

SCOTTISH ENVIRONMENT PROTECTION AGENCY

Compliance Assessment Scheme: SEPA's Response to the Consultation

1. Introduction

- 1.1 In September 2015, we consulted on proposals to review SEPA's Compliance Assessment Scheme (CAS). This document provides an analysis of the responses to the consultation and presents SEPA's conclusions on how to develop the next version of the scheme.
- 1.2 As Scotland's principal environmental regulator, SEPA issues a range of environmental licences, permits and authorisations designed to control activities that could, if uncontrolled, lead to pollution or harm of the environment. Compliance with these licences is important in ensuring that the environment, and human health and wellbeing are protected.
- 1.3 SEPA has measured compliance using its CAS since 2009. This scheme was developed to harmonise compliance assessment across several regulatory regimes covering a wide range of sites. The scheme was phased-in over a number of years to cover approximately 10,000 sites.
- 1.4 Our aim is to build on the best points of the current scheme to make CAS fairer, more consistent and proportionate for those we regulate with greater focus on breaches that cause most harm to the environment and persistent poor practice. We also want the scheme to be simpler to use by SEPA and businesses and easier to understand.

2. Way forward

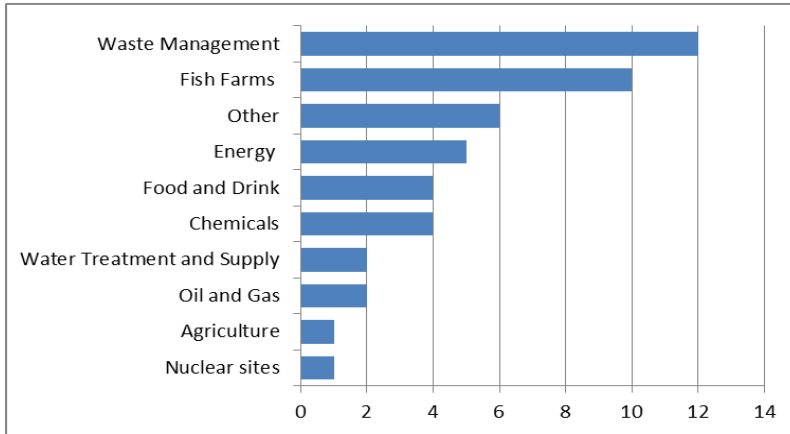
- 2.1 SEPA's Regulatory Strategy, One Planet Prosperity, sets out SEPA's ambitions to deliver environmental protection and improvement (environmental success) in ways that also create health and well-being benefits (social success) and sustainable economic growth (economic success).
- 2.2 A key part of this strategy is to drive all those remaining businesses not yet meeting standards into full compliance with the environmental laws in Scotland. To achieve this, we support those we regulate to meet their legal obligations and reach compliance quickly, easily and cost effectively.
- 2.3 The review of CAS is an important part of this process. It will ensure that our measure of compliance is fair and proportionate. Achieving full compliance is the minimum requirement we expect and is the first step for businesses to become more sustainable. Reaching minimum compliance alone however does not open up opportunities for problem solving, for game-changing innovation or for collaboration which creates new opportunities to turn the environment from a problem into something that creates new employment or which increases profitability. The most successful businesses in the 21st century will be those that see great environmental and social performance as a profit opportunity. SEPA has a specific role through the regulatory services it provides to help businesses to realise this opportunity.

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3. Overview of consultation response

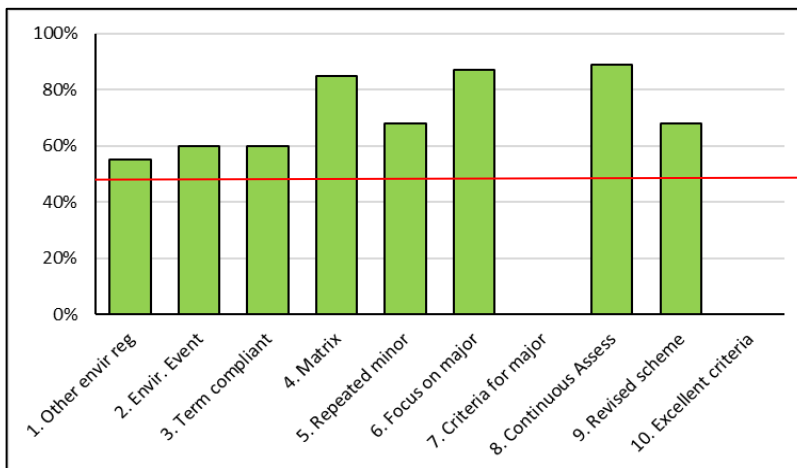
2.4 We received 47 responses to the consultation of which 22 were from two sectors (waste management and fish farm operators). This represents 1% operators who are covered by SEPA's Compliance Assessment Scheme. Those that answered included many of the larger companies. In total respondents held 30% of the licences covered by the Scheme.

Figure 1. Number of consultation responses received from different sectors.



2.5 Most respondents responded positively to the consultation with approval ratings for the proposals ranging from 55% to 89%.

Figure 2. Summary of the responses to questions that asked for approval of specific proposals.



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- 2.6 Some respondents expressed the following concerns about the consultation.
- On-line questionnaire allowed little opportunity for comment.
 - The consultations on charging, CAS and enforcement should have been issued at the same time to allow a full understanding of the implications across the different consultations.
 - Insufficient information was supplied with this document for a full and proper understanding of the possible impacts this revised scheme. A fuller explanation of the proposals is required.
 - Insufficient time was proposed to allow operators to prepare for the implementation of the scheme.

SEPA conclusions on the overview

- 2.7 We will ensure that future on-line consultation feedback forms allow more opportunity for comment.
- 2.8 Whilst the CAS and Charging have implications for each other we consider that the primary purpose of CAS is to assessment compliance. The manner in which CAS is used for charging is a matter for future charging scheme consultation. We aim to provide operators with a clear understanding of how CAS will operate so that they can respond appropriately to future proposals in the next charging scheme consultation (planned for June 2016).
- 2.9 SEPA will consult on the details of CAS by June 2017 and plans to bring it into force on 1 January 2018.

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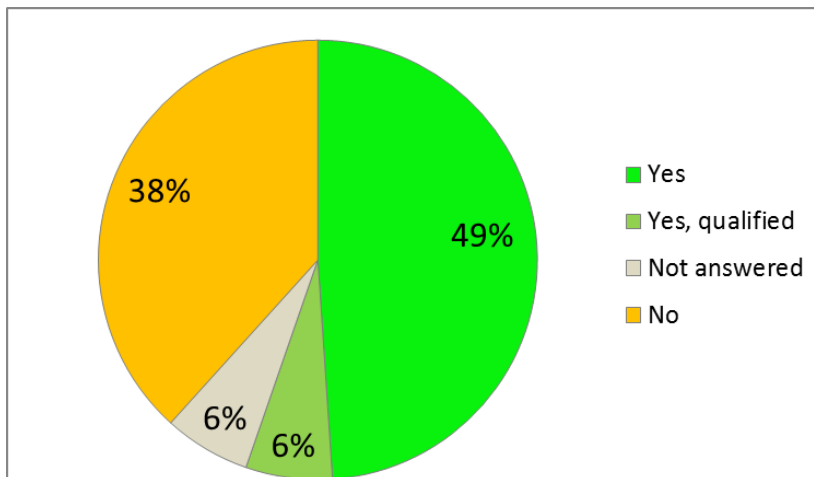
4. Specific responses and SEPA conclusions

Question 1

Do you think that SEPA should take into account compliance with other regulatory requirements when assessing and reporting compliance?

Answer	Number	%
Yes	23	49%
Yes, qualified	2	6%
Not answered	2	6%
No	18	38%
Total	47	

Figure 3. Responses to question (%).



- 3.1 The majority of responses (55%) supported the inclusion of other regulatory requirements when assessing and reporting compliance.
- 3.2 The most consistent opposition was from fish farmers, most of whom opposed the inclusion of other regulatory requirements within CAS (8 out of 10).
- 3.3 Of those who opposed the inclusion of other regulatory requirements:
 - four made reference to the inclusion of regimes not regulated by SEPA; and
 - six made reference to concerns about the introduction of increased complexity and uncertainty.

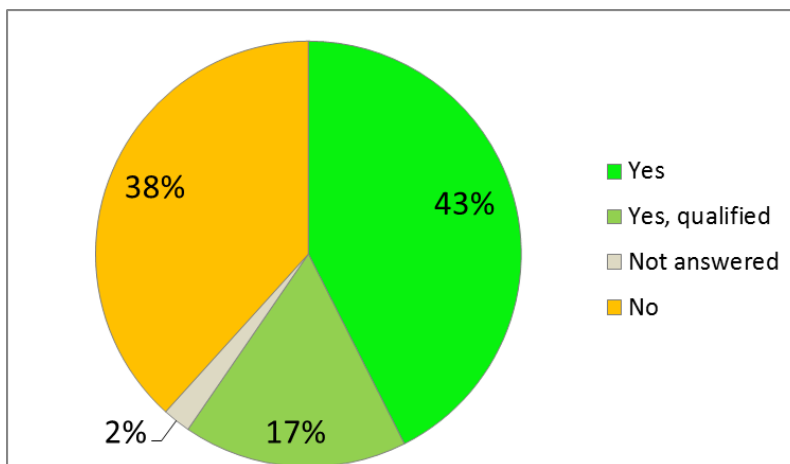
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Question 2

Do you think that environmental events not covered by the licence condition but associated with the licenced activity should be taken into account in assessment of compliance?

Answer	Number	%
Yes	20	43%
Yes, qualified	8	17%
Not answered	1	2%
No	18	38%
Total	47	

Figure 4. Responses to question (%).



- 3.4 Where an activity regulated by SEPA causes an impact upon the environment and/or people's health or wellbeing we consider this as an environmental event. This could include, for example: a polluting discharge to a river, black smoke from a factory chimney, dumping of large numbers of tires or complaints about large numbers of people about the smell from a site.
- 3.5 The responses to question 2 were very similar to those for question 1. Most (60%) supported the inclusion of environmental events. Most of those who qualified their approval, stressed that SEPA must include only those events that were the direct responsibility of the operator.
- 3.6 Respondents who opposed the inclusion of events within the CAS assessment raised concerns about the introduction of increased complexity and uncertainty.

SEPA conclusions on questions 1 and 2

- 3.7 In future, we propose to provide a CAS assessment for the following:
- licences;
 - sites;

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- operators; and
 - sectors.
- 3.8 We propose to incorporate other environmental obligations and environmental events into our CAS assessments but we will do this only at the appropriate level in the hierarchy.
- 3.9 We will continue to base our assessment of licence compliance with reference to the conditions of a licence. However, when considering compliance at a site, an operator or a sector level we consider that it is appropriate to consider other environmental obligations and environmental events (beyond those specified in licence). For example, if a waste management site complies with its licence conditions but sends waste to an illegal site (failing its duty of care obligations), CAS will record the licence as compliant, but the site and the operator as not compliant.
- 3.10 We will only include those key environmental obligations and events that are enforced by SEPA.
- 3.11 SEPA produces guidance (CAS Manual) for its staff on how to undertake CAS assessment. We will specify in the CAS Manual the key regulatory obligation that will be considered as part of the assessment of non-licence compliance issues. This will ensure that operators understand, in advance, the criteria against which their performance will be assessed.
- 3.12 We will be reviewing SEPA's classification of environmental incidents and will issue a consultation on this. We will only include incidents in our assessment of compliance where:
- SEPA has the regulatory responsibility to take action; and
 - the operator is liable for the incident.
- Link to charging
- 3.13 We will use the licence compliance information to calculate the Compliance Factor within the charging scheme.

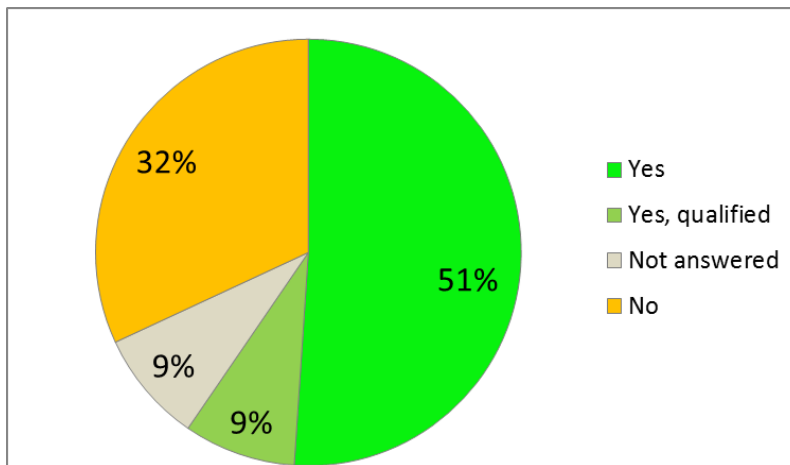
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Question 3

Do you agree that SEPA should consider those that are fully compliant as 'Compliant' and not 'Excellent'?

Answer	Number	%
Yes	24	51%
Yes, qualified	4	9%
Not answered	4	9%
No	15	32%
Total	47	

Figure 5. Responses to question (%).



- 3.14 The majority (60%) agreed that it was more appropriate to use the term compliant rather than excellent. Those that qualified their approval suggested that the:
- transition between the use of the term “excellent” and the term “compliant” would have to be managed to avoid the impression that compliant sites were deteriorating; and
 - term “excellent” should be retained for sites that performed at levels that exceeded compliance with licence conditions.
- 3.15 A number of respondents questioned more widely the descriptors used by SEPA in the compliance matrix. The consultation proposed that the compliance assessment should be made by reference to a matrix of breach against environmental impact. They suggested that the categories used in the compliance matrix should either use:
- descriptive terms such as Excellent, Good, Poor; or
 - measures of compliance (Compliant/ Not Compliant)
- 3.16 Some suggested that the term 'broadly compliant' should not be used (a site is either compliant or not).

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SEPA conclusions on question 3

- 3.17 SEPA will replace the term excellent with the term compliant. We consider that it is a more straightforward way of describing licence performance.
- 3.18 We will change the terminology used to describe levels of compliance and will consider basing it on the terms listed in the table below (under Post Consultation). We consider that this terminology is simpler and clearer.

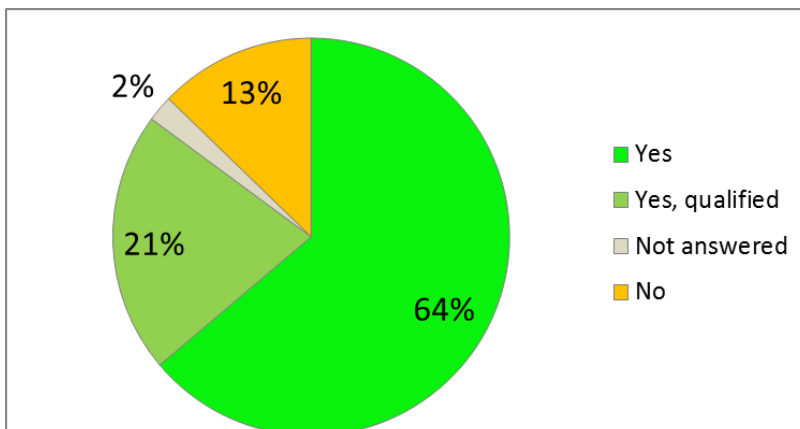
Existing	Consultation Proposal	Post Consultation
Excellent	Compliant	Compliant
Good		Non-compliant
Broadly compliant	Broadly compliant	
At risk	Improvement required	
Poor	Poor	Major non-compliance
Very Poor	Very Poor	

Question 4

Do you agree with the changes to the matrix bringing environmental impact more to the fore?

Answer	Number	%
Yes	30	64%
Yes, qualified	10	21%
Not answered	1	2%
No	6	13%
Total	47	

Figure 6. Responses to question (%).



- 3.19 The majority (85%) of those who responded agreed that the compliance matrix should take more account of environmental impacts.

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- 3.20 Those who opposed the proposal were concerned that insufficient detail had been provided on how environmental impact would be defined. They considered that the definition of environmental impact would therefore be contentious and hence not workable. This issue was also raised by some of those who qualified their approval.
- 3.21 Some consultees also questioned aspects of design of the compliance matrix:
- A site which has no breaches but has a minor incident and a site which has a major breach but no environmental impact would attract the same assessment “improvement required”.
 - The proposed consultation compliance matrix only has two ‘satisfactory’ (compliant and broadly compliant) classifications out of the nine possibilities – compared with four with the existing scheme.

SEPA conclusion on question 4

- 3.22 We do propose that CAS should give more prominence to breaches that are associated with environmental impacts.
- 3.23 We consider that the compliance matrix causes confusion and is insufficiently clear. We will therefore dispense with the compliance matrix and use the three categories described in the conclusions to question 3 together with rules for upgrading or downgrading between categories.

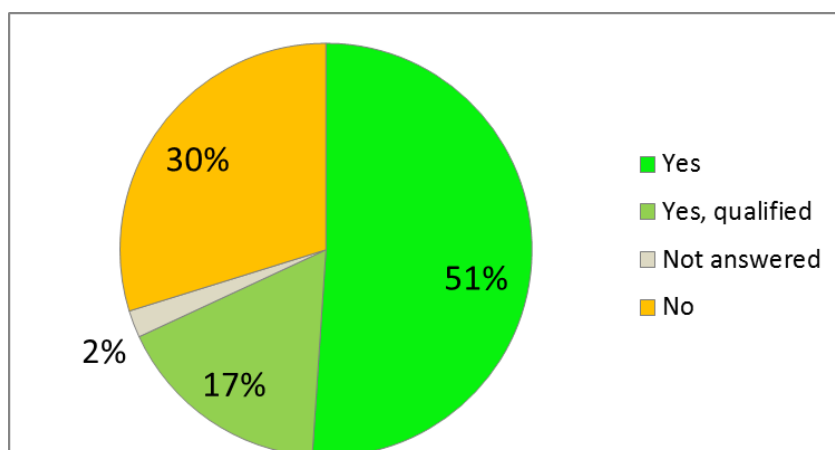
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Question 5

Do you think that the category of repeated minor breaches should be removed from compliance calculations?

Answer	Number	%
Yes	24	51%
Yes, qualified	8	17%
Not answered	1	2%
No	14	30%
Total	47	

Figure 7. Responses to question (%).



- 3.24 The existing Scheme automatically escalates four or more minor breaches (eg data returns) to the poor or very poor categories. The majority (68%) of those who responded to the consultation agreed that the automatic escalation of four or more minor breaches should be removed.
- 3.25 Some respondents who opposed the change emphasised the importance of minor breaches as an early warning of future more serious problems.
- 3.26 The most consistent concern raised by both those who said no, or said yes with qualifications, referred to the definition of minor and major breaches. In particular, concerns were raised about breaches that were defined as minor under the existing scheme but which would be considered major in the proposal. They considered that went against the stated intention of the consultation to focus the assessment on the most important breaches.
- 3.27 Some respondents pointed out that the Compliance Assessment Breach Classification was different to the compliance matrix breach definitions. They recommended that the compliance matrix definitions should be used (no breach, minor breach, major breach).
- 3.28 Respondents considered that the criteria used to escalate a persistent minor to a major breach should be clear and documented, with the priority focussed where persistent minor breaches could have the greatest risk of category A environmental

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event (the most serious events). Several respondents also highlighted the importance of considering the response of the operator to an issue. Where an operator responds quickly and effectively this should be taken into account when considering the definition of major/minor and when escalating minor breaches to major. One respondent suggested that there should be an independent arbitration process where operators did not agree with the escalation of a breach from minor to major.

- 3.29 One respondent did not consider it appropriate for the non-payment of SEPA charges to be considered a breach.

SEPA conclusions on question 5

- 3.30 We will no longer automatically escalate four minor breaches to be equivalent to a major breach.
- 3.31 We will only escalate minor breaches to major breaches where the breaches are persistent or there are:
- impacts upon the environment and/or human health/wellbeing; or
 - clear risks to the environment and/or human health/wellbeing should this breach continue; or
 - attempts to gain an unfair economic advantage over competitors;.
- 3.32 We consider that it is appropriate to escalate minor breaches to major, where the breach is persistent and intentional or a result of negligence, because this type of behaviour is likely to lead to major breaches that have environmental or health or wellbeing consequences. We will wish, therefore, to devote more resources to such sites. We will consult on the details of the criteria that we will use to escalate a minor to a major breach when we publish the draft CAS Manual.
- 3.33 Decisions to downgrade a site's compliance because of persistent minor breaches will be discussed with the operator. Should the operator disagree with the final decision, they can follow SEPA's [complaint handling procedure](#).
- 3.34 Our response to the expressions of concern about the definition of major breaches will be covered in the conclusions associated with question 7.

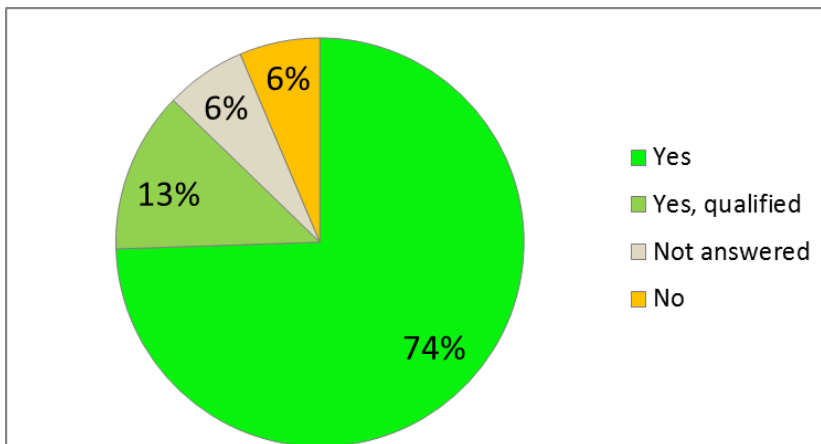
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Question 6

Do you think that focusing effort on major non-compliance will allow SEPA to be more proportionate in its approach to assessing compliance?

Answer	Number	%
Yes	35	74%
Yes, qualified	6	13%
Not answered	3	6%
No	3	6%
Total	47	

Figure 8. Responses to question (%).



3.35 The most (87%) of those who responded agreed that focusing effort on major non-compliance will allow SEPA to be more proportionate in its approach to assessing compliance

3.36 Most of the concerns (nine respondents) raised were associated with the classification of too many breaches as major events. Three respondents considered that the focus on major events would mean that SEPA would miss developing problems which could have been revealed by minor breaches.

SEPA conclusions on question 6

3.37 We will ensure that the definition of major non-compliances does focus on the major issues. See our response to question 5. .

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Question 7

Do you have any suggestions to improve the criteria used to define major breaches?

- 3.38 A total of 26 respondents offered 47 comments on how to improve the criteria to define major breaches.
- 3.39 Most suggestions (33) related to the reduction of the number of criteria which would define a breach as Major. Most of these were proposed because respondents did not consider that the criteria were associated with environmental impacts. A further 10 referred to the incorporation of considerations which would mitigate the definition of a breach as major. There were 10 suggestions that referred to the provision of better guidance/explanation for criteria.

Suggested improvements	No respondents	SEPA conclusions
Criteria 8 (Data returns) should not be considered major unless persistent	12	√
Criteria 4 (non-payment) should not be considered major	4	√
Criteria 2 not all instances of failing EU Directive requirements should be major	4	√
Some allowance for mitigating circumstances (eg operator speed of response).	4	√
Distinction between unintentional and intentional/negligent breaches	3	√
Need clarity on escalation rules from minor to major	3	√
Concerns over “risk” of a Category A event and how it will be used	3	x
Compliance matrix should allow for more compliant/broadly complainant outcomes	2	x
Criteria 6 (preventing SEPA access) should not be considered major	2	x
Consideration of the reversibility of any environmental event or impact	2	x
Most incidents should be minor breaches (minor & cat B)	1	√
Criteria 4 (non-payment) should be extended (seeking financial advantage)	1	√
More than 3 minor breaches should be escalated to major	1	x
Percentage of 'leeway' over the chosen infringement value	1	x
Non-quantifiable breach highly subjective	1	x
Criteria 5 needs clear definition of action required by SEPA	1	√
Events combining Category 1 & 2 to make Category A – too coarse	1	x
How does Serious Breach relate to No Breach, Breach and Major Breach.	1	√

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SEPA conclusions on question 7

- 3.40 SEPA's views on the suggestions received are summarised in the last column of the table above.
- 3.41 We agree that failure to make a data return and failure to pay SEPA's charges should normally be considered as a minor breach rather than a major breach. We do consider, however, that persistent non-payment of SEPA's charges should be considered a major breach because they aim to create a financial competitive advantage. Similarly we agree the failure to make a data return should not normally be considered a major breach unless this was persistent and then prevented us assessing the performance of a site.
- 3.42 We agree that only a defined selection of EU Directive requirements should be considered as a major breach.
- 3.43 We agree that the scheme should take account of whether operator actions are intentional or negligent and should also take account of the speed of response. We will do this by developing clear rules for escalating breaches from minor to major.
- 3.44 We will publish the details of the escalation criteria.
- 3.45 We do not agree with the following suggestions.
- Allow for more compliant/broadly compliant. The concerns are a result of the way the compliance matrix was designed. We will no longer be using the compliance matrix. Our response to question 3 illustrates that there is an appropriate spread of compliance and minor breaches categories.
 - We consider that preventing SEPA access to a site is a major breach. Clearly we will take into account situations where the refusal to allow access was unintentional or was justified because of health and safety concerns.
 - Considering the reversibility of any environmental event will make the scheme too complex.
 - See previous response on escalation rules.
 - We consider that there should not be leeway in considering compliance with a licence condition. It is either complied with or not.
 - We don't agree that non-quantifiable breaches are necessarily high subjective. For example, if a bund around an oil tank has failed, it is not a failure of a quantitative standard but it is clear.
 - We consider that an environmental event that has a significant impact (category 1 & 2) should be considered a major breach.

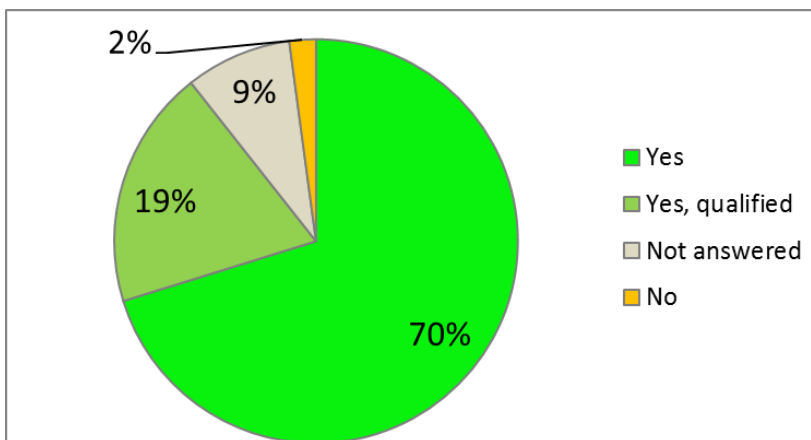
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Question 8

Do you think continuous assessment is a fairer way of calculating compliance?

Answer	Number	%
Yes	33	70%
Yes, qualified	9	19%
Not answered	4	9%
No	1	2%
Total	47	

Figure 9. Responses to question (%).



- 3.46 Most respondents (89%) agreed that a continuous CAS assessment would be a fairer way of calculating compliance.
- 3.47 One of the most common concerns raised (6 respondents) was the use of the worst CAS result for the year to provide the annual summary which would provide the input to the charging scheme. These respondents considered that an average score should be used. Linked to this point, concerns were expressed that an infrequent inspection schedule could result in low compliance scores persisting for in long period of time. Several respondents emphasised that a continuous assessment would increase the importance of dealing with updates and appeals in a timely manner.
- 3.48 Some respondents asked for more details of the mechanics of how breaches and resultant remedial action would be managed in the scheme when it was operating on a continuous basis.

SEPA conclusions on questions 8

- 3.49 We do propose to publish CAS results on a continuous basis over the year. This means that the results for a licence or site will a more relevant assessment of current performance.

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- 3.50 We agree that more detail needs to be provided on the mechanics of how compliance will be managed on a continuous basis. We will provide the additional detail when we publish the CAS manual for consultation.
- 3.51 We will review our approach to the statistics used to drive the charging scheme. We note the opposition to the use of the worst-score-over-the-year and will develop an approach based upon the time over the year that a licence is non-compliant. A time-based figure would provide an incentive for the operator to address issues of non-compliance rapidly.
- 3.52 We recognised that the use of continuous assessment, together with the adoption of a time-based link to charging will mean that operators will want inspections carried out quickly so as to confirm that breaches have been addressed.
- 3.53 A similar, issue is associated with the publication of results. In the consultation, SEPA gave a commitment to publish the results of inspections within four months of the inspection. We will publish the results of inspections as soon as possible and not longer than six weeks (to allow for discussions with operators where there are disagreements over the outcome). The consequences of inspections for published CAS results will apply from the date of the inspection.

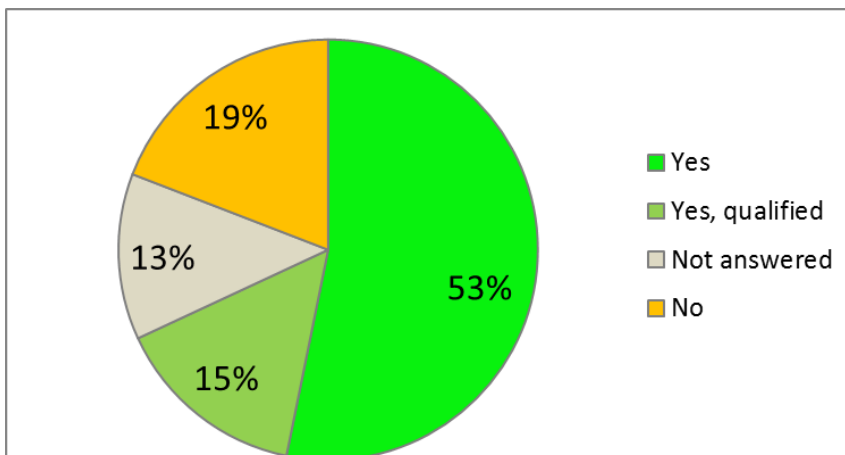
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Question 9

Considering all the proposals in Section 2 do you think the revised scheme will help meet the requirements of being fairer, simpler and transparent?

Answer	Number	%
Yes	25	53%
Yes, qualified	7	15%
Not answered	6	13%
No	9	19%
Total	47	

Figure 10. Responses to question (%).



- 3.55 The majority (68%) of those who responded agreed that revised scheme will be fairer, simpler and transparent.
- 3.56 A significant minority 19% (mostly from the marine fish farming and chemical sector) did not agree that the overall package would meet these criteria.
- 3.57 The most consistent concerns raised by both those who said no, or said yes with qualifications are listed below.

Simpler and transparent

- 3.58 Some respondents considered that the addition of “other regulatory” requirements and other environmental events would make the scheme more complex and contentious (see answers to questions 1 & 2).

Fairer

- 3.59 The inclusion of other environmental events could lead to events caused by other parties/factors being counted against the compliance record of operators. This

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concern was raised by operators responsible for marine fish farms and very complex sites that had multiple interconnected licenced activities.

- 3.60 Large complex sites with multiple operating units are far more likely to receive a non-compliance than simple sites operating a few units or plants because of the number of processing units and the complexity of the processes. Some operators suggested that CAS should be a tiered system depending on the size and the potential impact of the company. Incorporating all companies into a single system is unfair.
- 3.61 The definition of major breaches was not sufficiently closely linked to environmental impact with activities that some respondents considered to be minor being proposed as major (see responses to question 5).

SEPA conclusions on questions 9

- 3.62 Most of the issues raised have been dealt with previously.
- 3.63 There remains the question of proportionality at larger more complex sites. We recognise that the more complex the site, the more likely that a major breach will occur. It may be possible to devise a scheme which takes account of the number of processes covered by a licence and provide some means of assessing average compliance. Our concerns with this approach is that two sites (one big and one small) who are subject to the same major breach would have different CAS results. It would appear unfair for the small site to have a lower rating than the large site. We will discuss this issue more widely with operators and would welcome further suggestions.

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Question 10

What criteria should we use to identify those sites that have excellent environmental practice?

A total of 31 respondents made 43 suggestions on the criteria that could be used to identify sites with excellent environmental practice. Of these, nine were opposed to CAS being used to describe performance beyond compliance.

Criteria for excellent environmental performance	No. respondents
Improved performance beyond compliance (decarbonising, circular economy)	11
Commitment to accredited Environmental Management Systems	7
Full compliance should remain defined as “excellent”.	5
Beyond compliance is an inappropriate concept for CAS	4
Consistent history of full compliance	3
Management and staff competence/commitment	3
Should have award Scheme (eg gold, silver, bronze)	2
Real-time reporting against standards	1
Investment in environment performance	1
Quality of infrastructure	1
Community engagement and support	1
Application of best available technology	1
Compliance with other regulatory requirements	1
No environmental events	1
Participation in environmental improvement schemes	1

3.64 Some considered that if the Scheme only takes account of those who perform within the legal limits, there is no encouragement for innovation. This will drive a culture of just compliance not moving beyond legal compliance. Others considered that SEPA’s job was to drive compliance with legal requirements not to promote voluntary measures to move beyond compliance.

SEPA conclusions on question 10

3.65 SEPA considers that a sustainable future requires as many regulated businesses as possible to move beyond basic compliance by taking action now to become low carbon, low materials use, low water use and low waste. Our role as a regulator is to help them to take these opportunities, creating lasting prosperity and viability from the resources of one planet.

3.66 This consultation has demonstrated the difficulties of defining criteria that can be used to categorise performance beyond compliance. We now consider that developing such a concept would require an assessment programme that would use the skills of a range of organisations. This requires time to consider and develop. We will not therefore be developing a proposal for a beyond compliance component of CAS at this stage.

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Final consultation question. Do you have any other comments to make?

- 3.67 SEPA should increase the resources that it devotes to compliance monitoring so as to ensure that that compliance assessments reflected the current status of sites.
- 3.68 Industry needs feedback on Inspections in a timely manner so we can redress any issues but has no target for reporting to operators whilst operators must review the results, raise any factual errors or apply to exclude the result within 15 days of the notification. SEPA has four months from the date of inspection to add the compliance assessment to its website.
- 3.69 Sites which have demonstrated a consistent approach to excellence should be provided with some leeway should an issue occur. Consistent good practice would indicate that occasional issues are likely to be result of accidental occurrences rather than poor performance.
- 3.70 The Scheme should be reviewed after a period of about five years. SEPA should define the criteria against which it will make the judgement as to whether the new Scheme represents an improvement.

SEPA conclusions on final consultation question

- 3.71 Some of the issues raised have been dealt with previously.
- 3.72 We don't agree that we should provide leeway for sites with consistently good performance. But we do agree that we should take account of whether breaches have been the result of deliberate acts or negligence.
- 3.73 We agree that the scheme should be reviewed within five years. We will consider whether we can define criteria to judge its success.