

Business and Regulatory Impact Assessment

Title of Proposal

Integrated Framework of Environmental Authorisations

Purpose and intended effect

Background

One of the main ways in which the environment and human health are protected in Scotland is by a system of environmental authorisations (such as permits, registrations and general binding rules). These authorisations are an integral tool in SEPA's approach to controlling and minimising the impact of certain activities on the environment.

Each regulatory regime which SEPA is responsible for, however, has a different history and has developed and evolved largely separately, adopting a variety of approaches to achieve similar outcomes. The procedures and requirements associated with the different regimes are also inconsistent. This is unnecessarily complicated and onerous to administer, both for SEPA and business.

Objective

The integrated framework of environmental authorisations will bring together all the permissioning arrangements for SEPA's four main regulatory (water, waste, radioactive substances and pollution prevention and control) into a single permissioning structure and under a single set of standardised procedures (subject to the requirements of European and national legislation).

Rationale for Government intervention

Protecting the environment is not just a valuable end in itself. Scotland's natural resources are vital to its economic success and the health and wellbeing of its citizens.

Many of Scotland's most successful industries depend on our natural assets and the sustainable use of our environment is intrinsically linked to our economic potential as a nation. Scotland's environment provides a range of resources and services the value of which is estimated to be between £21 billion and £24 billion per year.

A healthy and flourishing environment is essential in ensuring that people in Scotland lead longer, healthier lives, that they value and enjoy their natural and built environment, and that our communities thrive and can access the amenities and services they need.

By enabling a more proportionate, risk-based and outcome-focussed approach to environmental authorisation, the Integrated Authorisation Framework will support a number of National Outcomes in the Scottish Government's National Performance Framework, including:

- We live in a Scotland that is the most attractive place for doing business in Europe;

- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others;
- We value and enjoy our built and natural environment and protect it and enhance it for future generations;
- We reduce the local and global environmental impact of our consumption and production;
- Our public services are high quality, continually improving, efficient and responsive to local people's needs;
- We live longer, healthier lives;
- We live our lives safe from crime, disorder and danger.

Consultation

Within Government

Development of these proposals, as well as the wider Better Environmental Regulation programme, has been a joint activity between the Scottish Government and SEPA. There has also been wider engagement with a range of officials across Scottish Government and with the UK Government and other devolved administrations to discuss and refine the proposals where appropriate.

Public Consultation

The Better Environmental Regulation programme has been subject to extensive consultation over a period of approximately 6 years. A consultation on the high level principles behind the main elements of the programme was undertaken between May and August 2012. Analysis of responses to that consultation indicated 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 to adopt a simplified, proportionate and risk-based approach was supported by 92% of respondents.

A further consultation on the detail of the proposed integrated authorisation framework was carried out between January and April 2017. Again there was widespread support for every proposal.

Business

A series of stakeholder workshops, involving a range of businesses, trade bodies and other interested stakeholders, have taken place over recent years to support the development and implementation of the Better Environmental regulation programme. In addition to general stakeholder workshops, a number of workshops were organised on a sectoral basis.

These workshops provided useful and constructive feedback about the detailed proposals. This feedback has informed the finalisation of the framework now presented in the draft Regulations.

Options

Options summary:

Option 1 - Do Nothing / Status Quo.

Option 2 - Partial integration/ Integrate 2 of SEPA's main regulatory regimes

Option 3 - Integrate SEPA's 4 main regulatory regimes

Option 1 – Do Nothing / Status Quo

This approach would leave SEPA's existing regulatory regimes unchanged. This would mean that regulatory requirements, procedural arrangements and terminology would remain inconsistent across SEPA regimes.

Sectors and Groups Affected

- Regulated businesses;
- Local communities;
- SEPA.

Benefits

- The implementation costs associated with integrating SEPA regimes (such as the staff costs associated with developing and implementing new procedures and guidance) are not incurred;
- Regulated businesses are already familiar with existing procedures, forms etc.

Costs

- The efficiencies and savings (both for regulated businesses and SEPA) associated with a simplified, streamlined and standardised process are not delivered;
- The opportunity to deliver single site and corporate permits will be lost;
- Costs associated with poor operator performance and the environmental harm caused by rogue operators (both financial and in terms of reputational damage) continue to be indirectly borne by legitimate businesses.

Option 2 – Partial integration/ Integrate 2 of SEPA's main regulatory regimes

This approach would integrate a couple of SEPA's existing main regulatory regimes. This would mean that certain regulatory requirements, procedural arrangements and terminology would be integrated but that others would remain inconsistent across the remaining SEPA regimes.

Sectors and Groups Affected

- Regulated businesses;
- Local communities;
- SEPA.

Benefits

- The benefits in terms of simplicity, transparency and consistency would be obtained by those sectors regulated under these particular regimes

Costs

- The efficiencies and savings (both for regulated businesses and SEPA) associated with a simplified, streamlined and standardised process are not optimised and the benefits not delivered;
- The opportunity to deliver single site and corporate permits will not be available for certain regulated businesses;
- This partial integration would increase confusion for certain regulated businesses.

Option 3 - Integrate SEPA's 4 main regulatory regimes

This approach would integrate (as far as possible) the regimes relating to the regulation of water, waste, radioactive substances and pollution prevention and control. These regimes cover the bulk of SEPA's regulatory activities, accounting for approximately 95% of SEPA's charging income.

Sectors and Groups Affected

- Regulated businesses;
- Local communities;
- SEPA.

Benefits

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

- Provide a simple, consistent, 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;
- Unlock new opportunities to streamline administrative processes and increase efficiency.

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

Businesses holding multiple permits are likely to benefit most by moving to a single integrated authorisation. Annual savings for business from reduced charges are estimated to be £50k. Business will also benefit from reduced administration costs; case studies are planned during the consultation to help gather such information.

For Scotland's environment and communities, the integrated authorisation framework would:

- 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.

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

For SEPA, the integrated authorisation framework would:

- 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;
- Ensure it has the right enforcement tools to allow it to intervene where necessary, including on a preventative basis, to protect the environment.

These benefits would 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.

Savings for SEPA due to simplification of administrative arrangements such as procedures, enabled by the simpler regulations, and internal restructuring and simplification of the permitting service, are estimated at annual savings of £200k.

Overall the likely savings generated by this option are estimated to be in the region of £250k annually.

Costs

For most regulated businesses, there will be no additional costs as a result of the move to an integrated authorisation framework. The vast majority of existing authorisations in place when the integrated framework comes into force will automatically transfer into the new framework, with no need for a new application.

There are, however, a small number of cases where operators would need to obtain an authorisation in a different authorisation tier, with associated costs. For instance, certain activities in the waste regime were previously automatically registered as “simple exemptions”. While it is anticipated that the vast majority of these activities will move to the notification or general binding rule tier, it is anticipated that up to 5% of existing registered “simple exemptions” (particularly some activities within Paragraphs 5, 11, 13, 14, 17 & 18 of WML 2011) will become registrations or permits in the new framework. It is estimated that the cost to businesses affected by this will be an overall one-off cost of approximately £250k.

Comparison of costs and savings

Overall the estimated savings (approximately £250k annually) generated by this option outweigh the estimated costs (one-off cost of approximately £250k).

The Scottish Government recommends this Option.

Scottish Firms Impact Test

The proposals outlined at Option 3 are designed to deliver the most cost-effective, streamlined and transparent legislative framework for environmental authorisations, whilst ensuring we maintain appropriate control over activities liable to have an adverse effect on Scotland’s environment. This cost-effective approach will be particularly beneficial for Scotland’s small businesses.

A series of sectoral workshops was undertaken to further identify any impacts (both positive and negative) on Scottish business and to enable Scottish firms to help shape the proposals. At these workshops, and in response to the formal consultation itself, there was widespread recognition that the expected benefits would be substantial whilst any increase in costs would be relatively low and limited to a small subset of businesses (see examples at Option 3).

For instance, of the 61 respondents to the written consultation, over 60% agreed that the recommended option would deliver the expected benefits. Others felt that until further detail was provided they were not yet able to state positively that the benefits would be delivered. 2 respondents felt that the predicted savings would not be achieved.

In summary, the recommended option would roll forward existing policy whilst ensuring the authorisation process is more cost-effective for most parties.

We invited stakeholders to provide case studies to demonstrate the impact of these changes. A number of businesses responded supporting the introduction of this Integrated Authorisation Framework; but noted that at this stage it was difficult to quantify the extent of any savings until the framework is put into practice. No cost assessments were provided.

Competition Assessment

The proposals are designed to support the creation of a “level playing field” for business, ensuring that law-abiding businesses are not undercut by those who deliberately or negligently harm Scotland’s environment.

Through measures such as a standardised fit and proper person (FPP) test and ensuring that most regulated activities have a named “authorised person”, SEPA will be able to ensure high standards and accountability and tackle poor performance more effectively.

This will help to ensure that legitimate business operations are able to compete fairly, and that less reputable operators do not benefit financially from non-compliance or environmental harm.

Test run of business forms

As part of the implementation of the integrated authorisation framework, SEPA will develop a range of new simplified forms e.g. in relation to applications for new environmental authorisations and for variations or surrender of existing authorisations. Test runs of these forms will be undertaken will regulated businesses will be undertaken to ensure that they are readily accessible and easy to use.

Legal Aid Impact Test

It is not envisaged that there will be any greater demand placed on the legal system by this proposal since regulated businesses/organisations will be the primary subject of the legislative changes. Furthermore, it is proposed to retain the Scottish Ministers, rather than the courts, as the appeals route. Accordingly, it is not considered that there will be any effect on individuals' right of access to justice through availability of legal aid or possible expenditure from the legal aid fund.

The Scottish Government’s Access to Justice Team has considered this document and is in agreement with this view

Enforcement, sanctions and monitoring

Consistent, flexible and proportionate enforcement is a core aspect of the Better Environmental Regulation programme.

SEPA has, and will retain, powers to monitor and enforce compliance with the requirements of authorisations, regardless of the option chosen. Options 2 and 3, however, envisage streamlining and standardising the existing enforcement arrangements associated with environmental authorisations and broadening SEPA’s ability to take enforcement action. In particular, it is proposed that SEPA be given the power to require steps to be taken:

- in response to non-compliance;
- where a 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 fit and proper person requirement.

This broad power means that SEPA will be able to serve an enforcement notice whether the activity is authorised or not and without needing the notice to be related to a specific non-compliance such as breaching an authorisation condition or committing an offence. This would mean, for example, that SEPA would be able to specify preventative and remedial steps to be taken where there is no authorisation in place, which it cannot do at present.

In addition, the proposals would also give SEPA the power to suspend or revoke an authorisation, or part thereof. These powers would be used to prevent harm to the environment or human health (e.g. to suspend abstractions during a period of drought) or, in the case of revocation, in cases involving chronic or serious non-compliance.

These proposals, together with the range of new enforcement measures already given to SEPA under the Environmental Regulation (Enforcement Measures)(Scotland) Order 2015 will ensure that SEPA has the powers it needs to deter and punish actions which damage the environment, adversely impact communities and undermine legitimate business.

Implementation and delivery plan

A formal implementation and delivery plan is currently under development; and SEPA has begun re-structuring its permitting operations to ensure the new permitting arrangements are delivered in the most cost-effective manner, and supported by appropriate guidance.

Post-implementation review

A full post-implementation review will be carried out within 10 years of the regulations creating the integrated authorisation framework coming into force.

Summary and recommendation

The Scottish Government believes that Option 3 will deliver the optimum combination of benefits for the environment, businesses and communities.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been with the support of businesses in Scotland.

Signed: R Cunningham

Date: 26th April 2018

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