

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Ref: EqIA-017
Equality and Diversity SEPA Enforcement Policy , Guidance and associated documentation	Page No: 1 of 9
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Scottish Environment Protection Agency

Equality and Human Rights Impact Assessment (EqIA)

SEPA Enforcement Policy, Guidance and Associated Documents

Policy Name	SEPA Enforcement Policy and Guidance
Policy Author	Wendy Thornton
Date Written/Reviewed	July 2015
Impact Screening Undertaken by	Anne Marsden / Joan Robertson Date: 1 April 2016
EqlA carried out by	Anne Marsden / Joan Robertson / Rob Morris Date: 1 April 2016
EqlA authorised by	Ian Buchanan
Date Authorised	17/01/17

Introduction

An Equality and Human Rights Impact Assessment (EqIA) identifies whether any policy, practice or activity has any disproportionate impact on any individual or group of people with a protected characteristic as determined by the Equality Act 2010.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires that all new and revised policies undergo a screening for impact. Where impact is identified, a full EqIA is undertaken.

This form has five parts;

- Part 1 provides general information about the policy, the owner and its purpose and is self-explanatory.
- Part 2 is a screening process to identify whether there is impact. If impact is identified, Part 3 must be completed.
- Part 3 is a full EqIA, where evidence is captured.
- Part 4 captures what will be monitored to ensure impact is either reduced, negated or remains constant.
- Part 5 is the approval section.

The Policy, Guidance and associated documents should be read in conjunction with this form.

ON COMPLETION please indicate if this is a screening document only or full EqIA:

Screening only	N	Full Assessment	Y
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**Scottish Environment Protection Agency
Equality and Human Rights Impact assessment**

PART 1

About the Policy/Activity

Portfolio/Function developing/reviewing policy or activity	Regulatory Services / Change Team
Title of policy/activity	SEPA Enforcement Policy, Guidance and associated documents
Date EqIA Screening Commenced	23 March 2016

Briefly describe the aims, objectives and purpose of the policy/activity	<p>The Regulatory Reform (Scotland) Act 2014 enabled Scottish Ministers to give us the power to impose new enforcement measures. As a result we have developed an updated Enforcement Policy, Enforcement Guidance and associated letters, forms and templates for implementation.</p> <p>The purpose of the policy is to ensure that staff, those we regulate and other stakeholders are aware of the general intent and principles underpinning our approach to enforcement action.</p> <p>The guidance sets out the detail of how we will use enforcement action and aims to:</p> <ul style="list-style-type: none"> - make clear what enforcement action we can take, and under what circumstances different types of intervention might be appropriate to drive positive behaviour change; - explain the pro-active, voluntary undertakings that can be offered to make amends and prevent recurrence; - give an overview of what to expect and the options available to any person against whom we take enforcement action. <p>The associated documentation includes the letters and notices we will use in respect of the enforcement process.</p>
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<p>What are the intended consequences of the policy/activity?</p>	<p>The policy and guidance make clear to those we regulate and to our staff, the enforcement actions available to us, how we will use them proportionately and the sorts of safeguards we have built in. This includes a statutory obligation on us to follow the Lord Advocate’s Guidelines on the use of the new enforcement measures, alongside existing enforcement actions via the criminal courts.</p> <p>The new enforcement measures are intended to tackle lower level offending and plug the ‘compliance gap’ between criminal prosecution for the most serious cases, and the use of statutory notices or warning letters for other cases.</p> <p>Achieving full compliance and going beyond compliance through behaviour change is the overall aim and this links to our statutory purpose and the delivery of our Regulatory Strategy.</p> <p>An operator (or ‘responsible person’) should be reassured through the implementation of our policy, guidance and documentation that we:</p> <ul style="list-style-type: none"> - will take a consistent and transparent approach; - can be held to account on the decisions we make; - have appropriate governance arrangements in place.
<p>Does this policy/activity link with any other? If Yes, please list.</p>	<p>Yes, it directly links to our established inspection, incident response and investigation procedures – all part of the delivery of our Regulatory Strategy and Regulatory Evidence Strategy (i.e. monitoring).</p> <p>There will be additional processes and guidance to support implementation of Variable Monetary Penalties and, specifically, how these are to be calculated and which will be subject to further public consultation.</p> <p>N.B. The principles identified within this EqIA apply to the policy, guidance, letters and notices and any other forthcoming related documents.</p>
<p>Who are the main stakeholders in relation to the policy/activity?</p>	<p>Our staff and any ‘responsible person’ (including a business) carrying on any activity where we are the enforcing authority. This includes a very wide range of activities and</p>

	<p>where individuals, public bodies and small and large companies are engaged in, for example:</p> <ul style="list-style-type: none"> • sewerage treatment (e.g. a householder with a septic tank, private and public sewage treatment work); • waste management (e.g. carrying, treating / recovering, disposing); • producing food (e.g. vegetable growers abstracting water, caged fish farming); • manufacturing (e.g. distilling, chemicals, cement, chipboard etc.); • Etc.
<p>Who implements and who is responsible for the policy/activity?</p>	<p>The enforcement policy, guidance, letters and notices are corporate in nature but the lead responsibility for implementation sits with the Regulatory Services Department supported by Evidence & Flooding.</p> <p>Any officer who is required to take enforcement action must apply the policy and follow the guidance.</p>

Part 2

Initial Screening for Relevance

This section is designed to determine the relevance of the policy/activity to equality:

- This section also fulfils the duty to consider any impact in relation to Human Rights.
- Initial screening will determine whether there is impact and where none is found, set out any evidence/justification for that determination.

Indicate in the table below whether policy/activity has any impact on the protected characteristics or is likely to influence SEPA’s ability to comply with the general duty, which is to;

- a) Eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010 and/or;
- b) Advance equality of opportunity between people who share a characteristic and those who do not and/or;
- c) Foster good relations between people who share a relevant protected characteristic and those who do not.

Please tick as appropriate	Positive Impact	Negative Impact	No Impact	Unknown
Age				X

Disability	X	
Gender reassignment		X
Marriage and civil partnership (relevant only to point a) above)		X
Pregnancy and maternity		X
Race	X	
Religion and belief		X
Sex (gender)		X
Sexual Orientation		X

If you have answered 'no' for all of the above, what is your justification or evidence for that determination?

The protected characteristics that have no indicated impact would not suffer any differential impact specific to that characteristic.

Indicate on the table below whether the policy/activity has any impact on the Human Rights Act 1998

Please tick as appropriate	Positive Impact	Negative Impact	No Impact	Unknown
Article 6			X	
Article 8			X	
Article 14		X		

If you have answered 'no' for all of the above, what is your justification or evidence for that determination?

The elements of the policy, guidance and documentation which relate to Articles 6 and 8 are managed through separate systems and pieces of legislation both of which are compliant with the relevant Articles.

Concluding Part 2

Has Relevance been Identified?	Please Tick	Next Steps
There is no relevance to Equality or the Human Rights Act 1998		Proceed to Part 4 Monitoring and Review
There is relevance to some or all of the Equality characteristics and/or the	X	Proceed to Part 3 Impact Assessment

Human Rights Act 1998		
It is unclear if there is relevance to some or all of the Equality characteristics and/or the Human Rights Act 1998		Proceed to Part 3 Impact Assessment

Part 3

Full Impact Assessment

This section captures details of any impact relevant to the listed protected characteristics and to Human Rights. It should also show details of relevance, evidence gathered and used, suggestions as to steps that could be taken to negate or reduce impact and decisions taken relating to impact. This should be based on proportionality.

Age	<p>The Ofcom user reports indicate that only half as many people over the age of 65 use the internet, as opposed to those under 65. Having an internet-based policy and guidance may limit accessibility for those people who do not use the internet. At present we have no internal evidence of age groups of our users.</p> <p>Action: A way to mitigate any potential impact would be for us to make it clear in any letter or application that the policy and guidance can be made available in hard copy on request.</p> <p>Evidence source: Ofcom Adults media use and attitudes Report 2015.</p>
Disability	<p>There is a potential impact on users who are sight impaired and who use screen readers and also those with learning difficulties or disabilities. As far as possible the policy and guidance have been drafted using clear English and examples are provided for people to understand more easily our approach.</p> <p>Action: To support the use of screen readers the documents should be available in Word format, as well as PDF and for anyone with learning difficulties or disabilities, there should be an offer of one-to-one support from an officer.</p> <p>Again, we have no direct evidence of users with such difficulties or disabilities. However, the 2011 Census tells us that 2.3% of the population have sight impairment and 2.5% have learning difficulties or disabilities. In addition, there is empirical evidence from staff of individual service users requiring support to understand application forms, letters and guidance documents.</p> <p>Evidence source: Scottish Census 2011 Reference Table QS304SC and Enforcement Policy and Guidance consultation feedback.</p>
Gender reassignment	No impact

	<p>Evidence source:</p>
Marriage and Civil Partnership	<p>No impact</p> <p>Evidence source:</p>
Pregnancy and maternity	<p>No impact</p> <p>Evidence source:</p>
Race	<p>In terms of race, there are likely to be service users whose first language is not English and who have limited understanding of written English language. Where this is the case translated materials and the use of an interpreter may be required when undertaking enforcement action. This is not clear in the guidance documents at this point in time (01/04/16).</p> <p>Around 4% of the Scottish population are from minority ethnic backgrounds and a growing number of people are from eastern European and other non-English nationalities (3.1%). These figures vary greatly across Scotland. The Census also showed that 5.8% of the population speak another language in the home, including 12,533 who use British Sign Language.</p> <p>Action: The need for translation services and translated formats of documents, including this guidance should be acknowledged and made available as required; text reflecting this should also be included in the Introductory pages of the Enforcement Guidance. Notices; and other communications may have to be translated into alternative languages or formats on occasion.</p> <p>Again there is also evidence from staff who act as a first point of contact of a growing number of people with limited English language skills request information on licensing and regulation.</p> <p>Evidence source: Scottish Census 2011 Reference Tables DC2202SC and KS206SC and SEPA staff feedback.</p>
Religion and Belief	<p>No impact</p> <p>Evidence source:</p>
Sex (gender)	<p>No impact</p> <p>Evidence Source:</p>
Sexual Orientation	<p>No impact</p> <p>Evidence source:</p>
Human Rights	<p>Article 6 relates to the right to a fair trial or hearing. The legislation making the new enforcement measures available to us has established a process of appeal and our procedures fully reflect these rights. All of these comply with Article 6 and so there is unlikely to be any detriment related to this.</p> <p>Article 8 relates to the right to privacy and family life. We are</p>

	<p>required to publish certain information associated with the new enforcement measures and will also use publicity to highlight enforcement action and outcomes. Where there is personal data being used in any of the enforcement processes, this will be done in a manner that is compliant with the Data Protection Act 1998 and to account for the implications of this article.</p> <p>Article 14 is the right to be free from discrimination. There have been occasions where staff have encountered service users who have literacy difficulties, which are not related to disability.</p> <p>Action: Where any individual is found to have such difficulties, it is recommended that staff provide the necessary support to enable understanding of requirements and to achieve compliance.</p> <p>Evidence source: Staff information</p>
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Summary and Conclusion of Impact Assessment

The impact assessment has indicated that there is potential for impact relating to the characteristics of age, race and disability. In addition, there may be other implications which link to Article 14 of the Human Rights Act 1998.

The impact is mainly on how we communicate the policy and guidance and there are some simple steps that can be taken to support better access:

- the production of the documents in Word format as well as .pdf;
- the awareness amongst our staff of the need for the use of translated materials and interpreters, where appropriate;
- the availability of the documents in alternative formats and languages, where required.
- The provision of support for people who have difficulties in understanding the notices, policy or guidance.

Concluding Part 3

Impact Assessment	Please Tick	Next Steps
There is no relevance to Equality or the Human Rights Act 1998		Proceed to Part 4 Monitoring and Review
There is relevance to some or all of the Equality characteristics and/or the Human Rights Act 1998	X	Proceed to Part 4 Monitoring and Review

Part 4

Monitoring and Review

The purpose of this section is to show how you will monitor the impact of the policy/activity.

- The reason for monitoring is to determine if the actual impact of the policy/activity is the same as the expected or intended.
- A statement on monitoring is required for all policy/activity regardless of whether there is any relevance to Equality or the Human Rights Act.

If you have provided evidence or justification for believing there is no relevance to Equality or the Human Rights Act in Part 2 Initial Screening or Part 3 Impact Assessment:

Q1 How do you intend to monitor and review the policy/activity?

The policy and guidance will be kept under on-going review and changed, where appropriate, in light of experience. Staff in the Regulatory Services Department will lead this work and will work with internal and external stakeholders to agree significant revisions to the approach set out in the documents.

A more formal review will then be undertaken after 12 months from the date that all of the new enforcement measures are available for us to use (e.g. after the method of calculation for Variable Monetary Penalties has been implemented).

The aim of keeping the policy guidance notices and letters under review will be to improve their clarity and usability.

Q2 What will be monitored?

Internally, we will consider improvements suggested by our staff in terms of how useable the policy and guidance are.

Externally, we will look at: any appeals lodged; complaints made about our service levels; and compliments we receive about our enforcement approach. We will also consider introducing an equality monitoring form as part of focused user surveys in order to provide a better understanding of the equalities and human rights impacts of our enforcement approach.

Q3 What is the frequency of monitoring?

Our aim is to keep the policy and guidance under on-going review with a formal process after 12 months has elapsed from all of the new enforcement measures being available for us to use. If any significant issues were to arise, action will be taken at the time to understand and address any implications.

Q4 How will monitoring information be used?

Monitoring information will be used to determine whether or not any changes are required to procedures and guidance. This will be evidence based and applied in a manner that is proportionate to the impact against the intent of the policy.

Part 5

Approval

All screening documents and EqlA's must be submitted to the Equality mailbox for approval.

This Equality and Human Rights Impact Assessment was completed by:

Name	A M / J R / R M
Department/Function/Team	SEPA Advice and Engagement Unit
Date	1 April 2016

This Equality and Human Rights Impact Assessment was approved by:

Name and Designation	I B. Area Manager, Regulatory Services
Date	17/01/17

ON COMPLETION please indicate if this is a screening document only or full EqlA:

Screening only	N	Full Assessment	Y
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