



Law Society  
of Scotland

# Consultation Response

## SEPA Housing Sector Plan

February 2019



## Introduction

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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 Housing Sector Plan.<sup>1</sup> We have the following comments to put forward for consideration.

## General comments

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As we have previously indicated, we welcome SEPA's sectoral approach to regulation. However, it appears from the Sector Plan (and others consulted upon) that SEPA seeks to radically change the way in which it regulates the housing sector by moving away from the 'traditional approach' to regulation.

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. Individuals and businesses also require 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.

In relation to SEPA's vision for the sector<sup>2</sup>, we note that a number of the factors identified are social and economic based and do not directly relate to the environment. It is not clear as to how this fits with SEPA's

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

<sup>2</sup> Page 6.

role and responsibilities. We recognise the wide scope of influence on the sector and the extent of the relationship between this and other sector plans<sup>3</sup>.

We consider that the environmental impacts identified in the draft Plan, particularly in relation to site selection, are appropriate and we stress the importance of considering appropriate assessment and remediation of contamination as part of the regulation of the housing sector. It is also crucial to recognise the role of other bodies who regulate the sector<sup>4</sup>, but also the limits of other bodies, for example the limited enforcement resources of the planning and building control authorities which impact upon the ability to monitor compliance with those regimes and factors affect the environmental impact of the sector.

We note the reference to water in the draft Plan<sup>5</sup> and consider that it is necessary for SEPA to work with Scottish Water and others in relation to this. This requires careful consideration as to how this fits with SEPA's role and responsibilities, when it is the Scottish Government that will generally set the objectives to which Scottish Water will work.

We recognise the Circular Economy opportunities to move 'beyond compliance' in respect of materials<sup>6</sup>, however consider that there is scope for this to be developed further than expressed in the draft Plan. For example, we suggest that there be greater focus on design culture, including opportunities to improve quality control and energy efficiency through offsite construction; modular design to allow for repurposing of buildings; the use of building management information and inventories to allow for repurposing of materials; and opportunities for a move to building services models (for example lighting provision) now being seen in commercial premises to be applied in residential settings. It is likely that retrofitting will continue to present challenges to householders and property owners as well as businesses serving them in seeking to improve the environmental performance of existing buildings.

With regards to land, in particular, the use of vacant and derelict land<sup>7</sup>, the need for appropriate site assessment and remediation requires full consideration.

We consider that there is a strong link between this Sector Plan and others, in particular, the Strategic Infrastructure (Transport and Utilities) Sector Plan and Water Supply & Waste Water Treatment Sector Plan. While 'partnership working' is to be encouraged particularly in the housing sector, consideration should be given as to what extent this fits with SEPA's role and remit.

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<sup>3</sup> As identified in figure 5.

<sup>4</sup> As identified on page 15.

<sup>5</sup> Page 24.

<sup>6</sup> Page 25.

<sup>7</sup> Page 29.



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