

ANNEX C - CONSULTATION ON PROPOSALS FOR AN INTEGRATED FRAMEWORK OF ENVIRONMENTAL REGULATION



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Environmental Association for Universities and Colleges (EAUC)

Title Mr Ms Mrs Miss x Dr Please tick as appropriate

Surname

Lee

Forename

Sarah

2. Postal Address

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) 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?

Please tick as appropriate

Yes

Please return this information form with your comments by 4 August 2012.

Your comments with this form may be sent by post, e-mail or fax to:-

Postal address: Environmental Quality Division
Scottish Government
Area 1-H North
Victoria Quay
Edinburgh EH6 6QQ

E-mail: EQCAT@scotland.gsi.gov.uk

Fax: 0131-244 0211

Consultation Questions

Q1 *Do you foresee any difficulties in adopting the single permissioning framework set out above?*

In general the representation of the sector commenting feel that this is a sensible approach and would welcome a clearer system. Although many share concerns on the detail of how this will map out across activity. The clear regimes currently in place outline where permissions are required, and there is some apprehension that those trying to ensure they are doing the right thing but possibly those not clear if permissions are necessary, could unintentionally fall foul under the new proposed framework.

While this consultation covers a broader framework than small-scale project work, it is worth noting that university and college communities would benefit from clear guidance, and simple rules as exemplified in the questions below. Activity such as how groups re-use items abandoned by community members, with less need for exemptions or licences but ensuring they are compliant. For example: allowing small-scale movement of waste, such as items from end of year Halls re-use projects allowing collection, sorting, cleaning and storing items (potentially offsite from student flats in towns).

Q2 *Do you agree that SEPA should adopt this proportionate approach to determining where an activity sits in the new permissioning hierarchy?*

Provision of flexible, proportionate, enforcement provisions is always welcomed; however, we already see inconsistency in the way enforcement (and for that matter advice) occurs. It is felt that flexibility could lead to further inconsistency across the country. Therefore clarification on the various scoring systems would be needed to ensure transparency and reduce the chances of assessments being ranked differently in different areas.

Q3 *Are there any problems in the current procedures for the 4 Main Regimes which could be addressed in the new single regulatory procedure?*

Yes – as reported there are significant opportunities for confusion and inappropriate layers of rules and guidance to be applied currently to a single installation. Consolidated legislation has, to date, been quite difficult for lay-persons and small groups to interact with – especially where it lists multiple pieces of legislation and refers only to the amendments. It would be more helpful and less open to mis-interpretation if the amended legislation was reissued in full.

Therefore a simplification to produce legislation that has all consolidated amendments is required so people don't need to try and 'gauge' which changes apply where and what amendments of amendments apply.

Q4 *Are there any issues which you think SEPA should take into account when developing its approach to joined-up permits?*

Yes – there are some shared issues, including:

- Facilitated checks on the Duty of Care that waste producers should do on waste contractors etc needs to be considered. Currently this is not an easy task and could be made more difficult by single, integrated, permissions.
- Consideration should also be given to how this information will be made available to the public (e.g. to waste producing companies to enable Duty of Care auditing responsibilities to be easily met).
- Challenges surrounding staffing of the agency – still with many colleagues who come from a narrower disciplinary background and may feel comfortable dealing with the traditional approach based on water, air etc.
- Very careful change management and provision of support and training will be required to assist in the introduction of a more holistic approach being taken across the board for all activities.

Q5 *Do you agree that there is merit in introducing corporate or accredited permits for environmental activities? If not, why not?*

As mentioned in Q4 response above, consideration needs to be given to lay-persons within client companies who have a responsibility to cross-check / validate permits. An up to date on-line publically accessible database would help ie with Duty of Care checks and others.

However whilst having the potential to simplify activity, it also could make it more complicated and time-consuming downstream, for eg: an institution might only be interested in one waste stream with a company but their permit may cover a whole range over sites across the country.

A lighter touch by the regulator could prevail where an organisation has evidenced appropriate levels of investigation and approach.

Q6 *Do you agree that SEPA should have the power to use fixed and discretionary direct financial penalties to address less significant offences? Do you think the amounts of £500 and £1,000 for fixed penalties and the cap of £40,000 for a discretionary penalty are set at the right level?*

There have been mixed opinion with regards to the responses to this question.

SEPA should have the power to use penalties to address offences, so long as there is provision for recourse to some appropriate form of review, and potentially appeal against imposition of a fixed penalty, and then this would be sensible.

However, possession of a permit and an EMS should not automatically be reason for a 'light touch' approach. If the activity is significant enough to require a permit, then SEPA should be monitoring this activity closely.

There have been no comments as to the amount these penalties should be set at.

Q7 Do you agree that SEPA should be given the power to accept enforcement undertakings in a greater range of circumstances? Do you agree that they should be limited to ensuring environmental restoration?

Fixed penalties for specific offences is a more appropriate approach as it removes inconsistencies. A multiplier effect for multiple offences/greater proportionality approach is also favoured.

Q8 Do you agree that SEPA should be able to require non-compliant operators to publicise the damage they have caused [and] the action they are taking to put things right? Should this power also be available to the courts?

Some caution should be taken around this proposal.

While a much greater transparency about all infractions of discharge limits, or other deleterious impacts on the environment or human health and well-being would be welcomed, the actions suggested in 3.5.15 potentially seem like a 'let off' for transgressors.

Therefore this should include an onus on miscreant organisations and individuals to remediate and to report how they are doing so.

Q9 Do you think that the direct measures set out above should be applied to the 4 Main Regimes and to the other regimes set out in paragraph 3.5.21? Would it be useful for the direct measures to be available to SEPA in relation to other regulatory regimes for which it has responsibility?

All regimes and regulated processes should be treated in a coherent and even-handed approach. Therefore clarity on how different regimes interact with each other and commonality around definitions, levels of risk and guidance associated with these different regimes would be welcomed.

However some caution should be undertaken with the roll SEPA has to play in establishing compensation with regards to 3.5.17. Individuals and small business would not match the likes of Scottish Water in court!

Q10 Is there a need for any additional safeguards?

It has been expressed that proposals in 3.5.30 set the figures too low and are only

ok if there is another way to recover costs. The idea also seems at odds with 3.5.17 already referred to in question 9.

Additionally, it is essential that both field staff and strategic management of the agency are provided with sufficient training, guidance and support in the proposed new approach. This is to ensure consistency and appropriate science-led application of principles, coupled with a strong dose of common sense.

Q11 Do you agree that the existing powers relating to remediation and compensation orders should be extended as set out above? Do you think that we should require the courts to have regard to financial benefit when setting fines?

It is essential that any applications of different forms of punishment for misdeeds are appropriate and proportionate and ideally have an educative effect on the organisation or individual which has caused the offence.

However, with reference to 3.5.34 where SEPA can recover its own costs. If you are not guilty, you would then be required to go to civil court. Does this mean an institution would then be able to recover costs from SEPA for all the loss and damages that had incurred in the process?

Q12 Do you agree that SEPA should be able to recover the costs which it incurs in investigating and enforcing environmental legislation, up to the point at which it imposes a direct measure or refers a case to the Procurator Fiscal for prosecution?

So long as there is a reasonable requirement to provide chapter and verse outlining the make-up of the charges and these are not seen as arbitrary, and there is an appropriate means to appeal and where necessary reclaim these charges if fault is later apportioned differently.

Please also refer to the cautionary note in Q11.

Q13 Do you agree that the new integrated permissioning framework, supported by a more strategic, flexible enforcement toolkit and a targeted approach to regulation, will provide more effective protection of the environment and human health?

We shall see over the course of their introduction. The in principle the proposals make a good case for this and so long as progress is carefully reviewed to ensure the intention of the changes are being delivered in practice, the approach merits support.