

## **Joint Working Protocol between Scottish Environment Protection Agency, Scottish Natural Heritage and Marine Scotland for the implementation of the Environmental Liability (Scotland) Regulations 2009**

THIS JOINT WORKING PROTOCOL is made between -

- (1) SCOTTISH ENVIRONMENT PROTECTION AGENCY, a body corporate established under section 20 of, and schedule 6 to, the Environment Act 1995, having its principal place of business at Strathallan House, Castle Business Park, Stirling, FK9 4TZ (it and its successors and assignees being hereinafter referred to as "SEPA");
- (2) SCOTTISH NATURAL HERITAGE, a body corporate established under section 1 of, and schedule 1 to, the Natural Heritage (Scotland) Act 1991, having its principal place of business at Great Glen House, Leachkin Road, Inverness IV3 8NW (it and its successors and assignees hereinafter referred to as "SNH"); and
- (3) MARINE SCOTLAND, a Directorate of the Scottish Government, having its principal place of business at 1B South, Victoria Quay, Edinburgh, EH6 6QQ (it and its successors and assignees being hereinafter referred to as "MS");

(each a "Party" and together the "Parties").

### **INTRODUCTION**

#### **Purpose**

1. This Joint Working Protocol ("Protocol") sets out the manner in which the Parties will work in partnership to implement the Environmental Liability (Scotland) Regulations 2009 (as amended) ("the Regulations").

#### **The competent authorities**

2. SEPA is a statutory non-departmental public body, accountable to Scottish Ministers. SEPA's statutory purpose is to protect and improve the environment in ways that, as far as possible, also help create health and well-being benefits and sustainable economic growth.
3. SNH is a statutory non-departmental public body, responsible through Scottish Ministers to the Scottish Parliament. SNH's remit is to promote the care and improvement, responsible enjoyment, greater understanding and appreciation, and sustainable use of the natural heritage.
4. MS is the Directorate of Scottish Government with responsibility for an integrated approach to the management of Scotland's seas involving scientific research, compliance monitoring, and policy development and implementation.
5. Each of the three Parties are designated competent authorities, responsible for dealing with a different type of damage, as specified under regulation 7 of the

Regulations. The responsibilities of the Parties as competent authorities are set out in the Regulations.

## **WORKING PROTOCOL**

6. Environmental damage cases are often likely to be large-scale incidents causing complex environmental impacts and may result in environmental damage being caused in areas regulated by different competent authorities. All Parties are committed to co-operating with each other fully and to supporting each other in carrying out their functions under the Regulations, according to their expertise or practical knowledge. This commitment is in addition to the provisions of the Regulations and to any statutory requirement for consultations between authorities under other legislation.<sup>1</sup>

### **Cases where there is more than one competent authority**

7. Incidents may involve more than one type of environmental damage, which may mean that more than one of the Parties will be the relevant competent authority. Where incidents of multi-damage occur, each category of damage will be investigated by the relevant competent authority. The relevant competent authorities will co-ordinate their investigations, where possible, for example to prevent issuing conflicting instructions for investigation and remediation to the operator.
8. Incidents involving a single type of environmental damage may also cover the interests of more than one relevant competent authority. In such a situation, the Parties shall agree which of them will be the lead competent authority, and shall co-ordinate and streamline the investigation process, where possible, so as to limit the impact on the operator or operators.
9. In cases of an imminent threat of environmental damage, the same working protocols as described in paragraphs 7 and 8 will be applied as necessary.

### **Cross-border working**

10. In cases involving damage in another part of the UK, as a result of an activity in Scotland, regulation 15 of the Regulations applies. The Environmental Liability Directive 2004/35/EC<sup>2</sup> is transposed through separate regulations in England, Wales and Northern Ireland and in the offshore environment around Scotland. Should a case arise which affects more than one part of the UK, consistent with regulation 15, the Parties are committed to working in partnership with their English, Welsh and Northern Irish counterparts to deliver the requirements of the relevant regulations. The English and Welsh enforcing authorities have

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<sup>1</sup> For example, in relation to Sites of Special Scientific Interest ("SSSI") under the Nature Conservation (Scotland) Act 2004.

<sup>2</sup> [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0035-20190626&qid=1568193390794&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0035-20190626&qid=1568193390794&from=EN)

committed to partnership working through respective Memoranda of Understanding.

### **Contact arrangements**

11. The Parties will seek to present a co-ordinated service to operators and interested parties, by dealing with enquiries relating to the Regulations in the most effective way possible. This would include any notifications of damage or requests for action.
12. Where one Party receives notification from an operator or an interested party that appears to relate to a type of environmental damage, for which another competent authority is more likely to be responsible, they shall advise the operator or interested party of this and provide the appropriate contact details within the relevant competent authority or offer to ask the relevant competent authority to contact the operator/interested party directly.
13. If the other competent authority does not agree that the case relates to a type of environmental damage for which it is responsible, it shall resolve the issue with the Party who was first contacted. If the Parties concerned agree that more than one competent authority is relevant, they will agree who should act as lead authority and be the contact point for the operator or interested party.

### **Exchange of information**

14. A timely and efficient exchange of information between the Parties is vital to ensure the effective implementation of the Regulations. The Parties agree to exchange information in a timely and efficient manner, in accordance with any existing local or national arrangements, and in compliance with data protection and other relevant legislation.
15. When sharing information, the Parties shall ensure that they comply with the identified, relevant and agreed mandatory requirements of the Government Security Classifications<sup>3</sup>, May 2018 issued by the UK Government.
16. For the avoidance of doubt, the Parties undertake to operate and implement any exchange of information as outlined above. Care should be exercised when transmitting classified information, including via electronic means.
17. All information provided by a Party pursuant to this Protocol must only be retained by the Parties in line with business requirements and their own respective records management retention policy and in accordance with the General Data Protection Regulation 2016/679/EC<sup>4</sup> and the Data Protection Act 2018<sup>5</sup>.

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<sup>3</sup> [www.gov.uk/government/publications/government-security-classifications](http://www.gov.uk/government/publications/government-security-classifications)

<sup>4</sup> [eur-lex.europa.eu/legal-content/EN/TXT/?qid=1532348683434&uri=CELEX:02016R0679-20160504](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1532348683434&uri=CELEX:02016R0679-20160504)

<sup>5</sup> [www.legislation.gov.uk/ukpga/2018/12/contents/enacted](http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted)

18. Without prejudice to the foregoing, each Party shall comply with all instructions given by the Party that released the information for sharing.

### **Costs and charging**

19. It is anticipated that the services provided by all Parties to one another will be without charge and no charges will be levied without agreement prior to the cost being incurred.

### **Civil Contingencies Act 2004**

20. All Parties acknowledge that where another Party is subject to an overriding legal duty (for example, the duty of SEPA as a Category 1 responder under the Civil Contingencies Act 2004), the Parties may receive a reduced level of co-operation from that Party.

### **Communication**

21. For the purposes of this Protocol, the following are lead contact points:

In SEPA: Kim Bradley, Circular Economy (0131 273 7320)  
[Environmental.Liability@sepa.org.uk](mailto:Environmental.Liability@sepa.org.uk)

In SNH: John Kerr, Protected Areas & Surveillance (01463 725300)  
[John.Kerr@nature.scot](mailto:John.Kerr@nature.scot)

In MS: Marine Planning and Policy Division (0131 271 9700)  
[marinescotland@gov.scot](mailto:marinescotland@gov.scot)

22. The Parties are committed to working together to raise awareness and understanding of the requirements of the Regulations amongst businesses, the public sector, non-governmental environmental organisations and the general public, within the constraints of available resources.

23. The Parties will also seek to enhance mutual understanding of each others' roles and responsibilities, amongst their staff through dissemination of this Protocol and assistance with staff training where appropriate.

### **Dispute Resolution**

24. If any of the Parties has any issues, concerns or complaints about any matter in this Protocol, that Party shall notify the chief executive (whosoever termed) of the other Parties and the chief executives (or their nominees) of the Parties shall then meet to seek to resolve such issues, concerns or complaints. Such meeting shall take place within 14 days of the date of receipt of notice issued under this paragraph or as soon as reasonably practicable thereafter.

## **Review**

25. Where any of the Parties consider it appropriate to amend the Protocol, for example, so that it can be kept current and reflect best practice, all Parties must consider the proposed amendment. Any amendments must be made by mutual agreement between all Parties.
26. Each Party may initiate a formal review of this Protocol as required by serving three months' written notice on the other Parties stating the Party's reason for the review and summarising what changes it believes are necessary.

## **Term and Termination**

27. This Protocol shall commence on the commencement date, being the last date of execution of this Protocol.
28. Any Party may terminate this Protocol by giving at least three months' notice in writing to the other Parties at any time.
29. If as a result of a Party withdrawing from this Protocol in terms of paragraph 28, either of the remaining Parties may terminate this Protocol by giving at least three months' notice in writing to the other Party at any time.
30. Notwithstanding termination of this Protocol under paragraphs 28 or 29, the Parties shall continue to co-operate in accordance with this Protocol with respect to all requests for assistance that were made under the Protocol prior to its termination and all information obtained under this Protocol will continue to be treated in accordance with paragraphs 17 and 18.

## **Miscellaneous**

31. The Parties shall execute three copies of this Protocol one of which shall be retained by each Party.

SIGNED for and on behalf of  
SCOTTISH ENVIRONMENT PROTECTION AGENCY  
by TERRY A'HEARN

at STIRLINGS on the 20<sup>th</sup> day  
of JANUARY 2020 in the presence of:-



.....  
Authorised Signatory

Witness..... Margaret McLean .....

Full Name..... MARGARET MCLEAN .....

Address..... STRATHMALLAN HOUSE .....

CASME BUSINESS PARK, STIRLINGS FK9 4TZ

SIGNED for and on behalf of  
SCOTTISH NATURAL HERITAGE

by SALLY THOMAS

at EDINBURGH on the 16 day

of JANUARY 2020 in the presence of:-

.....  
Sally Thomas  
Authorised Signatory

Witness..... Sarah Hutcheon .....

Full Name..... Sarah Hutcheon .....

Address..... Silvan House, .....

231 Corstorphine Rd, Edinburgh

EH12 7AT.

SIGNED for and on behalf of  
MARINE SCOTLAND

by MICHAEL PALMER

at EDINBURGH on the 7<sup>TH</sup> day

of JANUARY 2020 in the presence of:-

Michael Palmer  
Authorised Signatory

Witness R. Bower

Full Name RACHEL BOWER

Address 9B NORTH, VICTORIA QUAY,  
EDINBURGH, EH6 6QQ