

**Proposed Changes to the Environmental Regulation (Scotland) Guidance on Public Participation and Fit and Proper Person Test**

January 2025

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If you would like this document in an accessible format, such as large print, audio recording or braille, please contact SEPA by emailing equalities@sepa.org.uk.

# How to respond

The preferred way to respond to this consultation is digitally via [SEPA’s consultation hub](https://consultation.sepa.org.uk/governance/proposed-changes-to-the-environmental-regulation-s).

Where it is not possible to respond via our consultation hub, you can respond to this consultation by sending an email to: [iaf@sepa.org.uk](mailto:iaf@sepa.org.uk). If responding by email, please complete and return the [Respondent Information Form](https://consultation.sepa.org.uk/++preview++/governance/proposed-changes-to-the-environmental-regulation-s/supporting_documents/Respondent_Information_Form_Proposed%20changes%20to%20the%20public%20participation%20and%20fit%20and%20proper%20person%20test.docx) with your response.

If you wish to respond another way, please [contact us using our online contact form](https://www2.sepa.org.uk/contactus) or by phone: 0300 099 6699 and we’ll arrange for an officer to call you back.

Responses must be submitted by midnight on 30 March 2025. Earlier responses are welcomed.

# Handling your response

We would like to know if you are happy for your response to be made public. If you ask for your response not to be published, it will be regarded as confidential and treated in accordance with our published [Privacy Policy](https://www.sepa.org.uk/help/privacy-policy/).

You can indicate your preference in the [Respondent Information Form](https://consultation.sepa.org.uk/++preview++/governance/proposed-changes-to-the-environmental-regulation-s/supporting_documents/Respondent_Information_Form_Proposed%20changes%20to%20the%20public%20participation%20and%20fit%20and%20proper%20person%20test.docx).

# Introduction

The Scottish Environment Protection Agency (SEPA) are Scotland’s principal environmental regulator, protecting and improving Scotland’s environment.

In 2018, Scottish Government brought in the [Environmental Authorisations (Scotland) Regulations 2018](https://www.legislation.gov.uk/ssi/2018/219/contents/made) (EASR 2018), referred to in this document as ‘EASR’. The aim of EASR is to provide a standardised, simplified, common framework for environmental authorisations in Scotland, known as an Integrated Authorisation Framework (IAF).

In March 2024, Scottish Government closed its [consultation on proposed amendments to EASR](https://consult.gov.scot/environment-forestry/easr-2018-proposed-amendments/). These proposals extend the Integrated Authorisation Framework to include the regulation of water, waste management and industrial activities (currently called pollution prevention control or abbreviated as PPC), which are currently each regulated under different legislation. The proposals also included amendments to common procedures in EASR. As a result of the responses received, Scottish Government is proposing to amend EASR to:

* Enhance the opportunities for public participation.
* No longer require a Fit and Proper Person Test for private sewage activities.

In addition to the amendments that Scottish Government is making to EASR, we’re also reviewing our approach to determining whether a person is ‘fit and proper’ to hold an authorisation to bring it into line with other UK environmental agencies and ensure only those that are ‘fit and proper’ can hold an authorisation.

In September 2018, we consulted on and published, two guidance documents to support the implementation of EASR.

* [Public Participation Statement: Guidance under the Environmental Authorisations (Scotland) Regulations 2018](https://www.sepa.org.uk/media/372006/public_articipation_statement.pdf)

This is our Public Participation Statement (PPS) that explains when and how we will involve the public and other interested bodies in our decisions on environmental authorisations. It will help you to understand how you can be involved. EASR brings a common approach to public consultation for activities that require a permit.

* [Guidance On Who Can Hold an Authorisation: ‘In Control’ and ‘Fit and Proper Person’ Tests](https://www.sepa.org.uk/media/372007/guidance_on_who_can_hold_an_authorisation.pdf)

This guidance on who can hold an authorisation is for any person who applies for or holds a permit or registration under the Environmental Authorisations (Scotland) Regulations. It explains how we will decide whether you are ‘in control’ of the regulated activity and whether you are a ‘fit and proper person’ to hold or continue to hold an environmental authorisation.

This consultation:

* Proposes changes to the SEPA guidance on public participation by adding a requirement for prospective applicants to engage in public consultation at the pre-application stage in the Public Participation Statement.
* Proposes changes to the SEPA guidance on the criteria we will apply in determining whether a person is a fit and proper person to hold a registration or permit (‘the Fit and Proper Person’ Test).

# Previous consultation and conclusions

In January 2024, we published a consultation on the [Proposed types of authorisation for Waste, Water and Industrial activities](https://consultation.sepa.org.uk/regulatory-services/better-regulation-consultation-types-of-authorisat/) that would be required under the extended Integrated Authorisation Framework. You can [read our consultation digest](https://consultation.sepa.org.uk/regulatory-services/better-regulation-consultation-types-of-authorisat/), which summarises the responses we received on the proposals and what we have done in response.

We’ve consulted separately on proposed changes to application and activity charges for EASR authorisations. You may wish to [read the changes to charging consultation](https://consultation.sepa.org.uk/communications/easr_charging_scheme_2024/). We’ve also consulted on the [Proposed Standard Conditions for Registration level activities](https://consultation.sepa.org.uk/communications/easr_registration_standard_conditions_2024/), which proposed the standard conditions for each registration level activity and the explanation as to why this is necessary. Both these consultations have now closed and the consultation digest will be available through the [We asked, You said, We did section](https://consultation.sepa.org.uk/we_asked_you_said/) of our website.

# Public participation statement (PPS)

Our [public participation statement](https://www.sepa.org.uk/media/372006/public_articipation_statement.pdf) (PPS) sets out when and how we will involve the public and our partners in decisions relating to environmental authorisations, and what information we will make available.

We want communities and individuals to take part in significant decisions that might affect them, and we recognise that the quality of these decisions can be improved through the active involvement of the public concerned. We also recognise other statutory bodies make a valuable contribution to environmental decision-making by providing specialist knowledge and perspective. Scottish Government has proposed to amend the existing [public consultation requirements in EASR](https://www.gov.scot/publications/better-environmental-regulation-programme-environmental-authorisations-scotland-regulations-2018-proposed-amendments-consultation-analysis-responses-received/pages/3/) so that we may require pre-application public consultation in relation to some permit applications or variations. We propose to amend the existing PPS to reflect this. Below are the key changes:

* Further information on the process requiring an applicant to carry out pre-application engagement on certain activities due to their nature or location being of significant public interest or where experience has shown this would be beneficial to the application process (for example, in relation to marine pen fish farms).
* The requirement of pre-application engagement will not be expected for all permit applications or variations. Details will be provided on our website to make it clear which activities we would normally consider pre-application engagement a requirement for. The proposed applicant will need to ensure that they have fulfilled this requirement before applying for a permit for that activity with us.
* Simplification of the procedure by which the Scottish Ministers can require a particular application to be referred to them for a determination (known as the call-in procedure).

## Additional information to be included in the current PPS

We’re proposing to add the following text to the existing section on ‘How can I get involved in permit consultations?’:

### Pre-application public engagement

“We may require pre-application public consultation in relation to some permit applications or variations. The aim of any pre-application engagement is to explore local environmental knowledge and understand any potential issues or community concerns in relation to a proposed development. Understanding these at an early stage, as opposed to at the end of the process when any changes are likely to be more expensive to implement, will enable the applicant to take them into account during development of their proposals.”

### Figure 1: Application process for a permit

We’re proposing to add the following text to Figure 1, which explains the application process for a permit:

“For some permit applications, we will require the prospective applicant to engage in pre-application work with interested parties, including the public. Part of this engagement will include the prospective applicant seeking more information from interested parties on the proposed activity. This is a good opportunity to get involved early and give your views. These events might be happening in your local area and be published by the applicant. Alternatively, you may find pre-application engagement is included as part of the local authority planning process.”

### Additional supporting information on Pre-application public engagement

We’re proposing to add the following text to an additional Annex:

“Pre-application engagement will not be expected for all permit applications or variations and details will be provided on our website to make it clear which activities we would normally require pre-application engagement.

Where we require pre-application engagement, we will require the prospective applicant to demonstrate that they have taken part in meaningful and transparent pre-application engagement with the local community.

It’s important that the applicant can demonstrate they have taken feedback from those likely to be affected by the proposed activity into account when preparing their application.

Pre- application engagement may be required for:

* An activity that due to its nature or location may have a particular local or national public interest. An activity where our experience has shown that engaging with the local community is beneficial to the application process.

Prospective applicants should engage with those who represent the views of potentially affected communities, guided by the [National Standards for Community Engagement](https://www.scdc.org.uk/what/national-standards/).

The objective of this engagement is to provide a process which enables communities to:

* Be better informed about the proposals.
* Have an opportunity to contribute their views to prospective applicants before an application is submitted.

The prospective applicant will be required to provide the following information:

* A description in general terms of the development to be carried out.
* The site location as far as possible with a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site plan.
* Details as to how the prospective applicant may be contacted and corresponded with.

Information issued as part of the engagement should be:

* Factually accurate.
* Easy to understand.
* Jargon free.
* Accessible.
* Relevant.

It should be made available in appropriate formats and provided in good time to enable people to take part and discuss their views with others. In doing so, prospective applicants should consider the needs of different groups in the local population, such as people with disabilities, age or language related issues.

The prospective applicant should engage with the public through various means, such as:

* Written information.
* Advertisements in community bulletins.
* Online measures such as social media platforms.
* Community meetings.
* Round table and focus group discussions.
* Local council’s planning portal.

For SEPA, it’s important that we understand how the proposal may impact on local communities so that the prospective applicant can consider these aspects early on. We will require the prospective applicant to share this information in support of their application. We ask the prospective applicant to share the feedback that they received during the public consultation with us and to show how it influenced their decision-making, if appropriate.”

### Questions

1. **Do you agree with the proposed approach on pre-application? Yes or No. If you answered ‘No’, please explain why.**
2. **Do you have additional suggestions for the prospective applicant in terms of the public consultation process outlined in the additional annex? Yes or No. If you answered ‘Yes’, please provide your suggestions.**
3. **Do you think we should have minimum criteria that we expect the potential applicant to demonstrate to meet the requirement for pre-application engagement? Yes or No. If you answered ‘Yes’, what do think the minimum criteria should be.**
4. **Do you have any additional suggestions for engaging with the local community? Yes or No. If you answered ‘Yes’, please provide your suggestions.**

## Simplification of call-in process

In Figure 1, we propose to simplify Step 3 and remove some of the steps associated with the call-in process, to reflect the changes made to EASR.

The text to be removed is:

“If you believe that your views have not been addressed, are material to SEPA’s determination of the permit and meet the criteria for third party call-in, you have 21 days to ask Ministers to make the decision instead.”

The new text will read.

“Scottish Ministers may choose to call in an application for their own determination. More information on this process is available here: [process for considering third party representations](https://www.gov.scot/publications/process-considering-third-party-representations-under-environmental-authorisations-scotland-regulations/).”

We will also remove the final sentence under ‘How can I get involved in permit consultations’ to reflect the changes made by EASR.

The text to be removed is:

“The four month period does not include the process of third party representations whereby respondents have 21 days to ask Scottish Ministers to determine the permit instead.”

#### Question

1. **Is the new text understandable? Yes or No. If you answered ‘No’, please explain why.**

# Fit and Proper Person Test

## Criminal convictions

In 2018, we published [Guidance On Who Can Hold an Authorisation: ‘In Control’ and ‘Fit and Proper Person’ Tests](https://www.sepa.org.uk/media/372007/guidance_on_who_can_hold_an_authorisation.pdf) which explains how we decide whether you are a ‘fit and proper person’ (FPP) to hold or continue to hold an environmental authorisation.

Currently, in the section on criminal convictions, we state that for most activities, we will only take convictions for environmental offences into account, and we will ask applicants to declare any convictions for environmental offences as part of their application. However, for certain activities that are vulnerable to misuse, the guidance indicates convictions for non-environmental offences may be significant when considering an overall picture of the applicant.

Based on our experience to date, and to be consistent with other UK agencies, we’ve reviewed our approach to criminal convictions. We intend to ask all applicants to declare if they have convictions for relevant offences (‘relevant convictions’), which will include convictions for both environmental and non-environmental offences, as part of their application.

The guidance contains some examples of the non-environmental offences that we are likely to consider relevant. They are:

* Offences that appear on Schedule 4 of the Proceeds of Crime Act 2002 are considered ‘lifestyle’ offences and may indicate a history of using crime for profit making.
* Dishonesty, for example, fraud and theft.
* Violence or abusive behaviour (particularly if towards public officials).

We will publish a full list of relevant offences on our website following this consultation and once the revised guidance is published.

### Proposed amendments to criminal convictions

We’re proposing to replace the existing text with the following:

“If you or a relevant associate have a criminal record, it doesn’t necessarily mean you will not get a permit or registration. However, we will take convictions into account when making our decision.

The circumstances of the conviction and what it tells us about the person in the context of our fit and proper outcomes is important. We will take into account:

* The nature and significance of the offences.
* The actual sentence or disposal given for the convictions.
* How recent the convictions were.
* Any mitigating circumstances.

We will always take convictions for environmental offences into account when determining the suitability of an applicant to hold an authorisation. However, non-environmental convictions may be significant and, on occasions, more significant, when considering our overall view of the applicant. Subject to the Rehabilitation of Offenders Act 1974 we will, therefore, ask applicants to declare if they, or any relevant associates, have relevant convictions, which include convictions for both environmental and non-environmental offences, as part of their application.

Assessment of the significance of any relevant convictions will be carried out on a case-by-case basis, having regard to those convictions we consider relevant to the nature of the activity and to ensure they meet our ‘fit and proper’ criteria.

Examples of the types of non-environmental offences that we are likely to consider relevant include:

* Offences that appear on Schedule 4 of the Proceeds of Crime Act 2002 are considered ‘lifestyle’ offences and may indicate a history of using crime for profit making.
* Dishonesty, for example, fraud and theft.
* Violence or abusive behaviour (particularly if towards public officials).

We will keep the offences which we consider to be relevant to assessing a person's fitness under review. We will post the list of relevant offences on our website.

Where we have information to suggest that an individual applicant or relevant associate may have convictions for relevant offences, we may request a basic disclosure certificate after the application has been submitted.

Convictions for environmental and non-environmental offences may indicate a risk that the applicant would not comply with the conditions of the permit or registration or would abandon environmental liabilities for others to remediate. They may also indicate that the regulated activity is at risk of being used as a front for another illegal activity.

Convictions for violent offences may indicate that SEPA colleagues could be put at risk of harm. If we consider that our colleagues may be unable to safely assess whether an operator is complying with an authorisation, the environment is also put at risk, and we would be unlikely to be satisfied that the person would comply with the conditions of an authorisation.

Access to criminal records is restricted under the Rehabilitation of Offenders Act 1974 and we will generally not take ‘spent’ convictions of individuals into account when applying the Fit and Proper Person Test.

If you’re subject to outstanding criminal charges for an environmental offence, we may seek to defer our decision on your application for an authorisation until the courts have determined the outcome of those charges.”

#### Question

1. **Do you agree with the proposal for SEPA to ask applicants if they, or their relevant associates, have any convictions for relevant offences (‘relevant convictions’), which includes both environmental and non-environmental offences, as part of their application? Yes or No. If you answered ‘No’, please explain why.**

## Other changes to the guidance on who can hold an authorisation

#### Where an Authorised Person no longer exists or has died

The amendments to EASR now allow us to end an authorisation if the authorised person no longer exists or has passed away. The guidance will be amended to make this clear.

#### Compliance Assessment Scheme (CAS)

The guidance refers to our Compliance Assessment Scheme (CAS) at various points and in the Annex. We don’t use this scheme to assess operator performance, but undertake compliance verification to ensure operators meet their environmental obligations. We will amend the guidance to remove specific reference to the CAS.

#### Private Sewage Treatment Systems

A proposed amendment to EASR means that we are not legally required to apply Fit and Proper Person Test to authorisations for private sewage activities. The guidance will be amended to make this clear.