



Law Society
of Scotland

Consultation Response

SEPA Water Supply & Waste Water Treatment 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 Water Supply & Waste Water Treatment Sector Plan¹. 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. However, it appears from the draft Plan that SEPA seeks to fundamentally change the way in which it regulates by moving away from the 'traditional approach' to regulation. The traditional, rule-based approach is generally both measurable and transparent and this ensures SEPA's accountability to the Scottish public in relation to environmental 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. Businesses require clarity as to what will happen if they 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.

The draft Plan recognises that major change is needed in other sectors in order to deliver the transformation needed and that SEPA can help bring those sectors together. While that is true and would be valuable, the proper coordination of those sectors will need more than SEPA's support. If true coordination is to be achieved, more radical legislative reform would be required.

¹ <https://consultation.sepa.org.uk/sector-plan/water-waste-water-treatment/>

We consider that there are a number of matters within the draft Plan which would merit clarification. For example, reference is made in the vision to working with other individuals and partners in relation to a strategy for low water use², to ensure required water-safe land management practices are followed³, and in relation to drainage solutions in new developments and areas that are at risk of environmental pollution and sewer flooding⁴. Reference is also made to working with partners and facilitating liaison between them and the sector.⁵ It is not clear what actions SEPA proposes to take and how it would exercise its legal powers in order to achieve these outcomes.

In addition, the draft Plan refers to actions being reflected in licence conditions in due course⁶. It is important that those operating in the sector are aware of when and how this will be done. Similarly, reference to consideration of goals in decision-making⁷ and to work to encourage developers, industry and suppliers to include low water use designs as standard in developments⁸ need clarification as to whether these actions will be permit-led or policy-led, particularly where penalties may be imposed. Individuals and businesses must be aware of what is expected of them. The proposed outcome-based actions⁹ would benefit from further information being provided in the Plan as to how these will be achieved and supported by SEPA.

There would be merit in a clear assessment of SEPA's powers and how the proposed actions will fit with these powers being set out in the Plan. For example, reference is made to the sector using "new ways of treating wastes to high standards using passive or low energy techniques"¹⁰ yet it is not clear how this will be achieved using SEPA's powers. In addition, reference is made in the vision around leakage and new ways of incentivising and enabling action¹¹. It is not clear 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. The draft Sector Plan for Strategic Infrastructure is much clearer in this regard and the water Sector Plan would benefit from incorporating a similar approach.

It is important that the status of this, and other, Sector Plans is clarified. Do the Sector Plans have endorsement of central government? Are they to be used as statements of SEPA policy on permitting and enforcement and if so, which of the targets will be pursued in this way and which will be pursued via 'softer' methods?

In relation to the outcomes and actions identified, we note the inclusion of an outcome that "environmental pollution risks are being avoided or controlled at source *wherever possible*"¹² (our emphasis). This outcome should take account of costs and benefits, and balance these appropriately.

² Page 8.

³ Page 8.

⁴ Page 10.

⁵ Page 13.

⁶ Page 24.

⁷ Page 28

⁸ Page 26

⁹ Pages 28 – 31.

¹⁰ Page 13.

¹¹ Page 7.

¹² Page 28.



Finally, we note that arrangements for private sewage systems are dealt with within the Annex to the draft Plan. We note that significant change is proposed, and we wonder whether affected persons will have become aware of this via the consultation on the draft Plan, given that its title does not flag this quite specific content.

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