

**Better Environmental  
Regulation Programme**

# **Consultation on Proposals for an Integrated Authorisation Framework**

**January 2017**

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## Foreword

This consultation sets out proposals for an integrated environmental authorisation framework as part of the Better Environmental Regulation Programme. Stakeholder views are important to us and we would welcome your comments on these important proposals.

Consistent, proportionate and simplified regulation is an essential component of Scotland's environmental protection framework. It is vital to the promotion of responsible business growth.

The Regulatory Reform (Scotland) Act 2014 provides a significant opportunity to simplify, streamline and standardise the system of environmental authorisations in Scotland.

The integrated authorisation framework will support delivery of SEPA's statutory purpose, which is to ensure that environmental protection is carried out in a way that, as far as possible, supports health and wellbeing and sustainable economic growth. It is also key to the successful implementation of SEPA's regulatory strategy "[One Planet Prosperity - Our Regulatory Strategy](#)". This sets out how, as a 21st century regulator, SEPA is engaging to deliver compliance and maximise its contribution to our communities, a dynamic and sustainable economy and Scotland's ambitious climate change agenda.

The sustainable use of our environment is intrinsically linked to our economic potential as a nation. Consistent and proportionate regulation plays a vital role in making Scotland the most attractive place for doing business in Europe. Similarly, a clean and flourishing environment is essential in ensuring that people in Scotland lead longer, healthier lives and can access the amenities and services they need.

Both the Scottish Government and SEPA wish to make clear that compliance with environmental regulations is the minimum standard expected and is non-negotiable. We want, however, to help encourage and incentivise as many businesses as possible to go beyond compliance by helping them to further reduce their environmental impact in a way that builds business benefits. Doing so will not only help businesses to innovate and grow sustainably; it will enable our communities and environment to thrive and our country to prosper.

The integrated authorisation framework will play a key role in delivering a 21<sup>st</sup> Century approach to regulation for Scotland and we invite you to help us deliver it.



A handwritten signature in black ink that reads "R. Cunningham".

**Roseanna Cunningham**  
**Cabinet Secretary for Environment,**  
**Climate Change and Land Reform**



A handwritten signature in black ink that reads "Bob Downes".

**Bob Downes**  
**Chair, Scottish**  
**Environment Protection Agency**

## **1 Part 1 - Purpose, contents and consultation information**

### **1.1 Overview**

- 1.1.1 This consultation sets out the policy intent behind the creation of an integrated authorisation framework and seeks stakeholder views on a range of proposals relating to it. The framework has a key role to play in enabling SEPA to deliver its [regulatory strategy](#). This integrated authorisation framework will integrate, as far as the relevant European Directives (“the Directives”) allow, the authorisation, procedural and enforcement arrangements relating to water, waste, radioactive substances and pollution prevention and control (“the existing regimes”).
- 1.1.2 The framework will also help SEPA to deliver proportionate, joined up, outcome focussed regulation that significantly simplifies the regulatory landscape and reduces regulatory burden.
- 1.1.3 This new integrated authorisation framework will be delivered through regulations made under section 18 of the [Regulatory Reform \(Scotland\) Act 2014](#) (“RR(S)A”). It will replace existing legislation which currently implements the existing regimes by re-transposing the requirements of a number of Directives.
- 1.1.4 Stakeholder views at this stage will help with both the development of the regulations and SEPA’s implementation. In particular they will help with the development of SEPA guidance, changes to SEPA’s procedures and will inform other preparations for the implementation of the integrated authorisation framework.

### **1.2 Scope of consultation**

- 1.2.1 This consultation seeks stakeholder views on features of the proposed integrated authorisation framework. The proposed features set out in this consultation include:
- The standardisation, simplification and streamlining of the process for obtaining, modifying, transferring or surrendering an authorisation, replacing the existing regimes with, as far as possible, a common framework;
  - The introduction of simple environmental outcomes;
  - The creation of an integrated approach to public participation in decision-making on the authorisation of regulated activities;
  - An integrated “fit and proper person” (FPP) test across all regulated activities; and
  - Standardisation of arrangements relating to statutory notices (such as information, enforcement and revocation notices).

- 1.2.2 However, the regulations will need to provide, where necessary, for more detailed prescriptive provisions or modifications to the common framework to meet European Directive requirements for particular activities. The number of modifications will be minimised but some are unavoidable.
- 1.2.3 The Directives being re-transposed in whole or in part by the new regulations and the domestic legislation we propose to replace with the new regulations are described in parts 5 to 8.
- 1.2.4 It is intended that the regulations will also be used to integrate the requirements of two further Directives:
- The [Medium Combustion Plant Directive \(MCPD\)](#) on the limitation of emissions of certain pollutants into the air from medium combustion plants; and
  - The [Basic Safety Standards Directive \(BSSD\)](#) laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation. This directive replaces the existing Basic Safety Standards Directive.
- 1.2.5 These Directives must be transposed into domestic law by 19 December 2017 and 6 February 2018 respectively. Scottish Government is currently consulting on proposals for transposition of the [Medium Combustion Plant Directive in Scotland](#). Technical detail and focussed engagement on detailed proposals for the BSSD will likely be subject to a separate public consultation process prior to the transposition date.

### 1.3 Better Environmental Regulation (BER) programme

1.3.1 The integrated authorisation framework is a key component of the joint [Scottish Government - SEPA BER programme](#). Through the BER programme, the Scottish Government and SEPA aim to provide a simpler legislative framework so that SEPA can be more transparent, accountable, proportionate, consistent and targeted in carrying out its regulatory functions.



1.3.2 This will enable SEPA to better identify, and focus most effort on, the most important environmental risks and harms. This will ensure more effective and efficient

protection of the environment, reduce the regulatory burden on business and allow regulators to take opportunities to improve the environment. It is vital in promoting sustainable business growth and enabling SEPA to transform the way it approaches and delivers regulation in line with its [regulatory strategy](#).

- 1.3.3 The BER programme is being delivered on a phased basis, and has already delivered a range of tangible outcomes to better protect and improve Scotland's environment such as: a new statutory purpose for SEPA, new enforcement powers for SEPA, a range of new sentencing options for courts and the creation of a new significant environmental harm offence, and a new regulatory charging model. The integrated authorisation framework is the final major project in the programme.
- 1.3.4 Stakeholder engagement, as part of the wider BER programme, has been essential in developing the framework for environmental regulation that will underpin the regulations. This consultation builds on previous consultations, such as the [high level SEPA Environmental Regulation consultation](#) in 2010/11 and the joint Scottish Government – SEPA consultation on [Proposals for an Integrated Framework of Environmental Regulation in 2012, both of which showed strong and widespread support for](#) simpler, more risk-based environmental regulation with more integrated permissions and a single consistent regulatory procedure. In particular the proposal in the 2012 consultation to adopt a simplified, proportionate and risk-based approach was supported by 92% of respondents.

#### **1.4 Issues not covered by this consultation**

- 1.4.1 The basis of charging for environmental authorisations is not covered in this consultation. Any charging issues arising from this programme will be considered as part of the first review of SEPA's new charging scheme, scheduled for 2017.
- 1.4.2 The policy on, and use of, enforcement measures introduced under the [Environmental Regulation \(Enforcement Measures\) \(Scotland\) Order 2015](#) (including fixed monetary penalties, variable monetary penalties and enforcement undertakings) and civil penalties is also outside the scope of this consultation.

## 1.5 What happens next (your input and future consultation)

1.5.1 This is a large consultation document and has been structured to help readers access the information most relevant to them as follows:

Part	Title	Most relevant to
1.	Purpose, contents & consultation information.	All.
2.	Policy overview.	All.
3.	Key features of the new framework for authorisation holders.	Authorisation holders but also any interested members of the public.
4.	Key features of the new framework for the public.	All.
5.	Pollution prevention and control (this part is in a separate document).	PPC permit holders.
6.	Waste (this part is in a separate document).	Waste management licence or exemption holders, waste carriers, brokers and dealers, and PPC waste activity permit holders.
7.	Radioactive substances (this part is in a separate document).	RSA authorisation and registration holders and those who carry out activities under Exemption Orders.
8.	Water (this part is in a separate document).	CAR licence or registration holders and anyone carrying out an activity under CAR general binding rules.

1.5.2 The regime specific parts of the consultation (parts 5 to 8) provide more detail on the proposed changes for each of the existing regimes, and contain information and proposals about how the integrated authorisation framework will be modified to accommodate specific directive requirements which cannot be integrated. Whilst we have used a common overall format for these parts there are differences in the types of information provided and the detailed format. This is because each of the existing regimes has a different history and is starting from a different point. For example, the water regime benefits from being the most up to date having been substantially reformed in 2005, but the waste regime has evolved over decades and currently relies on at least eight different pieces of legislation.

1.5.3 In addition to this formal consultation we will also provide opportunities to speak to us face to face about the proposed changes, including stakeholder events over the consultation period so we can listen to and understand your views and answer any questions. These events are also intended to help you understand the proposed changes and put together your response.

1.5.4 You can respond to the consultation online using the Scottish Government's Consultation Hub on [Citizen Space](#). You do not have to answer all the questions. You can choose to answer only those questions most relevant to you.



- 1.5.5 You can also respond by sending your views and comments on the proposals in this paper to the following address:

Environmental Quality Division  
Scottish Government  
Area 1-D North  
Victoria Quay  
Edinburgh  
EH6 6QQ  
Tel: 0131 244 0205  
Fax: 0131 244 0245  
E-mail: [EQCat@gov.scot](mailto:EQCat@gov.scot)

- 1.5.6 Responses should be made on the attached respondent information form and returned to us by 12<sup>th</sup> April 2017. Earlier responses would be welcomed.
- 1.5.7 We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the respondent information form attached at Annex 1 with your response as this will ensure that we treat your response appropriately.
- 1.5.8 Further information about the Scottish Government consultation process is available on the [Scottish Government website](#).

## **2 Part 2 - Policy Overview**

### **2.1 Environmental Regulation in the 21st Century**

- 2.1.1 SEPA has a clear role to play in tackling the challenge facing Scotland to achieve social and economic success while living within planetary constraints. This is embodied in SEPA's statutory purpose to deliver environmental protection and improvement in ways that, as far as possible, also create health and wellbeing benefits and sustainable economic growth.
- 2.1.2 To deliver this purpose, SEPA is taking a new approach to regulating, an approach that helps to put Scotland on a path that creates prosperity within planetary limits. This approach is set out in SEPA's regulatory strategy "[One Planet Prosperity - Our Regulatory Strategy](#)".
- 2.1.3 The integrated authorisation framework has a key role to play in enabling SEPA to transform the way it approaches regulation by providing a framework that enables innovation and proportionate, joined up, outcome focussed regulation, that significantly simplifies the regulatory landscape and reduces regulatory burden.

#### ***Enabling innovation***

- 2.1.4 To support this 21<sup>st</sup> century approach to regulation we need a regulatory system that will help encourage businesses to move beyond compliance by identifying innovations that help them further reduce their environmental impact in ways that builds business benefits.
- 2.1.5 Beyond compliance does not mean additional regulatory burdens on businesses. It means working with those businesses that voluntarily want to go broader and further than mere compliance because they recognise that adopting this approach creates commercial benefits, such as reducing costs, opening up new markets and reducing supply-chain risks.
- 2.1.6 The most successful businesses in the 21st century will be those that are low carbon, low materials use, low water use and low waste. For these businesses, the environment will be an opportunity, not a problem.
- 2.1.7 Achieving this will require innovative technologies and approaches and it is intended that the integrated authorisation framework will be more supportive of innovation. We believe these changes will make it easier for an authorised person to test and implement innovative technologies without compromising environmental protection.

### **2.2 Current legislative and regulatory framework**

- 2.2.1 The current legislative landscape is unnecessarily complicated and not helpful in enabling SEPA to transform the way it regulates. The regulatory systems for the existing regimes that SEPA is responsible for have developed and

evolved largely separately and adopt different approaches to achieve similar outcomes.

#### 2.2.2 Each regime has a different history:

- The water regime benefits from being the most recent having been substantially reformed in 2005 and is the model for proportionate tiers of authorisation.
- The waste regime has evolved over decades and relies on at least eight different pieces of legislation.
- The radioactive substances regime has evolved over the last 50 years and whilst it has stood the test of time well, will benefit from being updated to reflect modern approaches and practices.
- The Pollution Prevention and Control regime has already adopted a more integrated approach across environmental media, but complex signposting and interaction is needed with the other regimes. It also only deals, on the whole, with the more significant polluting activities.

2.2.3 Figure 1 below shows the different tiers of authorisation currently used in each of the existing regimes, as well as the proposed future tiers.

2.2.4 In addition to the complexities around authorisations, there are unnecessary differences between the procedural requirements of the existing regimes. This includes fundamentals such as, who holds an authorisation, determination periods, how the suitability of a person to hold an authorisation is assessed and how the public and other interested parties are consulted and engaged in relation to applications.

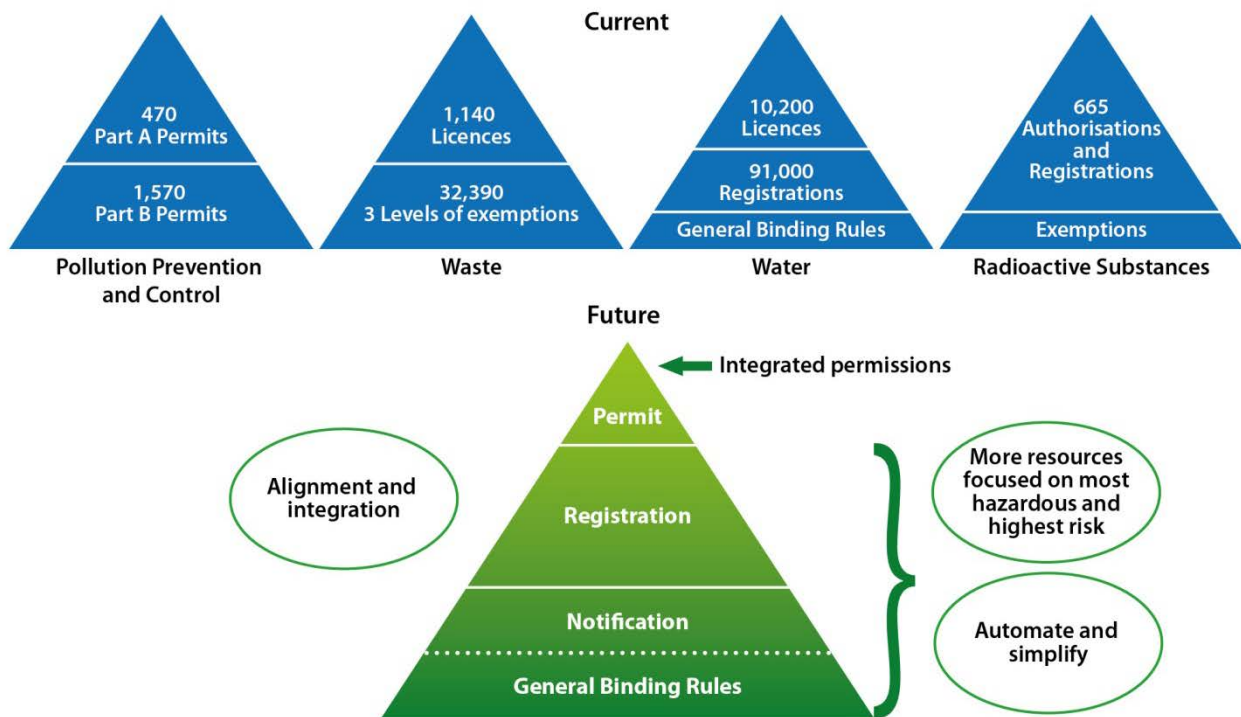
2.2.5 While there has often been good reason for the differences in the existing regimes, it has resulted in a legislative framework and regulatory procedures that are inconsistent, and onerous to administer, both for SEPA and operators.

### 2.3 Overview of the proposed integrated authorisation framework

2.3.1 Chapter 1 of Part 3 of the [RR\(S\)A 2014](#) enables the Scottish Ministers to make provision for, or in connection with, protecting and improving the environment, including provision for regulating environmental activities and provision for implementing European and international obligations relating to protecting and improving the environment.

2.3.2 The Scottish Government and SEPA propose to radically simplify, streamline and integrate, as far as possible, the existing environmental authorisation regimes into an integrated authorisation framework (as illustrated by Figure 1 below).

**Figure 1 – Current and Future Authorisation Tiers**



2.3.3 However, there are some constraints in the Directives, which are not themselves integrated. The integrated authorisation framework has been developed to be as integrated as possible but there are circumstances and activities where specific directive requirements must be applied.

2.3.4 This consultation sets out the benefits of the integrated authorisation framework and the detail of the policy proposals. It also sets out the details of any modifications required to the integrated authorisation framework and the main differences in the regime specific parts. The table in paragraph 1.5.1 will help you identify what parts of the consultation are important for you.

### **The benefits of an integrated authorisation framework**

2.3.5 The framework is designed to standardise, simplify and streamline the process for complying with environmental legislation in Scotland, while also improving transparency and engagement in decision making. The framework is an essential component of the tools SEPA needs to be a 21<sup>st</sup> century regulator.

2.3.6 **For Scotland’s environment and communities**, the integrated authorisation framework will:

- Enable SEPA to focus on the environmental risks that matter most;

- Support SEPA's work to bring all regulated businesses into compliance quickly, easily and cost effectively;
- Support SEPA's ambitions to help as many businesses as possible to go beyond compliance;
- Ensure that people are properly informed and engaged in decision making, particularly communities directly impacted by regulated activities;
- Improve flexibility for SEPA to undertake enforcement that secures compliance, prevents harm and requires restoration of the environment;
- Gives SEPA discretion to revoke authorisations if the holder of the authorisation has ceased to be a fit and proper person, has ceased to be in control of the regulated activity or has repeatedly failed to secure compliance with regulatory requirements or harmed the environment; and
- Ensure that most regulated activities have a named authorised person, increasing accountability and ensuring that corporate responsibility is taken for compliance and the prevention of harm.

2.3.7 These benefits will enable SEPA to maximise the effectiveness of its regulatory activities to ensure Scotland's environment and communities are protected from environmental harm.

2.3.8 **For Scotland's regulated businesses**, the integrated authorisation framework will:

- Provide a simple, consistency, transparent and integrated system that is easier to use and understand;
- Make it quicker, easier and more cost effective to comply with environmental legislation;
- Provide clarity for regulated businesses about the type of authorisation they need, why and what is required of them to comply;
- Provide a robust, and risk-based approach that adopts a level of control proportionate to the risks posed by regulated activities;
- Enable the introduction of simpler, integrated authorisations (e.g. single site and corporate authorisations) replacing regime specific authorisations;
- Support innovation so that businesses can realise the financial and reputational benefits of going beyond compliance;
- Provide a more 'level playing field' for business by ensuring that disreputable operators or criminals are unable to obtain authorisations; and
- Unlock new opportunities to streamline administrative processes and increase efficiency.

2.3.9 These benefits will enable SEPA to help businesses secure compliance and go beyond compliance as well as maximise the efficiency and transparency of its processes to ensure Scotland's businesses are regulated effectively with minimised administrative burden.

2.3.10 Those currently regulated under more than one regime are likely to see the biggest benefits as a result of integrating regulatory requirements. Those that

are currently only regulated under the older waste or radioactive substances regimes will also benefit from the simplification and modernisation of these regimes. Those currently regulated under PPC will benefit from simplification and SEPA's ability to take a more proportionate approach by using other types of authorisation than permits, where appropriate. Those that are currently only regulated under the water regime may not see direct benefits but these changes deliver wider benefits across all activities. A small number of activities in the registration tier may also see a small reduction in flexibility.

2.3.11 **For SEPA**, the integrated authorisation framework will:

- Enable it to work in a more integrated and transparent way across different sites, operators and sectors;
- Enable it to support innovation and help businesses realise the benefits of going beyond compliance;
- Secure more effective environmental regulation by focussing on practical environmental protection rather than administrative processes;
- Allow it to apply a level of authorisation that is appropriate to the risk of an activity;
- Simplify legislation and processes that will in turn enable service improvement and long term costs savings through greater operational efficiency; and
- Ensure it has the right enforcement tools to allow it to intervene where necessary, including on a preventative basis, to protect the environment.

2.3.12 These benefits will enable SEPA to maximise the efficiency and effectiveness of its regulatory activities and to focus efforts on protecting Scotland's environment and communities from environmental harm, while facilitating innovation and supporting sustainable economic growth.

**Question 1 – Do you agree with the benefits set out above?**

**Question 2 – Are there any other comments you would like to make on Part 2?**

**Question 3 – How could SEPA better support the uptake of new technologies?**

### **3 Part 3 - Key features of the new framework for authorisation holders**

#### **3.1 Overview**

- 3.1.1 This is a joint Scottish Government and SEPA policy consultation and the sections below are a mixture of policy questions on the legislation and on its implementation by SEPA. This reflects the joint working between Scottish Government and SEPA and the fact that the legislation and its implementation are very closely interlinked. It is hoped that this gives readers of the consultation a clearer picture as to how the legislation will be approached and how it will work in practice.
- 3.1.2 Authorising activities allows SEPA to set proportionate controls to protect the environment and human health, and provide a level playing field for legitimate businesses. Authorisations are integral to SEPA's approach to controlling and minimising the impact of certain activities on the environment and in ensuring regulated activities are properly managed, undertaken within relevant limits and by responsible operators.
- 3.1.3 The integrated authorisation framework sets out what activities must be authorised, any specific requirements that apply to those activities, and the procedural arrangements that apply to those carrying on a regulated activity and to SEPA.
- 3.1.4 Any activity authorised under an existing regime will need an authorisation under the integrated authorisation framework, although as far as possible authorisations will transfer across automatically as part of the transitional process. Whilst the proposals for the integrated authorisation framework are new, much of it may seem familiar to anyone already regulated under one of the existing regimes. Many of the proposed features exist already in one or more of the existing regimes but with some differences in the detail. The integrated authorisation framework will also continue to reflect the particular requirements of the Directives. Whilst these particular requirements will be integrated they are largely unchanged from the existing regimes, with the exception of some exemption and exclusion values relating to radioactive substances.
- 3.1.5 The key policy features being proposed in the integrated authorisation framework will:
- Deliver outcome focussed regulation;
  - Deliver proportionate regulation and align and standardise how activities are authorised;
  - Support simpler, outcome focussed authorisations;
  - Make sure the right person holds the authorisation and that they can be held to account where they fail in their responsibility to secure compliance, including a standardised "fit and proper person" test;
  - Simplify and, wherever possible, standardise the process for obtaining, modifying, transferring or surrendering authorisations;
  - Provide consistent and flexible enforcement arrangements;

- Provide a common route of appeal; and
- Provide a smooth transition from the existing regimes to the integrated authorisation framework.

3.1.6 This section describes the key policy features of the integrated authorisation framework. How the integrated authorisation framework differs from each of the existing regimes is described in Parts 5 to 8. For anyone already regulated under one of the existing regimes, this part is intended to be read in combination with any of the relevant Parts 5 to 8.

3.1.7 Those people reading this consultation who do not need an authorisation, but are interested in any changes to how they can access information or participate in decision making in relation to authorisations may wish to jump to Part 4.

## **3.2 Delivering outcome focussed regulation**

3.2.1 A key ambition of the Better Regulation Programme is to focus environmental regulation on clear outcomes. To help integrate and simplify, we are considering whether the integrated authorisation framework could establish three universal environmental outcomes (the universal outcomes).

3.2.2 As shown in figure 2 overleaf, the universal outcomes are broadly to:

- prevent harm;
- use resources sustainably; and
- prevent incidents and accidents.

3.2.3 These would form overarching requirements for all authorised persons and are the basic things every environmental regime seeks to achieve.

3.2.4 Depending on the type and scale of the activity, the universal outcomes will additionally be supported by guidance and specific authorisation conditions.

3.2.5 Such an approach would provide an opportunity for industry bodies, such as trade associations, to develop best practice guidance for their sector within the context of these outcomes, as is already common in health and safety regulation. SEPA has existing guidance that can also be used to support this approach.



**Figure 2: Universal Outcomes**



**Question 4 – Do you agree that the framework should include a set of universal outcomes?**

**Question 5 – If so, are the outcomes proposed the right ones?**

**Question 6 – Do you see any opportunities within your sector for industry-led guidance to be produced to support this approach and how could it support you to deliver better?**

### **3.3 Delivering proportionate regulation**

3.3.1 We want environmental regulation to be risk-based with the greatest effort focused on those activities which cause, or have the potential to cause, the greatest harm. Having an integrated authorisation framework allows SEPA to more easily look across all environmental impacts and apply a level of authorisation that is appropriate to the overall environmental risk. Only considering the relative risk of an activity against other activities regulated under the same existing regime, as can happen now, means that regulation is not always proportionate to the overall risk of an activity.

3.3.2 The main aim of the integrated authorisation framework is to ensure that regulated activities are authorised at the lowest appropriate level taking account of a range of factors, for example, the potential impact of the activity,

whilst also taking account of any directive requirements. We believe this will reduce the regulatory burden by making regulatory effort proportionate to the overall risk of the activity and by allowing more activities to benefit from the significantly simpler regulatory processes associated with the lower tiers of authorisation. It also enables SEPA to focus more effort on addressing significant environmental issues.

### ***What activities need an authorisation?***

- 3.3.3 The proposed regulated activities are listed in Annex 2. The activities listed reflect the scope of the existing regimes, which in turn reflect the scope of the Directives that they are implementing.
- 3.3.4 In the main there is no intention to change the types of activities that require an authorisation from the existing regimes (although the type of authorisation required may change). For some activities the description of the activity may be different. The different descriptions are intended to simplify the regulations and make them easier to understand, but the activities themselves are the same.
- 3.3.5 However, the regulated activity of “Operating a medium combustion plant” is new and would integrate those activities falling within the scope of the MCPD to be regulated under the Integrated Authorisation Framework. The proposed regulated activity “The production of radioactive material” is also new and has been added to reflect current practices. Over time other activities may be added to reflect technological progress, changes in Directive requirements or as a matter of domestic policy.
- 3.3.6 In addition, we are proposing changes to how mobile plant and apparatus are authorised. These types of plant and apparatus will still need an authorisation but the location will be defined widely with a requirement for the authorised person to notify SEPA in advance of using the plant or apparatus at a new location, where appropriate. There would no longer be a separate mobile plant authorisation.
- 3.3.7 It is likely that more than one “regulated activity” description might apply to a particular activity or facility. For example, a food and drink manufacturer might operate a boiler that needs an authorisation as a “medium combustion plant” and discharge effluent to a river that requires an authorisation as an activity “liable to cause pollution of the water environment”. It doesn’t matter how many activity descriptions apply, under the integrated authorisation framework you only need to apply for one authorisation (this would be for the highest of the applicable tiers). However, the applicant can choose to apply for separate authorisations rather than a single authorisation if they wish.
- 3.3.8 The exception to this is general binding rules. This is because general binding rules are simple, standalone authorisations that require no interaction with SEPA. For example, if the food and drink manufacturer described above also abstracted water under general binding rules, the general binding rules would not be integrated into the single authorisation.

**Question 7 – Do you understand the descriptions of the regulated activities in Annex 2?**

***The tiers of authorisation***

- 3.3.9 To help deliver risk-based environmental regulation where the greatest effort is focused on those activities which cause, or have the potential to cause, the greatest harm, the RR(S)A provides for four possible tiers of authorisation; general binding rules (GBRs), notification, registration and permit. Activities will be regulated at the lowest appropriate tier. It is possible for an activity to be authorised by a permit, registration or notification as well as being subject to a GBR.
- 3.3.10 **General Binding Rules (GBRs)** authorise an activity automatically without any prior contact or agreement from SEPA, as long as they are carried out in accordance with the rules. They are appropriate for low risk activities which, provided the authorised person complies with the rules, are unlikely to result in environmental harm.
- 3.3.11 **Notifications** are also suitable for low risk activities where SEPA does not need to decide whether to grant or refuse the authorisation, but needs to know where the activity is located, or needs to maintain a register to satisfy European Directive requirements.
- 3.3.12 **Registrations** are intended, in general, for lower risk activities where a simple assessment or on-line screening is sufficient before the activity can commence and for some higher risk activities where just a simple quick assessment is sufficient. An application will still have to be made, which will be determined by SEPA within 28 days. As registrations will only include standard rules (standard rules are sets of standard conditions that apply to a particular activity) SEPA only has to decide whether or not to grant a particular application. Therefore it is intended that there will be no formal consultation process on an application for a registration. There will however be consultation on the standard rules, as part of the process of making standard rules.
- 3.3.13 **Permits** are the highest tier of authorisation in the new framework. They are intended for higher risk, or non-standard, activities which require a more rigorous assessment. Any activities that need financial provision, bespoke conditions or a consultation process would fall into the permit tier.
- 3.3.14 In deciding which tier of authorisation is appropriate for a particular type and scale of activity SEPA will take into account any Directive requirements and will consider a wide range of factors including:
- Risk to the environment and human health;
  - Consistency of the activity across a sector and the need for bespoke conditions;

- Public interest and the need to conduct a consultation;
- The need to provide ongoing financial provision for site aftercare and remediation; and
- Vulnerability to misuse (e.g. if the activity is susceptible to being used for criminal purposes such as waste crime).

3.3.15 The policy intent is that the tier a particular activity must be authorised under will not be specified in the legislation, except where this is required by Directives. The tier an activity is normally allocated to will be described in SEPA guidance (this is modelled on the existing [CAR](#) approach where the tier of authorisation appropriate for different types and sizes of activity are described in the [CAR Practical Guide](#)). Describing this in guidance means the applicant will know what tier their activity is likely to be regulated under in advance of applying. This also allows SEPA to adjust the tier a particular activity is authorised under as circumstances and risks change. It is proposed that SEPA be required to publish this guidance on its website. SEPA will also be required to consult on this guidance and any changes made to it.

**Question 8 – Do you agree that these are the right factors for SEPA to consider?**

**Question 9 – Do you agree that SEPA should consult on the guidance setting out the likely tier of authorisation for particular activities?**

3.3.16 In many circumstances where more than one “regulated activity” description applies to a particular activity the type of authorisation required may be different for each regulated activity. For example, a waste facility requiring a permit as a waste activity that also requires a registration for water abstraction. In this circumstance only a single authorisation is needed but the type of single authorisation would be the highest of the applicable tiers, in this example a permit. However, the integrated authorisation framework will provide flexibility so that a person may apply for the individual authorisations if they prefer. In this example separate applications for a permit and a registration could be made. In some circumstances SEPA may decide separate authorisations are more appropriate. For example, authorisations for radioactive sealed sources would not be integrated for national security reasons.

3.3.17 SEPA will give pre-application advice to anyone who thinks they might need an authorisation under the integrated framework to confirm if they need an authorisation, what type is needed and what to include in the application.

3.3.18 We will consult separately on the detail of which tier we expect regulated activities to be authorised under. However, for illustrative purposes, Parts 5 to 8 include the tier of authorisation being considered for most activities.

### **3.4 Delivering simpler outcome focussed authorisations**

- 3.4.1 Clear and simple rules are generally recognised as being supportive of entrepreneurship. SEPA intends to produce simpler, joined-up, outcome-based permits and registrations that provide greater flexibility for authorisation holders in how they manage their activities and environmental obligations. The intention is to remove prescription from authorisations as much as possible and allow authorisation holders more choice as to how they fulfil authorisation requirements, empowering them to be more innovative.
- 3.4.2 Clear and simple standard rules will be developed to support particular sectors. These will provide consistency across the sector whilst minimising prescription (recognising that some prescriptive measures are required to comply with Directive requirements). Standard rules will also provide greater certainty for applicants as they are able to check what conditions they will need to meet before they apply. SEPA intends to make greater use of standard rules within permits, and registrations will only include standard rules.
- 3.4.3 We believe these changes will improve consistency, make it easier for an authorised person to comply and support innovation.
- 3.4.4 To support these changes SEPA is in the process of establishing a new permitting service to drive improvements for the processing of applications and to start the practical implementation of reforms to existing authorisations.

#### ***Standard Rules***

- 3.4.5 Standard rules are sets of standard conditions and emissions standards that apply to a particular regulated activity, or part of a regulated activity. Currently only PPC includes a procedure for SEPA to make standard rules and they are used in some PPC permits. We propose to expand the use of standard rules so that in future:
- Registrations will only include standard rules (including suites of standard rules for some activities, with the particular rules reflecting the appropriate standard treatment option needed for that particular location and the corresponding emission standard); and
  - SEPA will be able to use standard rules in a permit for any regulated activity, alongside any bespoke conditions that may be included.
- 3.4.6 There will be a range of benefits from using standard rules, these include:
- Greater transparency and consistency across a regulated sector;
  - Clear rules on the regulatory requirements being available at the time an application is made, rather than when the authorisation is granted (this will help applicants in planning, financing and producing a good application);
  - Reduced burden and cost for SEPA to review and change authorisation conditions across a sector; and

- SEPA can more consistently monitor and compare compliance across a regulated sector.
- 3.4.7 The simplicity of picking the appropriate standard rules registration “off the peg” has a down side in that if none of the standard rules fit the individual activity, the activity needs to be adapted to fit a set of standard rules, or a permit is required with appropriate bespoke conditions. Experience in CAR suggests this is likely to only occur in a small number of cases.
- 3.4.8 Applicants who are unable to comply with the standard rules registration that applies to their activity will need to apply for a permit instead. In these circumstances, and where the standard rules would be applicable to several applicants or authorised persons, SEPA will consider whether new standard rules should be developed.
- 3.4.9 In addition, it is not possible to vary the standard rules in a registration if a change to the individual activity is proposed. Instead, the registration would need to be replaced with another registration, or if necessary a permit.
- 3.4.10 SEPA will be required to consult on any draft standard rules. After consultation final standard rules will be published on the SEPA website and those affected will be notified by SEPA. Once standard rules have been set there is no right of appeal against the rules themselves, but an applicant may appeal against the inclusion of those standard rules within an authorisation.

**Question 10 – Do you agree that standard rules will deliver the benefits we have set out?**

**Question 11 - Do you agree with the procedure for making standard rules? If not, why not?**

### ***General Binding Rules (GBRs)***

- 3.4.11 The integrated authorisation framework provides for General Binding Rules which are a very simple type of authorisation for the lowest risk activities.
- 3.4.12 General binding rules (GBRs) include a description of the activity to which they apply and a set of rules or conditions that must be complied with. Where a person is carrying out a GBR activity they will be treated as authorised under the regulations to the extent that the activity is carried out in accordance with the GBRs. There is no need to seek prior permission from SEPA to carry out such an activity. However, some activities in the notification tier will also have GBRs that apply. In these cases the activity is not authorised until the activity has been notified.
- 3.4.13 GBRs are currently only available under CAR and have been used since 2005. They are made by the Scottish Ministers and set out in Schedule 3 to

CAR. However, exemptions under the Radioactive Substances Exemption (Scotland) Order 2011 are equivalent. In light of experience with GBRs in CAR we considered what would be the best approach for GBRs under the integrated authorisation framework, for which the enabling powers given by Parliament are much broader and provide for SEPA to make GBRs as well as Scottish Ministers.

3.4.14 We have considered whether solely Scottish Ministers or solely SEPA should make GBRs. One option might be to retain flexibility so that:

- Scottish Ministers make or amend GBRs by regulations; and
- SEPA may also make GBRs after a consultation and publish them on its website but SEPA is not able to amend any GBRs made by Scottish Ministers in regulations.

3.4.15 This will allow SEPA to react to new or emerging environmental developments or innovative activities and ensure that proportionate regulatory controls are put in place. It is proposed that any GBRs made by SEPA must be approved by Scottish Ministers. In both cases SEPA and/or Scottish Government would consult on the draft GBRs with those people likely to be affected by them.

3.4.16 It is proposed that all GBRs be published on the SEPA website, including repeating those also set out in regulations, with links directing users to them from other relevant websites.

**Question 12 – Do you agree that SEPA and Scottish Ministers should have the ability to make GBRs?**

### **3.5 Making sure only the right people hold an authorisation and that they can be held to account**

3.5.1 When granting an authorisation, SEPA needs to be confident that the person being authorised has sufficient control of the activity and is able to make day to day operational and financial decisions to secure compliance with any conditions. SEPA also needs to be confident that any person granted an authorisation is fit and proper. For example, depending on the activity in question, SEPA will need to be confident that the applicant is competent, has no history of being involved in environmental crime and has sufficient finance to properly manage their liabilities.

3.5.2 It is proposed that the integrated authorisation framework will establish an integrated approach for SEPA to refuse an application where the applicant does not have control or is not fit and proper, and to revoke a registration or permit if the authorised person is no longer in control or fit and proper. We believe this is important to ensure the environment and communities are adequately protected and to ensure legitimate businesses are protected from those that seek to profit by avoiding their environmental obligations.

- 3.5.3 The authorised person is the person responsible for overall compliance with authorisation conditions and for preventing harm from a regulated activity, including where others are carrying on the activity on their behalf. We want to ensure every authorised person fully understands this responsibility and they are held to account if those requirements are not met.
- 3.5.4 It is proposed that the integrated authorisation framework will apply to everyone, including the Crown, unless they are specifically excluded. More detail on exclusions is provided in parts 5 to 8.

### ***The authorised person***

- 3.5.5 For registration and permit level activities it is proposed that SEPA may only grant an authorisation to the person who is in control of the activity and they will be the “authorised person”. Similarly the person submitting a notification must be the person in control of the activity and will be the authorised person. The authorised person can include individuals, companies or partnerships. For registrations and permits the authorised person(s) will be named in the authorisation.
- 3.5.6 In deciding if a person is in control of an activity SEPA will consider if that person:
- Has day-to-day control of the regulated activity, including the manner of operation;
  - Can make sure that the authorisation is complied with;
  - Can make investment and financial decisions that affect how the regulated activity is carried out; and
  - Can make sure activities are controlled in an emergency situation.
- 3.5.7 Sometimes there is shared, or joint, control of a regulated activity. Identifying one person to have overall responsibility for the regulated activity in these cases can be artificial and has resulted in difficulties in practice. We are considering that, where appropriate, SEPA will include more than one person as the authorised person who would then be individually and jointly responsible for securing compliance, and individually and jointly held to account for any breaches of authorisation conditions.
- 3.5.8 The authorised person(s) is responsible for the conduct of anyone carrying out all, or parts, of the regulated activity on their behalf and must ensure that they, and their employees and contractors, comply with the conditions of the authorisation and any other regulatory duties.
- 3.5.9 The policy intent is that where SEPA finds non-compliance with an authorisation they will be able to take enforcement action against those who were directly responsible for the non-compliance and, if this is not the authorised person, also against the authorised person(s).



3.5.10 We are considering imposing a requirement on an authorised person to apply to transfer or surrender the permit or registration if they are no longer the person in control of the activity. In addition, it is proposed that where SEPA identifies that the authorised person is no longer in control they may revoke the authorisation if it is not transferred to the person in control.

3.5.11 These changes combine to ensure that the authorised person(s) can always be held to account if they fail in their responsibility to secure compliance.

3.5.12 There will be a range of benefits from taking the “authorised person” approach. These include:

- It makes clear who is responsible for overall compliance with authorisation conditions and who is accountable if those requirements are not met;
- It improves enforceability of authorisation conditions;
- It enables SEPA to prevent someone who is not “fit and proper” to be in control of a regulated activity;
- It imposes responsibility for surrender and transfer and enables revocation of authorisations; and
- It makes clear who is responsible for any preventative or mitigation actions required when the activity ceases (e.g. site clean-up).

3.5.13 We have considered if the authorised person always needs to be named in the registration tier (currently in CAR only the activity is authorised and the responsible person is not identified). We believe the authorised person should always be named in a registration. Whilst this means there is an additional burden to transfer a registration we believe this is outweighed by the benefits that the person to whom the authorisation has been transferred is fully aware of their environmental responsibilities, and it is clear who enforcement action should be taken against, where necessary.

**QUESTION 13 - Do you agree that all regulated activities should have an authorised person responsible for overall compliance and that this person should be named in a permit and registration? If not why not?**

**QUESTION 14 - Do you think it is proportionate to require the person in control to be the person that notifies an activity in the notification tier?**

**QUESTION 15 - Do you agree that SEPA should include more than one person as the authorised person where appropriate?**

**QUESTION 16 - Do you have any views on how SEPA should decide if a person is in “control”?**

### ***Fit and proper person (FPP)***

3.5.14 Assessing the applicant and their professional, technical and financial competence is an important part of the existing regimes although each carries it out differently.

3.5.15 The proposed integrated Fit and Proper Person (FPP) test will streamline these approaches under a single outcome based test supported by a list of considerations or factors to be applied proportionately.

3.5.16 The FPP test will be applied across the registration and permit tiers.

3.5.17 The regulations will place a duty on SEPA to grant, or transfer, an authorisation for a regulated activity only where it is satisfied the proposed authorised person is fit and proper to carry on the activity.

3.5.18 We propose to base the FPP test on the following principles:

- A clear, broad outcome within which FPP decisions are made;
- The ability to bring a wide range of relevant evidence to bear on FPP decisions;
- A flexible and proportionate approach. Different activities require different assessments and it must be possible to tailor the test accordingly;
- The ability to get behind the ‘face’ of a company or organisation to the persons of influence; and
- Maintaining FPP status as an ongoing requirement and the ability for SEPA to review authorisations should new information come to light.

3.5.19 A focus on a clear outcome is central to applying the FPP test. One issue with the test that is currently used by SEPA in relation to waste management licences is there is no stated outcome, just three factors to consider. These factors limit the evidence available to support refusal even where granting the authorisation is clearly not in the interests of the legitimate waste industry or the wider public. This has made it more difficult to take a preventative approach to waste crime.

3.5.20 CAR 2011, on the other hand, does focus on an outcome – namely that SEPA must be “satisfied the applicant is likely to secure compliance with the conditions of the authorisation”. Framing the test this way provides broad discretion regarding the evidence which can be used to support a decision. However, the question itself is too narrow and does not take into account wider community and business interests.

3.5.21 A wider outcome is therefore necessary; one which will enhance SEPA’s ability to ensure high environmental standards, protect legitimate business from unfair competition and communities from the harm associated with environmental crime. SEPA’s Statutory Purpose provides that wider outcome and the supporting guidance on the FPP test will make clear that all decisions are taken within its context.

3.5.22 We propose the regulations will provide criteria which SEPA may take into account in determining whether the proposed authorised person, and where appropriate other relevant persons, are fit and proper. Other relevant persons might include for example, those benefiting financially from the activity. It is proposed that SEPA will, where appropriate, have regard to any, or all, of the following:

- Whether the authorised person(s) and other relevant person(s) are likely to secure compliance with the conditions which would be included in the authorisation;
- Whether the authorised person(s) and other relevant person(s) are of good repute;
- Whether the authorised person(s) or other relevant person(s) have been convicted of any relevant criminal offences and the significance of those convictions;
- Whether the authorised person(s) is technically competent;
- Whether the authorised person(s) has made adequate financial provision to protect against foreseen and potential environmental liabilities; and
- Whether any other grounds exist on which it would be reasonable to determine that the authorised person(s) is not a fit and proper person to hold an authorisation.

3.5.23 Not all of these factors will be applied to every activity. The level of assessment SEPA undertakes will be reasonable and proportionate to the activity in question and this will be set out in guidance. It will depend on the risk and scale of the activity and the vulnerability of the activity to misuse (e.g. waste crime). For example, with respect to household septic tank registrations, we may generally assume that householders are fit and proper to manage their own septic tanks. On the other hand, an applicant who proposes to operate a large scale waste treatment facility may be subject to the full suite of checks.

3.5.24 The FPP assessment will be conducted on the proposed authorised person. This should be the applicant because if the applicant will not be the person in control of the activity SEPA is unable to grant the authorisation. Where the applicant is a company rather than an individual, SEPA will also be able to assess other relevant persons under the FPP test.

3.5.25 The policy intent is that FPP status must be maintained over the life of the authorisation and SEPA will be able to reassess FPP status at any point. SEPA should also be able to take action where a new person, who may themselves not be fit and proper, becomes a relevant person. Further, where an authorised person fails to maintain their FPP status (e.g. by failing to maintain their professional qualifications or an appropriate financial security instrument) SEPA will be able to take appropriate enforcement action including suspension or revocation of the authorisation.

3.5.26 It is proposed the detail of how the FPP test will be applied in practice will be provided in SEPA guidance. SEPA will consult on the proposed guidance on FPP in 2017.

**Question 17 – Do you think the core requirements set out above will deliver the right approach to FPP for the integrated authorisation framework?**

**Question 18 – Do you think that the criteria set out above will achieve the stated purpose of the FPP test?**

### **3.6 Delivering simple and standardised processes for authorising activities**

3.6.1 The integrated authorisation framework will have one standardised process for obtaining, modifying, transferring or surrendering authorisations that is simpler and easier for applicants and SEPA to use. This will enable SEPA to maximise the efficiency, transparency and understanding of its processes to ensure Scotland's businesses are regulated effectively with the minimum of administrative burden.

#### ***Application process***

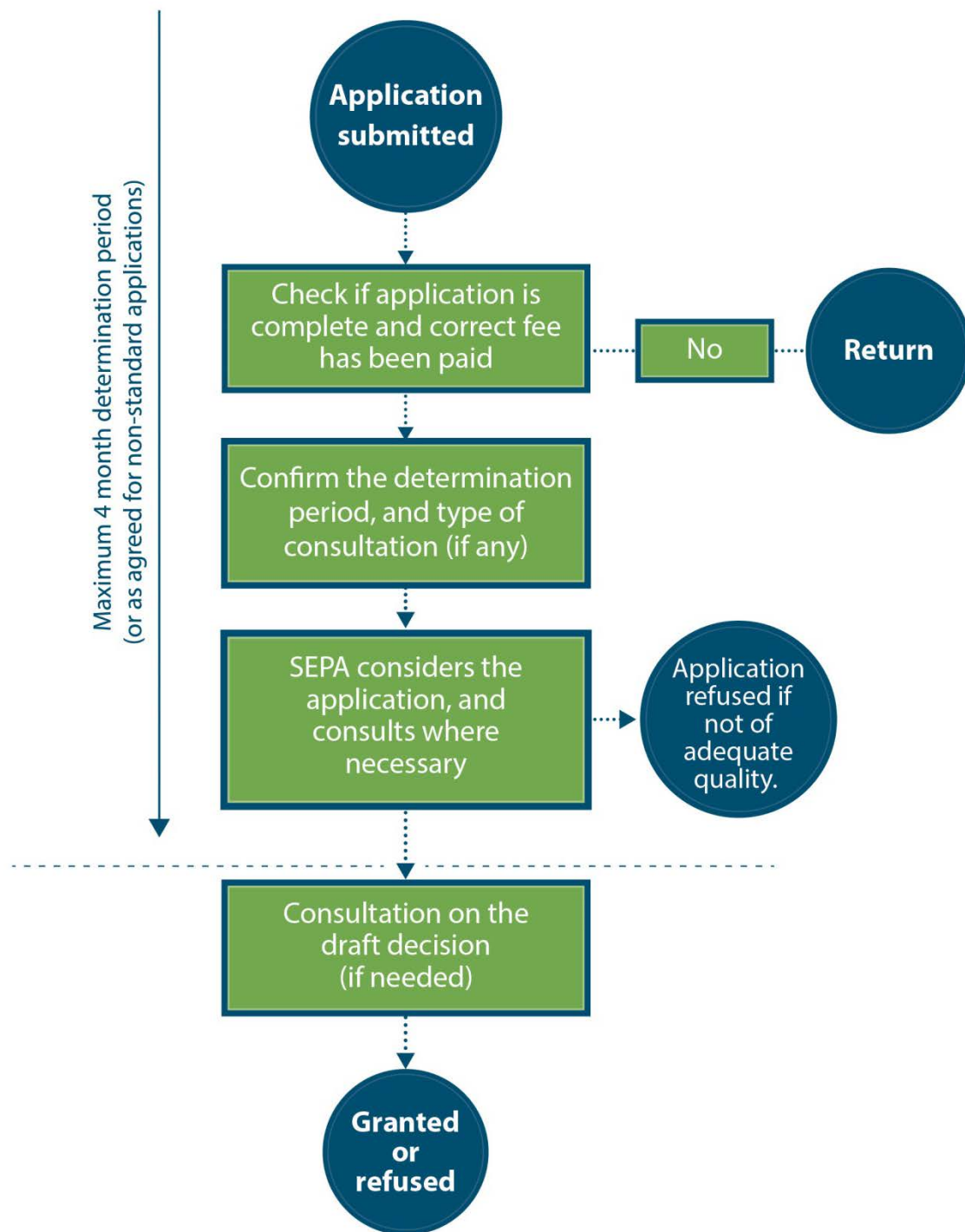
3.6.2 A key aim of the integrated authorisation framework is to develop a standardised application process that is simpler and easier to use for applicants and SEPA. In addition, we wish to take advantage of the opportunities presented by digital technologies in line with [“Scotland's Digital Future – Delivery of Public Services”](#).

3.6.3 The policy intent is that for activities in the notification tier the authorised person will be able to notify via a simple on-line system. The activity will be automatically placed on a register at which point it is authorised.

3.6.4 For activities in the registration tier there will be a simple application process. Applications for registrations must be determined within 28 days. At the end of the determination period SEPA must either grant or refuse the application. The applicant has a right of appeal against SEPA's decision. If SEPA has not granted the application by the end of the determination period the applicant may choose to treat it as refused and, if they wished, appeal against the deemed refusal.

3.6.5 For activities that require a permit there is a single standardised application process. The proposed permit application process is set out in Figure 3 overleaf:

Figure 3: Permit Application Process



- For simplicity we are proposing a single statutory determination period of 4 months for straight forward applications (including time for any public consultation on the application). However, it is the intention that for the majority of applications SEPA will set internal targets for its permitting service so that permits are determined well within the statutory 4 month period. It will be possible to extend the determination period by agreement between the applicant and SEPA.
- At the end of the determination period SEPA must either grant or refuse the application. The applicant has a right of appeal against SEPA's decision.
- If SEPA has not granted the application by the end of the determination period the applicant may choose to treat it as refused and, if they wished, appeal against the deemed refusal.
- In some existing regimes it is common that SEPA uses information notices to obtain considerable additional information during the determination process, where the quality of the application and the information provided was insufficient. This:
  - is unfair on those operators who submit good quality applications as the cost for this additional work is borne across the sector;
  - means that SEPA often consults the public and other statutory bodies using an incomplete application; and
  - creates uncertainty for applicants on when their application will be determined as they might be served an information notice at any time during the determination period.
- It is proposed that in future SEPA will initially accept an application provided a complete application form has been submitted and the correct fee has been paid. This is when the determination period will start.
- SEPA may, however, subsequently refuse the application after the determination period has started if it finds that the information submitted is incorrect or that there are significant gaps in the information required. As soon as possible, and as a matter of good practice within 6 weeks, SEPA will notify the applicant to confirm that the application is of sufficient quality, to confirm the determination date and the type of consultation needed (if any). It is anticipated that over time this will drive improvement in the quality of applications submitted. To support this change SEPA will continue to offer pre-application advice and will improve application forms and guidance.
- It will still be possible for SEPA to request additional information through a notice but it is proposed that the determination period will not be suspended (the clock will not stop) during the period SEPA is waiting for this information. This simplifies the regulatory process and reduces uncertainty for applicants. If the applicant fails to return the information within the time specified in the notice SEPA may deem the application withdrawn.

- For applications to operate a new Annex I to the Industrial Emissions Directive activity SEPA must consult on its draft decision (including the draft authorisation) as this is a Directive requirement. This can add an additional 2 months to the determination period.

3.6.6 Further details on how the proposed application process differs from each of existing regimes can be found in Parts 5 to 8.

3.6.7 There will be a range of benefits by taking this approach to the permit application process, including:

- SEPA can tailor its approach to application determination, providing a high quality service with the appropriate level of scrutiny;
- The application process will be simpler for applicants to use and for SEPA to administer, with the associated additional benefit of reducing costs;
- Applications will be processed quickly with certainty that a decision on the application will be made by a pre-determined date (with a right of appeal for applicants if that date is not met) (unless a claim is made that information is commercially confidential or subject to national security provisions); and
- Where the public and other stakeholders are consulted, they are consulted on the full application and given sufficient time to consider the application and submit a response.

3.6.8 Where any information is provided to SEPA, including information provided within an application, a request can be made that the information be withheld from the public because it is commercially confidential or subject to national security provisions. The application determination period will be suspended (the clock stopped) to consider any such requests relating to an application.

**Question 19 – Do you agree with the proposed application processes?**

**Question 20 – Do you agree with the proposal to have a statutory determination period of four months for the majority of permit applications? If not, what do you think the determination period should be?**

### ***Determination of non-standard permit applications***

3.6.9 Permit applications for activities which are controversial, complex, of high public interest, novel, innovative, or likely to cause significant environmental harm, generally take longer than four months to determine, for reasons including:

- The need to ensure the public and stakeholders have sufficient opportunity to participate and to ensure public confidence in the determination process;
- Their complexity, or novel nature means it takes SEPA longer to fully understand and consider the risks and impacts; and

- The need for SEPA to involve the right people at the right part of the determination process so it can make robust decisions (sometimes seeking specialist advice).

3.6.10 Examples of these types of “non-standard” activities are applications for waste incinerators, nuclear installations and large-scale hydro-electric schemes.

3.6.11 Where SEPA considers an application for a permit is controversial, complex, of high public interest, novel, innovative, or likely to cause significant environmental harm, one option is for SEPA to agree an alternative, realistic, determination period with the applicant at the beginning of the determination process. The agreed determination date would then become the determination period for the application and notified to the applicant as described in paragraph 3.6.5 above. To support this approach SEPA would develop guidance, including criteria describing what are considered to be these types of non-standard applications.

3.6.12 Alternatively the regulations could make a clear distinction between those activities SEPA is expected to determine within four months and those non-standard applications we expect will take longer. For example, by clearly stating the types of applications the statutory four month determination period does not apply to.

3.6.13 Non-standard applications do not necessarily require special treatment; SEPA applies the same principles of robust decision-making to all determinations. However, having the flexibility to agree a longer determination period allows SEPA to use its resources more effectively on non-standard activities and agree a timescale for determination that reflects the nature of an individual application without affecting the overwhelming majority of applications.

**Question 21 – Should the legislation make a clear distinction for applications for “non-standard” activities?**

**Question 22 – What other alternative arrangements would you suggest for managing non-standard applications?**

### ***Variations***

3.6.14 An authorised person may apply to SEPA to vary a registration or permit. An application to vary a registration or permit would follow the same process as an application for a new registration or permit. SEPA may also initiate variation of a registration or permit at any time.

3.6.15 It will not be possible to change standard rules in a registration or permit if requested in an application for variation. However, SEPA might vary standard rules from time to time. Any changes to standard rules would follow the same process as that used when making a new set of standard rules. SEPA would



notify those affected of the changes to the rules and the date the new rules take effect.

3.6.16 Because registrations only contain standard rules, variation of a registration will be limited to the addition of a new activity (provided it is an activity in the registration tier) or a new location. For example, an authorised person might hold a corporate registration covering all its sites and apply for a variation to add a new site to the registration.

3.6.17 If an authorised person wishes to make a change to their activity which would result in them no longer being able to comply with the standard rules in their registration they would need to apply for a new registration or, if necessary, a permit.

**Question 23 – Do you agree with the proposals for variations?  
If not, why not?**

### ***Transfer***

3.6.18 An authorised person and a proposed transferee may apply jointly to SEPA to transfer a permit or registration. It is proposed that the integrated authorisation framework will also provide flexibility for the person who is now in control of the activity to apply for a transfer on their own where the previous authorised person cannot be found. An application to transfer a permit or registration will need to provide sufficient information to allow SEPA to assess if the person to whom the authorisation is being transferred has sufficient control of the activity and is fit and proper. As for a new application for a permit or registration the amount of information required will be proportionate to the risk posed by the activity (as described in paragraph 3.5.23).

3.6.19 It is proposed that there will be no provision to transfer a notification. This is because the processes for notifying and de-notifying are very simple and we believe it is simpler overall to use these.

**Question 24 – Do you agree with the proposals for transfer? If not, why not?**

### ***Surrender***

3.6.20 The integrated authorisation framework will include provisions for the authorised person to surrender an authorisation when they intend to cease the carrying on of the activity. It is also proposed that it will require the authorised person to surrender when the activity has ceased to be carried on. The policy intent is that SEPA will set out in guidance the circumstances in which it will consider an activity to have ceased.

3.6.21 For registrations and permits, it is proposed that an application for surrender will need to be made that contains information to allow SEPA to assess the potential impact on the environment from the cessation of the activity and whether all reasonable steps have been taken by the authorised person to:

- prevent environmental harm resulting from cessation of the activity;
- prevent ongoing harm arising as a result of the activity having been carried out; and
- restore the environment affected by the carrying on of the activity to a satisfactory state, where appropriate having regard to the state of that environment before the activity was carried on.

3.6.22 The aim is to deliver a ‘lifetime approach’ to the protection of land and groundwater. This means preventing pollution, rectifying any problems at the time and keeping adequate records as an integral part of management systems so evidence is ready for surrender of the permit. It is also intended to ensure that authorised persons take an active role in assessing and managing the impact that an activity has had on the environment.

3.6.23 However, we also propose to streamline the surrender process for those activities that are inherently low risk, i.e. land and groundwater should not be at risk, and where there is low or no ongoing risk of harm to the environment once the activity has ceased. It is proposed that for each activity the detail required in an application to surrender an authorisation will be set out in SEPA guidance. SEPA will consult separately on this guidance. This guidance will also include:

- when a surrender application needs to include a report that describes and records the condition of land and groundwater to demonstrate the environment affected by the carrying on of the activity has been restored to a satisfactory state; and
- when a report that describes and records the condition of land and groundwater before the activity commences is needed as part of an application for an authorisation.

3.6.24 SEPA will notify the authorised person whether the application is accepted or refused, with reasons for any refusal. A surrender notice may specify steps to be carried out to avoid or mitigate any environmental harm resulting from the regulated activity or its cessation. The notice may also include steps to ensure that the environment is returned to a satisfactory state.

**Question 25 – Do you agree with the proposals for surrender?  
If not, why not?**

### **3.7 Delivering consistent and flexible enforcement arrangements: Enforcement, suspension and revocation notices**

- 3.7.1 The integrated authorisation framework will have standardised processes for enforcement. This will make it more straightforward for SEPA to secure compliance and restoration of the environment and enable SEPA to maximise the effectiveness of its regulatory services to ensure Scotland's environment and communities are protected from environmental harm. Being able to enforce the requirements of authorisations is also essential to ensure legitimate businesses are protected from those that seek to profit by avoiding their environmental obligations.
- 3.7.2 The integrated authorisation framework provides several enforcement options for SEPA. SEPA is hoping to use enforcement notices in a number of innovative ways so this section highlights a number of changes in approach.

### ***Enforcement***

- 3.7.3 Enforcement notices are used by SEPA to describe the steps a person must take to restore compliance and/or the preventative, or remedial, steps to be taken where the carrying on of a regulated activity has caused or might cause harm to the environment or human health.
- 3.7.4 Irrespective of whether the activity is authorised or has previously been authorised, a broad power is proposed for SEPA to require steps to be taken:
- In response to non-compliance;
  - Where the regulated activity is causing, has caused, or is likely to cause, harm to the environment or human health; and
  - Where the authorised person no longer meets a FPP requirement.
- 3.7.5 This broad power being considered means that SEPA would be able to serve an enforcement notice whether the activity is authorised or not and without needing the notice to be related to failure to comply with an authorisation condition. For example, to allow SEPA to specify preventative and remedial steps to be taken where there is no authorisation in place, or where harm has arisen, or might arise, even though the activity is being carried on in compliance with the conditions of an authorisation.
- 3.7.6 This is a broader power than under the existing regimes where unless an enforcement notice is used in response to non-compliance an enforcement notice may only be used in certain circumstances, for example, in PPC when an incident or accident significantly affecting the environment has occurred. The current high thresholds for impacts and harm undermine the effectiveness of the enforcement notice provisions in dealing with environmental harm.
- 3.7.7 A particular area which requires improvement is the function of notices issued under Section 59 of the Environmental Protection Act 1990, which deals with the illegal deposit of waste. The proposed changes are described in detail in Part 6.

- 3.7.8 It is proposed that SEPA will also be able to use an enforcement notice to require someone to cease to carry on a regulated activity. This is required to allow SEPA to stop the carrying on of a regulated activity that is unauthorised and causing harm. Where an activity is authorised, requiring the carrying on of the activity to cease through an enforcement notice means the authorisation would effectively be suspended so that it ceases to have effect to authorise the regulated activity, to the extent specified in the notice.
- 3.7.9 As with the current situation in existing regimes we propose that an enforcement notice should still take effect if an appeal is made against it.
- 3.7.10 Currently SEPA uses enforcement notices to set short term actions an authorised person needs to take to get back into compliance, generally so they comply with the conditions of the authorisation. Because SEPA intends to develop a simpler, outcome based approach to setting authorisation conditions, SEPA is considering using enforcement notices in a very different way.
- 3.7.11 SEPA intends to simplify permits and remove unnecessary prescription to give more flexibility for authorisation holders in how they manage their activities and environmental obligations. In future, where an authorised person fails to adequately manage their activity, such that there is harm or a risk of harm, SEPA is proposing to use a notice to set longer-term more prescriptive steps that set out in more detail what SEPA expects the authorised person to do. It would allow time for that authorised person to change their behaviour and demonstrate they are committed to compliance in the longer term. The detailed steps set out in the notice would then be removed and the authorised person would be operating under their less prescriptive permit again. Thus, SEPA would use notices to set temporary additional requirements on poor performers. If the authorised person failed to comply with the notice SEPA would take further enforcement action, for example they may have their permit revoked because of persistent non-compliance.
- 3.7.12 This approach would enable authorised persons to benefit from simpler permits and only adds additional prescription where it is needed and only for as long as it is needed. SEPA is considering this approach as there is more incentive for the authorised person to change their behaviour (as it is clear that a form of enforcement action is being taken against them), and it avoids the risk that simplification of permits is eroded over time.

**Question 26 – Do you agree with the proposed approach to enforcement notices set out above?**

**Question 27 – Do you agree a notice used in the way set out in 3.7.10 to 3.7.12 is a different type of notice and should be therefore be called something different, such as an improvement notice?**

**Question 28 - What benefits and drawbacks do you foresee from SEPA using enforcement notices in the way set out at 3.7.10 to 3.7.12?**

## ***Suspension***

3.7.13 As described in paragraph 3.7.8 above, the intention is that SEPA will be able to use an enforcement notice to effectively suspend an authorised activity. It is also proposed to retain provisions for SEPA to serve a suspension notice when an authorised person fails to pay their subsistence fees.

3.7.14 SEPA may also use a suspension notice to prevent harm to the environment or human health in certain circumstances (e.g. to suspend abstractions during a period of drought). In these circumstances a suspension may be required but this is not enforcement action as the authorised person has done nothing wrong.

**Question 29 – Do you agree we should retain suspension notices for use in circumstances where we wish to suspend an activity in order to protect the environment, but the authorised person is not being ‘enforced’ against?**

## ***Revocation***

3.7.15 It is proposed that SEPA will have a broad power to revoke all, or part of, an authorisation. The circumstances in which SEPA would use this broad power are likely to be where there is chronic or serious non-compliance, the authorised person has ceased to be a FPP, or has ceased to be in control of the activity.

3.7.16 SEPA will also use this broad power, where appropriate, to revoke an authorisation when the authorised person fails to surrender the authorisation when the activity has ceased to be carried on. It is proposed that SEPA would set out in guidance the circumstances in which it would consider an activity to have ceased. This reflects SEPA's statutory purpose by ensuring access to ecosystem services is not inhibited by unused authorisations, thus supporting sustainable economic growth.

3.7.17 We consider it important that SEPA should have the power to revoke an authorisation and at the same time require steps to be carried out that are needed to avoid, or mitigate, environmental harm resulting from the regulated activity. A notice may also include a requirement for specified steps to be taken to ensure that the environment is returned to a satisfactory state. The effect of this would be that while the authorisation to carry on the relevant activities would cease, the requirements imposed to avoid, or mitigate, any environmental harm would continue until SEPA is satisfied they are no longer needed.

**Question 30 – Do you agree SEPA should have the power to revoke authorisations in these circumstances?**

## 3.8 Route of appeal

### *Grounds for, and effect of, an appeal*

3.8.1 The regulations will provide a mechanism for appeals to be made in a range of circumstances. This includes where:

- An application for a new authorisation, or an application to vary, transfer or surrender an existing authorisation, is refused;
- An application is deemed withdrawn;
- A person is aggrieved by conditions attached to their authorisation, variation, or surrender (excluding standard rules and GBRs);
- A person is aggrieved by the terms of an enforcement, revocation or suspension notice served on them;
- SEPA determines information is not commercially confidential; and
- Where an application is escalated or de-escalated so that a different type of authorisation is required than the type of authorisation a person originally applied for or holds.

3.8.2 There are strict timescales governing when an appeal can be made, which vary depending on the circumstances of the appeal. The lodging of an appeal does not stop a decision, notice or condition from having effect except where:

- The appeal is against a revocation notice, which has the effect of suspending the operation of the notice;
- The appeal is against a commercial confidentiality determination, which has the effect that the information cannot be made available to the public until the appeal is determined.

### *Proposed appeal route*

3.8.3 At present, appeals against SEPA decisions in relation to environmental authorisations are made to the Scottish Ministers. The Scottish Ministers will usually appoint a reporter of the [Directorate of Planning and Environmental Appeals \(DPEA\)](#) to make a decision on their behalf. There are currently between five and ten such appeals per year. However, in some cases Scottish Ministers may make a decision themselves (such as in cases of genuine national interest) but may still ask the DPEA to consider the case and make a recommendation. Scottish Ministers are not obliged to agree with the DPEA recommendation in this eventuality.

3.8.4 In view of the DPEA's existing expertise in handling environmental appeals, and capacity to continue to do so on behalf of the Scottish Ministers, we are minded to retain this appeals route for the integrated authorisation framework. We further propose to retain existing practices around the awarding of expenses (e.g. awards of expenses will only be made in exceptional cases where a party to the appeal has, in the opinion of the reporter, acted unreasonably and, as a result, has caused unnecessary expense for the party making the claim). Using the DPEA will ensure ongoing consistency of

approach and will allow appellants to continue to benefit from the DPEA's swift and cost-effective appeals processes.

- 3.8.5 This means that the existing arrangements will continue, with the appeals under the Environmental Regulation (Enforcement Measures) Scotland 2015 continuing to go to the Scottish Land Court.

**Question 31 – Do you agree that appeals against SEPA decisions should continue to be heard by the DPEA on behalf of Scottish Ministers? If not, which alternative body do you think should hear such appeals and why?**

### **3.9 Overview of the likely transitional arrangements**

- 3.9.1 We have provided an overview of the proposed transitional arrangements and are seeking your views on how the transition from the existing regimes to the integrated authorisation framework is managed. However, we may consult again on the detail of the transitional arrangements.

#### ***Existing authorisations***

- 3.9.2 To implement the integrated authorisation framework transitional arrangements will need to be made to ensure all existing authorisations move smoothly into the appropriate tier of authorisation. We are aiming for the vast majority of existing authorisations to become an authorisation under the integrated authorisation framework without the authorised person needing to re-apply or SEPA needing to issue a new authorisation. However, there are some activities currently operating under a waste exemption that we anticipate will need to apply for a registration or permit.
- 3.9.3 We are currently considering the timing of the transition for existing authorisations to allow sufficient time for:
- Any authorised persons to prepare and submit applications, if necessary;
  - SEPA to appropriately plan for the transition and spread the workload; and
  - Robust consultation on any new standard rules or GBRs.
- 3.9.4 We propose that the majority of existing authorisations will be transferred automatically into the appropriate tier in the integrated authorisation framework. Where an authorisation for an activity will transition into the GBR or registration tier, this can only happen once GBRs or standard rules, as appropriate, have been made for that activity.
- 3.9.5 There will be some exceptions to this where specific issues need to be addressed. For example, we are considering whether some existing waste management exemptions should continue without requiring the normal annual renewal (where applicable) then come to an end on a specified date, after which the activity will be regulated under a GBR, notification, registration or

permit, as appropriate for the particular activity. For those exemptions moving to the notification and registration tiers this date would be linked to when the relevant GBRs or standard rules have been published. For those exemptions moving to the registration or permit tiers this date will also need to allow sufficient time for the authorised person to submit an application.

- 3.9.6 SEPA will have the ability to consolidate multiple authorisations for the same activity into a single authorisation for the site, or into a corporate permit covering activities at several sites controlled by the same authorised person. In most circumstances this will be at the request of the authorised person. However, SEPA will not have a duty to consolidate, and whilst it would seek to meet any such requests, this work must be managed to ensure it does not interfere with other priorities. We expect that some people may wish to take advantage of the benefits of having a single, or corporate, authorisation as soon as possible. We are considering how to implement this process so that SEPA is able to manage the potential workload from such requests and would welcome stakeholder views.
- 3.9.7 SEPA may also consolidate multiple authorisations where it wishes to simplify the authorisation for its own purposes. Or SEPA might, for example, consolidate multiple GBRs or notifications into a registration or permit where they are under the control of the same person and the aggregated impact of the individually authorised activities is causing harm, so that additional, or more stringent controls, are required.
- 3.9.8 It is intended that the stock of existing authorisations will be reviewed and varied to reflect any changes needed. SEPA intends to make any changes to reflect its new approach of using simple, joined-up, outcome focussed authorisations at the same time. It is expected this work will be spread over several years.

### ***New applications***

- 3.9.9 It is our intention from the implementation date of the regulations that any new applicants for authorisation will benefit from being able to use the integrated authorisation framework. However, activities can only be authorised under the GBR, notification and registration tiers if GBRs and standard rules have been made at the time. If no GBRs or standard rules are available it is proposed that new activities will need to be authorised under a permit.

**Question 32 – Do you have any views on the proposed policy principles for transitional arrangements?**

**Question 33 – Do you have any suggestions for how SEPA might manage the workload to implement integrated, and corporate, authorisations?**



## **4 Part 4 - Key features of the new framework for the public**

### **4.1 Public participation in decision-making and access to information**

4.1.1 Each of the existing regimes has its own approach to when and how the public can participate in decision making, the amount of information to be made available to the public and how this information is made available. The integrated authorisation framework will provide a simpler and modernised approach that is the same for all regulated activities. We believe this will make it simpler and easier for communities and individuals to participate in decisions about authorising regulated activities and to access the information they need.

4.1.2 In addition, we wish to take advantage of the opportunities presented by digital technologies in line with “Scotland’s Digital Future – Delivery of Public Services”.

### **4.2 Public information**

4.2.1 People have a right to information about the environment in which they live and work. SEPA provides information about authorised activities to people in lots of different ways; through its web site, in response to requests under the Environmental Information (Scotland) Regulations 2004 and via its public registers.

4.2.2 SEPA’s public registers are currently a mix of electronic information and paper based public registers available at SEPA offices. Nowadays people access information in different ways and as far as possible SEPA intends to replace its paper registers with electronic information so that it is more easily available via the internet.

4.2.3 The traditional approach of putting documents on a public register (in paper or electronic form) does not always make the information available in an easily understandable form. Therefore, SEPA also seeks to publish information about authorised activities in a more user friendly way, for example, as it currently does with its Compliance Assessment Scheme and Radioactivity in Food and the Environment (RIFE) reports.

4.2.4 We propose that the integrated authorisation framework will be clear on what information will be available to the public but will provide flexibility to SEPA in how that information is made available. This will allow SEPA to more easily adapt and keep its approach up-to-date. There will also be additional benefits to information users because consistent types of information will be available about all regulated activities, whereas currently the information made available varies across the existing regimes.

4.2.5 As is the case now, anyone who wants additional information about any authorised activities is able to request it through the [Environmental Information \(Scotland\) Regulations 2004](#) (EIR).

**Question 34 – Do you support SEPA having more flexibility in how information is made available to the public?**

### **4.3 Public participation**

4.3.1 We want to make sure that communities and individuals have an opportunity to take part in significant decisions that might affect them and we recognise that the quality of these decisions can be improved through the active involvement of the public concerned. We also recognise that other statutory bodies make a valuable contribution to environmental decision-making by providing wider knowledge and perspective.

There are European requirements and other international obligations on public participation that we must meet as a minimum. These include the United Nations Economic Commission for Europe (UNECE) [Aarhus Convention](#) and Directives; [Environmental Impact Assessment \(EIA\) Directive](#), [Public Participation Directive \(PPD\)](#) and [Industrial Emissions Directive \(IED\)](#)

4.3.2 It is proposed that the integrated authorisation framework will require SEPA to consult such persons it considers appropriate about:

- Proposed GBRs, and amendments to GBRs, where they are being made by SEPA;
- Proposed standard rules and amendments to standard rules; and
- Applications for new, or changes to, permits, where appropriate and dependant on the risk or where required by a directive.

4.3.3 Recognising the European requirements and other international obligations, to ensure proportionality we propose to tailor public participation on the basis of the risk posed by the activity or type of activity.

4.3.4 Each of the existing regimes has different arrangements for public participation. For some regimes they rely on written correspondence, adverts in local newspapers and the [Edinburgh Gazette](#) and a paper-based public register. For these regimes, SEPA is currently tied to using these approaches as they are prescribed within the existing legislation. As well as developing a common approach to public participation we also have an opportunity to modernise (e.g. by making wider use of on-line systems, as is currently the case in CAR, or face-to-face meetings). We propose that the precise approach to public participation will be detailed in guidance. Setting out the detail of public participation arrangements in guidance will allow SEPA to more easily adapt and keep its approach up-to-date and relevant to stakeholders.

4.3.5 SEPA will consult separately on the detailed proposals for public participation set out in guidance. Any guidance will explain how the public concerned and other statutory bodies will be involved in decision-making, at what point in the decision-making process and who will be involved.

4.3.6 There will be a range of benefits by taking this approach to public participation, including:

- For consultees it will be easier to obtain relevant information and respond to SEPA;
- For applicants and operators public participation processes will be clearer, simpler and proportionate; and
- For SEPA it will allow us to tailor our public participation approach to ensure we get effective input to support good decisions.

**Question 35 – Do you agree that a consistent, flexible and proportionate approach to public participation should be adopted?**

#### **4.4 Third party call-in**

4.4.1 In the vast majority of cases SEPA will make regulatory decisions, giving due regard to the interests of all interested parties. There are, however, some circumstances, such as where third parties raise issues of such significance (e.g. issues of wider public interest), or where they feel that SEPA has not given due regard to their interests, which mean that it may be appropriate for Scottish Ministers to determine the application.

4.4.2 To enable this, Scottish Ministers will have the power to direct SEPA to refer to them for their determination all or any part of any application.

4.4.3 Presently under CAR, SEPA has an additional duty to notify any third party who has made representations in relation to an advertised application if it is going to grant an authorisation. Those third parties then have 21 days to write to Scottish Ministers to ask for the application to be ‘called-in’ and determined by them instead of SEPA.

4.4.4 Although Scottish Ministers have the power to ‘call-in’ any application, for CAR there is a clear policy that they will only do so where all of the following criteria are met:

- The third party wrote to SEPA within 28 days of any required advertisement of the application, variation or surrender and the subject and nature of the objection has not substantially altered;
- The objection is not an objection to the appropriate use by SEPA of current principles, policies, methodologies or standards that have been subject to public consultation or Ministerial direction;
- The objection relates to matters that are material considerations in the determination of the case; and
- The representation made to Scottish Ministers makes clear the reasons for objection and provides suitable scientific, technical or other factual evidence to substantiate the objection.

4.4.5 In addition, in relation to CAR one or more of the following must normally be met for an application to be referred for a Ministerial determination:

- The third party is a responsible authority designated under Section 2(8) of the Water Environment and Water Services (Scotland) Act 2003; and its objection raises issues of significance for the delivery of national, local or regional policy priorities or compliance with international obligations; or
- The third party's objection is that either its own, or wider interests which it represents, will be directly and significantly adversely affected by a proposed activity; or
- There are substantial numbers of objections and these objections raise issues of significance for the social, economic or environmental wellbeing of those objecting.

4.4.6 We believe that the current approach in CAR strikes an appropriate balance in meeting the needs of all parties directly involved in, or with a significant interest in, determinations and that the criteria in place ensures that only the most significant cases are dealt with by Ministerial determination. This approach also reflects the unique circumstances relating to the protection of the water environment, where there can be multiple users of the same water body, including for both business and social purposes. We therefore propose to retain the requirement for SEPA to give due regard to third party interests and power for Scottish Ministers to direct SEPA where necessary. In these circumstances, we propose that the determination period would be extended to allow this to happen.

4.4.7 Recognising that the particular circumstances that make such rights appropriate for CAR may not necessarily apply across the integrated authorisation framework, we are open-minded about whether to extend these requirements in relation to applications for activities other than former CAR activities. If these requirements were extended, we propose to use similar criteria as currently used in CAR but adding that the objection is not about a matter that has already been considered in the planning process.

**Question 36 – Do you agree that the procedural arrangements for third party call-in under CAR should be extended to all regulated activities?**

## Annex 1

### Consultation on Proposals for an Integrated Authorisation Framework

#### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

**Parts 2 - 4**

**Q.1 – Do you agree with the benefits set out above?**

**Q.2 – Are there any other comments you would like to make on Part 2?**

**Q.3 – How could SEPA better support the uptake of new technologies?**

**Q.4 – Do you agree that the framework should include a set of universal outcomes?**

**Q.5 – If so, are the outcomes proposed the right ones?**

**Q.6 – Do you see any opportunities within your sector for industry-led guidance to be produced to support this approach and how could it support you to deliver better?**

**Q.7 – Do you understand the descriptions of the regulated activities in Annex 2?**

**Q.8 – Do you agree that these are the right factors for SEPA to consider?**

**Q.9 – Do you agree that SEPA should consult on the guidance setting out the likely tier of authorisation for particular activities?**

**Q.10 – Do you agree that standard rules will deliver the benefits we have set out?**

**Q.11 - Do you agree with the procedure for making standard rules? If not, why not?**

**Q.12 – Do you agree that SEPA and Scottish Ministers should have the ability to make GBRs?**

**Q.13 – Do you agree that all regulated activities should have an authorised person responsible for overall compliance and that this person should be named in a permit and registration? If not why not?**

**Q.14 - Do you think it is proportionate to require the person in control to be the person that notifies an activity in the notification tier?**

**Q.15 – Do you agree that SEPA should include more than one person as the authorised person where appropriate?**

**Q.16 – Do you have any views on how SEPA should decide if a person is in “control”?**

**Q.17 – Do you think the core requirements set out above will deliver the right approach to FPP for the integrated authorisation framework?**

**Q.18 – Do you think that the criteria set out above will achieve the stated purpose of the FPP test?**

**Q.19 – Do you agree with the proposed application processes?**

**Q.20 – Do you agree with the proposal to have a statutory determination period of four months for the majority of permit applications? If not, what do you think the determination period should be?**

**Q.21 – Should the legislation make a clear distinction for applications for “non-standard” activities?**

**Q.22 – What other alternative arrangements would you suggest for managing non-standard applications?**

**Q.23 – Do you agree with the proposals for variations? If not, why not?**

**Q.24 – Do you agree with the proposals for transfer? If not, why not?**

**Q.25 – Do you agree with the proposals for surrender? If not, why not?**

**Q.26 – Do you agree with the proposed approach to enforcement notices set out above?**

**Q.27 – Do you agree a notice used in the way set out in 3.7.10 to 3.7.12 is a different type of notice and should be therefore be called something different, such as an improvement notice?**

**Q.28 - What benefits and drawbacks do you foresee from SEPA using enforcement notices in the way set out at 3.7.10 to 3.7.12?**

**Q.29 – Do you agree we should retain suspension notices for use in circumstances where we wish to suspend an activity in order to protect the environment, but the authorised person is not being ‘enforced’ against?**

**Q.30 – Do you agree SEPA should have the power to revoke authorisations in these circumstances?**

**Q.31 – Do you agree that appeals against SEPA decisions should continue to be heard by the DPEA on behalf of Scottish Ministers? If not, which alternative body do you think should hear such appeals and why?**

**Q.32 – Do you have any views on the proposed policy principles for transitional arrangements?**

**Q.33 – Do you have any suggestions for how SEPA might manage the workload to implement integrated, and corporate, authorisations?**

**Q.34 – Do you support SEPA having more flexibility in how information is made available to the public?**

**Q.35 – Do you agree that a consistent, flexible and proportionate approach to public participation should be adopted?**

**Q.36 – Do you agree that the procedural arrangements for third party call-in under CAR should be extended to all regulated activities?**

#### **Part 5 - Pollution Prevention and Control**

**Q.37 - Do you consider that the provisions of the universal outcomes contain equivalent protection as BAT in relation to domestic activities?**

**Q.38 - Do you have any comments on the potential impact of this change for other industrial pollution risk activities?**

#### **Part 7 – Radioactive Substances**

**Q.39 - Do you agree that it is appropriate to have controls on radioactively contaminated materials whilst they remain on the premises where they were contaminated?**

**Q.40 - Do you foresee any practical implications of the proposal to have controls on radioactively contaminated materials whilst they remain on the premises where they were contaminated?**

**Q.41 - Do you agree that all substances associated with NORM industrial activities should be subject to control under the integrated authorisation framework, where they exceed the out-of-scope values, irrespective of whether or not they are classed as radioactive material or waste?**

**Q.42 - Do you foresee any significant implications of this proposed change, e.g. are there any finished products (consumer products or construction materials) that would become classified as radioactive material?**

**Q.43 - Do you agree that we should continue to exclude the public from the scope of the radioactive substances regulatory regime?**

**Q.44 - Do you agree with the proposed radioactive substances regulated activities?**

**Q.45 - Do you agree with the proposals for applying the new regulatory regime to nuclear licensed sites?**



**Q.46 - Do you foresee any problems with removing the requirement to display certificates?**

**Q.47 - Do you agree that SEPA should have the power to impose conditions in an authorisation requiring the permit holder to carry out operations off their site?**

## Annex 2 – The regulated activities

The table below provides an overview of the proposed regulated activities being considered.

Activity	Notes
1. Operating an Annex I to IED installation.	This is any activity described in Annex 1 of the <a href="#">Industrial Emissions Directive (IED) (Directive 2010/75/EU)</a>
2. Operating a solvents installation.	This is any activity described in Part 1 or Annex 7 of the <a href="#">Industrial Emissions Directive (IED) (Directive 2010/75/EU)</a> .
3. Carrying out an industrial pollution risk activity.	This is any activity currently listed in Part A or B of Schedule 1 to the <a href="#">Pollution Prevention and Control (Scotland) Regulations 2012</a> that is not an IED or solvents installation.
4. Operating a medium combustion plant.	This is any combustion plant with a rated thermal input of between 1 and 50MW as described in the <a href="#">Medium Combustion Plant Directive (MCPD) (Directive (EU) 2015/2193)</a> .
5. Operating an EED activity.	This activity will cover installations described in articles 14(5) to (8) of the <a href="#">Energy Efficiency Directive (Directive 2012/27/EU)</a> .
6. Production of radioactive material.	These activities include the activities in sections 6, 9, 13 and 14 of the <a href="#">Radioactive Substances Act 1993</a> although the new regulated activities combine some of the RSA 1993 activities and introduce a new activity of production of radioactive material. More detail on this is provided in Part 7.
7. Keeping and use of radioactive material.	
8. Management of radioactive waste.	

9. Activities liable to cause pollution of the water environment.	These activities are the same as those set out in Regulation 3 of the <a href="#">Water Environment (Controlled Activities) (Scotland) Regulations 2011</a> .
10. Artificial recharge or augmentation of groundwater.	
11. Abstraction of water from the water environment.	
12. Construction, alteration or operation of impounding works in surface water or wetlands.	
13. Carrying out building or engineering works, or works other than those referred to in (12) — (i) in inland water (other than groundwater) or wetlands; or (ii) in the vicinity of inland water or wetlands and having or likely to have a significant adverse impact on the water environment.	
14. The direct, or indirect discharge, and any activity likely to cause a direct or indirect discharge, into groundwater of any hazardous substance or other pollutant.	
15. Any other activity which directly, or indirectly, has, or is likely to have, a significant adverse impact on the water environment.	This is a broad activity which captures the current range of regulated waste activities and transposes Articles 23 and 26 of the <a href="#">Waste Framework Directive</a> (Directive 2008/98/EC). More detail is provided in Part 6.
16. The collection, transport, recovery and disposal of waste, and including actions taken as a dealer or broker.	

### Annex 3 – List of acronyms

BER	Better Environmental Regulation
BSSD	Basic Safety Standards Directive
CAR 2011	Water Environment (Controlled Activities) (Scotland) Regulations 2011
DPEA	Directorate of Planning and Environmental Appeals
EC	European Commission
EA	Environment Agency
EED	Energy Efficiency Directive
EPA 1990	Environmental Protection Act 1990
EU	European Union
FPP	Fit and Proper Person
GBR	General Binding Rule(s)
HSE	Health and Safety Executive
IED	Industrial Emissions Directive
MCPD	Medium Combustion Plant Directive
PPC 2012	Pollution Prevention and Control (Scotland) Regulations 2012
PPD	Public Participation Directive
RS	Radioactive Substances
RSA 1993	Radioactive Substances Act 1993
RR(S)A	Regulatory Reform (Scotland) Act 2014
SEPA	Scottish Environment Protection Agency
UNECE	United Nations Economic Commission for Europe
WFD	Waste Framework Directive
WML 2011	Waste Management Licensing (Scotland) Regulations 2011



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