



Law Society
of Scotland

Consultation Response

SEPA Crop Production Sector Plan

February 2019



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 Crop Production Sector Plan.¹ We have the following comments to put forward for consideration.

General comments

As we have previously indicated, we welcome SEPA's sectoral approach to regulation. The sector plan, however, (as with the other sector plans consulted on) indicates a desire on SEPA's part to radically change the way in which it regulates the crop production sector, reflecting a move away from the 'traditional approach' to regulation. We consider that the plan lacks the detail as to how it is intended that SEPA will fundamentally alter the regulation and policy which currently exists under the 'traditional approach'.

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. It is important that SEPA maintains a distinction between 'regulatory' and 'encouraging better practice' functions, otherwise there is a risk the public may query enforcement action as inconsistent with some other activity in which SEPA involves itself. 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. It is important that the public is reassured that SEPA is no less likely to take enforcement action against those operating illegally in the sector, while supporting 'beyond compliance' innovation.

It is crucial that there is clarity around the relevance of the standard of 'beyond compliance' – both what is meant by this and what is expected of businesses to meet this standard. Clarity is also required as to what will happen if businesses do not go 'beyond compliance'. It is important that individuals and businesses

¹ <https://consultation.sepa.org.uk/sector-plan/crop-production/>

understand what is required of them, and the consequences of non-compliance, in order that they can guide their conduct appropriately.

In the event that SEPA wish to move to a greater interventionist approach, for example around abstraction of water for irrigation, greater powers may be required in order to allow joint ventures with others, such as those in the farming community. In the event that steps require to be taken to support the extraction of residues, such as fertilisers and phosphates, it is not clear who would lead on such action other than SEPA itself. These two examples may give rise to difficulties in that taking or coordinating active measures for these purposes may not sit easily with SEPA's regulatory and advisory functions.

For further information, please contact:

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