



Law Society
of Scotland

Consultation Response

SEPA Nuclear Power Generation and Decommissioning 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 Nuclear Power Generation and Decommissioning 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. In other draft Sector Plans, however, it appears that SEPA seeks to radically change the way in which it regulates sectors 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 regimes, it is crucial that there is clarity around the standard of 'beyond compliance' – in particular, what is meant by this, what is expected of businesses to meet this standard and what will happen if businesses do not go 'beyond compliance'. Businesses must understand what is required of them, and the consequences of non-compliance, in order that they can guide their conduct appropriately.

The draft Nuclear Power Generation and Decommissioning Sector Plan, however, is generally much clearer than other draft sector plans as to what SEPA means by 'beyond compliance' and, crucially, how it will seek to have the sector achieve it.

¹ <https://consultation.sepa.org.uk/sector-plan/nuclear-power-generation-and-decommissioning/>

We note that the vision states a desire to achieve the “best possible environmental and social outcome...for each nuclear site during operation, decommissioning and after final site clearance.”² While this may be a laudable objective, “best possible” is a very high standard and is not a clear legal test with which to judge standards of conduct. If this is to be treated as a legal test, we consider that 'practicable' would allow a more balanced approach and use a well-established concept. Indeed, we note that the standard of “best practicable means” is used in the draft Plan in reference to requirements upon permits for nuclear sites³.

We note the intention within the draft Plan to “work with Scottish Government to ensure that legislation is integrated so that regulation is harmonised”⁴. We welcome this proposal. It is important that the law is clear and understandable for individuals and businesses operating in the sector and we consider that improved integration of legislation will help to achieve this.

For further information, please contact:

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² Page 5.

³ Page 12.

⁴ Page 16.