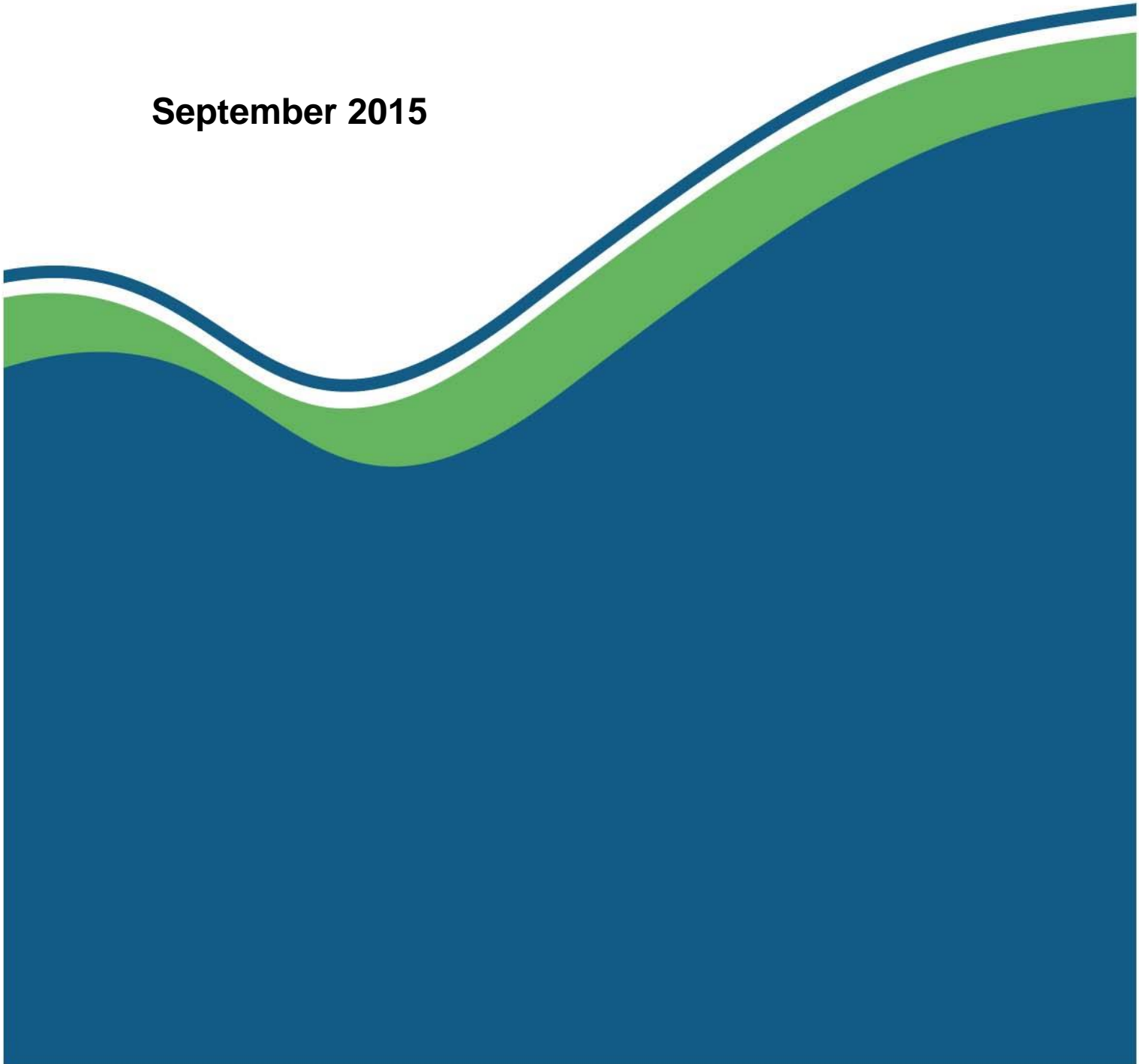


Consultation on the Revised Compliance Assessment Scheme

September 2015



1. INTRODUCTION & SUMMARY

1.1 Overview

The purpose of this consultation is to seek your views on proposed improvements to the Compliance Assessment Scheme (CAS) used by SEPA and to reflect your feedback where possible in the revised scheme.

We propose to bring in the changes to CAS on 1 January 2016.
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As Scotland's principal environmental regulator, SEPA issues a range of environmental licences, permits and authorisations designed to control activities that could, if uncontrolled lead to pollution or harm of the environment. Compliance with these licences is important in ensuring that the environment and human health are protected.

SEPA has measured compliance using its CAS since 2009. This scheme was developed to harmonise compliance assessment across several regulatory regimes covering a wide range of sites. The scheme was phased in over a number of years to cover approximately 10,000 sites.

The revision of CAS is part of our Better Environmental Regulation approach. Our aim is to build on the best points of the current scheme to make CAS fairer, more consistent and proportionate for those we regulate with greater focus on breaches that cause most harm to the environment and persistent poor practice. We also want the scheme to be simpler to use by SEPA and businesses and easier to understand and scrutinise by the public.

1.2 What is the Compliance Assessment Scheme?

One of SEPA's key roles is to issue environmental authorisations that set out the conditions and guidelines that an operator must meet in their everyday business in order to meet their legal obligations. We assess compliance with these conditions through site visits and inspections, investigating environmental events, sampling of discharges to the environment and through assessment of data submitted by the operator. The CAS takes in all this information and allows us to assess and present compliance information in a consistent and objective manner. The results of the assessment are published annually on [SEPA's web page](#)¹. If a company is not complying we will work with them through advice and guidance to secure compliance. There are some situations where it is also appropriate to take

¹ More information and assessment results can be found on the SEPA website <http://www.sepa.org.uk/regulations/authorisations-and-permits/compliance-assessment-scheme>

enforcement action to change a company's behaviour and bring them into compliance.

The current scheme does not take into account non-compliance with other statutory environmental obligations not included in the environmental authorisation.

1.3 Why are we changing CAS?

We are proposing improvements to CAS for a number of reasons. Firstly, we have had feedback from those we regulate and also from within SEPA that the existing scheme focuses too heavily on minor non-compliances. We want to address this and ensure greater focus is on major non-compliances in particular where there is significant risk to or impact on the environment. Also, the current scheme only looks at compliance with authorisation conditions and does not consider compliance under a wider range of environmental legislation which, if also assessed will give a better assessment whether an operator is meeting their legal obligations across the site.

In addition, we recognise that the scheme and compliance calculations are complicated and that annual assessment and the time delay in reporting may not give a current picture of compliance. We want to make the assessment simpler and report the results quicker so there is a fairer, more recent and easier to understand picture for those that we authorise.

Better compliance information is also a key part of our [proposed Environmental Regulation \(Scotland\) Charging Scheme 2016](#)² and our [proposed new enforcement policy](#)³ under the Regulatory Reform (Scotland) Act 2014. The improvements to CAS are intended to provide this.

1.4 How does this fit with Better Environmental Regulation?

The proposed improvements to CAS support the changes as part of our better environmental regulation agenda, in particular our approach to compliance.

It is our clear position that compliance with regulatory obligations is the minimum expected from every operator who holds an environmental authorisation issued by SEPA. The proposed changes to CAS will provide a better picture of compliance and the underlying behaviours of operators.

² More information on the Charging Scheme consultation can be found on the SEPA website <https://consultation.sepa.org.uk/charging-team/2016>

³ More information on the Enforcement Policy and Guidance consultation can be found on the SEPA website <https://consultation.sepa.org.uk/change-programme/consultation-on-sepa-enforcement-policy-guidance>

This will allow us to continue to engage, encourage and support those businesses that consistently meet their environmental obligations and also importantly to target our efforts on the minority that are non-compliant. Non-compliance with environmental regulation is not an option as it puts the environment and communities at risk and undermines businesses that take their responsibilities seriously.

Non-compliances will be tackled proportionately and in line with the proposals in [SEPA Enforcement Policy and Guidance](#).

Additionally, the improvements to CAS will ensure greater transparency and accountability in the terms of the [Scottish Regulators' Strategic Code of Practice](#)⁴ to help operators understand the way in which decisions are made on compliance and to enable the general public and operators to hold us to account for those decisions. It is envisaged that this will help provide reassurance that SEPA is building a better picture of non-compliance.

In line with this code, SEPA will use the annual compliance score as part of the risk calculations⁵ to help target action where it's needed.

1.5 Who does the revised CAS apply to?

There will be no change to those that will be assessed under the scheme and therefore revised CAS will still apply to all licence holders regulated under the existing compliance scheme. Namely:

- Pollution Prevention and Control Regulations (PPC)
- Waste Management Licensing Regulations (WML) – not including Waste Management Exemptions.
- Controlled Activity Regulations (CAR) – discharges to water, water resources abstractions and impoundments. Not including CAR registrations, sheep dip disposal or authorisations for engineering works
- Radioactive Substances Act (RSA)

1.6 Summary of proposed changes

Focus on the environment with a truer picture of site compliance

- The CAS assessment will include major non-compliance with environmental obligations related to the regulated activity (e.g. Producer Responsibility, Duty of Care Regulations, the Scottish Pollutant Release Inventory (SPRI) and the non-payment of fees etc).

⁴ The Scottish Regulators' Strategic Code of Practice can be found on the website <http://www.gov.scot/Resource/0046/00467429.pdf>

⁵ SEPA's Dynamic Regulatory Effort Assessment Model (DREAM) is the risk assessment model used to establish the inspection frequency required for an authorised site

It is proposed that other environmental obligations will be taken into account from **January 2017** and may be reported at site and/or operator level

- Environmental events that cannot be attributed to a condition in an authorisation but which are related to the regulated activity will also be taken into account in the CAS assessment.
- The revised CAS will place more emphasis on environmental impact; unauthorised releases to the environment; unauthorised on-site activities and persistent and/or major non-compliance at its core.

Simplification of the scheme

- CAS will no longer use Environmental Limit Conditions (ELCs) and Environmental Management Conditions (EMCs) to calculate compliance and instead will use compliance with legal obligations and environmental significance to calculate the score aiding transparency and simplifying the process. Guidance will be simplified.
- Breaches of the conditions of an authorisation will be classified as either minor or major. The additional classifications of repeated minor or gross used in the existing version of the scheme will be removed.
- The scheme will use simple, easy to understand calculations to derive the compliance classification as explained by Section 2.2 of this consultation.

Reporting

- Compliance assessments (e.g. inspections, data submissions etc) will be reported on SEPA's website within 4 months of the date of inspection, and as soon as reasonably practical for other assessment types such as results from discharges made to the water environment⁶. This will give a truer picture of compliance and allow operators to demonstrate a return to compliance quicker than the current version of the scheme.
- The website will contain a historical snapshot dating back to the first assessment of compliance for each authorisation.
- Operators will be given the opportunity to declare minor non-compliances have been rectified. All major non-compliance will automatically require SEPA verification.
- Some regulated activities have conditions that use a rolling 12 month average. These conditions will be included within the revised scheme. For example compliance with conditions relating to discharges to the water environment will be assessed in line with the current approach⁷.

⁶ Sampling results will depend on time taken to analyse and verify the result.

⁷ [WAT-RM-40 Assessment of Numeric Discharge Quality Conditions \(for CAR, UWWTD, IPC and PPC Compliance\)](http://www.sepa.org.uk/media/59955/policy-37-wat-rm-40-assessment-of-numeric-discharge-quality-conditions.pdf) provides additional information on how discharge compliance is calculated. WAT-RM-40 can be found on the website <http://www.sepa.org.uk/media/59955/policy-37-wat-rm-40-assessment-of-numeric-discharge-quality-conditions.pdf>

This will mean that those who discharge to the water environment that exceed the allowable number of breaches in a rolling year (as calculated under WAT-RM-40) will be taken as a Major breach

Compliance linked to charges

- Currently the compliance score for Pollution Prevention and Control Regulations (PPC) Part A and some Part B processes is linked to charging.
- It is proposed that this will apply to **all authorisations** assessed under the revised scheme.
- [Consultation on the Environmental Regulation \(Scotland\) Charging Scheme 2016](#) proposes that the revised CAS will determine the new Compliance Factors which will calculate subsistence charges based on performance.

It is proposed that any link to charging will not become live until 2018 to allow operators to return to full compliance

2. EXPANDED DETAIL ON CHANGES

2.1 Scope

The existing CAS focuses only on licence compliance and it is therefore possible that those that breach other environmental legal obligations or cause an environmental event can still be reported as 'Excellent' under the current scheme. This does not give a true or fair picture of how well an operator is doing in meeting their environmental obligations.

Regulatory requirements

There will be no change to the range of regulatory regimes that are assessed under CAS.

However, we propose to expand the scheme to take into account compliance with other regulatory requirements associated with the licensed activity. For example breaches of Producer Responsibility obligations, Scottish Pollution Release Inventory (SPRI), Duty of Care and the non-payment of subsistence fees. This will give a better picture of compliance with wider environmental legislation and uphold the polluter pays principle.

An example of this may be where a site holding a Waste Management Licence fails to comply with Duty of Care Regulations in terms of onward movement of waste.

The Scheme will be kept under review to ensure alignment with changes to licensing under the Regulatory Reform (Scotland) Act 2014.

Environmental events

Environmental events are incidents that have resulted, or could potentially result, in environmental damage. We propose that the scheme should capture environmental events that cannot be attributed to a specific licence condition.

An example of this may be where a site is authorised under PPC Part B in relation to emissions to air which gives rise to an oil spill. This environmental event would be taken into account in the assessment of compliance for that site under the proposed improved scheme.

Question 1

Do you think that SEPA should take into account compliance with other regulatory requirements when assessing and reporting compliance?

Question 2

Do you think that environmental events not covered by the licence condition but associated with the licenced activity should be taken into account in assessment of compliance?

2.2 The Compliance Matrix

The current scheme calculates a score using a standard framework (matrix) against which all regulatory regimes can define an appropriate compliance score for a licensed site. This matrix is based on two types of licence conditions:

- Environmental Limit Conditions (ELC) that are for example; conditions relating to the scope of the authorisation, process controls or numeric limits.
- Environmental Management Conditions (EMC) that are for example; conditions relating to reporting, management, or plant and infrastructure.

An example of an ELC is a numeric condition relating to the Biochemical Oxygen Demand (BOD) limit of (for example) 20mg/l.

The matrix allows the level of compliance to be rated from 'Excellent' to 'Very Poor'. The current matrix is shown below:

Figure 1: The Current Compliance Matrix

		Environmental Limit Conditions (ELCs)		
		No breaches	Minor breach(es)/ one gross breach	Significant breach, more than one gross breach or repeated minor breach
Environmental Management Conditions (EMCs)	High performance	Excellent	Good	Poor
	Medium performance	Good	Broadly compliant	Poor
	Low performance	At risk	Poor	Very poor

SEPA propose to revise the matrix as per **Figure 2** so that:

- one axis is defined by breaches of regulatory requirements (i.e. authorisation conditions and wider environmental obligations); and
- the second axis is defined by the impact to the environment

This will allow us to identify more easily those sites that pose the most significant threat to the environment and target these for improvement.

Figure 2: The Revised Compliance Matrix

		Breaches		
		No Breach	Minor Breach	Major Breach
Environmental Impact	No identifiable impact	Compliant	Broadly Compliant	Improvement Required
	Category B (or equivalent)	Improvement Required	Improvement Required	Poor
	Category A or 'Chronic' (or equivalent)	Poor	Poor	Very Poor

Compliance bands

The compliance assessment bandings will also change as shown in Figure 2 and Table 1. The proposed scale of compliance will range from those with the best score of 'Compliant' to those with the worst score of 'Very Poor'. Those with an overall score of 'Improvement Required', 'Poor' or 'Very Poor' will be classified as having 'unsatisfactory' performance.

We will no longer refer to those that are fully compliant with licence conditions as being "Excellent" as compliance with regulatory obligations is the minimum expected from every operator that holds an environmental authorisation issued by us.

Table 1: Table showing changes to overall compliance assessment bandings

Existing CAS	Revised CAS
Excellent	Compliant
Good	<i>'Good' has Removed from the matrix</i>
Broadly Compliant	Broadly Compliant
At Risk	Improvement Required
Poor	Poor
Very Poor	Very Poor

Environmental Impact

Environmental Impact will replace the existing EMC assessment criteria. This will enable us to take into account environmental impact caused by a licensed site to ensure that we target sites that cause the most impact proportionately. If environmental impact occurs from a licensed activity, the scale of this incident will directly impact the compliance score for that site. i.e.:

- Category A (or equivalent) or chronic Environmental Event will be used to define 'Category A' in the Compliance Matrix
- Category B Environmental Event (or equivalent) will be used to define 'Category B' in the Compliance Matrix

Environmental events definitions are provided by the [Table 5 of the current CAS manual](#)⁸. These categories are being revised and are likely to see those currently defined as Category 1 or 2 combined resulting in classification as a Category A event and those defined as Category 3 being classified as a Category B event.

Question 3

Do you agree that SEPA should consider those that are fully compliant as 'Compliant' and not 'Excellent'?

Question 4

Do you agree with the changes to the matrix bringing environmental impact more to the fore?

Breaches

The way SEPA classify breaches of environmental requirements will be simplified and deal with those areas causing the greatest concern. Table 2 provides a summary of the changes to breach classification.

Those breaches that do not fit within the criteria of 'Major' will be recorded as a 'minor breach', however, we may escalate these to a major breach where there is significant reason to do so.

We propose to remove the requirement to calculate 'repeated minor' breaches as referred to by **Figure 1** so that we focus our efforts on those that are causing a major threat and/or having a major impact on the environment.

Instead of calculating repeated minor breaches based on the occurrence of four or more minor breaches, the revised Scheme will allow for persistent breaches to be escalated to a 'Major' breach where deemed necessary.

⁸ The current CAS manual can be found on the website <http://www.sepa.org.uk/regulations/authorisations-and-permits/compliance-assessment-scheme/compliance-assessment-scheme-manual/>

Before a breach is escalated, SEPA will allocate an appropriate action in line with the Enforcement Policy and Guidance to address the breach. Where SEPA deem it appropriate to escalate the breach, the operator will be notified that failure to carry out the action will be considered to be a Major Breach as per Criteria 5 of Table 3 below.

Table 2: Compliance Assessment Breach Classification

Existing Scheme		Revised Scheme	
Assessment Type	Result	Assessment Type	Result
Environmental Limit Conditions (ELC)	No Breach	Breaches	No Breach
	Minor		Breach
	Repeated Minor		Major Breach
	Gross		
	Significant		

Major Breaches

Those identified as having a Major breach will be classified as unsatisfactory under the matrix (Figure 2) and targeted for improvement. To qualify as a Major Breach, one of more of the criteria provided by Table 3 will be met.

Operators will be given the opportunity to query any assessment as described in section 2.3 below.

Table 3: Table showing major breach criteria

Major Breach Criteria	Reason
<p>1. Regime or media (e.g. waste, water, RSA, PPC) specific breaches as defined under Table 3 of the 2012 Compliance Assessment Scheme or Annexes as significant, gross or major that have passed a ‘fit for purpose’ test⁹.</p>	<p>The existing scheme is supported by Annexes that contain aspects of an authorisation that, where breached, is considered to be a gross, significant or major breach. We are currently working with operators to ensure that they are fit for purpose and can be taken as a ‘Major’ breach under the revised scheme. Those identified are likely to meet with one or more of the following criteria or justify extra regulatory effort to allow improvement to be targeted.</p> <p>Operators will be given the opportunity to query any assessment as described in section 2.3 below.</p>
<p>2. Breach of EU Directive</p>	<p>European Union (EU) Directives instruct Scotland to implement measures to protect the environment or to ensure data is collected so impact on the environment is monitored and improvement targets can be measured. Breaches of an EU Directive by individual operators can therefore have a significant impact.</p>
<p>3. Where there is risk of a Category A environmental event as defined by the Environmental Impact section of this document</p>	<p>SEPA places conditions on activities in order to protect the environment. Where these conditions have been breached and the severity of breach is seen to cause a risk of a Category A event, we will identify this and record the breach as ‘Major’. This breach would result in more regulatory effort to work with the operator to ensure that appropriate corrective action is taken.</p>
<p>4. Show financial advantage by not paying fees</p>	<p>We want a scheme that provides a fair playing field for all, but which also ensures proportionality. We consider the deliberate non-payment of fees gives financial advantage over others. We also need to initiate extra effort to recover our costs. To avoid a Major Breach, operators must pay promptly and certainly avoid the need for formal confirmation of non-payment by SEPA’s finance department. Licensed sites cannot be reported as being ‘compliant’ if they increase the costs of regulation by their non-payment of fees. SEPA will, however, take into account extenuating circumstances in reaching any decisions where appropriate.</p>

⁹Those defined under the annexes or table 3 of the 2012 Compliance Assessment Scheme as Gross, Major or Significant breaches are currently being reviewed to ensure they are fit for purpose under the revised scheme and justify additional charge and effort

Major Breach Criteria	Reason
<p>5. Failure to carry out or implement improvements as required by any corrective action instructed by SEPA (enforcement or non-enforcement).</p>	<p>Where breaches have been identified, the appropriate corrective action and completion date will be stipulated. We will be clear that failure to carry out the action by the date specified will be treated as a Major breach of our requirements. This will therefore trigger additional regulatory effort to determine further action required and ensure that the environment remains protected. In any case, failure to comply with enforcement action will be treated as a Major breach.</p>
<p>6. Where there is obstruction or hindrance meaning that compliance cannot be assessed</p>	<p>In this case, we will not be able to make an assessment to ascertain if the aspect due for assessment is compliant with our requirements. We would therefore take this to be a Major breach and trigger additional effort to make a re-assessment.</p>
<p>7. Serious breach of associated environmental regulatory requirements</p> <p><i>It is proposed that this be taken into account from January 2017</i></p>	<p>The conditions in the authorisation may not cover all associated environmental regulatory requirements such as requirements under the Scottish Pollution Release Inventory (SPRI) for the supply of data or Duty of Care. A serious breach is likely to meet with other Major breach criteria or be identified in other media specific annexes as a major breach.</p> <p>An example of a 'serious' breach would be a failure to comply with requirements of Duty of Care for the onward passing of waste from a regulated waste site that results in repatriation of waste from a foreign country.</p>
<p>8. Non submission of data</p>	<p>We may request information to be submitted so we can determine compliance with licence conditions or report environmental data to the Scottish Government and/or Europe. We do not underestimate the amount of time and resource that is required from both our operators and our officers, supporting staff and IT systems to collect and process this information. If we ask for information it is because we can demonstrate a need for it. We will therefore consider non submission of data to be a Major breach. We will continue to require submission of data even after a major breach is identified.</p>

Question 5

Do you think that the category of repeated minor breaches should be removed from compliance calculations?

Question 6

Do you think that focusing effort on major non-compliance will allow SEPA to be more proportionate in its approach to assessing compliance?

Question 7

Do you have any suggestions to improve the criteria used to define major breaches?

2.3 Reporting

We currently calculate and report compliance on a calendar year basis. Interim scores are fed back to operators at the time of an inspection; however, the final score is not made publically available until autumn the following year due the complexity of the publication process. Annual compliance under the current version of the scheme means:

- Compliance is reset every January regardless of whether any previously identified non-compliance has been remedied.
- SEPA does not report final compliance scores until mid-way through the following year and that may give an unfair perspective of the sites current compliance performance. We could be seen to be unfair to those operators who have taken corrective action but who are being reported as being non-compliant.
- There is little incentive for an operator to fix breaches of ELC's as they cannot recover from these until the following year unlike EMC's where it is possible to re-assess during the year.
- We use end of year compliance scores to feed into our regulatory effort calculations to determine how much planned effort a site requires. The site may have already implemented the required improvements during the year and may not necessarily require any addition effort the following year.

The Scheme will operate on a continuous assessment basis, designed to encourage operators to be compliant or return to being compliant as soon as possible. At the same time the aim is to become more transparent by publishing inspection reports and results on the SEPA web site within four months of the inspection.

Continuous assessment means that the last assessment results and score stands until SEPA carries out a re-assessment. This will allow SEPA to show

where operators have demonstrated they have recovered from previous non-compliance issues but will also ensure that breaches remain in place until SEPA re-assesses them as being compliant.

Other scores include:

- The **compliance charge factor**; as determined by the **worst score** recorded during the calendar year and will be used to inform the compliance subsistence charge factor to be applied. The reason for this is to recover costs for activities carried out by SEPA during the non-compliance.

For example; assessments made as below will have the last/current score of **Compliant** and the charge factor score applied on April 2017 of **Very Poor**

Assessment 1 - January 2016: Very Poor

Assessment 2 - March 2016: Poor

Assessment 3 - November 2016: Broadly Compliant

Assessment 4 - February 2017: Compliant

We will revise the publication process so that the results of compliance assessment are made publically available within four months of the date of an inspection and as soon as reasonably practical for other assessment types. This will provide a more transparent and fairer representation of the current compliance performance of a regulated activity. We intend to publish the results following review by the operator.

Operators will be provided with notification of the assessment results and asked to review the results, raise any factual errors or apply to exclude the result¹⁰ within 15 days of the notification.

To allow the operator to demonstrate a timely return to compliance; SEPA will accept operator self-certification to be submitted to show a **minor non-compliance** has been rectified. This sort of declaration needs to come from a manager with responsibility for compliance. Should SEPA identify that this has not remedied, this will be treated as a Major breach in line with criteria 5 of Table 3.

SEPA intend to make self-certificates and applications to exclude results publically available.

Question 8

Do you think continuous assessment is a fairer way of calculating compliance?

¹⁰ The revised CAS will continue to provide criteria that must be demonstrated before SEPA is able to exclude the result e.g. extreme weather conditions as stipulated in the authorisation.

Question 9

Considering all the proposals in Section 2 do you think the revised scheme will help meet the requirements of being fairer, simpler and transparent?

2.4 Links to the Regulatory Charging Scheme

Working with operators to achieve compliance with their permit conditions imposes substantial costs upon SEPA which are then passed on to all charge payers. We believe that those who do not comply with their licence conditions should pay higher charges to cover these costs.

SEPA is consulting on its proposed new charging scheme¹¹ and will use the annual CAS results to apply a multiplier to the annual charge. It is proposed that this compliance factor will not come into effect until 1 April 2018. This will give operators time to improve their compliance before CAS is used to increase charges for those with poor compliance.

If you have any concerns about this approach, and wish to comment, you should respond to the Charging Scheme consultation.

2.5 Beyond Compliance

SEPA will no longer refer to those who are fully compliant with their legal obligation as being 'Excellent'. Compliance with regulatory requirements is the minimum expected from every operator who holds an environmental authorisation issued by SEPA and to ensure that we are capturing and reporting this we will expand upon the principles of the current CAS to include compliance with other SEPA regulatory requirements.

We will work with partners to do more to encourage and recognise good practice in going beyond compliance as a key enabler of sustainable economic growth. SEPA recognises that many operators voluntarily go beyond the statutory minimum as they recognise the positive outcomes that this can deliver, not just for the environment but for their business and the communities they operate in.

Examples of this include making the environment and sustainability a key element of their brand marketing, pursuing resource efficiency, implementing a "good neighbour agreement" approach with a local community and/or being very transparent to the public about their environmental performance.

SEPA currently carries out work in this area e.g. as a partner in the VIBES (Vision in Business for the Environment of Scotland) awards, in our work with partners on NetRegs and in supporting Scotland's 2020 and 2050 Climate Groups.

¹¹ The consultation can be found on the SEPA website:
<https://consultation.sepa.org.uk/charging-team/2016>

When we have engaged stakeholders in the past on our CAS we have often received feedback that the Scheme does not recognise the overall performance because it only focuses on legal obligations as opposed to good practice being implemented over and above legal obligations. The current consultation seeks general views on what more we could do to support this further.

We are interested, as part of this consultation, in hearing stakeholder views and ideas on what SEPA should do to support businesses and organisations in Scotland in voluntarily implementing good sustainable practice over and above legal obligations.

Question 10

What criteria should we use to identify those sites that have excellent environmental practice?