



Law Society
of Scotland

Consultation Response

SEPA Chemicals Manufacturing 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 Chemicals Manufacturing 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. It appears from the Sector Plan, however, that SEPA seeks to radically change the way in which it regulates the chemicals manufacturing sector by moving away from the 'traditional approach' to regulation.

It is important to recognise that the traditional, rule-based approach is generally both measurable and transparent. This ensures accountability of SEPA to the Scottish public in its approach to regulation and enforcement. Under the new proposed regime, it is crucial that there is clarity around the standard of 'beyond compliance' – in particular, what is meant by this and what is expected of businesses to meet this standard. There requires to be clarity as to what will happen if businesses do not go 'beyond compliance'. Businesses must what is required of them, and the consequences of non-compliance, in order that they can guide their conduct appropriately. By way of comparison, DVSA was explicit about the potential advantages for road hauliers of participation in its Earned Recognition scheme.

We note the significant scale and breadth of the chemicals manufacturing industry, as recognised by the draft Plan². The sector demonstrates high levels of compliance, within what is a complex legal landscape of regulation. The aim to move 'beyond compliance' is laudable, particularly against this background.

¹ https://consultation.sepa.org.uk/sector-plan/chemicals-manufacturing/consult_view/

² Page 6.

Businesses operating in the sector require reassurance that SEPA will support this by providing reasonable scope for innovation, however we note that potential for this to present a regulatory challenge for SEPA. It is important that SEPA maintains a distinction between ‘regulatory’ and ‘encouraging better practice’ functions and we suggest the balance of this needs to be carefully considered. It is important that SEPA’s regulatory role is considered fully to ensure that the public is reassured that SEPA is no less likely to take enforcement action against those operating illegally in the sector, while moving ‘beyond compliance’ is supported.

It is crucial that SEPA recognise that innovation may not always be successful or deliver as expected, and while recognising the need for environmental protection, businesses must be given some degree of freedom to trial new ways of working. A stated set of principles and parameters for proof of concept or pilot projects may provide operators, SEPA and stakeholders with a suitable degree of clarity. Innovation can involve significant investment of financial as well as intellectual capital, and require (whether to a greater or lesser degree) an element of risk. Commercial sensitivities require to be respected to safeguard confidence of the industry in taking steps to move ‘beyond compliance’.

We note several references within the draft Plan to ‘partnership working’ within SEPA, with businesses and with other partners. While this is to be encouraged, consideration should be given as to what extent this fits with SEPA’s role and remit. In addition, partnership working may present other challenges, for example, the ownership of intellectual property.

We support the draft Plan’s stated aspirations, in particular those referable to a Circular approach to supply chain optimisation. Reference is made to working collaboratively “to tackle the environmental impacts around plastic manufacture, and use of plastic in the chemicals manufacturing supply chain”³. We suggest that the focus should be on the *appropriate* use of materials.

The draft Plan recognises the importance of social responsibility in the sector⁴ and notes:

“There is a focus on the consolidation of activities in chemicals and life sciences ‘hub’ locations across Scotland. This can have a real impact on communities living around these areas.”

It is important to recognise and balance the respective rights and responsibilities of parties in the regulation of the sector. Given the pressures on housing supply and demand referred to the draft Housing Sector Plan, it should be borne in mind that there is potential for conflict between existing chemical sites (especially COMAH sites) and surrounding land use. In some instances, the issue may not so much be impact of the sites or a growing hub on an established local community but rather the need to protect the integrity of existing designated industrial facility from encroachment by inappropriate development on surrounding land. Whilst land use planning is a matter for local authorities and Scottish Ministers through the planning regime, SEPA could, and in our view should, have role in promoting an objective understanding of the interplay

³ Page 16.

⁴ Page 19.

between permitted operations, and the impacts of such upon the environment and local communities, and the potential impacts of proposed developments being considered through the planning system.

We note the reference to “prescription” within the actions identified⁵ and would welcome clarification as to the meaning of this in the context. With regards to the outcome that “Professionals and the public in Scotland have information on the environmental impacts of products to assist them in making choices between them”⁶, we consider it important, as an NDPB, that SEPA maintains an objective role in this regard.

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⁵ Page 22.

⁶ Page 22.