

**Better Environmental Regulation Programme**

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

**An analysis of responses  
and proposed next steps**

**August 2017**

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## 1. Overview of responses

In January 2017, we consulted on proposals for the creation of an integrated authorisation framework. This new integrated authorisation framework will be delivered through regulations made under section 18 of the [Regulatory Reform \(Scotland\) Act 2014](#).

The aim of the framework is to integrate, as far as the relevant European Directives allow, the authorisation, procedural and enforcement arrangements relating to water, waste, radioactive substances and pollution prevention and control.

The new framework will help SEPA to deliver proportionate, joined up, outcome focused regulation that significantly simplifies the regulatory landscape and reduces the regulatory burden for operators.

The consultation ran from 12 January until 12 April 2017. We received 61 formal responses. A number of comments were also received, and we have taken these into account in developing our way forward.

A summary of the responses and key comments is presented below. A full list of yes/no responses by question can be found at Annex A.

## 2. Key points made

The vast majority of respondents supported each proposal. There were however 8 topics where 10%-20% of respondents indicated they did not support the proposal. These topics were:

- Universal outcomes
- Making General Binding Rules
- Notification issues
- Fit and proper person
- Application procedures
- Timescales for processing applications
- Enforcement notices
- Third party call-in

In some instances the associated comments received reflected some misunderstanding of what was proposed, but in others they raised useful points which we have considered. These are discussed in more detail below.

### Universal outcomes

The consultation proposed that there should be an overarching set of universal outcomes that every operator should comply with, as follows:

- Prevent environmental harm;
- Use resources sustainably; and
- Prevent incidents and accidents.

Whilst most respondents supported the aim that the regulations should facilitate the delivery of general environmental outcomes, some questions were raised as to the status of the proposed universal outcomes - whether these were intended to be guiding principles or whether failure to achieve them could be used as grounds for bringing an enforcement action. Some respondents did not support the idea of including such high level outcomes in individual authorisations.

This lack of clarity could lead to uncertainty for operators. We recognise this concern, and agree that there needs to be greater clarity about the purpose of the proposed universal outcomes.

As a first step we have concluded that the regulations will not make the universal outcomes conditions in individual authorisations. However we continue to believe there is value in the high level aims of the prevention of environmental harm (except to the extent authorised), the prevention of accidents, and the sustainable use of resources. We are still considering how best to take these aims forward.

### Making General Binding Rules

The consultation proposed that both Scottish Ministers and SEPA should be able to make General Binding Rules (GBRs).

Whilst a majority of respondents agreed that both Scottish Ministers and SEPA should have the ability to make GBRs, a number of respondents did not agree; and those expressed mixed views as to whether only Ministers or only SEPA should be able to make GBRs.

On one hand it was recognised that SEPA's technical expertise was key to the development of GBRs, but it was also suggested that as a matter of legal clarity Ministers should make the GBRs, thus ensuring these are given due Parliamentary scrutiny and support.

In light of these various comments, we have given this matter further thought and concluded that a dual route to the making of GBRs could lead to unnecessary confusion. On balance we think it is preferable for Ministers to set out all GBRs formally in legislation whilst ensuring SEPA's technical expertise informs their development. This will provide legal certainty and transparency.

To support this approach, SEPA will have the option of recommending GBRs to Ministers from time to time, and Ministers will be obliged to consider these.

### Notification issues

The consultation proposed that only the person in control of an activity, would be authorised; and sought views on whether this was proportionate, particularly for notifications.

A number of respondents were concerned at the proposal that the 'person in control' should be required to notify an activity in the notification tier. There was particular

concern that in the case of a company, only a director of the company would be considered an acceptable person to notify SEPA.

This reflects a misunderstanding by what we mean by the 'person in control'. In this context, we mean the *legal* person which includes a company; so in the case of a company carrying out an activity that requires notification, if it is an individual's job to notify SEPA about that activity, that is an entirely acceptable approach.

### Fit and proper person

The consultation proposed that SEPA could assess whether a person was a 'fit and proper person' to carry out a regulated activity, and set out proposed criteria to be used in that assessment. In this context a 'person' again means the legal person; but in the case of a company, individual directors and other key officers would also be assessed to determine if they were 'fit and proper' in their own right.

Although the vast majority of respondents supported the proposals in principle, some noted that until the detailed guidance was produced it was difficult to make an informed conclusion.

We are currently considering the various points of detail made by respondents, to help inform the development of the SEPA guidance; and there will be further opportunity for comment on the draft SEPA guidance at the next stage of this process.

### Application procedures

The consultation set out a suite of proposals regarding application procedures.

The majority of respondents agreed with the proposals; however some concerns were expressed regarding certain aspects of the proposals:

- that an application might be refused on the basis of incomplete or sub-standard information
- that applications not granted within the determination period might be treated as refused
- the suggestion that the 'clock will not stop' whilst further information is sought, as some complex authorisations may legitimately generate a number of additional information requests.

These points reflect misunderstandings of the way in which the regulations will be applied. Applicants have a responsibility to submit properly completed applications, and there is of course a judgment to be made regarding what constitutes 'complete', but in all regulatory matters SEPA is expected to act reasonably, and will do so before taking a decision to refuse an application on these grounds.

In addition, it will be possible under certain circumstances for an extension to be agreed between SEPA and applicants. In the event that SEPA accepts an application but uses an information notice to request additional information that the applicant cannot supply within a short period of time, SEPA or the applicant can seek

to agree an extension to the determination period to allow the information to be collated and supplied to SEPA.

### Timescales for processing applications

The consultation proposed that the default determination period should be 4 months, but that there could be different timeframes agreed for 'non-standard' activities.

The majority of respondents agreed that a 4-month determination period would generally be appropriate; although some suggested shorter timeframes, and others suggested there should be longer statutory timeframes for applications that were likely to be complex.

Whilst we continue to believe that in general a 4-month determination period should be the norm, we agree there should be greater clarity about the circumstances in which SEPA would aim to process an application in a shorter timescale and where an extension is likely to be appropriate. We do not consider it useful to be prescriptive about these matters in the legislation as that could reduce flexibility for SEPA and an applicant to agree the appropriate length of the determination period in individual cases. However SEPA will produce guidance on these matters to ensure clarity.

Pre-applications discussions will also be an important element in ensuring that applications, once submitted, can be determined as quickly and efficiently as possible.

### Enforcement notices

The consultation proposed that SEPA might use enforcement notices under a broader range of circumstances than at present.

The vast majority of respondents agreed that SEPA should be able to issue enforcement notices as proposed. However there were some concerns that the proposals seemed very broad and that this could lead to a lack of certainty for operators.

We believe these comments reflect misunderstandings about the circumstances where SEPA might use the proposed enforcement notice provisions. These new provisions need to be read alongside SEPA's [enforcement policy](#) and [enforcement guidance](#).

Providing advice and guidance is SEPA's main route to securing compliance. But we also believe it is important that SEPA has the right tools to carry out its functions and uses these responsibly. For instance, if SEPA considers that harm is likely but the operator responds to advice so that appropriate steps are taken to reduce the risk of harm, SEPA would not normally use an enforcement notice in such circumstances. But if an operator does not follow guidance provided by SEPA, then an enforcement notice may be necessary.

### Third party call-in

The consultation proposed that the procedural arrangements for third party call-in currently set out in the Water Environment (Controlled Activities) (Scotland) 2011 (“CAR”) should be extended to all regulated activities.

Most respondents agreed that this seemed sensible in the interests of consistency. However concerns were expressed that this could become disproportionate, with delays for operators, if appropriate checks and balances were not put in place.

We agree there need to be very clear criteria to ensure only the most relevant cases are eligible to be called in. We intend that these will be set out in a Scottish Government policy statement, building on the [policy statement](#) already in existence for CAR.

We also recognise a need to ensure that matters which have been properly considered by the planning system are not revisited through the call-in process.

### **3. Next steps**

We are currently working up the detailed draft regulations which will form the basis of the Integrated Authorisation Framework. These will be accompanied, in the first instance, by the technical provisions relating to the radio-active substances regime. These technical provisions will include GBRs and other matters specific to the regime flowing from the relevant Directives.

We are aiming to engage with stakeholders on this package in the autumn, with the intention of making this first batch of Regulations during 2018.

The technical provisions for the waste, water, and pollution prevention and control regimes will follow separately, with appropriate stakeholder engagement as each is developed.

## ANNEX A

QUESTIONS	YES	NO	NOT ANSWERED
Q.1 – Do you agree with the benefits set out above?	40	2	19
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?	35	5	21
Q.5 – If so, are the outcomes proposed the right ones?	30	6	25
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?	27	4	30
Q.7 – Do you understand the descriptions of the regulated activities in Annex 2?	41	1	19
Q.8 – Do you agree that these are the right factors for SEPA to consider?	34	2	25
Q.9 – Do you agree that SEPA should consult on the guidance setting out the likely tier of authorisation for particular activities?	46	0	15
Q.10 – Do you agree that standard rules will deliver the benefits we have set out?	33	2	26
Q.11 – Do you agree with the procedure for making standard rules? If not, why not?	37	1	23
Q.12 – Do you agree that SEPA and Scottish Ministers should have the ability to make GBRs?	32	9	20
Q.13 – Do you agree that all regulated activities should have an authorised person responsible for overall compliance and that his person should be named in a permit and registration? If not why not?	31	2	28
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?	23	11	27
Q.15 – Do you agree that SEPA should include more than one person as the authorised person where appropriate?	28	3	30
Q.16 – Do you have any views on how SEPA	-	-	-

<b>should decide if a person is in “control”?</b>			
<b>Q.17 – Do you think the core requirements set out above will deliver the right approach to FPP for the integrated authorisation framework?</b>	27	7	27
<b>Q.18 – Do you think that the criteria set out above will achieve the stated purpose of the FPP test?</b>	28	6	27
<b>Q.19 – Do you agree with the proposed application processes?</b>	27	8	26
<b>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?</b>	39	6	16
<b>Q.21 – Should the legislation make a clear distinction for applications for “non-standard” activities?</b>	27	4	30
<b>Q.22 – What other alternative arrangements would you suggest for managing non-standard applications?</b>	-	-	-
<b>Q.23 – Do you agree with the proposals for variations? If not, why not?</b>	33	4	24
<b>Q.24 – Do you agree with the proposals for transfer? If not, why not?</b>	40	2	19
<b>Q.25 – Do you agree with the proposals for surrender? If not, why not?</b>	33	3	25
<b>Q.26 – Do you agree with the proposed approach to enforcement notices set out above?</b>	26	5	30
<b>Q.27 – Do you agree a notice used in the way set out in 4.7.10 to 4.7.12 is a different type of notice and should be therefore be called something different, such as an improvement notice?</b>	34	4	23
<b>Q.28 - What benefits and drawbacks do you foresee from SEPA using enforcement notices in the way set out at 4.7.10 to 4.7.12?</b>	-	-	-
<b>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?</b>	37	0	24
<b>Q.30 – Do you agree SEPA should have the power to revoke authorisations in these circumstances?</b>	37	0	24
<b>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,</b>	31	3	27

<b>which alternative body do you think should hear such appeals and why?</b>			
<b>Q.32 – Do you have any views on the proposed policy principles for transitional arrangements?</b>	-	-	-
<b>Q.33 – Do you have any suggestions for how SEPA might manage the workload to implement integrated, and corporate, authorisations?</b>	-	-	-
<b>Q.34 – Do you support SEPA having more flexibility in how information is made available to the public?</b>	39	2	20
<b>Q.35 – Do you agree that a consistent, flexible and proportionate approach to public participation should be adopted ?</b>	34	2	25
<b>Q.36 – Do you agree that the procedural arrangements for third party call-in under CAR should be extended to all regulated activities?</b>	20	7	34
<b><u>Part 5 - Pollution Prevention and Control</u></b>			
<b>Q.37 - Do you consider that the provisions of the universal outcomes contain equivalent protection as BAT in relation to domestic activities?</b>	13	4	44
<b>Q.38 - Do you have any comments on the potential impact of this change for other industrial pollution risk activities?</b>	-	-	-
<b><u>Part 7 – Radioactive Substances</u></b>			
<b>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?</b>	24	1	36
<b>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?</b>	-	-	-
<b>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?</b>	15	2	44
<b>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?</b>	-	-	-

<b>Q.43 - Do you agree that we should continue to exclude the public from the scope of the radioactive substances regulatory regime?</b>	<b>21</b>	<b>3</b>	<b>37</b>
<b>Q.44 - Do you agree with the proposed radioactive substances regulated activities?</b>	<b>23</b>	<b>0</b>	<b>38</b>
<b>Q.45 - Do you agree with the proposals for applying the new regulatory regime to nuclear licensed sites?</b>	<b>17</b>	<b>2</b>	<b>42</b>
<b>Q.46 - Do you foresee any problems with removing the requirement to display certificates?</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>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?</b>	<b>24</b>	<b>3</b>	<b>34</b>



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