

**Proposals to change subsistence fees for materials facilities**

March 2025

**Consultation digest**

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# Overview

The [Scottish Environment Protection Agency](https://beta.sepa.scot/about-sepa/who-we-are) (SEPA) are Scotland’s principal environmental regulator, protecting and improving Scotland’s environment.

We charge the businesses we regulate for the work we do to regulate them. We are committed to making sure our charges are fair and transparent. We want them to reflect the full cost of the services we provide. To achieve this, we propose to amend the additional subsistence charge for materials facilities operations to make sure we fully cover the cost of our regulatory activities.

From 1 April 2025, a new statutory [Code of Practice on Sampling and Reporting at Material Facilities (the New Code)](https://www.gov.scot/publications/code-practice-sampling-reporting-materials-facilities-june-2024/) is due to come into force. [The New Code](https://www.gov.scot/publications/code-practice-sampling-reporting-materials-facilities-june-2024/) replaces the existing Code of Practice on Sampling and Reporting at Materials Recovery Facilities (the 2015 Code).

As well as continuing the policy intent of the 2015 Code, the [New Code](https://www.gov.scot/publications/code-practice-sampling-reporting-materials-facilities-june-2024/) should support the introduction of extended producer responsibility (EPR) for packaging from 2025 through data sharing and analysis. Packaging EPR is being introduced by the Scottish Government, alongside the other governments of the UK, as part of their work to build a more circular economy and address the global climate emergency.

In July 2024, we [consulted on proposals to change subsistence fees for materials facilities](https://consultation.sepa.org.uk/regulatory-services/change-subsistence-fees-for-material-facilities/) after reviewing the activity component (subsistence) charge which applies to facilities subject to the New Code against our regulatory costs.

In the consultation, we posed three questions:

1. Do you agree with SEPA’s approach to regulation of material facilities which are subject to the New Code?
2. Do you agree with SEPA’s proposal to no longer charge the Additional Recovery Cost (reference number 12600), placing the full cost of regulatory work under the New Code directly onto the facilities being regulated?
3. Do you have any general comments or suggestions to make about the matters set out in this consultation?

This digest summarises the responses to our consultation, with charts and brief explanatory text. It also sets out our response.

# How we ran the consultation

The consultation ran for 8 weeks from 17 July 2024 to 11 September 2024, hosted on our consultation hub. The consultation was shared with industry and local authority trade associations, existing material facilities and over 100 licenced/permitted waste facilities identified as potentially in-scope of the New Code. It was shared in the Net Regs newsletter which is emailed to over 3000 people. We also held two industry webinars on the 18th and 23rd August, which were attended by 18 people, including industry body representatives.

# Summary of responses

We received nine responses, including five from individuals and local authorities, and another four from organisations representing most of Scotland’s waste industry and local authorities.

The key themes highlighted included:

* mixed views over the proposal to change the 2-tier activity component structure within our charging scheme, and whether regulatory costs should be placed directly onto those being directly regulated
* confusion over what type of facilities will be affected by the New Code
* questions over whether the proposed charges are representative of costs, particularly given other UK regulators are charging lower fees

# Regulatory approach

**We asked:**

In Question 1, we asked whether you agreed with our approach to regulation of material facilities which are subject to the New Code.

**You said:**

Of the 9 consultee respondents who answered this question, 7 indicated that they did not agree with our proposed regulatory approach. However, the regulatory approach was not the cause of the proposed increase in fees. Respondents indicated that, other than the fee increase, they were in principle supportive of our risk-based approach to compliance and welcomed stringent auditing. When the same question was asked of the 18 attendees at our online engagement sessions, 13 responded in favour.

**We did:**

We will continue with our planned approach to regulation under the New Code, maintaining a robust regulatory approach to provide confidence in the data collected and used, to ensure a level playing field and prevent fraud. The regulatory approach for material facilities will be enhanced via the risk-based approach we are adopting. Our regulatory effort will be proportionate and will focus on where there are the biggest risks.

# Charging changes

**We asked:**

In Question 2, we asked whether you agree with our proposal to no longer charge the Additional Recovery Cost (SEPA reference number 12600), placing the full cost of regulatory work under the New Code directly onto the facilities being regulated.

**You said:**

Of the 9 respondents who answered this question, 5 indicated that they disagreed with our proposal, citing too steep an increase in cost for individual sites in scope of the New Code. Some respondents suggested that the Additional Recovery Cost should remain because the wider waste sector is involved in the movement of material and benefit from the data produced under the New Code. Those who agreed welcomed a simplified fee and agreed with the proposal to place the cost of regulation onto those being directly regulated.

**We did:**

Our approach to regulation and charging fees is aligned to the Polluter Pays Principle - placing the cost of our statutory regulatory effort onto those sites that are directly regulated by legislation.

We will continue with our proposed approach to charging, moving from a more complex two tier activity component structure to a simplified single tier activity component subsistence fee charged to in scope regulated MF sites under the 2024 Code By following the Polluter Pays Principle, the charging scheme places the full cost of our regulatory activity onto those sites that are regulated under the statutory code.

This realignment:

* + simplifies the charging scheme,
	+ allows us to accurately adapt charging schemes according to the number of in-scope sites and regulatory effort,
	+ aligns with [HM Treasury’s Guidance on Managing Public Money](https://assets.publishing.service.gov.uk/media/65c4a3773f634b001242c6b7/Managing_Public_Money_-_May_2023_2.pdf) and the [Scottish Public Finance Manual](https://www.gov.scot/publications/scottish-public-finance-manual/) placing the full cost of regulation onto directly regulated sites,
	+ applies a uniform charge applicable to all in-scope facilities reflecting the regulatory effort applied,
	+ fulfils a requirement to change and realign our charging to reflect the New Code, and
	+ follows the Polluter Pays Principle which underpins SEPA’s overall approach to regulation

It also aligns with the principles of pEPR, which aim to place the burden of managing packaging waste onto the producer.

# Other comments

**We asked:**

In Question 3, we asked whether you had any additional comments or suggestions about the consultation.

**You said:**

Some respondents to this question proposed a tiered approach to charging, based on tonnage throughput, whilst others were keen to see a flat rate. There was also confusion over whether some household waste recycling centres and transfer stations in remote areas would be in scope and concern about the cost implications for them. The difference in proposed annual subsistence fee between SEPA and other UK regulators was noted, with one respondent requesting more detail on how the charge was calculated. There was also a request for clear guidance to help operators meet their obligations.

**We did:**

Since the consultation closed, we have delivered a further online session to provide confirmation to local authorities that their household waste facilities are out of scope.

We have developed and circulated draft guidance to affected operators and industry bodies, incorporating feedback received into the final version. We have agreed to roll out online training ahead of the regulations taking effect and will provide ongoing guidance during site audits and desk-based data return checks to help operators meet their obligations.

We do not plan to change our proposed approach to the charging scheme. We believe our regulatory approach and charges cannot be directly compared with those of other regulatory agencies.