



Law Society
of Scotland

Consultation Response

SEPA Leather 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 Leather 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 leather 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'. 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. By way of comparison, DVSA was explicit about the potential advantages for road hauliers of participation in its Earned Recognition scheme².

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

² <https://www.gov.uk/government/publications/dvsa-earned-recognition-for-vehicle-operators-list-of-accredited-operators>

We also consider it important that SEPA maintains a distinction between ‘regulatory’ and ‘encouraging better practice’ functions. Failing to do so may lead to queries around enforcement action as being inconsistent with some SEPA’s other activities. We note several references within the draft Plan to ‘partnership working’ with businesses and with other partners. It is important that SEPA’s regulatory role is fully considered 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 supporting ‘beyond compliance’ innovation.

The aim to move ‘beyond compliance’ is laudable. Businesses operating in the sector, however, will likely wish reassurance that SEPA will support this by providing reasonable scope for research, development, and innovation. It is crucial that SEPA recognise that such 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. Commercial sensitivities also require to be respected to ensure confidence of the industry in taking steps to move ‘beyond compliance’. In that regard, it should be appreciated that 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.

We note that there is currently strong environmental compliance in the leather sector and recent improvement in compliance with PPC Permit conditions has been significant³. It appears that this strong compliance has been driven, to a large extent, by the sector itself and by reinvestment. We suggest that consideration be given as to how similar levels of compliance can be replicated across other sectors. We consider that it is important to recognise the economic context within which this compliance, and in some cases ‘beyond compliance’, has been achieved. The economic context may impact upon the extent to which this, and other sectors, can move ‘beyond compliance’ in the future. In this regard, we note the key influencers identified in the draft Plan⁴, particularly the supply chain and consumer demand. The aviation and automotive industries have not been included in these provisions but are likely to impact upon demand for leather products originating from Scotland.

It is important to note that while we consider there is merit in the sectoral approach to regulation, sectors should not and cannot be considered in isolation. For example, reference is made in the draft Plan to the meat and dairy industry Plan⁵. Given the connection of the leather sector to the circular economy and the potential issues arising from the supply and demand market, it is crucial for the wider impacts upon the sector to be considered. Failing which, there is a risk of unintended consequences resulting from actions taken to ensure environmental compliance or to go ‘beyond compliance’.

³ Figure 8.

⁴ Figure 7.

⁵ Page 7.

We note that the draft Plan is largely focused on PPC permit sites. We recognise that an action is identified to “increase our knowledge of leather producers that are below the PPC regulatory threshold”⁶, however the draft Plan gives little analysis of compliance of smaller operators and the potential for environmental improvements to be made in respect of such sites. We suggest that greater focus is placed on knowledge sharing between operators.

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⁶ Page 17.