



Summary of the consultation responses received to SEPA's consultation on changes to requirements for applicants to demonstrate financial provision for waste management activities.



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1. Introduction

The aim of the document was to consult on proposals to change how the Scottish Environment Protection Agency (SEPA) requires applicants to demonstrate adequate financial provision for certain waste management activities. We proposed to improve the way in which we assess financial provision in relation to new sites and to apply a new approach to existing sites in certain circumstances.

The consultation provided an opportunity for anyone to give their views on SEPA's proposed approach to financial provision for waste management sites. This consultation was supported by engagement with stakeholders during the consultation period.

The consultation set out the main proposals for changing financial provision outlined below:

- Changes to the way in which we calculate financial liability for waste management sites
- Requirement of ring fenced funds for high risk sites
- Changes to how we require applicants to demonstrate adequate financial provision for waste management activities
- Improvements in the way in which we assess financial provision in relation to new sites
- Application of a new approach to existing sites in certain circumstances

This digest summarises the responses received for the consultation to inform the development of new financial provision procedures and methods within the waste management industry.

We would like to thank everyone who took the time to respond to the consultation.

2. Summary of responses

2.1 Responses

Fourteen responses were received to the consultation from a variety of stakeholders and responsible authorities. In addition, additional meetings took place with some of those respondents. A full list of respondents is shown below.

Name	Organisation
Jen Hunter	Stevenson Bros.
David Wake	The North Harris Trust
W Spence	Shetland Islands Council
Walter MacArthur	Argyll and Bute Council
David Mackay	North Ayrshire Council
Jenny Grant	Renewable Energy Association
Stephen Freeland	SESA
Rolf Matthews	Glasgow City Council
Simon Rutledge	Biffa Waste Services
Paula Coopland	Mineral Products Association (Scotland) Limited
Gareth Mills	Aggregate Industries UK Limited
Catherine Maclean	The Chartered Institution of Wastes Management
Julie Fourcade	FCC Environment
Beth Clayton	SUEZ

2.2 Overview of responses

In general there was overwhelming support for the proposal for SEPA to adopt a risk-based approach to financial provision for waste management activities and that financial provision should be demonstrated by ring fenced funds in some instances. A strongly expressed view was that applying a requirement for ring-fenced funds to most non-landfill activities was disproportionately burdensome on business. In addition, some consultees expressed that, given landfill diversion targets, some of these landfill business models were likely to be at increasing risk over the next 5 years. Furthermore most respondents were of the view that both the minimum cost estimates associated with landfill and non-landfill activities were about right. With regard to risk thresholds, risk relating to waste/facility types and mechanisms of financial provision, most respondents had differing views in these areas. Further detail of the comments received for these topics are available in section 3.

3. Analysis of responses by topic

In addition to the main themes outlined, we received detailed comments and suggestions on each topic. These are summarised below.

We asked:

“Q1 – Do you agree that SEPA should adopt a risk-based approach to financial provision for waste management activities?”

All the respondents who answered this question (75% of total respondents) were supportive of the proposal for SEPA to adopt a risk-based approach to financial provision for waste management activities.

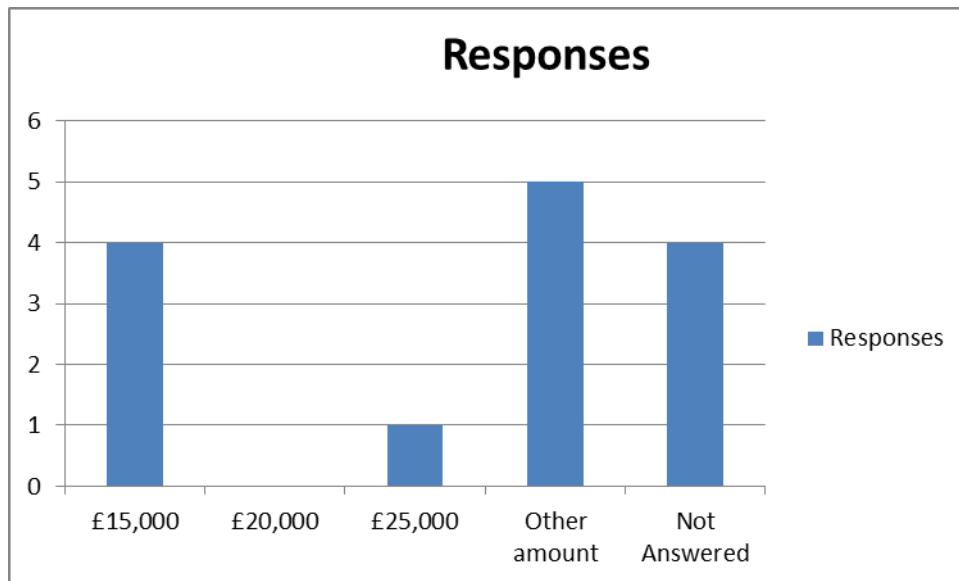
Whilst respondents generally agreed that SEPA should adopt a risk based approach to financial provision, there was a suggestion that this should profile risk within the waste industry rather than to seemingly apply a blanket provision which, in practice, would effectively require the majority of waste management sites in Scotland to provide financial provision through ring-fenced funds. It was suggested that a risk profiling exercise should also help improve SEPA’s understanding of the impact of tying-up liquid capital – particularly for operators of smaller, non-landfill activities - and potentially constraining investment within the legitimate industry. There were also concerns expressed that the proposed new measures have the potential to fall disproportionately on the responsible, regulated industry. In seeking to prevent site abandonment, a risk-adjusted company based approach would be more preferable, and more effective than the proposed activity-based approach.

“Q2 - Do you agree that, where the risk is greater, financial provision should be demonstrated by ring fenced funds (that is, by means of a financial security mechanism such as a bond, bank guarantee etc)?”

83% of respondents who answered this question (86% of all respondents) were supportive of the proposal that financial provision should be demonstrated by ring fenced funds.

A number of respondents expressed concerns that a requirement to have ring fenced funds for a large range of facilities could tie up significant company capital or cash and thus reduce an operators borrowing capacity and possibly have unintended effect of limiting a legitimate operators ability to make future investments. Consequently requiring such a fund will be a barrier to the development of the industry. It was also suggested by some respondents that ring fenced provision, such as renewable bonds, should be reserved for the largest waste management activities – such as landfill. For smaller, non-landfill activities they did not believe that SEPA should dictate that ring fenced funds should be put in place, and instead urged SEPA to consider a more flexible approach to financial provision.

Q3 - "With reference to the possible thresholds of £15,000, £20,000 and £25,000 set out above, what is the appropriate amount of financial obligation that should result in ring fenced funds being required? "



There was no across the board agreement on thresholds however concern was expressed by a number of respondents that all the proposed thresholds are so low that in actual reality, ring-fenced financial provision would have to be made for all non-landfill activities.

Q4 – “Which waste types do you consider present a low risk and are unlikely to benefit from requiring “ring fenced” funds to be put in place?”

There were few responses to this question however amongst those that did respond there was agreement that inert waste, metal and glass consider presented a low risk and were unlikely to benefit from requiring “ring fenced” funds to be put in place.

Q5 - “Which waste management activities do you consider present a low risk and are unlikely to benefit from requiring “ring fenced” funds to be put in place?”

Again there were few responses to this question (14%) however those that did respond suggested that composting, metal recycling, MRF’s, mobile plant , WEEE recycling and wood, glass and inert waste recycling were unlikely to benefit from requiring “ring fenced” funds to be put in place.

Q6 – “Which waste types do you consider present a high risk and would always benefit from requiring “ring fenced” funds to be put in place?”

Of those that responded there was consensus that tyres and hazardous wastes would always benefit from requiring “ring fenced” funds to be put in place.

Q7 – “Which waste management activities do you consider present a high risk and would always benefit from requiring “ring fenced” funds to be put in place?”

Of those that responded there was consensus that landfill, disposal/recovery of hazardous wastes and recycling and treatment of waste tyres would always benefit from requiring “ring fenced” funds to be put in place.

Q8 – “Are the minimum cost estimates associated with non-landfill activities in Appendix 1 reasonable?”

Of those that responded to this question (50% of total respondents) 71% were of the view that the costs estimates were about right whilst 29% thought that they were too high.

Q9 – “Are the minimum cost estimates associated with landfill activities, attached at Appendix 2, too high, too low or about right?”

Of those that responded to this question (36% of total respondents) 80% were of the view that the costs estimates were about right whilst 20% thought they were too low.

Q10 – “Do you agree with the proposals for when financial provision arrangements for non-landfill activities would apply?”

Of those that responded to this question (71% of total respondents) 60% agreed with SEPA’s proposals for when financial provision arrangements for non-landfill activities would apply.

Concern was expressed that if SEPA were to require financial provision to be demonstrated through ring-fenced funds in the phased manner described in the consultation, developers of new non-landfill activities would be placed at considerable disadvantage to their competitors, with the former required to tie-up capital up front in making financial provision to SEPA while the latter would face no such obligation. Concern was expressed that this would be likely to affect acquisitions.

Q11 – “Do you agree with the proposals for when financial provision arrangements for landfill activities would apply?”

Of those that responded to this question (57% of total respondents) 88% agreed with SEPA’s proposals for when financial provision arrangements for landfill activities would apply.

Again concern was expressed with regard to the potential to create an un-level playing field. New operators required to provide ring-fenced funds would be at a disadvantage compared operators of existing sites.

Q12 – “What are the best mechanisms, or combinations of mechanisms, for waste operators to make and maintain financial provision so that funds are secure and available to fulfil the obligations of authorisations and deal with breaches of the permit and environmental incidents?”

Of those that responded the majority were of the opinion that all of the mechanisms suggested in the consultation were suitable to secure funds. Renewable bonds and local authority deed agreements were the most favoured method.

A specific concern was raised relating to where financial provision has already been made by means of a Section 75 agreement with the local planning authority. The concern is that these agreements with the planning authority cover many of the same things as SEPA’s financial provision requirements. Whilst it was accepted that some aspects (for example,

environmental monitoring) are not covered by the Section 75 agreement, and that SEPA will require specific provision in this regard, respondents suggested that the potential for unnecessary duplication of financial provision should be addressed by SEPA.

Some respondents would also like to see the use of insurance added to the list of available mechanisms and suggest that environmental impairment liability insurance could meet relevant SEPA objectives.

The introduction of a single fund (cash fund or an industry wide insurance policy) contributed to by all operators that can be drawn upon the event of default was also proposed. This would significantly lower the level of financial provision which would be required from individual operators.

Q13 – “If required to use one of the proposed financial provision mechanisms what would be the likely costs of making financial provision and the impact on your business/sector?”

Of those that responded the majority were of the opinion that the proposed financial provision mechanisms would have a medium /high impact on their business.

A number of respondents comments included reference to the risk of requiring financial provision for new non-landfill activities in a blanket manner, such that it would seriously hamper growth and the development of new technologies in the wider Scottish industrial sector. It was suggested that there will be reluctance for existing permitted sites to amend permits to accept new types of material from newly developed or novel industrial processes due to the increased cost of providing financial provision. It was thought that this would add significant cost to industry.

Q14 – “Do you agree with the proposal for SEPA to recover additional costs from the applicant in the circumstances of the applicant not using the standard template or in particularly complex cases?”

Of those that responded to this question (71%) 100% agreed with SEPA’s proposals to recover additional costs from the applicant in the circumstances of the applicant not using the standard template or in particularly complex cases.

Q15 – “Do you agree that the key impacts of these proposals are captured above?”

Of those that responded to this question (78%) only 45% agreed that the key impacts of the proposals were captured in the consultation.

4. Next steps

We will consider the comments and suggestions in the development of our approach to financial provision.