



Law Society
of Scotland

Consultation Response

SEPA Tyre Sector Plan

November 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to Scottish Environment Protection Agency's (SEPA) consultation on the Tyre Sector Plan.¹ The sub-committee has the following comments to put forward for consideration.

General comments

We welcome SEPA's sectoral approach to regulation. However, the sector plan (as with the other sector plans consulted on earlier this year) indicates a desire on SEPA's part to radically change the way in which it regulates the tyre sector through a 'different set of rules' from that used in the past – i.e. a move away from the 'traditional approach' to regulation. The sector plan lacks the detail as to how it is intended that SEPA will fundamentally alter the regulation and policy which currently exists and comprises this 'traditional approach'.

We consider that there are many examples of where the traditional, rule-based approach to environmental regulation is feasible, including in relation to the management of waste. There is no explanation offered as to why this approach cannot be extended to cover the problem areas identified by SEPA within this sector.

The traditional, rule-based approach is, in the main, both measurable and transparent which enables SEPA to be accountable to the Scottish public in its approach to regulation and enforcement. A new approach based on 'partnership working' with business to encourage improved environmental performance in this sector could result in less public engagement and visibility and therefore affect SEPA's role as a regulator. The public needs to be reassured that SEPA is no less likely to take enforcement action against those operating illegally in the sector.

¹ <https://consultation.sepa.org.uk/communications/tyres/>

We consider that all of those involved in handling waste tyres need SEPA's guidance and advice to some extent, including those who are performing poorly. SEPA has appropriate enforcement tools for all forms of non-compliance (from mild to severe) and those tools should be used accordingly across the sector. In the first instance, there seems to be a need to ascertain the level of unregulated activity (including those sites which are operating under an exemption from waste management licencing) and illegal activity in the sector. We assume that is what SEPA are intending to uncover as part of their proposed 'audit'?

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We want to be a world class regulator, adopting innovative and novel approaches that help as many operators as possible to move beyond minimum legal standards and create economic and social success for Scotland from environmental excellence. In your opinion, does the Tyres Sector Plan set the right level of ambition for the sector?

As mentioned above, SEPA does not have full visibility of the levels of regulation, compliance and illegality within the sector. In addition, SEPA has, so far, failed in its endeavour to bring all business/operators/individuals within the sector into compliance. Before the sector can hope to 'move beyond compliance', action is needed to address that. On that basis, the level of ambition for the sector plan is currently too high. Focus should be on conducting the necessary research to establish a full picture of regulation and compliance and also on bringing all operators into full compliance and on reducing the levels of criminality substantially before moving on to deal with 'beyond compliance'. For the avoidance of doubt, the figures referred to in the sector plan only take account of those sites which are permitted and that does not reflect the number of illegal sites which are wholly non-compliant with environmental legislation. Little is offered by way of a solution to the level of criminality.

Does the Tyres Sector Plan contain the right actions to: (a) tackle non-compliance and (b) help businesses go beyond compliance?

See the response to the question above.

Are there other opportunities that SEPA should be taking, or partners that we should be working with, to meet the objectives for the tyres sector that have not been referenced?

We consider that SEPA could benefit from working more directly with the sector and also with the most prominent industry bodies therein (who SEPA already appears to have identified within the sector plan). That exercise should be undertaken before the plan is finalised and published.

Do you agree with the targets and priority actions?

We consider that much of what is set out in the sector plan as targets and priorities is an expression of SEPA's aspirational goals rather than actual targets which can be implemented and measured. More specific action points together with details of how those actions points will be achieved (via changes to policy and legislation perhaps) should be included in the sector plan. For example, how does SEPA intend to improve compliance by March 2019?

It would be useful to have visibility of when SEPA intends to start using variable monetary penalties which could help to target non-compliance.

It would also be useful to understand how and when SEPA intends to carry out its 'audit' of the sector which we consider will be fundamental to the sector plan.

Do you have any other comments on the Tyres Sector Plan?

We have no further comments to make.

For further information, please contact:

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