

Response to the  
Better Environmental Regulation:  
**SEPA's Change Proposals**  
Consultation

# Introduction

In December 2010, SEPA launched a public consultation on the high-level principles and proposed direction for delivering better environmental regulation.

The consultation closed on 14 February 2011 and 105 responses were received. We asked 17 questions and the overall findings for each of these are set out in this report.

Encouragingly, we had a significant number of offers of support in the responses. We intend to take up these offers as part of our ongoing and planned consultation activity and will reflect this input in any subsequent consultation process.

We would like to take this opportunity to thank everyone who responded as individuals, regulated businesses, trade bodies, non-governmental organisations or as one of our delivery partners in protecting and improving the Scottish environment.

## What did the consultation cover?

In brief, the consultation asked questions regarding the high-level principles required to deliver better environmental regulation and the key underpinning issues in order to make changes to the way that SEPA operates and is funded.

We outlined three main capabilities which we viewed as critical to the delivery of proportionate and effective environmental regulation.

These were:

- > simpler regulation;
- > problem solving;
- > sector management.

We also set out some specific short term improvements to our core regulatory work on inspections, permitting, monitoring and enforcement. Questions were posed on how the proposals could be funded including the possibility of charging for fast-tracking applications and for specialist or technical services that are currently funded by Grant-in-Aid.

The opportunity to simplify delivery by reducing the complexity of environmental legislation supported by a fully risk-based approach (i.e. linked to hazard and performance assessment) was covered. The value of taking a problem solving approach (i.e. to pick important environmental issues and fix them) was described and views were sought on the implications of building on the work we already do in this area, particularly in terms of SEPA's funding model.

Overall, the proposals were designed to deliver an effective, proportionate and risk-based approach to environmental regulation in Scotland.

## Overall response

One hundred and five responses were received to the consultation. These were from a wide range of sectors and we have assessed them all in detail. This response explains how we approached our analysis and sets this out for each of the questions posed in the consultation.

In providing the summary below, we recognise that we are drawing together views from a diverse group of interests. Furthermore, some of the views are very clearly stated, without qualification, and were

straightforward to interpret. Other views were clearly stated but qualified in some way (i.e. some had conditions attached) whilst some offered no comment or a view that was not easy to interpret against the issue being explored.

Our aim has been to be as transparent as possible in the way that we have approached this and we hope that the charts presented in this report help to demonstrate this. For instance, if a response said 'yes' and then went on to qualify this, we have taken this to be positive support for a proposal but accept that if the caveats or conditions are not met, this could turn into a lack of support.

## Summary

The overall findings are summarised below:

- > 91% said that they wanted simpler and more integrated environmental regulation – removing complexity for regulators, businesses and communities alike.
- > 90% agreed that a risk assessment process should be used to assess which activities should be regulated at what level with the aim of ensuring that the level of regulatory control is allied to risk and operator compliance.
- > 82% said that they agreed that far greater use could be made of statutory obligations (e.g. General Binding Rules), notifications and registrations for lower risk sites – as they believed they could be more proportionate and could reduce costs.
- > 79% said that they agreed that SEPA should align its inspections to the generally lower levels used across Europe, developing an audit-based approach but retaining the flexibility to increase the frequency of inspections if we feel we need to.
- > 75% supported the proposal to explore the feasibility of more operators self-monitoring where appropriate, with an initial focus on the water environment.
- > 74% agreed with the use of risk assessment to inform how we use our monitoring resources, to ensure a better balance of effort, with less water monitoring and, where appropriate, increased air, soil and climate change monitoring.
- > 87% said that they supported enhanced enforcement and robust penalties and agreed that these must underpin a risk-based approach.
- > 70% said that they supported, in principle, that SEPA should be able to recover costs from operators who have been successfully prosecuted.
- > 87% said that they would support a move to more integrated permissions, including the use of single site licences (e.g. for sites currently requiring multiple permits) and operator or network level licences.
- > 64% agreed that we should continue to apply an annual charge to all operators deemed low risk or subject to simpler types of permits to cover costs such as implementing online systems, preparing general binding rules, codes of practice and guidance, incident response, and surveillance work.
- > 36% agreed that we should offer and be able to charge for new, optional, value added services for fast-tracking a permit application or carrying out an application checking service. In contrast 47% of respondents disagreed.
- > 87% agreed with the proposal for the flexible use of SEPA's monitoring resources in order to effectively monitor emerging issues and respond quickly to incidents.
- > 39% supported SEPA charging in the future for certain specialist and technical advisory services that are currently funded by Grant-in-Aid. In total 30% of respondents did not agree with the proposal.
- > 84% indicated that SEPA should levy charges based on the level of environmental risk posed by the regulated activity, operator performance and the regulatory effort required.

- > 56% said they supported SEPA covering its costs across its income streams to allow us to allocate effort on the basis of environmental harm, including tackling environmental crime such as freeloaders (those that operate illegally without a licence).

## Assessment of responses

Responses were received from a very diverse group including private individuals, charitable organisations, the public sector and commercial business. We also received responses from large and small scale operators regulated by SEPA, non-governmental organisations, other regulators and partners we work with. Overall 96 respondents were external to SEPA and nine were from within SEPA.

A breakdown of responses is presented in **Table 1** and a list of those who responded is provided in Appendix 1.

**Table 1: Sectors that responded to the consultation**

Academia	Fish farming	Paper
Agriculture and forestry	Fisheries	Ports
Business	Leather and tanning	Private individuals
Cement	Legal	Property development
Chemicals	Local authorities	Public bodies
Construction	Mining and quarrying	Renewables
Consultancy	Ministry of Defence	Scientific services
Distilling	Non-governmental organisations	Shellfish growers
Electronics	Nuclear	Waste
Energy	Oil and gas	Water and sewage

Responses were classified based on whether the 'yes' or 'no' box was ticked to the question and the responses we received were categorised as shown in **Table 2**. From this we assessed the level of support, or otherwise, for each question.

**Table 2: How the responses were classified**

Response category	Definition
Y	Yes box ticked with either no comment or support expressed.
Yq	Yes box ticked and qualified. or Neither box ticked but comments indicate agreement.
N	No.
Unclear	Neither box ticked. or Both boxes ticked but comments unclear.
No comment	No response.

Comments were extracted to allow the identification of common views, key issues and insights. We sometimes found that a respondent made a comment under one question but that this was more relevant to another. In this instance we made sure that it was considered under the relevant question.

A one page summary has been provided for each question, including:

- > a chart showing the response categories (i.e. support or otherwise);
- > some text on the reasons for support;
- > any caveats, concerns or reasons against a proposal;
- > questions and requests for more information.

We also ensured that our staff could comment on the consultation if they wished. In total, nine responses were received and we decided to include these in our overall summary. We have assessed the impact of these views on the findings and found that they made little, if any, difference to the overall level of support expressed by external respondents.

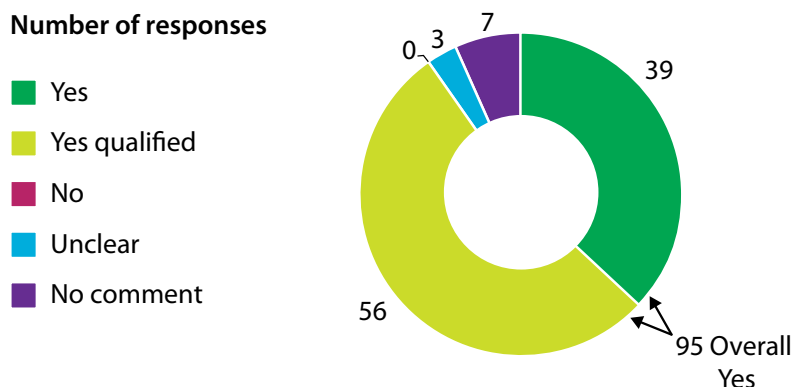
## Responses to the questions

Set out below is a summary of the responses to each question in the consultation and the proposed actions.

### Question 1

**We believe that the current system of environmental regulation is unnecessarily complex and more costly to operate than it might be and that we should develop a world class, simplified and integrated, system of environmental regulation. Do you agree?**

Figure 1: Responses to question 1



There was overwhelming agreement with the proposal to develop a world class, simplified and integrated system of environmental regulation, as illustrated in Figure 1. In total 91% of consultation respondents gave an overall 'yes' answer to the question and SEPA was commended for its proposals.

The work SEPA and partners have done over the years to reduce unnecessary complexity in the way environmental regulation is delivered was acknowledged by respondents. There are aspects of the current system that are still seen as too complex and which place significant burden on companies and regulators. Indeed, complexity was viewed as a barrier to future efficiencies and developing an overall system of environmental gains.

Respondents recognised that a move towards a simpler, smarter and more integrated regulatory model could help remove these barriers bringing significant benefits as a consequence. Many felt it would encourage good practice and give focus to the key environmental issues affecting sectors. In addition, the majority view was that there would be less confusion arising from differences and overlaps in regulatory regimes and the system would be easier and less costly to use. Some warned that these benefits would not be realised if existing regimes were just bundled together. Simplification is needed of the regulatory system and of SEPA's own duties and processes in implementing change.

There were differing views on what should drive change to the current environmental regulatory system. Some considered that customers should be the main focus. Others felt strongly that environmental outcomes must be the primary driver and improved customer service, whilst welcomed, must not come at the expense of the environment. Reassurance was sought that any changes to the current system would allow SEPA to continue to effectively protect and improve Scotland's environment using regulatory and non-regulatory approaches.

Many respondents recommended that Scotland learn from UK and European best practice to avoid reinventing the wheel and that rather than pushing for a world class system the aim should be to deliver a system that is fit for purpose for Scotland. Some also suggested that this system should operate across the UK and that there should be a push for integration at European level where regulations remain largely based on environmental media or specialist areas and particular sectors.

Respondents looked forward to the opportunity to explore the proposals further to gain a better understanding of what is meant by a world class, simplified and integrated system of environmental regulation and how this would work in practice. Interest was also expressed in the methods that will be used to assess the environmental implications and costs of the proposal and to benchmark SEPA's performance.

### Overall summary and proposed actions

We received overwhelming support for reducing complexity and improving the effectiveness of environmental regulation.

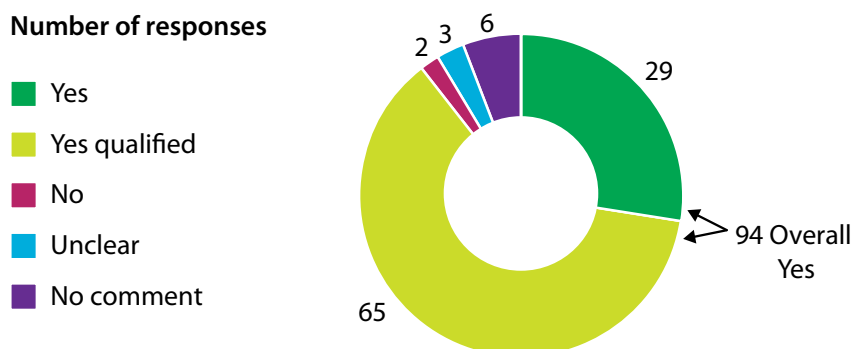
We will work jointly with the Scottish Government in order to develop legislative improvements and to seize opportunities to simplify.

This will involve ongoing discussion, testing and piloting work, plus more formal consultations on the detail.

### Question 2

SEPA is proposing a new regulatory model. A risk assessment process will be used to assess which activities should be regulated at what level. The aim is to ensure that the level of regulatory control is allied to risk and operator compliance. Do you agree?

Figure 2: Responses to question 2



We received significant support for the proposal for a new regulatory model which uses a risk assessment process to assess which activities should be regulated at what level and where the level of regulatory control is allied to risk and operator compliance. In total 90% of respondents gave an overall 'yes' response to this proposal.

Many potential benefits were highlighted by respondents including:

- > the opportunity to make more effective use of limited resource;
- > the development of a better understanding of key sector specific issues;
- > a greater focus on environmental consequences.

It was felt that the proposal could also reduce administrative burdens on individual businesses, instil business confidence by rewarding good performance and encourage greater openness from operators. The move away from 'box ticking' inspection programmes and from permit compliance as a principal focus was particularly welcomed. Respondents recognised that risk assessment is already used in other regulatory regimes, such as food safety and occupational health and safety.

Clarification was sought on the proposed risk assessment process, the definition of risk and its application. A consistent approach in risk assessment for particular sectors and types of operators was called for. Respondents considered that risk-based regulation should start with an assessment of real environmental harm such that resource is aimed at reducing negative environmental impact. Furthermore, the majority said that there should be transparency and dialogue during development of the risk assessment process. This included the ranking assessment, determining the level of intervention and how operational management, controls and performance and self-monitoring will be considered. It was felt that joint agreement of key risks would encourage greater co-operation and regulatory effectiveness through SEPA staff developing a better understanding of each sector. Where agreement could not be reached an appeal mechanism for operators was required.

There were some concerns raised about control of smaller low risk sites and those high hazard operations deemed to be low risk because of effective management controls or inspection programmes. Respondents suggested that a pro-active approach is required for such sites to ensure risk remains low with some oversight by SEPA through audits or specific surveys. Questions were also asked about how cumulative impacts of perceived low risk activities, for example vehicle emissions and diffuse pollution, would be controlled under the new regulatory model.

More information was sought by respondents on how operator performance will be assessed. Some felt that the current compliance assessment scheme can deter open and honest communications with SEPA and that paperwork was being given too high a weighting. In addition, as the compliance assessment scheme has not been implemented for all regimes it was felt that care will be required before setting benchmarks. The opportunity to explore the details of the proposal was welcomed.

### Overall summary and proposed actions

We received significant support for the proposal of a new regulatory model and continuing to use a risk-based approach.

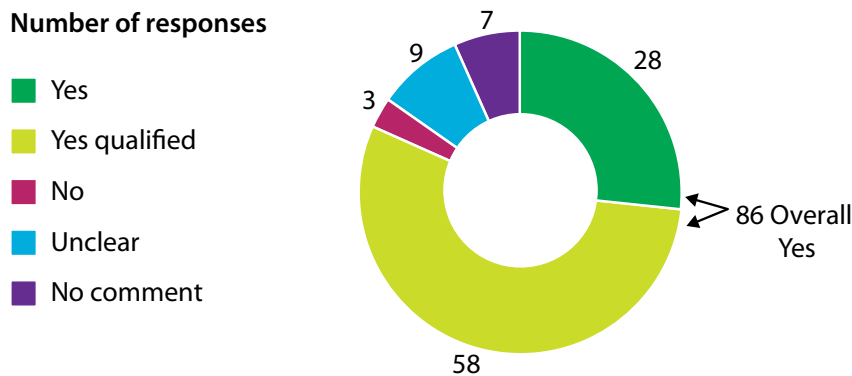
We will work jointly with the Scottish Government, business and other stakeholders in developing this model and the risk assessment process that underpins it.

This will involve ongoing discussion, testing and piloting work, plus more formal consultation on the detail.

**Question 3**

SEPA believes that far greater use, where possible, could be made of statutory obligations (e.g. General Binding Rules), notifications and registrations for lower risk sites. We consider these to be more proportionate and that they can reduce costs. Do you agree with this approach?

Figure 3: Responses to question 3



There was significant support for this proposal with 82% of respondents giving an overall 'yes'. This was seen as a sensible and proportionate proposal particularly where there is no need to actively monitor an activity. It was felt it would be welcomed by consistently compliant operators. General agreement was expressed that low risk activities merit a lighter touch approach and that the proposal would allow focus on environmental outcomes and impacts rather than routine inspection for its own sake. It was felt that such an approach will help operators see where they fit in the regulatory framework and that it would be easier to understand and enforce. Several respondents referred to a more level playing field within and between sectors. Benefits such as potential reduction in costs and burdens for both SEPA and operators were also recognised.

Queries that were raised related principally to the development of the regulatory controls and whether the use of statutory obligations would provide sufficient environmental protection. There was also specific interest in the cost and burden reduction and the need for awareness raising and education prior to and following implementation.

In terms of the regulatory process it was felt that this should not be absolute in nature and that flexibility is required to react to changing circumstances such as environmental or ecosystem quality, to manage under-performing sites or operators and to ensure that derogation from a rule is relatively straightforward. Others felt that the process must not result in a disproportionate reduction in monitoring and subsequent loss of the information base.

Concerns were expressed that statutory obligations may not provide sufficient environmental protection. Although they are seen to be effective in other areas such as health and safety, their use for low risk activities that can have a cumulative impact, for example those that contribute to diffuse pollution was queried. Focusing on environmental outcomes and having a clear definition of low risk are seen to be fundamental to the effectiveness and consistency of this approach and in ensuring sufficient environmental protection. It was pointed out that stepping back could mean transferring the risk to the environment and that as a result extra effort should go to monitoring to see if degradation results in the longer term.

In terms of reducing costs and burdens, it was felt that the effort required for low risk activities should not be under-estimated and carrying out risk assessments will also be time consuming. It was considered unlikely that this approach would result in cost savings to the conscientious operator because there is unlikely to be any real change to internal management systems to meet regulatory requirements. The fact that some General Binding Rules have been introduced without the introduction of costs, for example, under the Controlled Activities Regulations, was pointed out. Others noted that the cost and degree of mitigation from pollution by rogue operators might offset the benefit of reduced costs of administration.



If this approach were to be adopted by SEPA it was considered by many respondents that education, awareness raising and effective engagement would be required to encourage customers to take responsibility for environmental issues. This would require effort to jointly develop clear standards and guidelines and to effectively promote the regulatory controls to all sectors. Using trade associations and web pages could be used as communication mechanisms along with, for example, introducing competence training. Some respondents emphasised that SEPA staff play a critical role in awareness raising and sustaining effective dialogue and that this should not be underestimated.

Respondents wanted more detail on the definition of low risk, the rules required and how the effectiveness of regulation before and after implementation will be assessed to ensure a successful outcome in terms of the environment and overall reduction in costs and burdens. Many offered to work in partnership to develop tools and guidelines.

### Overall summary and proposed actions

We have received significant support for making far greater use of statutory obligations, notifications and registrations for lower risk sites.

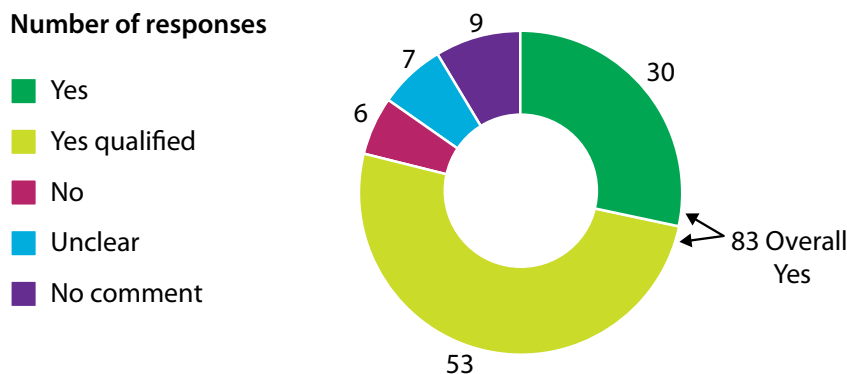
We will work with partners to show how this will work in practice and be assessed.

This will involve ongoing dialogue, testing and piloting work, plus more formal consultations on the detail.

### Question 4

**We intend to change our approach to site inspections, aligning more closely to the generally lower levels found across Europe, developing an audit-based approach and retaining the flexibility to increase the frequency of inspections if we feel we need to. Do you agree?**

Figure 4: Responses to question 4



A high number of respondents (79%) agreed to the development of an audit-based approach to inspections and to retaining the flexibility to increase the frequency of inspections if required. It was felt that there was no reason for inspection levels to be higher than the rest of Europe and that SEPA's approach being better aligned with its counterparts would help ensure a more level playing field. The key point here was that Scottish businesses should not be subject to more or less scrutiny but a broadly similar level. Experience of other regulations indicated that audits are a better value outcome for larger, mature sites - although perhaps less effective for smaller sites - and that the approach encourages a greater level of responsibility and ownership for the benefit of both regulator and those regulated.

The main focus of questions and concerns by respondents was:

- > the comparison of Scotland with the rest of Europe;
- > the development of an efficient and responsive audit programme that ensures environmental protection;
- > staff auditing skills.

A number of respondents raised questions about alignment with European inspection levels. They asked how effective these were and emphasised that there are potential differences in Scotland such as site geography, vulnerability of receptors, operator approach - including where they sit on the compliance spectrum. It was recommended that any new approach should be needs driven, based on sound intelligence and that it must maintain the high environmental standards that Scotland's economy depends on and has a reputation for.

In terms of developing the audit programme, most focused on the determination of site inspection frequency. Many felt that this should be based on risk and operator performance illustrated in the compliance spectrum. The focus of effort should be non-compliant sites and those aspects with greatest potential to cause harm. Some respondents suggested that there is potential to take account of operator management systems as these are based on risk. Another suggested this was an opportunity to fit the audit programme around the operator's business planning cycle so they can focus on the main risks and implement change. It was emphasised that the audit should not be prescriptive as site management differs depending on needs, and that the level of detail should be proportionate to risk.

A number of respondents also questioned the ability to maintain adequate environmental protection both in the short and long term using an audit-based approach. Apart from some occasional verification checks, it was agreed that a flexible mechanism is required to ensure inspection frequency can be changed in response to changing risk and performance. This should be supported by a clear and robust enforcement policy. Questions were asked about how SEPA will monitor the environmental consequences of reduced inspections especially as environmental harm could be underway before detection.

It was highlighted that regulatory inspection and auditing skills are quite different and that risk assessment and audit techniques are needed as well as detailed knowledge of site operations and systems. To ensure effective and resource efficient audits and a consistent approach, respondents suggested additional training for SEPA staff and operators would be required.

The opportunity to explore the proposal in more detail was welcomed.

### Overall summary and proposed actions

We have received a high level of support for changing our approach to inspections.

We will work with business to make changes that deliver legal obligations and the use of an audit-based approach by our staff.

We will advise our customers, partners and wider stakeholders of the changes we intend to make.

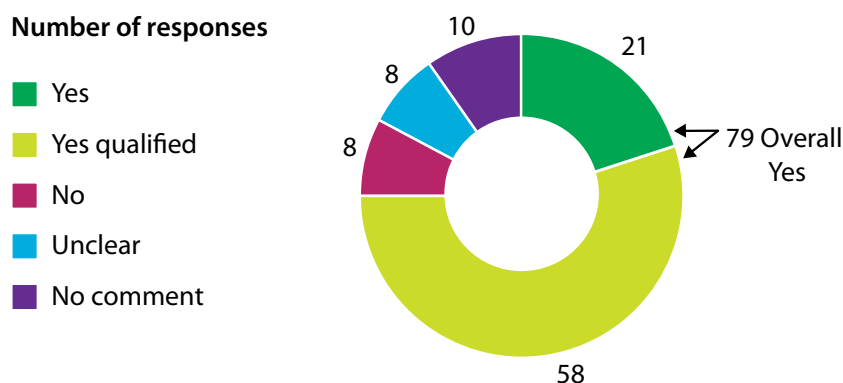
---

### Question 5

**We intend to explore the feasibility of more operators self-monitoring, where this is appropriate. Initially this will focus on the water environment. Do you agree?**

---

Figure 5: Responses to question 5



There was a high level of support for this proposal with 75% of respondents giving an overall 'yes'. Many respondents noted that they already carry out monitoring and welcomed the possibility of removing the duplication with SEPA's testing regime saying that resources could be released to tackle areas of poor compliance.

Quite a few respondents questioned why the water environment will be the initial focus and suggested that this should be based on risk, breaches and incidents. Others felt that a feasibility study or pilot is required to fully consider the environmental consequences and give assurance to the stakeholders that self-monitoring is effective. The findings of such a pilot should then be used to re-assess the proposal.

In terms of process, respondents felt that self-monitoring should be used for those with a good track record and for low risk sites but it may not be appropriate for private dischargers. The self-monitoring workload and cost must be proportionate to risk and the sampling and analysis should be quality assured. SEPA should still carry out spot checks with controls to ensure honesty amongst less reputable operators and to help deliver compliance. Some recommended that clear guidance detailing sampling requirements and acceptable testing methodologies is given to operators along with training.

In addition, it was felt that there was the potential to align data collection and reporting requirements reducing duplication and minimising disruption and costs. Some suggested that a reporting protocol should be developed and that a worthwhile target would be to eliminate all non-value added reporting requirements. Respondents highlighted that many sites are covered by various types of accredited management and external monitoring systems and considered that these should be recognised for certification purposes.

There was an expectation that subsistence fees would be reduced if the proposal was taken forward given that the burden of monitoring will transfer to the operator. There was also the question as to whether operators will be required to conduct more in-house inspections or to start monitoring when there was previously no requirement. The opportunity to explore the details further and understand how this proposal might work in practice was sought.

### Overall summary and proposed actions

We have received a high level of support for the possibility of more operators self-monitoring.

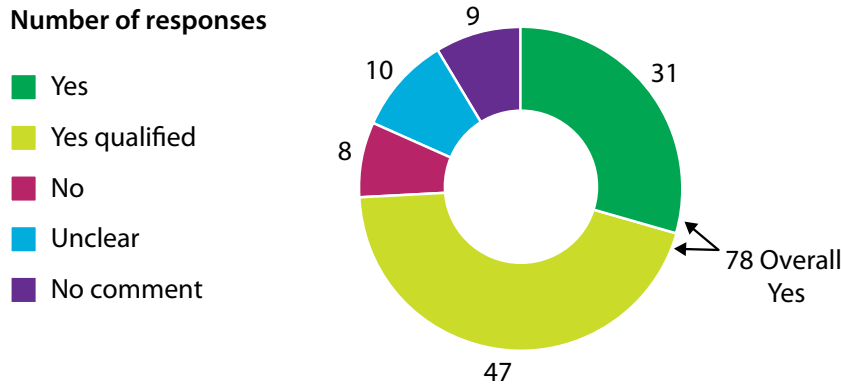
We will work with partners to develop our self-monitoring approach and to explore what this will mean in practice.

This will involve working with our customers and wider stakeholders on the detail.

**Question 6**

Do you support our proposal to use risk assessment to inform how we use our monitoring resources, resulting in a better balance of effort, with less water monitoring and, where appropriate, increased air, soil and climate change monitoring?

Figure 6: Responses to question 6



Again, a high level of support was shown for the proposal to use risk assessment to inform how SEPA uses its monitoring resources with 74% giving an overall 'yes'. There was almost complete agreement that it was important for SEPA to have a balanced picture of the environment as a whole and that too much focus on one environmental media can distort the setting of priorities and allocation of resources.

In terms of the process, respondents felt that the approach must be based on a proper, consistent and transparent assessment of site risk. It should take account of the benefits of site developments, any site designations and recognise sites with accredited management systems. It was also emphasised that low risk sites should not fall out of the monitoring programme as the lack of long term or real time data from these and other sites could potentially undermine the risk assessment process.

Respondents emphasised that in the short term this intelligence gathering may result in cost and resource issues. Some respondents were also concerned about putting too much resource into climate change monitoring as this is being done by many others worldwide. The opportunity for a joint organisational approach to collecting data across media in partnership with other organisations that have a statutory obligation to collect data and have prerequisite quality protocols and appropriately trained staff was referred to. There may also be the potential to utilise operators' own monitoring data. Likewise, SEPA could share its own environmental quality data with others including, for example those undertaking climate change monitoring.

Finally, a significant number of respondents raised concerns about the proposal to reduce water monitoring. These centred on SEPA's ability to meet Water Framework Directive objectives such as identifying trends and new pressures on water bodies, but also included concerns about the loss of data for modelling purposes and the impact on those using water for business and leisure activities.

**Overall summary and proposed actions**

We received a high level of support for proposals to change our monitoring.

We will introduce changes and work with our partners to develop this proposal including exploring opportunities to share data.

This will involve ongoing dialogue on the changes we make.

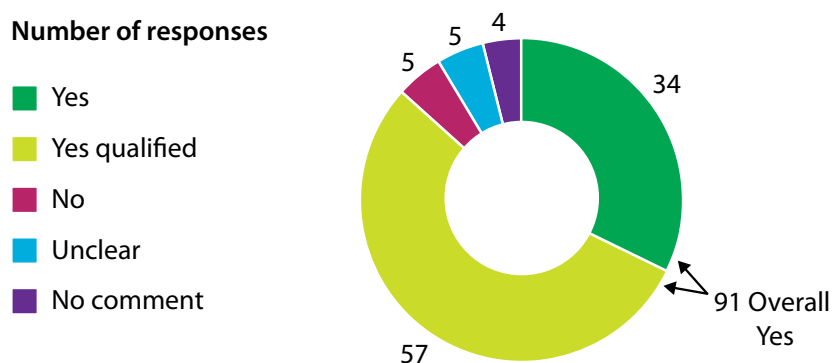
.....

### Question 7

SEPA is proposing to adopt a risk-based approach to regulation, featuring less intervention for high performing sites and operators, with reduced intensity of inspections for lower risk sites. We want to support this with enhancement of our enforcement activities and robust penalties for non-compliance. Do you support this approach?

.....

Figure 7: Responses to question 7



There was a very significant level of support for the proposal to support a risk-based approach to regulation with the enhancement of SEPA's enforcement activities and use of robust penalties in respect of non-compliance. In total 87% of respondents gave an overall 'yes' response to this proposal. For most, reducing the level of intervention for better performing sites coupled with appropriate enforcement for non-compliance was seen to be a fair system. It was seen to be aligned with the polluter pays principle (which requires that the costs of pollution be borne by those who cause it) encouraging an even balance of compliance costs, incentives to comply and targeted enforcement activity to punish and deter illegal activity. It was also felt that it would promote SEPA as being a strong, effective but proportionate regulator.

Respondents focused on three main areas:

- > nature and method of enforcement;
- > penalties;
- > partnership approaches.

Clarity was sought on the principle of enhanced enforcement with a call for a robust enforcement policy setting out a transparent, consistent and proportionate process for dealing with poor performers or illegal operators. Some respondents felt that enforcement should only be used for known or intentional acts and not for technical permit breaches, occasional failures or accidental events by the normally compliant. It was noted by some that the public perception between minor civil offences and more serious criminal ones is not obvious. When considering civil or criminal proceedings SEPA would need to take account of individual circumstances, the reaction of the operator and the clean up costs incurred. In addition, while some respondents agreed with the need for faster, more flexible tools to tackle non-compliance (e.g. fixed penalty notices) others were concerned about the levy of automatic sanctions for minor offences. Questions were asked about how they would be administered to ensure they are consistent with other civil penalties. In addition it was felt that fixed penalty notices could undermine confidence in SEPA's impartiality and could harm relationships with regulated industry. There was real concern that such penalties could redirect limited resource away from environmental improvement.

In terms of penalties, respondents felt that they should reflect the seriousness of the non-compliance and the true cost to the environment and be targeted to discourage unacceptable behaviour; current fines are not considered a deterrent. It was also felt that penalties must be for environmental damage and not a tax on large but essentially well managed businesses or an income generator. Also, that high performing business must not subsidise poor performing businesses that do not pay the enforcement costs. Some respondents

commented that the Scottish judicial system should support SEPA in tackling environmental crime. Strong fines should be imposed for serious cases with the view being expressed that this might be an opportunity for closer co-operation with specialist environment fiscals.

Finally, respondents considered that enforcement should be a last resort to changing behaviour, particularly as, for example, the complexity of regulation may cause a responsible but confused operator to inadvertently do the wrong thing. A partnership approach including greater emphasis on education including the provision of advice and guidance will result in better ongoing relationships and improved environmental performance.

### Overall summary and proposed actions

We have received a very significant level of support for a risk-based approach underpinned by enhanced enforcement and penalties where and when needed.

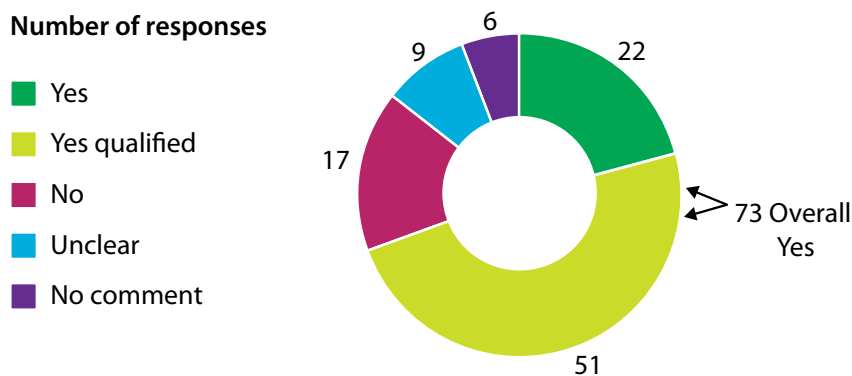
We will work with partners, the Scottish Government and the judiciary to continue to make progress in this area.

This will involve ongoing discussion and consultation with you.

### Question 8

SEPA's costs of enforcement are currently funded by Grant-in-Aid, whereas equivalent agencies in the UK can recover the costs of investigation from operators who have been successfully prosecuted. In addition, our work on developing cases for prosecution currently isn't chargeable. We consider that SEPA's costs for such work should be fully recoverable. Do you agree with this approach?

Figure 8: Responses to question 8



There was a good level of support for this proposal to recover SEPA's costs associated with prosecutions. In total 70% of respondents provided an overall 'yes' but a significant number indicated that they saw this as being restricted to cost recovery for successful prosecutions only. Recovering the costs from developing cases for prosecution was an altogether different matter for respondents. This they felt should be recovered through Grant-in-Aid and not through general charging income as they considered that this did not fit with the principles of fairness, transparency and proportionality.

For those that supported cost recovery without distinguishing between successful prosecutions and the development of legal cases, most did so because this approach is consistent with the polluter pays principle. Paying for both elements and reflecting the true costs of investigation would be a bigger deterrent and an added incentive to remain compliant, they stated. Recovering cost from cases that did not proceed or were unsuccessful was not considered to be valid on the basis of a presumption of innocence until proven guilty.

Questions were raised about how SEPA would justify the costs it seeks to recover such that this approach was not an income generator. Either way, it was felt that costs need to be transparent, reasonable and auditable and there should be an appeal process. Suggestions were made that perhaps the court could award the costs or that the fines paid by those in breach of regulations could be ring-fenced and channelled back to SEPA to offset the costs. Respondents also asked if SEPA would bear the defendant's costs if the case was unsuccessful.

Alternative approaches were put forward. Firstly, that costs recovered are proportionate to the environmental damage caused, rather than automatically being fully recoverable with an independent body or arbitrator assessing this. Secondly, the Scottish Government could continue funding prosecution work but with the recognition that fines are returned to SEPA's accounts.

A number of risks in the approach were highlighted. There was the concern that regulatory effort could become driven by the likelihood of cost recovery rather than focussing on illegal operations and working with, and educating, poor performers. Also if there was cost recovery for all cases it might mean that it becomes an easier option to encourage prosecution where a lighter touch might be more beneficial. Some respondents commented that more front end investment could help limit breaches and the need to recover costs in the first place.

Finally, it was suggested that there may be scope to jointly develop a model with other regulators which could then be applied in other contexts.

### Overall summary and proposed actions

We received a good level of support for the principle of recovering costs for successful prosecutions but less so for the development of legal cases.

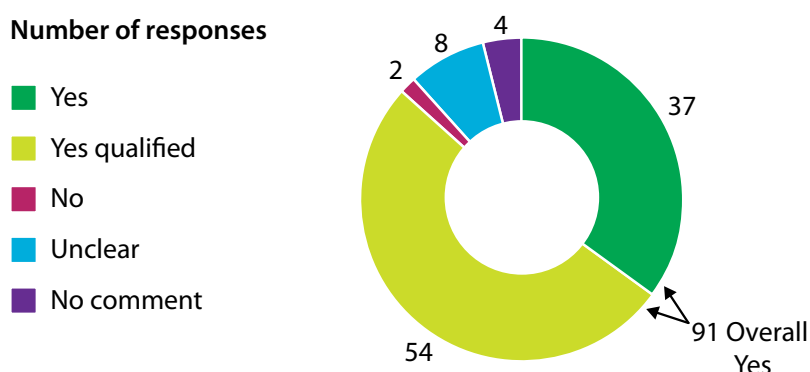
We will work with the Scottish Government to explore this issue further.

We will consult on any changes in this area.

### Question 9

SEPA wants to move towards integrated permissions. This would include the use of single site licences (e.g. for sites currently requiring multiple permits) and operator or network level licences. Do you agree with this approach?

Figure 9: Responses to question 9



There was a very significant level of support for, and significant interest in, the proposal to move towards integrated permissions including the use of single site licences and operator or network level licences. In total 87% of respondents gave an overall 'yes' answer to this question.

The proposal was seen by most as sensible, entirely viable and the logical outcome of efforts to simplify and streamline procedures. It was recognised as an approach that had worked well in other parts of the UK and one that could potentially deliver significant benefits. For example:

- > it would allow for an overall view of environmental impacts and the identification of the most important issues.
- > all activities on a site would be visible, improving transparency and reducing inconsistency and conflict between different regulatory regimes;
- > it would be easier to comply with requirements.

Indeed, there was the expectation that the proposal would lead to a reduction in administrative burdens, costs, time, delays, and the numbers of licences and inspections. These benefits would not be realised if the complexity of licences was increased. Respondents felt strongly that licences must be simple to follow and concise and that conditions relevant to a particular discharge for example must be easily distinguishable from other conditions. Proportionality was also important as applying the pollution prevention and control (PPC) regime to low risk activities was not deemed appropriate.

It was recommended that some flexibility should be maintained as an integrated permissions system may not be suitable in all cases. For very large sites, with a wide range of activities, emissions, discharges and releases, it may not be appropriate to combine all into one licence. In this instance an integrated inspection regime may be more effective. It was also suggested that operator or network level permits may not work well where each site is different in terms of local environmental conditions (i.e. geology, topography, groundwater vulnerability and surface water proximity) even when the same process is being carried out.

A number of questions were asked about the details of the proposal. Examples of these include:

- > How would such permits be framed so as to prevent the unreasonable suspension or revocation of the whole permit where a breach or breaches was limited to one activity or facility? If one site fails to comply, will the licence for all sites be withdrawn?
- > How would each premise within an operator or network licence (where there might be variability in use, hazard and risk) be risk rated; would it be by site or operator?
- > What if one aspect of the licence requires further negotiation or investigation but the remainder is agreed? Would this negotiation or investigation hold up all the work by the operator?
- > How will general binding rules and statutory obligations be worded when they also apply to a site so that they can be incorporated into an integrated permit? Will the inclusion of such requirements into a licence make any associated changes to the authorisation more costly?
- > How will changes and amendments to integrated licences be tackled for example for larger sites with regular changes to operations or where there are a number of small changes?
- > What will the scope of the permit cover? Some felt that aspects such as European Union Emissions Trading System (ETS) should be included; others were concerned that it might integrate permissions granted by local authorities (e.g. planning) and that this may reduce the democratic accountability of the consenting process.

Respondents looked forward to the opportunity to find out more about the proposal particularly in terms of environmental benefits, maintaining SEPA's ability to protect the environment, the financial implications and how it fits into the overall framework for environmental protection and improvement.



## Overall summary and proposed actions

We have received a very high level of support for integrating and simplifying permits.

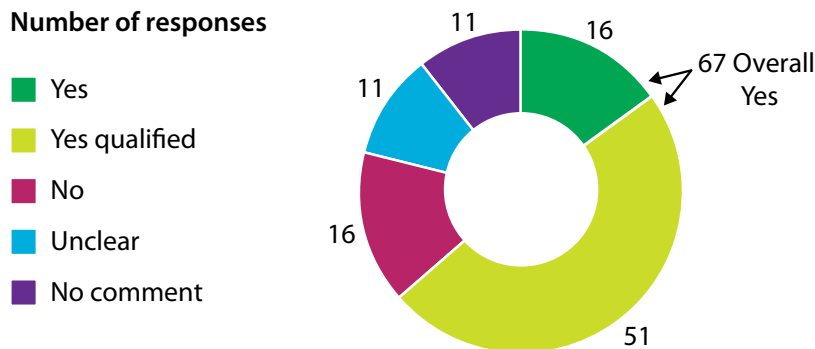
We will work ourselves and with the Scottish Government and those we regulate to explore the possibilities and to test them out. The focus here will be on achieving compliance but also in exploring how to go further than that (e.g. via our work with 'champions' of the Scottish environment in business). This will be taken forward via our ongoing engagement with individual companies and/or sectors.

We will work on this with those we regulate and make progress through pilots as well as seeking legislative reform, where necessary.

### Question 10

**Do you agree that, to cover these costs, an annual charge should continue to apply to all operators deemed low risk or subject to simpler types of permits?**

Figure 10: Responses to question 10



There was a reasonably good level of support for this proposal with 64% saying that an annual charge should continue to apply to all operators deemed low risk or subject to simpler types of permits. This was seen necessary to:

- > cover costs such as implementing online systems to support lower risk permissions;
- > prepare general binding rules and/or codes of practice;
- > produce sector guidance;
- > carry out incident response and surveillance work for failure to comply.

The support promoted was based on a recognition that any regulatory system and service must be maintained and that low risk activities and simpler types of permits require resources to be allocated by SEPA for surveillance and monitoring particularly. Many respondents felt that those who are responsible for a cost, or who benefit from a service, should pay a reasonable share of those costs. It was considered perfectly fair that such operators should make a contribution to the running of the system overall as opposed to simply covering the costs of charge collection. The retention of charges for low risk or simpler systems of permitting would help create an equitable approach whereby large operators and higher risk activities pay more but where all activities make a contribution. Others felt that charging for lower risk activities may lead to risks being taken by some operators in attempting to avoid, or plead ignorance of, the charges which could result in an unnecessary administrative burden for SEPA. There was also some debate on whether operators should be burdened with costs such as those associated with the development of Scotland's Environment website.

A range of views were expressed about the level at which an annual charge should apply. Some felt it should only be for standard permits and that notifications and statutory obligations should not be included as their view was that this did not involve any effort by SEPA. Others considered an annual charge appropriate at all levels of activity so long as it was equitable and proportionate to risk and past performance. In addition, all those that mentioned exemptions believed those that are free of charge should remain so given that they largely relate to providing environmental good practice such as recycling waste and community composting.

The frequency of charging was also challenged by a number of respondents. Some felt that an annual charge should only apply to ongoing operations like impoundments or abstractions but not to one off licences like engineering works. Others suggested that the pragmatic flexible risk-based approach proposed in the consultation could allow for assessment and licence renewal over different lengths of time, for example 3, 5 or 10 years. In such cases, it was argued it would not be reasonable or fair to charge an annual fee. The fee should relate to the full period of the permission or licence being granted.

Respondents requested more information on the definition of lower risk, the level of charges and whether the proposal would result in an overall increase in costs to the operator; and how annual charges would be regulated or verified. The opportunity to comment further on the detail in future consultations was welcomed.

### Overall summary and proposed actions

We received a reasonably good level of support for charges continuing to apply to low risk and simpler forms of permitting.

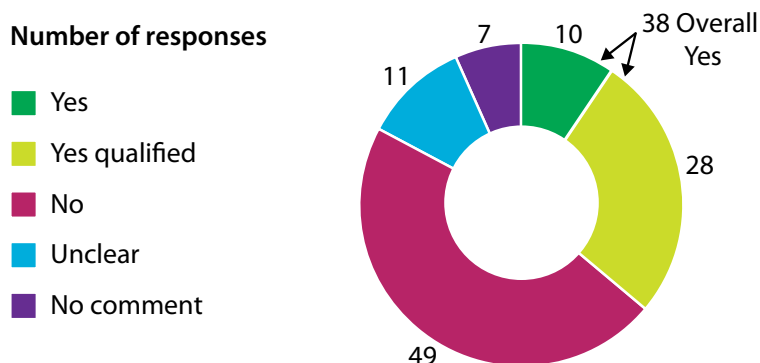
We will work with the Scottish Government on this and with the sectors concerned to explore how this should work in practice.

This will involve ongoing dialogue and consultation.

### Question 11

**We aim to offer excellent regulatory and scientific services, but could consider charging for new, optional, value added services for fast-tracking a permit application or carrying out an application checking service. Would you support this approach?**

Figure 11: Responses to question 11



There was a low level of support expressed for the proposal to charge for new, optional, value added services such as fast-tracking a permit application or carrying out an application checking service. Of the respondents 36% gave an overall 'yes' response and 47% did not agree. There was a high level of consistency amongst the issues and caveats identified by respondents.

The main concern expressed was that it was comparable to a consultancy service and there was therefore the potential for SEPA's impartiality, objectivity and integrity as a regulator to be challenged. Such a move it was felt, could bring SEPA into direct competition, and possibly conflict with, the consultancy market. Several mentioned that this may cause confusion in that applicants may believe their application has been pre-approved. Furthermore, there were civil liability issues for SEPA to consider. It was suggested that an alternative approach might be to either contract the work out or to develop an accredited service using a validated external body.

Another significant concern was that differentiating services could lead to a two tier and unfair system available only to those that can afford it. One which would favour larger organisations and potentially disadvantage small to medium-sized enterprises (SMEs). It was also felt that this approach could also lead to downgrading and delays for routine applications.

Respondents made it clear that they expect a standard service to suit the majority of users with fast-tracking being the exception and resulting in a licence decision being made ahead of the statutory timescale. Any premium service should have a guaranteed service level and a question about the offer of damages was raised in the event timescales were not met.

Two suggestions were made to assess the significance of these concerns. Firstly to carry out a separate consultation on service levels and charging proposals to better understand the needs of our customers and secondly, to run a trial of the fast-tracking service. If the latter does lead to the displacement of standard applications and other issues then the service should be withdrawn.

Many questioned the need for these additional services particularly as they might use increasingly scarce resources, for example, a specialised fast-tracking group might be needed. The complexity of the current application system was seen as a contributory factor to protracted processing of permits and it was considered that if the new approach described in the better environmental regulation consultation is successful then simpler and slicker processes would mean all applications being handled more efficiently. By simplifying the key requirements and working together at an early stage and throughout the application process respondents felt it was possible to use resources effectively and efficiently at the same time as developing good relationships; thereby providing the basis for good environmental performance. Indeed some indicated that SEPA should not only be improving the existing service but aiming for a self-financing value added service as an inherent feature of the organisational structure and systems. A number of respondents also highlighted the fact that application checking is a normal statutory process e.g. as part of duly made process for the PPC regulations, as such this is not a value added service.

Finally, there was a suggestion for an alternative approach, whereby preference would be given to applications which deliver sustainable growth, combat climate change or contribute to renewable energy targets in line with the policy goals of the Scottish Government.

### Overall summary and proposed actions

There was a low level of support for SEPA moving in this direction and the expectation that existing service levels could be improved by applying the better environmental regulation approach across the board.

We will reflect on this proposal and explore concerns in more detail so that we understand them better.

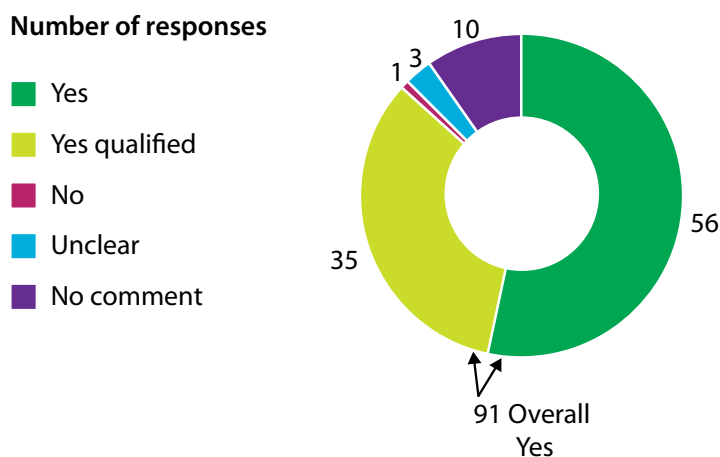
.....

### Question 12

**We want to be more flexible in the use of our monitoring resources in order to effectively monitor emerging issues and respond quickly to incidents. Do you agree?**

.....

Figure 12: Responses to question 12



There was a very significant level of support for the proposal for the flexible use of SEPA's monitoring resources so as to effectively monitor emerging issues and respond quickly to incidents, with 87% of respondents giving an overall 'yes' response to this.

Many respondents agreed that this is an appropriate proposition and that capabilities are needed for work in new areas in relation to unexpected events. It was recognised that SEPA already responds quickly to environmental incidents and that monitoring emerging issues and other incidents should be considered a pre-requisite rather than a new capability. SEPA would be strongly supported in deploying resources as it sees fit and in a way that is consistent with the duties and responsibilities placed on it.

Clarity was sought on what constitutes an emerging issue and what the purpose and use of data collected would be. Some felt that an emerging issue should be defined as something that is a high risk to the environment or where there is a real knowledge gap about a particular threat.

Achieving the right balance and flexibility is one thing but sufficient monitoring effort and data for long term datasets was also considered to be important in order to provide a stable and consistent service. As flexibility generally requires more resource, some respondents queried if the existing resource could be better streamlined whilst others suggested exploring opportunities for joint working, which could lead to a more cost effective and responsive monitoring service. Lastly, the point was made that engagement with the public is critical issue for SEPA particularly with respect to incident follow up and feedback as this could increase the likelihood of future participation in reporting environmental crime. The citizen science initiative in particular should help the public to understand exactly what SEPA does and why particular courses of action are taken in response to incidents. This should help build public support and confidence and ultimately help to protect the environment.

### Overall summary and proposed actions

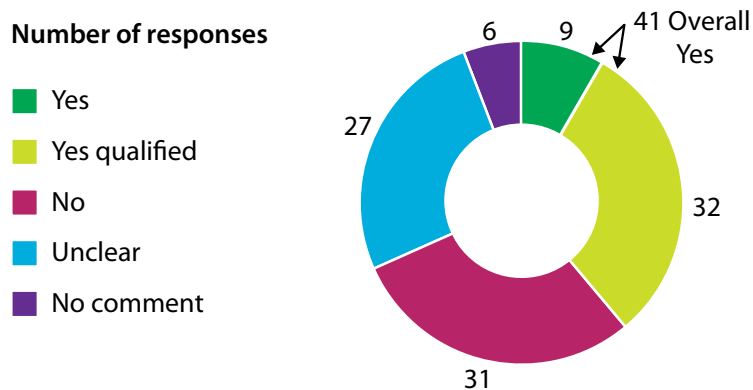
There was a very high level of support for us being more flexible and responsive in terms of our monitoring activities.

We will make changes to the way we monitor, working with other organisations who also undertake such work, and making this available to the public, wherever possible.

### Question 13

**SEPA has a wide range of environmental expertise and we believe that we could charge for certain specialist and technical advisory services that are currently funded by Grant-in-Aid. Would you support SEPA charging for such services in the future?**

Figure 13: Responses to question 13



Similarly to Question 11, there was a very low level of support for this proposal. In total 39% of respondents gave an overall 'yes' response and 30% did not agree. In total 26% of respondents did not express a view one way or another and were therefore unclear.

Again, as with Question 11, respondents were concerned that by taking this approach SEPA would be competing with environmental consultancies and that this would undermine SEPA's national role as an environmental regulator. It was felt that without clear delineation between its publicly funded statutory duties and the proposed commercial activities, public and third party confidence in SEPA's decisions could be lost.

Another concern was that unless the service is demand led and self supported it could lead to claims of unfair competition from the private market, as a non-profit organisation charges could be lower than the private sector for example if they were subsidised by Grant-in-Aid or from income recovered from permit holders. A suggestion to transfer specialist services to a national laboratory, charging according to industry standards, was put forward.

A number of comments related to the expectation that publicly funded bodies should provide advice free of charge. In particular for information required as part of regulatory requirements and which contributes to an improved understanding of the environment or best practice. It was considered that, as a matter of principle, information that is gathered in the public interest or collected as part of SEPA's statutory duties should be paid for at the level of the public purse. Respondents noted uncertainty about which services would attract charges and that these should be for services that go beyond the environmental advice and expertise that SEPA offers. Suggestions for potential services included:

- > the provision of data sets and chemical analyses;
- > assisting industry develop new products in the environmental and clean technology market;
- > introducing training packs to service providers.

Respondents felt that the suggested chargeable services could act as a deterrent for operators seeking assistance from SEPA and that this may increase the risk of subsequent environmental harm. Other respondents noted that they strongly value the guidance they receive from their local officers and that charging would jeopardise their good working relationship with SEPA. Sharing its expertise is seen to be one of the best services SEPA can offer the environment. As this is mainly developed in the course of its publicly funded statutory duties another view is that SEPA should not charge for this.

Concerns were highlighted that growing such a service could be a distraction from core regulatory activities and that SEPA's staff could face a number of challenges:

- > civil liability issues;
- > continuous professional development;
- > balancing new revenue and profitability targets with day to day work;

> managing the potential for a no fee, no advice culture.

More specifically, respondents asked how this might impact on existing memorandum of understanding agreements, such as data modelling.

### Overall summary and proposed actions

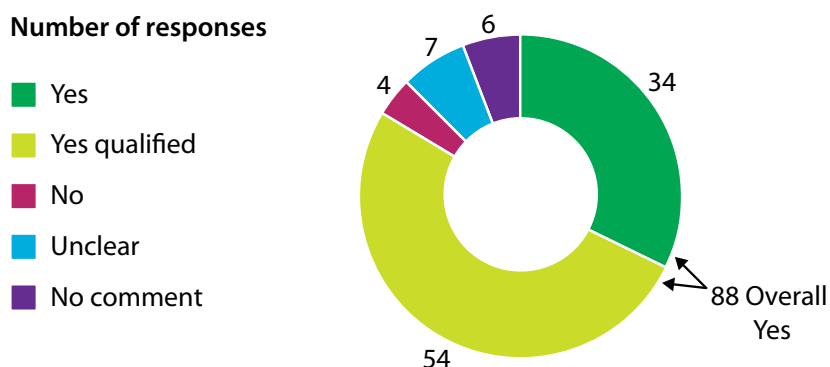
We received a very low level of support for charging for services that are currently funded under Grant-in-Aid.

We will reflect on this proposal and explore the concerns in more detail so that we understand them better.

### Question 14

We are proposing to apply SEPA's charges proportionately, depending on the level of environmental risk posed by the regulated activity, on operator performance and on the regulatory effort required. Do you agree?

Figure 14: Responses to question 14



There was a very significant level of support for this proposal. In total 84% of consultation respondents gave an overall 'yes' and commented accordingly.

The main reason for this support was the alignment with the polluter pays principle. The majority of respondents agreed, for example, that high risk activities and poorly performing operators should have higher charges. Many also recognised the benefits of such an approach and said that it could provide an incentive for improved performance. The opportunity to reward high performers through lower levels of monitoring and charges was also important. In addition, efficiency gains could be achieved by focusing resources on poor performers rather than on well-managed sites.

Despite the high level of support there were concerns in particular around the definition of risk. As an illustration comparing the environmental risk associated with, for example, a continuous emission to air which might have a long term impact on human health and a single discharge to water which would result in an immediate fish kill. Others asked how the competence of the operator and their proven track record of achievement would be assessed. Lastly, it wasn't clear to some exactly how this would work for new operators.

Questions were raised about how operator performance should be defined. Respondents considered that this should be based on actual, serious environmental incidents rather than less significant incidents or events where pollution had not been caused and that the level of risk management/mitigation should be taken into account. In addition, credit should be given for an accredited environmental management system and other specific controls put in place by operators.

It was clear that a transparent, consistent and robust way of allocating risk levels and assessing operator performance and regulatory effort was what respondents called for. Any associated build-up of charges should be open to scrutiny and challenge by those being asked to pay. Objective criteria should be developed with relevant industry sectors, to avoid a one-sided process, along with protocols for dealing with those cases where there was disagreement over the risk rating and performance level allocated. In addition, respondents felt strongly that charges need to be realistic and proportionate. For example, they should not penalise operators of higher risk activities as it might encourage them to relocate or reinvest elsewhere. Furthermore, the nature of the activity should be considered i.e. whether it is commercial in nature, charitable or in the public interest.

Respondents welcomed the opportunity in the next consultation to comment on details of how environmental risk and compliance levels will be assessed along with the allocation of associated charge tariffs. Indeed many respondents volunteered to participate in this development process.

### Overall summary and proposed actions

We received a very significant level of support for basing our charges on risk, performance and regulatory effort.

We will take into account comments raised in response to this consultation and will consult further on the detail using the offers made to help us with this work.

## Question 15 - What are your views about the key features of a future funding model for SEPA?

1. Charging based on risk and performance
2. Flexible use of funding
3. Cost recovery

### Charging based on risk and performance

Most agreed with the proposal to have charging based on risk and performance and felt that it was fair and equitable. There was support for the concept, for example, that poor performers who are causing environmental harm should pay higher charges than high performing operators. Respondents felt that this would provide a financial incentive for operators to improve their performance.

There were a number of concerns and caveats in relation to the key features of a future funding model based on risk and performance. In particular, respondents considered that risk and performance will need to be robustly and consistently assessed if they are to provide the basis for charging and that there should be full transparency. Some felt that the site involved should be in agreement as to which category they fall into and that this should not simply be based on the nearest type of industry code. Further to this, there should also be right of appeal for determinations which are felt to be unjustified. Others were concerned that charging based on risk would make the management of high risk activities more expensive despite continuous improvement in performance. Some strongly opposed any move away from charges based solely on regulatory effort, indeed they felt that charges must be based on regulatory effort if SEPA is to live up to its own stated principles of proportionality, fairness, transparency, accountability and targeted regulation. There was also the concern that without accompanying robustness and consistency of the compliance assessment scheme, the system could be too subjective and that a SEPA officer, rather than the operator, would have too much say about how much a given facility is charged.

### Flexible use of funding

There was a range of responses to the concept of flexible use of funding. Some supported this concept as they felt that SEPA's funding has to be broad based to support its wide range of activities and flexible to recognise the interconnectedness of the environment and its work. Furthermore dealing with emerging issues



was clearly expected of SEPA. Flexible use of funding across income and regulatory regimes was considered a must if you want to be risk-based and apply a more limited resource against priorities. Flexibility may be needed to allow SEPA to recognise the financial standing of not for profit organisations and to fund the important requirement for awareness raising on environmental priorities.

In contrast, other respondents were against the concept as they did not believe that operators should pay for things that are not directly related to permitted activities. Holding operators liable for the costs of wider environmental protection work including environmental crime was not wholly supported – although some saw benefits for legitimate businesses in tracking illegal activity. It was felt that this is a core SEPA activity that is carried out on behalf of the country as a whole and, as such, it should be funded by the Scottish Government. Generally, it was stated that if something is currently funded by Grant-in-Aid, and that funding is reduced, then SEPA's involvement in that area should be reduced too. There was also concern that a flexible approach to funding might result in one sector funding regulatory activity over another sector and that costs to operators might increase.

### Cost Recovery

There was agreement by many respondents that the costs of providing a service to customers should be fully recovered through application or registration fees and that there should be greater recovery of costs associated with investigation and enforcement following successful prosecution. This was felt to be fair and equitable and consistent with the application of the polluter pays principle.

Questions were raised about which services would be subject to cost recovery. Many felt that there should be no charge for services such as advice as this was considered part of SEPA's core work. If charges are expected for every interaction with SEPA, respondents felt that this will ultimately lead to less communication and poorer regulatory outcomes.

Some respondents expressed the view that cost recovery must be transparent and proportionate based on a published fee scale which is subject to scrutiny and challenge by those being asked to pay (i.e. based on a published fee scale designed to recoup costs for specific tasks only). Making a surplus or compensating for reductions in Scottish Government's Grant-in-Aid was not deemed to be acceptable. There was a clear expectation that cost recovery must also go hand in hand with increased efficiency and effective service from SEPA.

Some also felt that this proposal signalled increased costs. While it was expected that polluters and poor performers should pay more, for example, via enforcement and prosecution it would not be fair that additional cost should be paid by good operators.

Overall, respondents looked forward to being consulted on the detail of the proposed funding model including the:

- > assessment of risk;
- > level and scope of services covered;
- > associated costs;
- > degree of flexibility envisaged.

### Overall summary and proposed actions

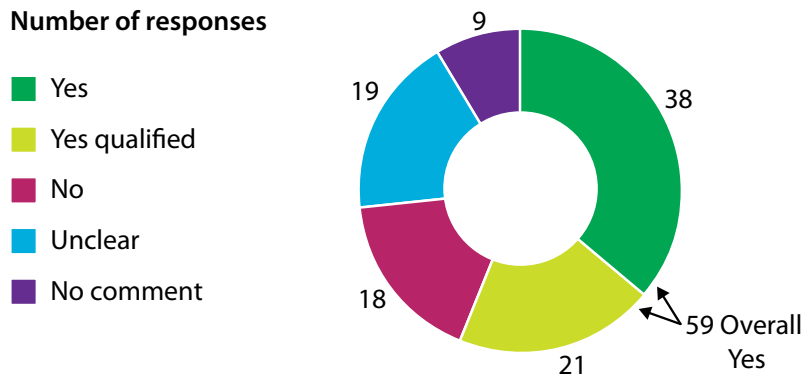
There were both strong areas of agreement and concerns which indicates that we need to discuss this further, develop more detailed thinking, with costs and examples of business impacts, as part of the next phase of consultation.



**Question 16**

**Do you agree that SEPA should be able to cover its costs across its income streams to enable it to allocate effort on the basis of environmental harm, including tackling environmental crime such as ‘freeloaders’ (i.e. who operate illegally without a licence)?**

Figure 15: Responses to question 16



There was a reasonable level of support for this with 56% of respondents giving an overall ‘yes’ response. However, 17% did not agree and 18% of responses were unclear.

The need to develop a new, flexible funding model for SEPA was recognised but significant concern was raised about the concept of covering costs across income streams. Respondents felt strongly that cross-subsidy of regulatory activity was not compatible with the principles of polluter pays, transparency, proportionality, and fairness. In particular, the potential for SEPA to fail to manage or limit incurred costs was raised. As such, safeguards would need to be built in to ensure that charges were appropriate and that they were subject to an open appeals procedure in cases of disagreement.

Clarification was sought on a number of issues. Firstly, would the proposal mean that income recovered from compliant operators could be used to fund wider environmental protection issues, including tackling environmental crime? Many felt that this would be unfair and inappropriate and that Grant-in-Aid from the government and monies recovered from successful prosecutions should fund work that was not linked directly to regulation. The benefits here, it was explained, were largely at a societal level (i.e. where the public were beneficiaries). There was a suggestion that in some instances additional funding and/or incentives might be needed to tackle issues such as environmental crime and, subject to accountability, SEPA should be able to cover such costs across income streams. Secondly, would operators be funding reductions in Grant-in-Aid from the government? This was also considered by a number of respondents to be unacceptable and it was suggested that any funding gap should be covered by efficiency improvements achieved by working to a risk-based approach. Thirdly, there was also a key point in principle for some in that the culture of SEPA as an organisation should primarily be led by environmental considerations and not by who is going to pay.

**Overall summary and proposed actions**

There was a reasonable level of support in this area with an understanding that the targeting of illegal operations and other problem solving needs to be funded.

We will develop the business model and options to deliver a problem solving approach and to address environmental crime, with costs and recommendations to deliver this opportunity.

We will consult on the details in due course.

.....

## Question 17

**Do you think that there are additional routes to deliver better environmental regulation that SEPA can explore over and above the changes that we outline in this consultation?**

.....

In total 65% of respondents said that there were additional routes to deliver better environmental regulation that SEPA could explore over and above the changes outlined in the consultation. These fall under the following broad headings many of which are complementary to the consultation proposals:

- > better use and refinement of existing regulations and regulatory processes;
- > integrating roles, shared services and joined up working with other regulatory organisations;
- > enhancing sector management working;
- > widening SEPA's education role.

In terms of better use of existing regulations, it was felt that the Scottish Government should ensure legislation in general is aligned to encourage and provide incentives for going beyond compliance and achieving good environmental protection. There could also be more alignment of the regulatory processes between Scotland and the rest of UK and this would have the potential to reduce costs, lift administrative burdens upon operators and achieve consistency.

Looking at regulatory regimes in more detail, other suggestions included removing duplication between water licences and planning consents to minimise risk and cost and ensure a balance between environmental concerns and social and economic considerations. There is the potential for self regulation where ISO/EMAS provides evidence for good performance. Some said that environmental regulation could be integrated with health and safety legislation and an ecosystem approach could be adopted with a robust set of indicators.

In terms of enforcement, it was felt that better use could also be made of existing sanctions within legislation, for example, for PPC sites, suspension and enforcement notices could be used to allow time for improvements and avoid the need for prosecution. The environmental liability regulations could offer alternatives to criminal proceedings. It was also suggested that ways to link civil penalties with an organisation's financial turnover should be explored.

Improvements to the regulatory process were suggested including:

- > delivering e-regulation;
- > improving and simplifying the payments system;
- > the use of automated processes for most activities and processes not just low risk activities;
- > consolidation of regime reporting and data returns;
- > improvements to licence design.

There were many suggestions that focused on removing duplication and streamlining organisational roles; clarifying boundaries between organisations; developing best practice and advice and guidance; joint working and sharing services. For example, there should be greater liaison with other bodies to give an overall view of issues facing a sector. There could be integration of the similar roles performed by Local Authority Environmental Health departments and the contaminated land specialists within SEPA. This was also suggested for flooding. The key benefit of this kind of approach would be to ensure a "one-stop shop". A fresh perspective was needed on roles/responsibilities and where they overlap with SNH and laboratory services across the public sector could be shared. There was a need identified for co-ordinated and scheduled presence on the ground to identify issues and remove duplication.

Respondents suggested that a culture of partnership between the regulator and the regulated needed to be engendered by continuing with the approach of joint working with industry and trade associations. This would allow the development of pragmatic solutions and allow SEPA to learn from sector programmes. Other respondents are keen for a sector management approach including sector specialist liaison officers for large complex sites and liaison with sectors across the UK, as this would allow a better understanding of the industry, their environmental issues and the controls available. It would also make best use of skills and expertise and allow more effective environmental outcomes. There was also a suggestion that a short term stakeholder forum could be formed or a survey conducted to provide direct, constructive feedback on the change process, help develop key performance indicators and assess the effectiveness of implementation. Likewise, in terms of using its scientific, technical and regulatory expertise, it was suggested that SEPA could assist Scottish industry to develop new products and services that would meet existing and future legislative requirements and act as an independent tester.

A number of respondents suggested that SEPA should widen its educational and awareness raising role. This could include, for example, developing a one-stop shop for environmental advice and guidance in Scotland across the agencies; improving the public understanding of SEPA's role in protecting the environment; and perhaps publicising more information about operator compliance and offences on its website. Respondents suggested that SEPA should play a greater role in educating existing and future customers. For example, in developing training programmes on compliance requirements in conjunction with various trade bodies some considered such training could be an effective revenue stream for SEPA.

### Overall summary and proposed actions

The positive nature of the responses with several new and supportive ideas, is welcomed by SEPA. These will be considered as part of the next phase of consultation with the possibility of some being taken forward as tests or pilots.

The willingness of respondents to help shape these ideas and to make them work, so that better environmental regulation can be delivered and benefits be realised, is very encouraging.

## Conclusions

This first phase of consultation on better environmental regulation generated considerable interest from a wide range of sectors. The quality of the responses was high and the way in which views were expressed was clear and encouraging in tone.

Respondents recognised that this was a principles level consultation and offered us comments that were overwhelmingly positive and supportive but which also led them to ask for more detail and involvement in building this up.

We were very encouraged by the generally high level of support for the main principles in the consultation and particularly in relation to:

- > reducing complexity and improving the effectiveness of environmental regulation;
- > developing a new regulatory model;
- > integrating and simplifying permits;
- > using a risk-based approach for permitting, inspections and charging;
- > strengthening enforcement.

We recognise that this support is dependent on what comes next and the details of the proposed changes and how these will work. As part of the follow up actions we undertake to work with respondents, and possibly others who were unable to respond, to make progress on this agenda for organisational improvement and change.

In those areas where there is a lower level of support, we will work harder to explain what we mean and to provide greater clarity on what the changes could look like, where this is needed. We will also reconsider whether to progress areas where strong concerns have been expressed.

## Further views and helping us with the next steps

Although the first phase consultation has formally closed, the door remains open as we now need to work on how to make the changes work in practice.

As such, there will be further opportunities to provide comments as and when we consult on more developed proposals. In the meantime, and as the first consultation said, we will be implementing a programme of organisational improvements to ensure that we have the right people, processes and places to deliver our services.

The emphasis for these will be to improve our efficiency and cost-effectiveness but also to allow us to make changes to the way we work, including our legal framework, business delivery and funding model.

If you wish to contact us about this response please email [betterenvreg@sepa.org.uk](mailto:betterenvreg@sepa.org.uk)

# Appendix 1: Alphabetical list of respondents

A&P Grewar  
Aberdeen Harbour Board  
Aberdeenshire Council  
Aggregate Industries UK Limited (2)  
Association of Salmon Fishery Boards  
BASF Performance Products Plc  
BP Exploration and Production  
Breedon Aggregates Limited  
British Hydropower Association  
British Waterways Scotland  
Catchment (Veolia Water)  
Centre for Water Law, Policy and Science, University of Dundee  
Chartered Institution of Wastes Management  
Chemical Business Association  
Chemical Industries Association  
Chemical Sciences Scotland  
Chivas Brothers Limited  
City of Edinburgh Council  
Civil Engineering Contractors Association Scotland  
CoalPro  
Comhairle nan Eilean Siar  
Community Resources Network Scotland  
Confederation of Forest Industries  
Diageo  
Direct Waste Management Limited  
Dounreay Site Restoration Limited  
Drummond Miller LLP  
E.ON UK  
East Ayrshire Council  
East Renfrewshire Council  
EDF Energy, Existing Nuclear Division  
ENVIRON UK Limited  
Federation of Small Businesses  
Fife Council  
Forestry Commission Scotland  
Fraserburgh Harbour Commissioners  
Glencoe Shellfish  
GreenPower International  
Health Protection Scotland  
Her Majesty's Naval Base Clyde  
INEOS Manufacturing Scotland Limited  
JIG Environment  
Keenan Recycling  
Kelda Water Services  
Kier Construction Limited (Mining Division)  
Lafarge Cement UK  
Leiths (Scotland) Limited  
Magna Limited  
Micro hydro generator and administrator of Micro Hydro Association  
Mineral Products Association (Scotland)  
National Semiconductor (UK) Limited  
National Farmers Union of Scotland  
North Lanarkshire Council  
Nuclear Decommissioning Authority  
Office for Nuclear Development  
Private Individuals (6)  
Rivers and Fisheries Trust of Scotland  
Renfrewshire Council  
Royal Society for the Protection of Birds Scotland  
RWE npower renewables  
Scotch Whisky Association  
Scottish and Southern Energy  
Scottish Council for Development and Industry  
Scottish Enterprise  
Scottish Environment Link  
Scottish Environmental Services Association  
Scottish Estates Business Group  
Scottish Leather Group Limited  
Scottish Natural Heritage  
Scottish Power Plc  
Scottish Renewables  
Scottish Rural Property and Business Association  
Scottish Salmon Producers' Organisation  
Scottish Sea Farms Limited  
Scottish Water  
Scottish Wildlife Trust  
SeaEnergy Renewables Limited  
SEPA Staff (9)  
SGL Carbon Fibers Limited  
Shell UK Ltd  
Spital Tower Property  
Stewart Renewables Limited  
Tarmac Limited  
The Crown Estate  
The Scottish Salmon Company  
Tomatin Distillery Co Limited  
Tullis Russell Papermakers  
TWMA Limited  
Veolia Environmental Services (UK) Plc  
Water Industry Commission for Scotland  
Waterwatch Scotland  
West Lothian Council