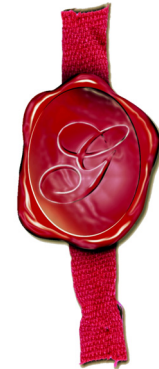


This information contained in this leaflet is general advice only. It cannot be relied upon as a definite statement of the law and you should take specific legal advice on any particular situation.

A Large Print version of this leaflet is available on request

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**The Legal Problems Associated with**

**SEPTIC TANKS**

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Septic Tanks and their outfalls, cause legal problems in two main areas with an additional practical problem.

## 1. Illegality

Under current environmental protection law, the outfall from Septic tanks must seep away into the ground without becoming apparent on the surface (by a 'soakaway').

If this is not possible, certain other systems, such as "reed beds" can be used providing that they are built and maintained to current regulations.

Discharges into ditches, watercourses or to the sea are now, in general, illegal unless they have the specific approval of the Scottish Environmental Protection Agency (SEPA), or the discharge previously had the approval of the predecessors to SEPA, the River Purification Boards. Such consents are generally given only where there can be adequate dilution, i.e. it is a substantial water course without too many other discharges into it..

Therefore many older discharges which are not to soakaways, which when constructed were perfectly legal, are now often illegal. However SEPA does not have the resources or personnel to investigate every Septic tank and drainage arrangement. The illegality usually becomes apparent only if there is a complaint or if the property is sold and the matter investigated by the purchasers Solicitor.

The implications of having an illegal drainage arrangement are:-

- (a) SEPA can order that a legal drainage arrangement is installed often at considerable expense.
- (b) The possibility that the SEPA may serve a prohibition notice: this means that you cannot

continue to use the existing drainage arrangement and must stop using it immediately. In the case of a dwellinghouse, this means the property will be declared "unfit for human habitation".

- (c) The possibility of prosecution.

As a result of these changes to law over time, it is now necessary for a solicitor to obtain confirmation in each case where drainage is to anything other than mains drainage or a soakaway that SEPA are happy with the drainage arrangement.

## 2. The Right To Use

If the Septic tank, pipes and soakaway or any of them are situated on ground which does not belong to the seller, then there must be a legal right (called a "servitude") to this. A servitude can be documented in the title deeds of property or it can occur simply by the use of the Septic tank and its apparatus for a period of at least 20 years after any date when the owner of the land affected may have also owned the house with the Septic Tank etc.

If these rights do not exist then the owner of the ground can demand that you cease to use his ground for this purpose. This may make your house uninhabitable.

In the event that an illegal discharge requires to be remedied, there may not be room to build a suitable system on your own land. In this case a soakaway etc. may be required to be built in someone else's ground. This requires the consent and co-operation of the owner of ground affected (which may not be forthcoming). A specific title deed known as a Deed of Servitude will be required, and even co-operative neighbours would probably wish you to pay both sides legal costs for this.

## 3. Percolation Test

This is a practical rather than a legal problem. If you wish to put in place a new soakaway then the ground concerned must pass a percolation test. This test estimates the rate at which water seeps away into the ground. This rate determines the size of the soakaway that must be constructed.

On some ground the water cannot seep in to the sub-strata and a soakaway is not possible. Alternative methods of sewage disposal (which tend to be more expensive) have then to be considered.

## Further Information

SEPA produce a leaflets giving their guidelines on Septic Tank drainage, "Disposal of Sewage where no Mains Drainage is Available – PPG4" which can be obtained from their offices, or obtained online at [www.sepa.org.uk/guidance/ppg/ppghome.htm](http://www.sepa.org.uk/guidance/ppg/ppghome.htm)

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