

Proposals for an Integrated Authorisation Framework

Consultation on SEPA's Guidance under the Integrated Authorisation Framework

September 2017

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FOREWORD

Effective environmental regulation is essential to the protection of Scotland's environment. A well-protected environment also makes Scotland one of the most attractive places to live, work and invest.

At SEPA, we are radically changing the way we regulate. One important way we are doing this is through our integrated authorisation framework which brings four main environmental regimes into a single system.

Clear and simple rules are the hallmark of effective regulation. Under the new framework, we will introduce simpler, joined-up, outcome-based permits.

This will make it clearer for regulated businesses to work out the type of authorisation they need and how to comply with it. It will help us to encourage businesses to move beyond mere compliance, by allowing them to spend less time on administration and more time working with us on better environmental outcomes that also save them money. It will also enable us to focus our effort on the environmental risks that matter the most.

The Scottish Government is consulting on the draft regulations that will make the new framework a reality. This consultation seeks your views on important SEPA guidance that will support its implementation.

The framework is key to the successful implementation of SEPA's regulatory strategy: One Planet Prosperity. This sets out how SEPA will bring all those it regulates into compliance and help as many businesses as possible to move beyond compliance. In doing so, we will maximise the contribution we make to our communities, a dynamic and sustainable economy and Scotland's ambitious climate change agenda.

The guidance we are consulting on directly supports these aims.

Our 'Public Participation Statement' explains when and how we will involve people in our decisions on environmental authorisations. It will help you to understand how you can be involved and help us regulate more effectively.

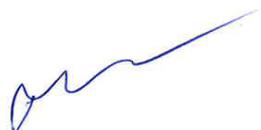
Our guidance on who can hold an authorisation will help us ensure only that legitimate individuals and businesses who take their environmental responsibilities seriously are given an authorisation in the first place.

Our Authorisation Guide puts into practice the consistent, proportionate and simplified approach to regulation for the management of radioactive substances.

The integrated authorisation framework and this supporting guidance will play a key role in delivering a 21st Century approach to regulation for Scotland and we invite you to help us to deliver it.

Terry A'Hearn

Chief Executive SEPA



SUMMARY

The table below summarises the specific questions raised in relation to the documents contained in this consultation paper:

Table 1: Summary of consultation questions

Topic	Questions
<p>Public participation statement</p>	<p>Question 1 Is our public participation statement clear and understandable?</p> <p>Question 2 Are there any parts of the public participation statement you particularly agree or disagree with?</p> <p>Question 3 Is there anything missing that you would have expected the public participation statement to have covered?</p> <p>Question 4 Do you think any groups of people may be advantaged or disadvantaged by this statement?</p>
<p>Guidance on who can hold an authorisation</p>	<p>Question 5 Do you find the guidance on who can hold an authorisation clear and understandable?</p> <p>Question 6 Are there any parts of the guidance on who can hold an authorisation you particularly agree or disagree with?</p> <p>Question 7 Is there anything missing that you would have expected the guidance on who can hold an authorisation to have covered?</p>
<p>Authorisation guide for radioactive substances</p>	<p>Question 8 Is our authorisation guide clear and understandable?</p> <p>Question 9 Are there any parts of the authorisation guide you particularly agree or disagree with?</p> <p>Question 10 Is there anything missing that you would have expected the authorisation guide to have covered?</p>

We are seeking your views to ensure we have accountability and transparency in the programme. We want to get it right so that we can all benefit from a more flexible, risk-based, outcome-focused approach to regulation.

HOW TO RESPOND

Respond to the consultation [online](#).

You can also respond by sending your views and comments on the proposals in this paper to the following address:

Wendy Thornton, Regulatory Reform Manager
SEPA
SEPA 3rd Floor
Silvan House
231 Corstorphine Road
Edinburgh EH12 7AT

E-mail: change@sepa.org.uk

Responses should be submitted to us by 22 December 2017. Earlier responses would be welcome.

HANDLING YOUR RESPONSE

We would like to know if you are happy for your response to be made public.

If responding online, please complete the confidentiality questions where prompted. If responding by post or email, please complete and return the Respondent Information Form with your response.

If you ask for your response not to be published it will be regarded as confidential and treated accordingly.

1. INTRODUCTION

1.1 Overview

In January 2017, the Scottish Government and SEPA consulted on proposals for an integrated authorisation framework. The aim of the framework is to integrate, as far as possible, the authorisation, procedural and enforcement arrangements relating to water, waste management, radioactive substances and pollution prevention and control. The integrated authorisation framework will be developed in a phased manner, starting with radioactive substances.

The framework has a key role to play in enabling SEPA to deliver One Planet Prosperity, SEPA's [regulatory strategy](#). It will help SEPA to deliver proportionate, joined up, outcome focussed regulation that significantly simplifies the regulatory landscape and reduces regulatory burden.

The framework is a key component of the joint Scottish Government-SEPA programme of improvements which will deliver a more risk-based, proportionate system of environmental regulation.

The Scottish Government is currently consulting on the [draft regulations](#) which will make the framework a reality. These draft regulations also set out the technical requirements relating to radioactive substances.

This consultation seeks your views on key SEPA guidance that will support implementation of the framework.

These are:

- **Public participation statement**
- **Guidance on who can hold an authorisation; and**
- **An authorisation guide for radioactive substances activities.**

The Environmental Authorisations (Scotland) Regulations 2018 will require SEPA to prepare, consult on and publish:

- a statement of its policies for exercising its public participation duties;
- guidance about which activities are required to notify (including when they must also comply with General Binding Rules);
- guidance about which activities SEPA is likely to require to be authorised by a registration, and which by a permit.
- the criteria which it proposes to apply in determining whether a person is a fit and proper person.

These documents fulfil these requirements but are wider in scope.

This consultation also provides information on proposed changes to our [charging scheme](#) that are needed to reflect the Environmental Authorisations (Scotland) Regulations. This information complements our current [consultation on proposal for new Environmental Regulation \(Scotland\) Charging Scheme 2018](#). We will consult separately on these proposals.

You may wish to read these various consultations outlined above together.

The existing water, waste and pollution prevention and control regimes will be brought into the integrated authorisation framework in a phased manner. It is our intention to consult on revisions to the authorisation guide to incorporate the new activities and any changes to the charging scheme, when each of the existing regimes is integrated into the framework.

1.2 Previous Consultation and Conclusions

Stakeholder engagement has been essential in shaping the integrated authorisation framework. Stakeholder responses to the [SEPA Better Environmental Regulation consultation in 2010/11](#), the [Scottish Government/SEPA consultation on Proposals for an Integrated Framework of Environmental Regulation \(2012\)](#) and the recent consultation on proposals for an integrated authorisation framework in January this year showed strong support for the proposals overall.

The responses to our joint consultation in January on [proposals for an integrated authorisation framework](#) have been [published](#) with an analysis of responses.

This stakeholder engagement helped to shape the proposals for the guidance in this current consultation.

2. PROPOSALS

2.1 Public participation statement

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.

Our [public participation statement](#) 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.

Its purpose is to ensure that:

- members of the public and other interested bodies know when and how they can get involved in decisions relating to environmental authorisations and what information they have access to;
- those that will be affected by, or have an interest in, standard conditions know how they can get involved in their development;
- applicants know when we will consult on their application and what will happen when we do;
- we take a consistent and proportionate approach to involving stakeholders in our decisions.

We want this statement to set out a simple and transparent approach to involving you and you can help us do this by answering the following questions.

Question 1

Is our public participation statement clear and understandable?

Question 2

Are there any parts of the public participation statement you particularly agree or disagree with?

Question 3

Is there anything missing that you would have expected the public participation statement to have covered?

Question 4

Do you think any groups of people may be advantaged or disadvantaged by this statement?

2.2 Guidance on who can hold an authorisation

When granting an authorisation, we need to be confident that the person being authorised has sufficient control of the activity and is able to make day to day operational and financial decisions to secure compliance with any conditions.

For permits and registrations, the draft regulations stipulate that an authorisation may only be granted by SEPA to the person who is in control of the activity and they will be the named “authorised person”. Similarly the person submitting a notification must be the person in control of the activity and will be the authorised person. The authorised person can include individuals, companies or partnerships.

Further, the draft regulations place a duty on SEPA to only grant, or transfer, a permit or registration where it is satisfied the applicant or transferee is a fit and proper person to carry on the activity.

For example, depending on the activity, we will assess whether the applicant is likely to comply with the authorisation by checking previous compliance history, any involvement in environmental crime, their technical qualifications and their financial standing.

Fit and proper status must be maintained over the life of the authorisation and we will be able to reassess fit and proper status at any point. Where an authorised person fails to maintain their fit and proper status we will be able to take appropriate enforcement action including suspension or revocation of the authorisation.

The [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 SEPA 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.

Its purpose is to:

- help people decide if they are the person ‘in control’ or ‘having control’ of a regulated activity and are the right person to apply for, or hold, an authorisation;
- help applicants submit a good application, and help authorised persons maintain their fit and proper status by;
 - explaining the purpose of the fit and proper person test and the outcomes we will seek to achieve through its use; and
 - setting out the framework for fit and proper person assessments and the factors and types of evidence we will take into account in our decision making.
- ensure that we take a consistent and proportionate approach in our decisions on who is in control and fit and proper.

Question 5

Do you find the guidance on who can hold an authorisation clear and understandable?

Question 6

Are there any parts of the guidance on who can hold an authorisation you particularly agree or disagree with?

Question 7

Is there anything missing that you would have expected the guidance on who can hold an authorisation to have covered?

2.3 Authorisation guide for radioactive substances activities

To help deliver risk-based environmental regulation where the greatest effort is focused on those activities which cause, or have the potential to cause, the greatest harm, the Regulatory Reform (Scotland) Act provides for four possible tiers of authorisation; general binding rules (GBRs), notification, registration and permit. Activities will be regulated at the lowest appropriate tier.

In deciding which tier of authorisation is appropriate for a particular type and scale of activity we will take into account any European Directive requirements and consider a wide range of factors including:

- The degree of risk to the environment and human health;
- Consistency of the activity across a sector and the need for bespoke conditions;
- The scale of public interest and whether there is a need to conduct a consultation;
- Whether there is a need to provide ongoing financial provision for site aftercare and remediation; and
- Vulnerability to misuse (e.g. if the activity is susceptible to being used for criminal purposes such as waste crime).

Our [authorisation guide for radioactive substances](#) provides practical advice for any person or business carrying on, or intending to carry on, a radioactive substances activity. Its purpose is to:

- help applicants determine the level of authorisation they need to apply for by explaining:
 - the framework for authorising radioactive substances activities under the Environmental Authorisations (Scotland) Regulations;
 - the radioactive substances activities regulated by SEPA under the Environmental Authorisations (Scotland) Regulations; and
 - the type of authorisation required for each activity.
- ensure that we take a consistent and proportionate approach to authorising radioactive substances activities

The authorisation guide also provides information on:

- the radioactive substances activities that have specific requirements in relation to our fit and proper person assessment and what these are; and
- the radioactive substances activities for which we will consult the public on any applications relating to a permit.

It is not the purpose of the authorisation guide to provide guidance on how to submit an application. Separate guidance on this will be produced and we will consult on this separately in due course.

Question 8

Is our authorisation guide clear and understandable?

Question 9

Are there any parts of the authorisation guide you particularly agree or disagree with?

Question 10

Is there anything missing that you would have expected the authorisation guide to have covered?

2.4 Information on proposed related changes to our charging scheme

The Environmental Authorisation (Scotland) Regulations 2018 introduce changes that need to be reflected in our charging scheme. These are:

- to specify charges for new descriptions of radioactive substances activities;
- to introduce charges for registrations under the new regulations ;
- to introduce charges for notifications;
- to introduce a charge for transferring a non-nuclear registration or permit, which is not possible under the current regime for radioactive substances.

There are no proposals to change the current charging scheme for nuclear sites which will continue to be charged as costs incurred as described in the Radioactive Substances Act 1993 Fees and Charges (Scotland) Scheme 2015.

There are no proposed changes to the level of charges from those in the current [consultation on proposal for new Environmental Regulation \(Scotland\) Charging Scheme 2018](#) (ERS) but the descriptions of activities may be different. The exception is where the authorisation level will be different under the Environmental Authorisation (Scotland) Regulations 2018. Information on charges for those activities where the authorisation level will be different is set out in Table 2 below.

The main changes to the charging scheme are outlined below:

- Notification is a new type of authorisation for radioactive substances activities. We are proposing a zero charge for notification.
- Transfer of non-nuclear registrations and authorisations is not allowed under the Radioactive Substances Act 1993 but is allowed for permits and registrations under the Environmental Authorisations (Scotland) Regulations. We are proposing a transfer application charge of 75% of the application charge.
- Applications for registrations require less technical assessment and do not require consultation or consideration of bespoke conditions. Therefore, the amount of regulatory effort to assess an application for a registration is less than for a permit and the proposed charges have been reduced accordingly as set out in Table 2. The amount of regulatory effort for the subsistence of a registration will remain similar to what it currently is for those activities and subsistence charges remain the same.

Table 2: Proposed changes to charges to reflect the introduction of notifications and registrations under the Environmental Authorisation (Scotland) Regulations 2018.

Radioactive Substance Sub-Activity	Type of Authorisation needed	Charge (£)	
		Application	Subsistence
The management of NORM from the production of oil and gas at offshore installations where the total quantity of solid waste discharges to the marine environment per year does not exceed 2 GBq of Radium 226, Radium 228, Polonium 210 and Lead 210.	Registration	1224 Band 9	867
The management, excluding disposal, of sealed sources that are normally kept in the UK outwith Scotland.	Registration	204 Band 5	350
The management of unsealed radioactive sources with no release to the environment.	Registration	612 Band 8	867
The management, excluding disposal, of sealed sources in IAEA category 5 that exceed 200 kBq.	Notification	Zero Band 0	Zero
The management of an orphan source.	Notification	Zero Band 0	Zero
The management of radioactive waste resulting from decontamination of people following an incident.	Notification	Zero Band 0	Zero
The management of radioactive waste from firefighting activities following an incident.	Notification	Zero Band 0	Zero
The management of a tritium source with an activity less than 20 GBq.	Notification	Zero Band 0	Zero
The management, excluding disposal, of electrodeposited sources.	Notification	Zero Band 0	Zero