



Law Society  
of Scotland

# Consultation response

## Cost assessment and water environment improvements

May 2022



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 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 respond to SEPA's consultation on *Cost assessment and water environment improvements*<sup>1</sup>. We do not seek to answer all of the consultation questions but have the following comments to put forward for consideration.

## General remarks

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We are generally supportive of the new proposed approach based on using environmental benefit values to calculate the Disproportionately Expenses Test, however, we consider that there are aspects of the proposals which require further consideration.

We do not consider that it is clear from the Regulatory Method (WAT-RM-41) document how the various factors will be weighed. This could give rise to subjectivity in the assessment meaning that the outcomes are uncertain for those parties involved. We note that the new approach does not give river populations an enhanced level of protection. While there seems to be an ecological focus of the approach, the criteria seem to connect to human impacts – we are of the view that the appropriate balance between these focuses may require further consideration.

The greater focus on economic valuations may mean there is less flexibility in the regime. We note that it is perhaps somewhat artificial to monetise the criteria, and this could risk not affording the appropriate levels of protection. The 'catch-all' discretion-based provision around overall water body status improvement is considered may be helpful to resolve this issue, however, could cut across the economic value calculations.

<sup>1</sup> <https://consultation.sepa.org.uk/water-unit/cost-assessment-and-water-environment-improvements/>

## Consultation questions

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### **5. Do you agree with SEPA's proposals on using willingness to pay (WTP) values to assess the appropriate cost of environmental improvements?**

It is appreciated why this approach is being considered, but there is a potential conflict between the concept of 'willingness to pay' with the ecological requirements of a river system and the aquatic environment. It may be more robust to make a decision on a case-by-case basis depending on the condition of a river and the potential benefits of the works in question for the environment and the local population based on quality rather than seeking to quantify the value in economic terms.

### **6. Do you prefer our proposed new method in comparison to the existing method for calculating disproportionate costs?**

The new method appears to be a progressive approach to addressing this aspect. However, we suggest that greater consideration is given to not just the impacts/benefits for the human population of a watershed but also the non-human environment. As above, it may be more robust to analyse the condition of a river in the first instance set against the context of improving its ecological condition (in line with the Water Framework Directive) than looking at costs initially. Ultimately consideration needs to be given to whether works are actually improving or at least protecting a river system, and if they do provide an environmental improvement then arguably those are works which should benefit from any discount/waiver of fees.

Consideration should also be given to 'wilder' rivers where there is a low human population, but where protecting the quality of the water environment for ecological reasons remains important.

### **7. Do you think that document Regulatory method (WAT-RM-41) contains too much technical information?**

We have no comment.

### **8. Please suggest any improvements that could be made to the document format of WAT-RM-41 to help readers follow it or understand it better.**

We have no comment.

### **9. Do you agree that this is the most accurate information available to be used for Scotland?**

We have no comment.

### **10. Do you think these costs accurately reflect the value of the water environment in Scotland?**

We have no comment.



**For further information, please contact:**

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