



Law Society  
of Scotland

# Consultation Response

## SEPA Dairy 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 Dairy Production Sector Plan.<sup>1</sup> We have the following comments to put forward for consideration.

## General comments

---

We welcome SEPA's sectoral approach to regulation, however, we note that the sector plan indicates a desire to radically change the way in which SEPA regulates the dairy 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 approach', based on fixed rules, is usually measurable and transparent which enables accountability of SEPA to the Scottish public. It is important that SEPA maintains a distinction between regulatory functions and 'encouraging better practice'. Failing to do so may lead to a loss of public confidence - the public should be reassured that SEPA is no less likely to take enforcement action against those operating illegally in the sector, while supporting 'beyond compliance' innovation.

The draft Sector Plan identifies that the dairy processing sector is not fully compliant with environmental legislation<sup>2</sup>. It also mentions that compliance in diffuse pollution priority catchments is, notwithstanding an increase at 12 months after SEPA's initial visit, only at 50%<sup>3</sup>.

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

<sup>2</sup> Page 6.

<sup>3</sup> Figure 10.

We consider that it is important, as SEPA identify, to work closely with farmers and to educate the dairy sector to ensure environmental compliance. The proposed actions identified in the Plan<sup>4</sup> appear to provide tangible steps to increase compliance within the sector. We note that reference is made in the Plan to the pollution effects on beaches and bathing waters<sup>5</sup>, however this issue does not appear to have been picked up in the list of suggested actions. This may merit further consideration given the potential adverse impacts on public health, tourism and the marine environment. Areas such as water recycling/conservation and renewable energy use are clearly aspects where Government guidance and possible incentives/investment would help dairy farms restructure so as to have less of an environmental impact.

Although the concept of moving 'beyond compliance' is highlighted, we consider that the primary focus at this stage should be on ensuring compliance with environmental law given the fairly low levels of compliance and best practice should be commended in some other way. Moving beyond that, there must be clarity around the standard of 'beyond compliance' – what is meant by this and what is expected of businesses to meet this standard? There also requires to be clarity as to what will happen if businesses do not go 'beyond compliance'. It is important that individuals and businesses understand what is required of them, and the consequences of non-compliance, in order that they can guide their conduct appropriately.

**For further information, please contact:**

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

[AlisonMcNab@lawscot.org.uk](mailto:AlisonMcNab@lawscot.org.uk)

<sup>4</sup> Pages 35 – 37.

<sup>5</sup> Page 10.