

# Better Environmental Regulation: SEPA's Change Proposals

# Key issues in this consultation and what they mean

## At SEPA, we want and need to:

- > change the way we work so that we can meet current and future environmental, social and economic challenges;
- > operate at a lower cost overall and do the best possible job with the resources we have available;
- > simplify our processes and improve our services;
- > have simpler and more flexible funding arrangements;
- > have legislative reform where necessary, so that Scottish environmental regulations can be simpler, more integrated and proportionate;
- > receive your ideas, feedback and support in shaping our proposals for change.

## What does this mean for SEPA?

We will deliver SEPA's outcomes and fulfil its values of 'environment, excellence and engagement', by:

- > being more flexible, innovative and responsive;
- > prioritising resources according to risk and focusing on the most important environmental issues;
- > working through partnerships to achieve multiple benefits for Scotland;
- > improving our understanding of the environment, the needs of business and local communities;
- > being smaller, both in terms of budget and staff complement.

## What does this mean for you?

By changing SEPA we want to ensure that:

- > Scotland's environment is protected and improving;
- > harms to the environment and human health are reduced;
- > people and communities across Scotland are actively engaged in protecting the environment;
- > environmental information and advice is easily accessible, influential and useful;
- > all SEPA's customers continue to find our staff helpful, knowledgeable and responsive to your needs, whether you are a regulated business, a partner organisation or a member of the public;
- > businesses are supported in complying with environmental regulations and/or in adopting good practice;
- > businesses that are non-compliant, performing poorly or operating illegally, are dealt with robustly and can expect stronger sanctions;
- > businesses that operate lower risk activities, perform well and are operating legally can benefit from a simpler, more proportionate, regulatory approach;
- > our services are significantly less bureaucratic (e.g. with shorter and easier to understand forms and licences).

By doing all of these things, we can focus appropriate resources on responding to environmental incidents, investigating environmental crimes and tackling environmental harms.

# Introduction

The purpose of this consultation is to set out, and seek a wide range of views on, our proposals for better environmental regulation. We believe the time is now right to consider how we, with others, can protect and improve Scotland's environment more efficiently and effectively in future.

Overall, the aim is to provide a proportionate, risk-based approach that will drive environmental improvements and reward good performance, while still providing reassurance that tough action will be taken against those who fail to meet acceptable standards. The Scottish Government fully supports and promotes the principles of better regulation and is committed to working with SEPA to deliver this.

The overall objective is to enable SEPA to deliver an effective and proportionate regulatory service for Scotland; one that will allow it to focus on priorities and to work with businesses and individuals whose activities pose higher environmental risks or who are struggling to comply with legislative requirements.

This is a critical point for SEPA and for public services generally in Scotland and we welcome your views on this consultation. We want to continue to be an effective force for the environment and for Scotland, but we want - and need - to change in order to do so.

The next two to three years will be a very significant period as public finances come under even greater pressure. We hope that you recognise the challenges that we face and tell us whether you agree with what we are proposing to do to meet these.

We have focused this consultation on those areas that we believe will bring about the biggest transformation of our regulatory and scientific services to date. This will not be the only opportunity for you to express your views, as we will also be consulting on the more detailed aspects of implementation in the financial year 2011-2012.

Your views on the major regulatory and organisational changes that we wish to realise are essential in shaping our future.

# Background

SEPA is changing because we want – and need – to change, so that we can move with the times and continue to do the best job possible for Scotland's environment.

As Scotland's environmental regulator we are here to protect and improve the environment, and to do that we have to spend our increasingly limited resources on three things: our people, property and processes. We expect to make significant savings on all three of these areas. This transformational change agenda has already started, but we need to go further.

We want to be able to focus most effort on the environmental problems and issues that matter most, so that our work can deliver the greatest benefits for Scotland. A high quality environment is one of the key foundations of Scotland's economic success. Protecting and improving it requires a flexible, innovative

and adaptable organisation that can deal with environmental challenges, both expected and unexpected. We want SEPA to continue to be a world-class environmental regulator, doing better with less and delivering services that are efficient, effective, and that give the necessary value for the money invested in us.

We will do everything within our control to drive our change agenda forward, but we can't achieve the extent of change we believe Scotland needs without significant reforms. For example, one of the more important changes needed is legislative reform, where necessary, which can integrate and simplify Scottish environmental regulations.

## Some of SEPA's services

### **Environmental regulation**

We issue environmental permits and licences, and inspect regulated sites.

### **Flooding**

We deliver Scotland's national flood warning service and have a major new role in implementing flood risk management and reservoirs legislation.

### **Environmental science**

We monitor the quality of, and report on the state of Scotland's environment.

### **Information and advice**

We publish a wide range of information and advise businesses, government and the public on environmental issues.

## Progress so far

In *SEPA's Annual Report 2009-2010*<sup>1</sup>, we demonstrated our best ever performance. This was against a challenging backdrop of reducing in size by 10% (120 posts in total) by the end of March 2010, and taking a further £7.6m out of the business. This included £5m in efficiency savings, far exceeding the Scottish Government's target of £1.45m. We achieved this with support from partners and a lot of effort by our own staff.

A good example of the progress we made is our improved [planning service](#)<sup>2</sup>. We put into place new ways of working, aimed at providing a more responsive, proportionate and enabling planning service. This has dramatically improved our performance, with over 95% of all planning consultations responded to within agreed deadlines. These improvements have been recognised by planning authorities and the development industry as good practice.

<sup>1</sup>[www.sepa.org.uk/about\\_us/publications/annual\\_reports.aspx](http://www.sepa.org.uk/about_us/publications/annual_reports.aspx)

<sup>2</sup>[www.sepa.org.uk/planning.aspx](http://www.sepa.org.uk/planning.aspx)

## Forces for change

Despite these achievements, we still face significant challenges:

### Customer views, modernising regulation and tackling environmental crime

Listening to our customers and stakeholders and engaging locally with communities has helped us improve our services. Modernising and simplifying the way we regulate and creating a supportive business environment have come through as priorities for regulated customers. For other stakeholders, maintaining our transparency and accountability for implementation of environmental law is important. They have also expressed a desire for citizens to be engaged in decision-making and having improved access to information. Environmental legislation has developed over many years in response to specific problems and EU directives. This has led to a wide range of different regulations and approaches, designed to meet different needs at different times over the past few decades. The cumulative result of this is significant complexity in the way we have to regulate. This is a concern to our customers and a significant barrier to the progress we want to make. What we have now is far from simple and nowhere near the level of integration required to meet today's needs. We believe that a major shift in approach is required and that legislative reform is needed to deliver integration across the main regulatory regimes which SEPA is responsible for implementing and enforcing. Furthermore, a system of stronger penalties and sanctions that deters and punishes offenders and changes their behaviour is essential.

### The changing nature of environmental challenges and solutions

Many of the current and future environmental challenges facing Scotland, such as adapting to climate change and moving to a low carbon economy, are multi-dimensional; they require many different interventions across multiple disciplines in order to address them effectively. A new approach that is integrated, shared and not restricted to single actions under separate regulatory frameworks, is therefore needed.

There have also been major scientific and technological advances that offer new opportunities for protecting the environment and human health. We need to take advantage of these developments, because you can't solve today's and tomorrow's environmental problems using yesterday's toolkit.

“The environment should be valued as an asset that is fundamental to Scotland’s economic success and our quality of life.”

SEPA Chairman, David Sigsworth

### Driving economic recovery

Protecting Scotland's natural resources is vital to Scotland's economic recovery. Many of the mainstays of that recovery in Scotland depend on the environment. Established industries like tourism, agriculture and the food and drink trade depend on our high quality air, land and water, and there are huge new economic opportunities in the renewable energy and clean technology sectors too.

SEPA is well placed to play its part in helping the recovery by protecting natural resources - the environmental assets on which many sectors depend - and by enabling innovation to help deliver a low carbon economy that puts Scotland at the forefront of the clean technology sector.

## Better public services

Like other publicly funded bodies, SEPA is seeing increasing pressure on its budget and we want to make sure that every pound invested in us is used effectively. This will depend upon a new approach that focuses our resources on the highest risks, the poorest performers and effectively tackling environmental crime, whilst continuing to protect and improve the environment for communities across the country and contributing to sustainable growth.

## Delivering in partnership

Solving Scotland's environmental challenges will depend upon public, private and voluntary organisations working together in new ways to bring the right resources and expertise together.

Building and maintaining productive partnerships will be an essential step in meeting these challenges.

# The vision for better environmental regulation

## Best practice on better regulation

SEPA has been, and will continue to be, a proactive and leading organisation in shaping and implementing 'Better Regulation'. We have aligned with the principles from the [Hampton Review](#)<sup>4</sup> (2005) on the effectiveness of inspection and enforcement and the [Macrory Review](#)<sup>5</sup> (2006) on environmental penalties and sanctions. We have also piloted projects with the [Regulatory Review Group](#)<sup>6</sup> and worked closely with other environment agencies in the UK and Europe, and with the European Commission<sup>7</sup>, engaging early, providing advice and exchanging information on what works and where improvements could be made.

## Building on established principles

Over the past five years, we have set out the key principles which drive the way we work. We are consulting on some profound changes we now want to make, but those key principles remain.

In 2005 we published our first vision for regulation<sup>3</sup>, which established a series of overarching and high level principles, including the precautionary principle, the polluter pays principle and sound scientific, regulatory, and financial and policy evidence. All of these are intended to contribute to a sustainable and successful future for Scotland.

These principles are at the core of our proposals and shape all of the changes that we set out in this consultation. We have developed these from our work with Scottish, UK and European partners and they are informed by national and international best practice.

The five key principles of better regulation are:

- > Proportionality
- > Consistency – fairness and legal correctness
- > Transparency
- > Accountability
- > Targeted – efficient, effective and evidence-based

<sup>3</sup>[www.sepa.org.uk/about\\_us/publications/better\\_regulation.aspx](http://www.sepa.org.uk/about_us/publications/better_regulation.aspx)

<sup>4</sup>[www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system](http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system)

<sup>5</sup>[www.bis.gov.uk/files/file44593.pdf](http://www.bis.gov.uk/files/file44593.pdf)

<sup>6</sup>[www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group](http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group)

<sup>7</sup>For example, IMPEL (<http://impel.eu/>) and the Network of the Heads of Environment Protection Agencies (<http://epanet.ew.eea.europa.eu/>)

“We want to achieve a step change in environmental regulation and science that delivers world class environmental management in Scotland.”

SEPA Chief Executive, Campbell Gemmell

We will achieve this step change by:

- > further improving our performance as a world class environmental regulator;
- > delivering a leading edge, fully integrated, environmental protection service for Scotland;
- > delivering world class scientific services and being an influential authority;
- > providing evidence to guide policy decisions and inform the public;
- > focusing more effort on the most important environmental risks and harms, delivering the greatest benefit;
- > being a flexible and adaptable organisation, responding swiftly to both short-term emergencies and emerging issues;
- > working in partnership with others to tackle environmental issues;
- > being more responsive to public needs, by engaging with the public to help them better understand the environment, informing them of key environmental challenges and sharing our information more widely;
- > being a smaller, more efficient organisation, doing better with less.

## Our proposals and your views

We are looking to take forward this vision by proposing changes to the way we regulate and monitor. In this section, we set out the principal areas of change upon which we are seeking your views.

### Delivering better environmental regulation

Environmental legislation has a long history and, over the years, regulations have been put in place to tackle many environmental and health-related issues, such as water, air and land pollution, waste management, and the control of radioactive substances. Each has served its purpose, but they do not always provide for an integrated approach. This is a challenge now as new and emerging, cross-cutting, environmental issues arise, such as climate change and making the transition to a low carbon economy.

How SEPA regulates reflects choices made over decades and the legal and technical issues that have arisen in implementing Scottish environmental law.

Each of the principal pieces of legislation for water, waste, pollution prevention and control and radioactive substances has evolved different administrative arrangements, reflecting the particular issues they were designed to address. This places unnecessary demands on both SEPA and those regulated by us.

The environment does not work in regulatory compartments. In order to address both current and future environmental, economic and social challenges, a simpler, smarter and more integrated model is needed; this is what we mean by 'better environmental regulation'.

We have listened to our customers and taken a close look at the range of legislation and regulations and how we currently implement them. We have concluded that they could be far simpler and more integrated than the way they are delivered now.

**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?**

## Environmental and clean technologies

A key challenge for Scotland will be making the transition to a low carbon economy in order to meet targets set in climate change legislation. Part of this transition will need a regulatory model in place that is sensitive to the need for innovation and that promotes the use of emerging technologies that can help industry improve their environmental performance. A sector management approach which enables the development of environmental and clean technologies could make Scotland a world leader in this area. In turn this will open up significant opportunities for Scottish companies and for knowledge transfer to other countries facing similar challenges.

## What is better environmental regulation?

Better environmental regulation is essentially about simpler and more effective regulation; regulation that reduces burdens, simplifies bureaucracy and gives us the tools to tackle poor practice and environmental crime. It is also about proactively regulating high risk activities whilst being supportive and more responsive to lower risk activities. We would also expect to reduce effort on consistently high performers, whilst focusing more effort on poor performers, with stronger penalties for failure. This relies upon having the right evidence on the environment to help us understand the nature of risks.

To deliver better environmental regulation we propose to develop our capabilities in three key areas:

1. improved sector management;
2. targeted problem-solving; and
3. simpler regulation.

Our proposals consist of what we feel is required for risk-based, targeted monitoring of the environment.

### 1) Improved sector management

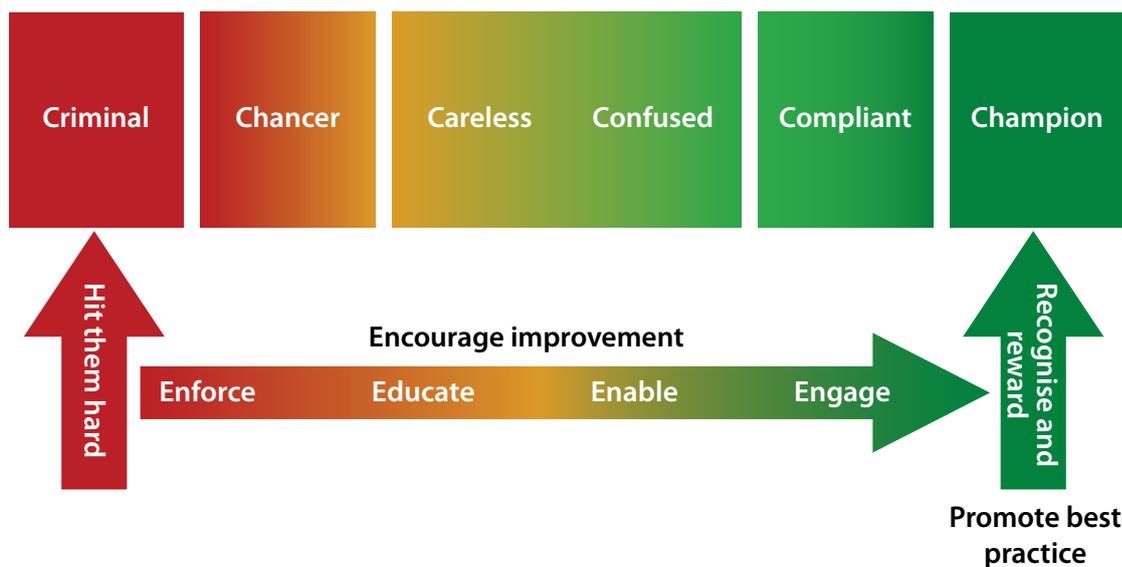
Sector management is about three things:

- > understanding the impacts on the environment, human health, climate and society at large, of 'harms' from particular industry sectors and working with stakeholders to address these;
- > deciding which sectors are strategically and operationally significant and working with these sectors, and partners, to build shared outcomes for improvement;
- > ensuring that we have open, positive and effective relationships with our customers.

Understanding our regulated customers and the reasons why they are compliant or not is a very important part of being an effective regulator, as is having the right tools and partnerships in place to ensure compliance.

Sector management requires SEPA to be flexible in its approach and the tools it deploys. To assist implementation of our proposed new regulatory model (see page 10), we have adopted a compliance and engagement spectrum to help inform the way we work.

## Compliance and engagement spectrum



The objective is to know where regulated operators are placed on the spectrum and to tailor our actions accordingly. The tools and enablers to encourage compliance need to be developed and used with this in mind.

Most operators in Scotland tend towards being “compliant” or “champions” for the environment. For well-managed and consistently high performing sites, proportionate and risk-based regulation can be adopted.

A sizeable proportion of operators will be in the “careless” or “confused” categories, and will require information, advice, guidance and support from SEPA and others. The aim would be to enable and encourage improvement that moves these operators along the spectrum and into the “compliant” or “champion” category.

Where operators are involved in criminal activities or where their negligence leads to significant impacts on the environment, on communities or on people’s health, SEPA considers that they should be targeted and, where necessary, punished. In such cases, we would expect to intervene in order to protect the public interest and the environment, as well as those operators who willingly comply with the law.

During 2010 we have been working on nine projects to identify patterns of non-compliance and illegal activity. The aim is to improve compliance and engage those businesses who have operated outside the law. Robust compliance assessments along with effective enforcement and penalty regimes are needed to discourage poor behaviour (see our proposals for enforcement, below).

Where regulated operators fall on the spectrum will therefore result in quite different actions from SEPA.

SEPA needs the legislative powers and organisational capacity to be able to deliver each of these different actions effectively.

### Compliance assessment

Each year SEPA assesses performance against licence conditions through our compliance assessment scheme. The 2009 results show that 63 out of 458 Pollution Prevention and Control Part A sites were classed as “poor” or “very poor”. Thirty-five of these sites were in the waste sector (27% of this sector), while four were in the minerals sector (31% of this sector). We are planning more intervention in these sectors to bring about improvements in performance. By contrast, 87% of the chemicals sector was classed as “excellent” or “good” – reflecting where we have effective sector management in place.

## 2) Targeted problem-solving

Problem-solving means targeting SEPA's resources on the environmental problems that are causing or are likely to cause the most harm to the environment and/or human health. This does not replace our routine regulatory work (e.g. licensing, permitting, inspection and monitoring), as this is necessary to protect and improve the environment and comply with European law. In practice, problem-solving means gathering intelligence on specific harms and intervening to solve them.

We are using the internationally-recognised work on problem-solving from Professor Malcolm Sparrow of the Harvard Kennedy School of Government to better plan and deploy resources to address key environmental harms.

For example, we have already successfully carried out large scale multi-agency enforcement and prevention work for unlicensed waste activities. This work with police forces, the Crown Office and Procurator Fiscal Service (COPFS) and Her Majesty's Revenue and Customs (HMRC) proves that this problem-solving approach works; environmental damage is dealt with and other crimes are also often detected. Solving these problems results in greater environmental benefit for each pound spent.

## 3) Simpler regulation

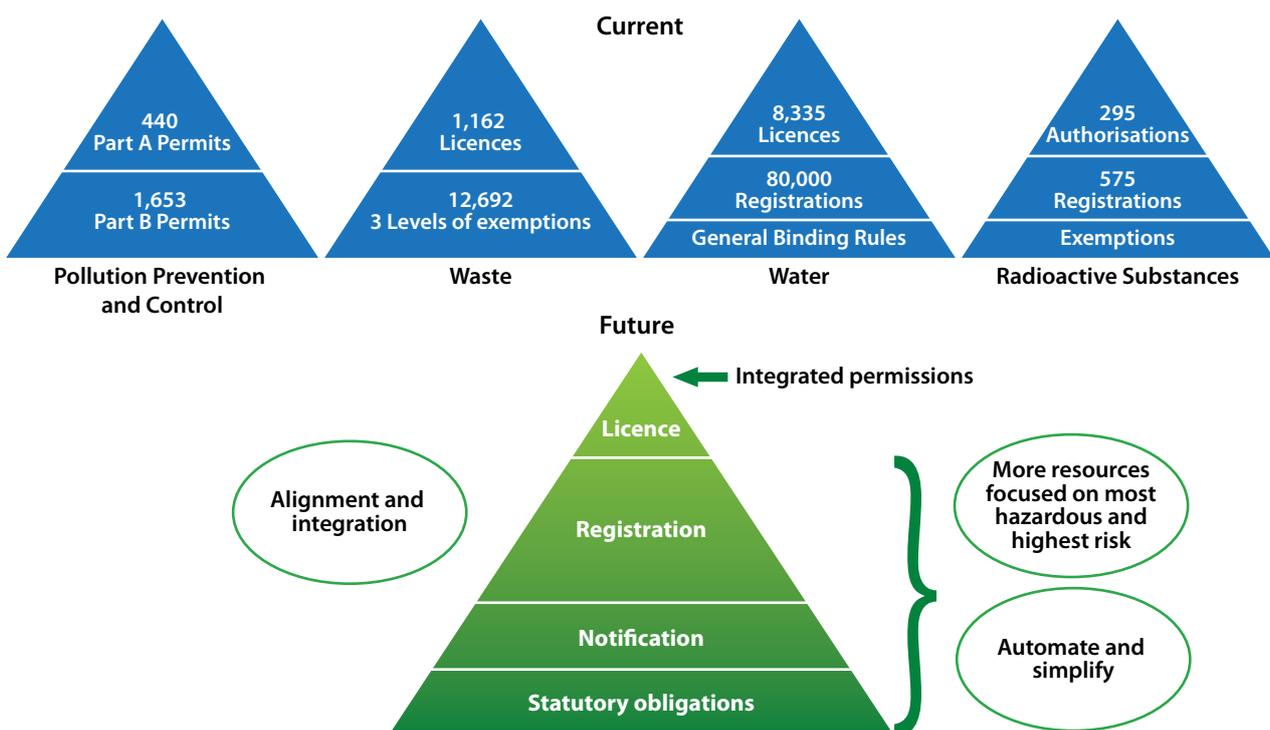
Environmental regulation is currently more complex than it needs to be, reflecting the separate regulations that have evolved over past decades. 'Simpler' means easier to understand, to operate under, to enforce, and to comply with.

The first step of this is to simplify how regulations are applied. This is about reducing burdens and simplifying or removing bureaucracy and complying with environmental law.

Each of the principal environmental regulations for air, water, waste and radioactive substances has different administrative arrangements, and this results in duties and definitions that are not aligned. It makes them complex to understand and administer and results in multiple permissions, multiple inspections, multiple inspectors and different monitoring arrangements.

We need a new, integrated, regulatory model to address these issues. Our proposals for a new model are set out below, together with the current situation and number of permissions in each of the principal regimes.

### The new regulatory model



The model will work alongside an assessment of risk and will mean that:

- > higher risk activities are covered by more detailed and integrated licences;
- > lower risk activities are covered by simple licences, online registrations or notifications;
- > the lowest risk activities will be expected to comply with statutory obligations (e.g. General Binding Rules and approved codes of practice).

These changes will be supported by a better balance of effort in terms of our monitoring of the environment. By this we mean a risk-based, better co-ordinated approach that involves partners and the use of smarter techniques. We are planning to do less 'end of pipe' monitoring, but more targeted and risk-based monitoring that connects up to the evidence gathered by others. By doing so, we believe that we will be helping to identify the most important environmental problems that need to be addressed in Scotland.

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### 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?**

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### 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?**

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## Inspections and monitoring

Despite significant reductions over the past 10 years, SEPA undertakes more site inspections than other UK and European countries. We propose to use a risk assessment tool to determine the appropriate inspection frequency and to change the nature of our site visits.

SEPA's approach to permitting and inspection will take account of:

- > the nature of activities (e.g. how hazardous they are);
- > the level of risk to the environment, and;
- > operator performance and compliance.

We currently put a lot of effort into monitoring compliance by taking samples of discharges to ensure hazardous operations are within legal limits. We do this to drive improvement and to provide public confidence. For consistently compliant operators, we feel that an alternative approach could be adopted. The feasibility of more operators self-monitoring to agreed standards will be explored as part of our risk-based approach to regulation.

### A new regulatory model

**Licence** – activities that require a permission that can be bespoke and detailed or simple and standard.

**Registration** – activities that must be registered with SEPA and where a formal permission is issued.

**Notification** – activities which must be notified to SEPA but where no formal permission is required.

**Statutory obligations** – statutory codes of practice which all operators are legally obligated to follow. This includes General Binding Rules (GBRs).

Our changes to inspections and monitoring could mean that:

- > overall, we will carry out fewer inspections which will be targeted at areas of greater risk;
- > those we do undertake will be increasingly based on gathering evidence to find the root cause of issues and the basis for subsequent action (i.e. an audit-based approach);
- > we have improved planning and work better with customers to resolve issues;
- > more operators are self-monitoring, where appropriate to do so and in accordance with our requirements.

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**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?**

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**Question 5**

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

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## A balanced understanding of the environment

We have reassessed our scientific effort and concluded that we need to achieve a better balance of effort and communicate more clearly the key issues we all face. Our data provide the evidence for action and we are committed to providing advice and analysis on the environment.

At present, there is no mechanism for co-ordinating the overall environmental monitoring effort across the range of organisations that collect environmental data in Scotland. Organisations try to avoid duplicating the monitoring activities of others; however, they will have differing approaches to monitoring, which may make it difficult to develop a balanced and holistic view of environmental issues. Initiated by the Co-ordinated Agenda for Marine, Environment and Rural Affairs Science (CAMERAS), SEPA and Scottish Natural Heritage (SNH) are leading on the development of a Scottish Environmental Monitoring Strategy. This will help organisations work together to ensure our monitoring networks are fit for purpose now and for the next 25 years.

We have reviewed SEPA's monitoring networks and re-aligned monitoring effort to address the greatest risks to the environment. Our water monitoring network has been risk-assessed, and our monitoring effort reduced where the pressures are well understood and changes in the environment are minimal. This resource has been refocused towards water monitoring networks in priority areas, increased air and soil monitoring where appropriate, as well as tackling emerging issues such as a network dedicated to climate change monitoring.

We need to make sure that we are monitoring the right issues, in the right place, at the right time, using the right techniques in order to support better environmental regulation.

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**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?**

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## Effective enforcement

To support a risk-based approach and the planned reduction in inspection and monitoring, it is important that a much firmer approach to non-compliance is also developed. We believe our proposals for simpler, proportionate regulation should be supported with strong measures that effectively tackle the poorest performers. This includes significantly more robust penalties, including fines that better reflect the costs avoided by poor practice, that cover the cost of the environmental damage caused, and that cover the regulator's costs in investigating the permit breach or crime.

We will continue to work in partnership with others and ensure that we are efficient, fair and legally correct in our enforcement actions.

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### 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?**

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Accordingly, we are seeking the strengthening of criminal sanctions (including raising the penalties for conviction, recovering SEPA's investigation costs and using the Proceeds of Crime Act) and considering new civil sanctions<sup>8</sup>.

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### 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?**

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## Penalties for environmental crime

The Appeal Court recently increased an unduly lenient fine of £8,000 imposed on an operator for committing waste management offences to £90,000. We believe this sends the right signal: environmental crime needs to be taken seriously.

## Integrated regulation

For individual sites we want to move from the current need for multiple permissions to a system that relies on single site permissions.

We believe that this will be simpler to operate and comply with, leading to greater simplicity, efficiency and effectiveness. Approximately a quarter of the sites currently regulated as licensable activities by SEPA are subject to multiple permissions (e.g. licences, authorisations, permits and registrations) which have the potential for a single site permit option. In addition, we would like to explore the potential use of operator permissions where, for example, a local authority with separate permissions for a number of civic amenity sites could instead have a single permission covering all of these sites (i.e. an operator level permit).

<sup>8</sup>These may include:

*Fixed Penalty* – relatively low fines for minor breaches caused by non-criminal carelessness or negligence; *Variable Penalty* – discretionary fines reserved for use for more serious non-criminal breaches; *Compliance Notices* – served for a breach with a future risk; *Restoration Notices* – to require restorative improvements from operators; *Stop Notices* – to prohibit activity until remedial action has been taken to prevent serious harm; *Enforcement Undertakings* – flexible sanctions where there is evidence against an operator but who is willing to address non-compliance issues through an "undertaking".

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**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?**

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**Service improvements and simplification**

By 2015, SEPA's environmental science functions will be more flexible, balanced and integrated. Science services will be more pro-active, influential and interactive, making them better able to respond to changing pressures and risks.

Scotland's environmental data are dispersed and can be hard to find, making it difficult to get a full picture of the environment. 'Scotland's Environment' website, a government initiative being led by SEPA, will bring together key information and data from across environmental organisations into one resource, enabling access and collaboration. Working in partnership with others, we will co-ordinate the production of concise 'state of Scotland's environment' reports, giving a picture of the condition of our environment and the main risks facing it. This information will be used to support the targeted problem-solving work explained on page 10.

We will maximise the value gained from our environmental data.

We intend to invest in on-line systems to support lower risk permissions and in the preparation of General Binding Rules (GBRs) and codes of practice. We expect more regulated activities to be covered by standard permits, registrations, notifications and GBRs. These will need simpler forms and automated, on-line, interactions with us. In addition, costs will need to be recovered for:

- > systems required to support 'lower risk' permissions;
- > preparation of GBRs and/or codes of practice;
- > production of sector guidance; and
- > carrying out incident response and surveillance work for failure to comply.

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**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?**

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We aim to offer excellent regulatory and scientific services but we consider that there are opportunities for us to provide new, optional, value-added services, such as fast-tracking a permit application or carrying out an application-checking service. These services would be chargeable.

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**Question 11**

**Do you agree that we should offer and be able to charge for such services?**

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We will share our scientific information and knowledge to help shape policy making in Scotland. We are changing to interact more with the public and partner organisations, sharing advice and information, identifying emerging issues and engaging with the public in a genuine two-way dialogue on the environment. This includes initiatives that engage the public and help them to help us and the environment. We call this "citizen science".

Our monitoring resources need to be used more flexibly, so we can respond quickly to short-term incidents to enable us to meet the emerging challenges for Scotland's environment.

## Responding to environmental incidents

In March 2010 the Eyjafjöll volcano started to erupt. The deposition of ash in Scotland disrupted air traffic and raised concerns for human and animal health, as well as for the wider environment. We responded immediately, increasing our monitoring and analysing data from SEPA and other agencies to identify and assess the risks. We worked with 14 other agencies, as well as the public, to provide on-going assessments of the risk from the ash and information for the public.

### 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?**

### 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?**

## In practice, what does better environmental regulation lead to?

Better environmental regulation will lead to the following changes.

- > An overall reduction in the number of licences:
  - a lower number of simpler, more concise and more integrated site permits for higher risk activities;
  - a larger number of lower risk activities covered by simpler licences or online registrations or notifications;
  - a larger number of the lowest risk activities expected to comply with statutory obligations (as GBRs and approved codes of practice).
- > A change in our approach to inspection and monitoring;
  - a general reduction in inspections of lower risk sites;
  - more resources will be used to target sites of highest risk, poor performers and illegal operators;
  - retaining our ability to carry out surveillance and to respond effectively to incidents;
  - less 'end of pipe' monitoring by SEPA, with operators taking more responsibility for their own monitoring, where appropriate to do so and in accordance with our requirements;
  - developing a range of incentives, including the prospect of reduced charges, for consistently high performers. This would build on work we have already undertaken via our existing compliance assessment scheme.
- > A better balance of monitoring effort, with less water monitoring and increased air, soil and climate change monitoring where appropriate.
- > Greater emphasis on providing evidence, advice and guidance through our sector management approach and a focus on customer requirements.
- > More effective sanctions that target the poorest performers and which address environmental crime and its consequences.

### 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?**

# Enabling delivery

We have set out above our ambitions for significant changes to the way we carry out our work and what it will achieve. A number of enabling factors are required to help us realise these ambitions.

## Legislative reform

We need to be able to deliver current environmental obligations in a more integrated way. This will require some legislative reform in Scotland to enable the changes we propose. We believe the time is right for a step change in environmental regulation to give Scotland a world-class system that will deliver multiple benefits for the environment, businesses and communities across the country.

We believe that some legislative reform will be necessary to enable us to deliver better environmental regulation.

Such reform would need to include provision for:

- > a set of high-level environmental principles drawn from the different European directives;
- > a new regulatory model including, for example, single site permits;
- > new civil penalties that complement strengthened criminal sanctions.

SEPA and Scottish Government have already started to consider what we think may need to be included in any legislative reform package.

## Developing a new funding model for SEPA

SEPA's current funding model will not adequately support the changes we have set out in this document. Better environmental regulation will result in fundamental changes to how SEPA processes applications and undertakes permitting, environmental monitoring, audit and enforcement activity. More regulatory effort will be targeted on highest risk sites. These changes will dramatically affect SEPA's operations.

Our charging income pays for our routine regulatory activity but does not allow us to fund sector management or targeted problem-solving adequately, due to the inflexible nature of the existing funding model.

To enable the proposed changes, we need greater flexibility and, explicitly, we need to cross-subsidise or receive new funding for this.

We are planning to be a smaller, lower cost organisation but we need the ability to allocate resources more flexibly (i.e. according to priority) so that our routine regulatory effort, sector management and problem solving work are all properly funded and in better balance. We believe that continuing with separate charging schemes for each of our principal regulations is not serving the environment, our customers, stakeholders or local communities as well as it could.

### SEPA's funding model

In 2010–2011, SEPA received £44.3 million from grant-in-aid and expects to receive £33.2 million from charging income. In 2011–2012 SEPA will receive £39.4 million from grant-in-aid under the spending plans announced for Scotland for this period. Most of SEPA's chargeable income comes from the principal schemes for water, air (or Pollution Prevention and Control), waste and radioactive substances. There are 14 charging schemes in total. SEPA's top 10 regulated customers account for approximately 50% of total charging income.

In order to facilitate the changes needed, SEPA's funding model must be far simpler and based on fewer charging schemes.

The funding model must fully support delivery of better environmental regulation and not hinder it. Key features of a future funding model are:

### 1. Charging based on risk and performance

The funding model needs to take account of: the nature of activities (e.g. how hazardous they are); the level of risk to the environment and human health; and operator performance and compliance. This is consistent with the risk-based approach to better environmental regulation already described.

Such an approach could result in:

- > higher fees for the most hazardous, highest risk and poorest performing sites;
- > lower fees for less hazardous, lower risk, well-performing and more standard sites;
- > greater use of online registration or notification which may incur lower or nominal application charges.

### 2. Flexible use of funding

The model needs to enable SEPA to fund efficient and targeted activity which will protect the environment, rather than simply recover costs from operators for services which apply directly to their sites. We also need to provide the flexibility for SEPA to manage its resources to deal with emerging issues. This is a key requirement of successfully delivering an expansion of a problem-solving approach.

### 3. Recovering costs

The model needs to enable SEPA to recover costs of certain activities that are currently funded by grant-in-aid from the Scottish Government. Greater cost recovery may allow areas directly funded by grant-in-aid to be reduced. Initial indications have highlighted potential areas such as recovering certain costs associated with SEPA's advisory role, implementing a small annual charge for registrations and charging for some environmental monitoring costs, but other areas will also need to be explored.

Further, the model should account for the costs associated with investigation and enforcement following successful prosecution.

Overall, the new approach will mean fewer permits are applied for and managed by SEPA, but there will be more intensive engagement with sectors and single site permit holders, according to environmental risk and performance.

Regulating fewer sites has the potential to affect our income whilst at the same time we seek to grow capabilities in other areas.

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#### 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

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#### 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)?**

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# Next steps – changing SEPA

Equally as important as the changes we propose above, is the need to continue with our programme of organisational improvements to ensure that we have the right people, processes and places to deliver our services.

We have made progress in reducing our staff complement by 120 posts from a peak of 1,460 and expect to reduce this further by approximately 120-150 by April 2011, with potential further reductions over the next three years.

SEPA will be a flexible and innovative organisation, with a strong focus on deploying experts in different fields to tackle specific problems as they arise. We will have more 'centres of expertise', operating as co-located or 'virtual' teams where staff with particular expertise can work together.

We also need the right geographic footprint to support our proposals for change and to be sure we can operate effectively both locally and nationally; locally so we can be in touch with local customers and local environmental conditions; nationally so we can ensure a consistent approach to regulation right across the country.

We have reviewed our scientific services and are making efficiency savings. This includes reducing the number of laboratories we have from seven down to two, developing a national sampling team, and improving how we deploy and share the use of our survey vessels. These efficiency savings create headroom to allow the development of a more flexible and responsive science service for Scotland.

Through these approaches we will improve the efficiency and cost-effectiveness of our services.

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## 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?**

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## Having your say

This consultation asks for your views on, and support for, the principles for changing the way SEPA and the environmental protection regimes we administer work.

We have outlined broad areas and principles of change and at this stage we are seeking your general views on these, rather than points of detail about **how** the planned changes will work.

There will be a further opportunity to provide detailed comments when we consult on more developed proposals in 2011. Your views will be taken into account and factored into our future plans.

We welcome your views on this consultation until 14 February 2011. Please download the [feedback form](#) (also available on the [consultation page](#)) and return it to us in one of the following ways:

- > Print off the feedback form and send it to: Better Environmental Regulation Consultation, SEPA Corporate Office, Erskine Court, The Castle Business Park, Stirling, FK9 4TR.
- > Email the form to [betterenvreg@sepa.org.uk](mailto:betterenvreg@sepa.org.uk)

If you have any queries about any aspect of this consultation, please contact us via this email address.