require authorisation from SEPA. Under EASR, if your site carries out

more than one regulated activity, you do not need separate authorisations. Instead, you will need just one based on the highest level of risk.¹⁴

There are four types of EASR authorisation:

- (a) **General Binding Rules¹⁵**
General Binding Rules (GBR) are mandatory rules which cover specific low-risk activities. Any activities that comply with the rules do not require an application to be made to SEPA. There are no associated charges. If the limits set out in the GBR are exceeded or it is not possible to comply with all the rules, a different type of authorisation will be required.
- (b) **Notification**
Notifications are used for low-risk activities, and the activity is considered authorised as soon as SEPA has been notified. They can be associated with GBRs that need to be complied with. Notifications do not expire (unless specifically stated) and will continue to exist until they are surrendered or revoked.
- (c) **Registration**
Small-scale, low-risk activities that individually pose low environmental risk but cumulatively can result in greater environmental risk can be registered by applying to SEPA. An application fee will apply. Registration must include the details of the scale and location of the activity and will require certain standard conditions to be complied with. The registration will not expire (unless specifically stated) and will continue to exist until it is surrendered or revoked.
- (d) **Permits¹⁶**
Permits are used for high-risk and non-standard activities that require a rigorous assessment before they are granted. If an activity requires bespoke conditions, involves public consultation or requires a Fit and Proper Person Assessment, a permit will

be required. Permits can include standard and bespoke conditions and will not expire (unless specifically stated) until they are surrendered or revoked.

3.1 The activities requiring EASR authorisation

3.1.1 Abstraction

Abstraction means any activity where water is removed or diverted by mechanical means, pipe or any engineering structure or works from any part of the water environment, temporarily or permanently.¹⁷

3.1.2 What permission is required for abstraction?

It is unlikely that rewilding would involve the abstraction of water, because rewilders would typically allow newly created features such as ponds to fill up with water by themselves. If it did, the requirements for registration or a licence would depend on the amount of water being abstracted.

- For abstractions of less than 10m³ per day, GBRs apply and no registration or licence is required.
- For abstractions between 10 and 50m³ per day, registration is required.
- For abstractions over 50m³, a permit is required.

3.1.3 Impoundment

The EASR impoundment regime applies to the construction, modification or operation of an impoundment in inland surface water (not associated with abstraction), the operation of an impoundment in surface water or a wetland, or the removal of an impoundment in inland surface waters or wetlands. Impoundments include any dam, weir or other works that impound water.

3.1.4 What permission is required for impoundment?

Although it is unlikely that a rewilding project would seek to build impounding structures such as dams or weirs, if you carry out impoundment activities you must have an authorisation from SEPA. Placing logs or branches in a river to slow flow or putting in 'leaky dams' may also be considered impoundments for the purposes of the EASR impoundment regime. The type of impoundment activity will determine what type of authorisation is required:

Registration

- (a) impoundments for peatland restoration or wetland creation;
- (b) operation of an existing impoundment of more than 1m high.

Permit

Operation, modification or removal of impoundments built before April 2006:

- (a) operating impoundments in estuaries or the sea;
- (b) construction, operation and modification or all other impoundments.

3.1.5 Engineering works

Some engineering works in inland waters require some form of authorisation from SEPA.

3.1.6 What permission is required for engineering works?

For rewilders, the most relevant of these are activities that include: green bank reinforcement, placing trees in rivers to protect eroding banks, river diversions or realignments, and restoration and enhancement works including the removal of structures.¹⁸ Removal of land drains will not usually require authorisation unless there is an impact on a natural watercourse.¹⁹

3.1.7 Exempt activities

Some engineering works do not require authorisation, including the removal or management of vegetation, the removal or management of debris or trash, and all works in wetlands not directly associated with a river, loch or artificial water body.

3.2 How is EASR authorisation obtained?

3.2.1 General Building Rules

Where a rewilding activity complies with the GBRs, no further action is required and the EASR is deemed to have been complied with.

1. Where a rewilding activity requires registration under the EASR, the applicant must submit an application through SEPA's online EASR system. Permit applications are made using SEPA's [Make an Application](#) service, which includes the forms required for new permits, variations, transfers or surrender of existing authorisations.

3.3 What are the consequences of non-compliance?

It is an offence to fail to comply with or contravene a GBR, a registration or a water use licence.²⁰ Non-compliance is punishable by a fine, imprisonment or both.²¹ If unsure as to whether registration or a water use licence is required, you should seek advice from SEPA.

3.4 Byelaws

Byelaws in Scotland are local laws made by local authorities or certain public bodies to address specific issues within their areas. The power to create them is granted by statutory authority.



3.4.1 Local byelaws

Local authorities have the power to make byelaws under the Local Government (Scotland) Act 1973. The purpose of byelaws is to ensure the good rule and government of the area and for the prevention and suppression of nuisances.²²

An example of byelaws that may be relevant to freshwater rewilding are those that manage activities on or around water bodies.²³

Consultation with the local authority and other statutory bodies will allow rewilders to establish which byelaws may apply to their rewilding activities.

It may be possible to obtain consent for activities that would otherwise contravene a byelaw if consent from the local authority or another statutory body, where relevant, is obtained.

3.4.2 What are the consequences of non-compliance?

Acting in contravention of applicable byelaws is a criminal offence punishable by a fine. Enforcement is typically carried out by local authority officers or the police.²⁴

4. WILDLIFE LICENCES

4.1 When is a wildlife licence required?

A rewilding project may require a wildlife licence if it involves the carrying out of activities that may disturb or harm protected species. NatureScot is responsible for all wildlife licensing in Scotland with the exception of some seals, whales and dolphins.

A licence would be required if a freshwater rewilding project would:

- cause harm to certain animals specified in the Wildlife and Countryside Act 1981, including:
 - intentionally or recklessly killing, injuring or taking any wild animal specified in the Act;
 - intentionally or recklessly (a) damaging, destroying or obstructing access to any structure or place which any wild animal included in the Act uses for shelter or protection; or (b) disturbing any such animal while it is occupying a structure or place which it uses for that purpose.²⁵

A number of species dependent on freshwater habitats in Scotland are protected under the Act. These include, among others, the Freshwater Pearl Mussel and the Water Vole.

- cause harm to wild birds, their nests or eggs, including intentionally or recklessly:
 - killing, injuring or taking any wild bird;
 - taking, damaging, obstructing or destroying their nest or eggs.²⁶
- cause harm to animals which are a European Protected Species, including:
 - deliberately or recklessly capturing, injuring, killing, harassing or disturbing them, or taking or destroying their eggs;
 - damaging or destroying their breeding site or resting place, regardless of intention.²⁷

A number of species dependent on freshwater habitats in Scotland are European Protected Species, including the Great Crested Newt, the Natterjack Toad, the Common Otter and the Eurasian Beaver.

4.2 Application process

Separate licences are required for each type of protected species affected by the rewilding activities. Separate

application forms exist for each protected species licence. These can be found in the [Species Licensing Guide](#), which also provides further guidance on the process.

Where an application is required, it should be made to NatureScot. Different tests will exist depending on the type of species in question. You may need to demonstrate that the work is necessary and that no alternative method exists that would allow you to carry out the work without affecting the protected species.

If rewilders are unsure as to whether their rewilding activities require a wildlife licence, a [species protection plan](#) can help to ensure that works related to the proposal take into account any protected species on site.

Where planning permission is required for a development, a protected species licence application should not be made until the necessary planning permissions and consents are in place.

For more information on the application process, see NatureScot's guidance on [Licensing](#), which specifies which protected species may need a licence and what is needed to apply.

4.3 What are the consequences of non-compliance?

Carrying out a regulated activity without a wildlife licence is a criminal offence punishable by an unlimited fine and/or up to five years in prison.²⁸ If in doubt as to whether a wildlife licence is required, rewilders should seek advice from NatureScot.

5. POTENTIAL LIABILITIES

In addition to the consequences of non-compliance with the legal requirements discussed above, the following further potential liabilities may arise in connection with carrying out

rewilding of freshwater habitats:

- liability to neighbouring landholders;
- breach of riparian obligations;
- liability to the public using the land under right to roam.

5.1 Liability to neighbouring landholders

A landholder can be held liable for doing something on their land that interferes with a neighbour's land or their enjoyment of it. For rewilding projects, the key issues that may arise are flooding and subsidence.

In terms of flooding, under common law obligations, a landowner whose property sits higher than an adjacent neighbouring property has the right to have natural water outside a controlled channel drain onto the lower land. Note that the higher owner cannot alter the route of the drainage so that it no longer follows the natural path of the land, and the higher owner cannot overstretch the right leading to damage of the lower property.²⁹ Should this occur, a neighbour may be able to claim damages against the higher landowner or obtain a court order requiring the landholder to take action to stop or prevent the damage from occurring. This may not usually be an issue for many rewilding water projects, which could generally be expected to improve drainage and which would not encourage drainage via an unnatural path, but it is still important to be aware of.

Other instances where neighbours are adversely impacted by flooding or subsidence caused by their neighbour's actions may result in claims for compensation for physical damage and loss of enjoyment. Without the prior agreement of neighbours, landholders may be required to take action to stop or prevent things from occurring on their land if they are impacting their neighbours.

Rewilders should check with their insurance broker the extent to which the risk of liability to neighbouring landholders is,

or can be, covered by their insurance. For further information see the [Rewilding in Scotland: Liability to Visitors and Neighbours](#) briefing note.

5.2 Breach of riparian obligations

One aspect of potential liability to neighbouring landholders relates to riparian rights and responsibilities.

Those who own land through or along which watercourses run (riparian owners) benefit from special legal rights and are subject to certain responsibilities. These rights and responsibilities derive from Roman laws, some of which have since been codified in statute or byelaw. This section will focus on the potential liabilities which remain governed by common law and which would constitute disputes between individuals as opposed to enforcement action brought by a regulator or public body.

5.2.1 Riparian rights

Rights enjoyed by riparian owners include:

- to receive a flow of water in its natural state, without undue interference in quantity or quality by upstream users;
- to protect their property from flooding and erosion, provided they obtain prior approval for any measures from SEPA;
- to fish in their section of the watercourse, although fishing rights can also be reserved to a previous owner or be sold or leased. This does not apply to salmon fishing.

5.2.2 Riparian responsibilities

Riparian owners also have numerous responsibilities which include:

- to pass on flow without obstruction, pollution or diversion which affects the rights of others;
- to accept flood flows through their land, even if caused by inadequate capacity downstream;
- to maintain the beds and banks of the watercourse (including trees and shrubs growing on the banks, and to clear any debris, even if it did not originate on their land);
- to keep the bed and banks clear from any matter that could cause obstruction.

5.2.3 Presumptions

In determining who owns a stretch of watercourse, and therefore who is obligated to comply with the riparian responsibilities, two presumptions apply:

- if the land boundary runs alongside a watercourse, the landholder owns the land up to the centre of the watercourse, unless it is owned by someone else.
- if the watercourse runs through or underneath the land, the landholder owns that stretch of the watercourse, unless it is the responsibility of a third party (which would more commonly occur with artificial watercourses).

If a rewilders is unsure of who owns a watercourse, they should check the title documentation available from the Registers of Scotland.

5.2.4 What are the consequences of a breach?

If a landholder is a riparian owner and, by virtue of carrying out rewilding activities in relation to freshwater habitats, breaches any riparian responsibility or infringes the riparian rights of others, liability could arise under various common law causes of action, in particular:

1. **Nuisance** – where there is a foreseeable risk of the type of damage that occurred, and either the use of or interference with the land is not reasonable or the landowner fails to take reasonable care.
2. **Negligence** – where there is proof of a foreseeable risk of damage and a failure to take reasonable care.
3. **Strict liability** – usually where there is an escape of water (where it accumulated unnaturally, such as through the construction of a dam), which spreads onto neighbouring land and causes substantial damage.

As with liability to neighbouring landholders, remedies for breach of riparian obligations are typically damages and/or injunctive relief.

If you are unsure of which riparian rights and responsibilities may apply to you (including those codified into statute and/or byelaw), your local council may have published guidance on this point.

5.3 Occupiers' liability

The right to roam in Scotland grants the public extensive rights to access most land and inland water for recreational, educational and various other uses, provided that the manner of use is responsible. It covers a wide range of activities including walking, cycling, horse riding, wild camping and canoeing. The occupier of the land must take reasonable care to avoid acts or omissions which they could reasonably foresee may result in harm or injury.³⁰

5.3.1 Obligations of landowners

Occupiers have a duty of care to ensure that their land is reasonably safe for those exercising their access rights. Therefore, they must take reasonable steps to prevent harm to visitors, such as maintaining paths and warning of any potential hazards.

Occupiers must manage their land in a way that respects public access rights. They should therefore avoid actions that could deter or prevent the public from exercising their rights, such as locking gates or erecting unnecessary fences. Therefore, rewilders should consider the impact of their activities on public rights of access.

Freshwater rewilding activities that may affect public rights of access include:

- the creation of natural ponds or scrapes;
- the re-meandering of a river;
- the removal of land drains to create a wetland.

All three of these activities could potentially prevent public rights of access or create a hazard, should they not be obvious to the reasonable person.

Further information can be found in the [Rewilding in Scotland: Public Access](#) briefing note and the [Rewilding in Scotland: Liability to Visitors and Neighbours](#) briefing note.

5.3.2 What are the consequences of a breach?

It is the duty of the local authority to uphold access rights. The local authority may institute and defend legal proceedings and generally take such steps as they think expedient.³¹ This may include enforcement notices or court orders.

6. EXAMPLES

6.1 Removal of a weir

Landowner A wants to remove a redundant weir in a river flowing over their land to restore a more natural river course and facilitate movement of aquatic wildlife. The river is an inland surface water.

- The removal of a weir would be likely to constitute 'engineering' operations and therefore be 'development' requiring planning permission. If a weir is located in an area at risk of flooding, an FRA may be required as part of the application for planning permission. Early engagement with the LPA is advisable to confirm what is required.
- Landowner A will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land.
- As the river is an inland surface water and the weir is an on-line impoundment, landowner A will require a CAR authorisation from SEPA (either a simple or complex licence depending on the type of weir) for the removal of the weir because this involves altering an impounding structure. Landowner A should also check whether any further requirements are imposed by local byelaws.
- Landowner A will also need to consider whether any wildlife licences are required (e.g. if there are protected species living on site that might be impacted).
- Finally, landowner A will need to consider the possibility of legal liability to neighbouring landowners, for example if removing the weir causes neighbouring land to flood. Landowner A may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

6.2 Removal of land drains

Landowner B owns an area of former agricultural land containing land drains. Landowner B wants to remove the land drains to create a wetland. There is a river (an inland surface water) nearby.

- LPAs may take different approaches regarding whether this activity constitutes 'minor works' (which do not require planning permission) or 'development' (which

requires planning permission). Their decision may be impacted by the specific circumstances of the project, including its scale, likely impact and the applicable planning policies. If planning permission is required, an FRA may also be required if the project is located in an area at risk of flooding. Landowner B should consult with the LPA in advance of undertaking such works to confirm what is required.

- Landowner B will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land, or whether any wildlife licences are required.
- Landowner B may require a CAR authorisation if the removal of the land drains would be likely to have an impact on the nearby river. If not, a CAR authorisation is not likely to be required. Landowner B should also check whether any further requirements are imposed by local byelaws, which may require consent if specific criteria are met.
- Finally, landowner B should consider how the works may impact their neighbours' land, for example whether removing the land drains may cause flooding to that land which could result in legal action for compensation or to stop the drains being removed. Landowner B may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

6.3 Creation of ponds and scrapes

Landowner C wants to create new wetland features on agricultural land, including ponds and scrapes, which will be dug and left to fill up with water and be planted. There is a river (an inland surface water) nearby.

- As with landowner B, LPAs may take different approaches regarding whether planning permission (and potentially an FRA) is required and landowner C

should consult with the LPA in advance of undertaking such works. As the land is used for agriculture, landowner C may be able to rely on permitted development rights provided that:

- those rights have not been restricted by the relevant LPA;
- Landowner C satisfies the relevant conditions (including that the works are "requisite for the purposes of agriculture within that unit").
- Landowner C will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land, or whether any wildlife licences are required.
- Landowner C may require EASR authorisation if the works are within a certain distance of the river and are likely to have an impact on it. The type of authorisation required will depend on the specific circumstances and the scope of the work.
- Landowner C should check whether any further requirements are imposed by local byelaws. In particular, landowner C should note that byelaws may restrict activities such as planting trees or shrubs within a specified distance of a water body.
- As the scrapes and ponds will be left to fill up with water by themselves, EASR authorisation for abstraction will not be required.
- Finally, landowner C should consider how the works may impact their neighbours' land, for example whether the wetland creation works may unduly interfere with the flow of water to neighbours downstream. Landowner C may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

6.4 Re-meandering of a river

Landowner D owns an area of land on which there is a straightened river. Landowner D wants to restore meanders to the river and plans to do so by digging out a new meandering channel, connecting this to the river and filling in the straightened channel. The river is an inland surface water.

- The re-meandering of a river would be likely to constitute 'engineering' and 'other' operations and therefore be 'development' requiring planning permission. However, if the land is currently used for agriculture, landowner D may be able to rely on permitted development rights, subject to the same restrictions set out above in respect of landowner C.
- If planning permission is required, an FRA may also be needed if the project is located in an area at risk of flooding. Early engagement with the LPA is advisable to confirm what is required.
- Landowner D will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land, or whether any wildlife licences are required. For example, if landowner D intends to remove fish from the original channel by electrofishing, landowner D will need to consider whether this might affect any protected species and if so whether a licence will be required to do so.
- It is likely that byelaw consent will be required because the works involve diverting the flow of water in the watercourse. Landowner D should contact the relevant local authority before starting the works.
- Landowner D will need to obtain EASR authorisation from SEPA for engineering works because the re-meandering works involve the diversion or realignment of a river. SEPA requires EASR authorisation even for engineering activities on minor watercourses where these involve a permanent diversion or realignment.



Whether a registration or a permit is required will depend on the type of channel modification. If the re-meandering involves impounding works, this is likely to require EASR authorisation too.

- Finally, landowner D will need to consider the possibility of liability to neighbouring landowners, for example if the engineering works to create the meander reduce the flow of water to neighbouring land. Landowner D may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

6.5 Peatland restoration

Landowner E owns an area of degraded peatland in Scotland. Landowner E wants to use peatland restoration techniques (such as installing bunds and blocking land drains) to restore the peatland. There is a river (an inland surface water) nearby.

- It is possible that the restoration works may count as 'development' for planning permission purposes, depending on the scale and type of work being carried out. Landowner E should engage with the relevant LPA to confirm whether planning permission is required. Landowner E may be able to rely on permitted development rights if certain conditions are met, as described in [2.1](#) above.
- Landowner E may also need to obtain licences if, for example, the peatland is on or near a protected site or if protected wildlife might be impacted by the restoration works. Landowner E should also take note of government policies relating to peatlands such as policy 5 of the [National Planning Framework 4](#).
- As there is an inland surface water nearby, landowner E may require EASR authorisation, for example if the works are within a certain distance of the river and would have an impact on it. Landowner E should consult SEPA to determine the specific requirements.

- Landowner E should also consider the possible impacts of the works on neighbouring land and whether insurance will be desirable to cover any risk of liability.
- Landowner E should also consider whether there are any byelaws applying to the proposed restoration activities.

7. CHECKLIST

- Would the works constitute 'development' for planning purposes? If so, can you rely on permitted development rights or will you need to apply for planning permission (see [2.1](#))?
- If planning permission is required:
 - Could the works have "significant effects" on the environment? If so, an EIA may be required (see [2.2](#)).
 - Are the works located in an area at risk of flooding? If so, an FRA may be required (see [2.4](#)).
- Would the works take place on or near any protected sites (e.g. an SSSI or SAC)? If so, restrictions may apply and additional consents may be required (see [2.3](#)).
- Is the project located on or near inland surface waters? If so, an EASR permit may be required (see [3](#)):
 - Are you planning to carry out engineering works on or near inland surface waters? If so, an EASR permit may be required (see [3.4](#)).
 - As part of your rewilding activities, are you planning to abstract more than 10m³ of water on a given day? If so, you are likely to need an EASR permit (see [3.2](#)).
 - Are you planning to create, alter or remove an impoundment (e.g. a weir, dam or fish pass)? If so, you may need an EASR permit (see [3.1.3](#)).

- Do any local byelaws impose further legal requirements or restrictions on your proposed rewilding activities? If so, you may need byelaw consent (see [3.4](#)).
- Could your project impact protected species? If so, you may need a wildlife licence (see [4](#)).
- Could the works impact your neighbours' land (e.g. by causing flooding or reducing the flow of water)? If so, you may wish to consider obtaining additional insurance cover in case they require compensation (see [5.1](#)).

Thank you to Clifford Chance LLP for their legal support in producing this briefing note.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.

The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of February 2026.

ENDNOTES:

- 1 [s.26 Town and Country Planning \(Scotland\) Act 1997.](#)
- 2 Ibid.
- 3 [Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992/223, Schedule 1, Part 6, para.18A and para. 20.](#)
- 4 [Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992/223, Schedule 1, Part 6, para.20A. For the conditions under which development for peatland restoration is permitted see para.20A\(2\).](#)
- 5 Although planning decisions are typically taken by the LPA, Scottish ministers have the power to take over ('call-in') planning applications. Scottish ministers will normally only do this if the application raises issues of national importance or conflicts significantly with national policy.
- 6 [S.2\(1\) of the Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) provides that "EIA development" means developments which is either Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location. [S.3](#) provides that planning permission for EIA development must not be granted unless an EIA has been carried out.
- 7 The activities are listed at [Schedule 2, paragraph 2 of the Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#). The indicative criteria, thresholds and key issues to consider are set out in guidance provided by the Scottish Government in the Planning Circular 1/2017: Environmental Impact Assessment Regulations, available here: <https://www.gov.scot/publications/planning-circular-1-2017-environmental-impact-assessment-regulations-2017>.
- 8 Ibid.
- 9 Ibid.
- 10 This applies even if you are relying on permitted development rights.
- 11 [National Planning Framework 4, p.149.](#)
- 12 Transitional waters being defined in [s.3\(7\) of the Water Environment and Water Services \(Scotland\) Act 2003](#) as water (other than groundwater) in the vicinity of river mouths which is partly saline in character as a result of its proximity to coastal water but which is substantially influenced by freshwater flows.
- 13 [Water Environment and Water Services \(Scotland\) Act 2003, s.3\(6\).](#)
- 14 Environmental Authorisations (Scotland) Regulations 2018 (EASR), as amended by the Environmental Authorisations (Scotland) Amendment Regulations).
- 15 General binding rules are defined in Regulation 10 of the Environmental Authorisations (Scotland) Regulations 2018 (as amended) and are set out in column 1 of the relevant chapter of Part 1 of Schedule 9 of the same Regulations.
- 16 SEPA's authority to grant water use licences is set out in [regulation 22 and 23 of the Environmental Authorisations \(Scotland\) Regulations 2018 \(EASR\), as amended by the Environmental Authorisations \(Scotland\) Amendment Regulations 2025.](#)
- 17 Environmental Authorisations (Scotland) Regulations 2018 (EASR), as amended by the Environmental Authorisations (Scotland) Amendment Regulations, Regulation 2.
- 18 [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011, Schedule 3.](#)
- 19 See SEPA's guidance on engineering and impounding activities affecting drainage ditches [here](#).
- 20 Environmental Authorisations (Scotland) Regulations 2018 (EASR), as amended by the Environmental Authorisations (Scotland) Amendment Regulations, Regulation 69 (1).
- 21 Environmental Authorisations (Scotland) Regulations 2018 (EASR), as amended by the Environmental Authorisations (Scotland) Amendment Regulations, Regulation 69 (3).
- 22 [Local Government \(Scotland\) Act 1973, s.201.](#)
- 23 For an example, see the Loch Lomond & the Trossachs National Park Loch Lomond Byelaws 2023.
- 24 [Local Government \(Scotland\) Act 1973, s.203.](#)
- 25 [Wildlife and Countryside Act 1981 \(as amended in Scotland\), s.9\(1\), \(4\).](#)
- 26 [Wildlife and Countryside Act 1981 \(as amended in Scotland\), s.1\(1\).](#)
- 27 [The Conservation \(Natural Habitats, &c.\) Regulations 1994, Regulation 39.](#)
- 28 [Wildlife and Countryside Act 1981, s.21\(4D\).](#)
- 29 While depending on specific circumstances, overstretching will only occur where it can be demonstrated that: (i) the lower owner's land has been damaged as a result of the higher owner exercising their right to drain water; and (ii) the higher owner has exercised drainage rights beyond what they are entitled to.
- 30 [Occupiers' Liability \(Scotland\) Act 1960, s.1.](#)
- 31 [Land Reform \(Scotland\) Act 2003, s.13.](#)