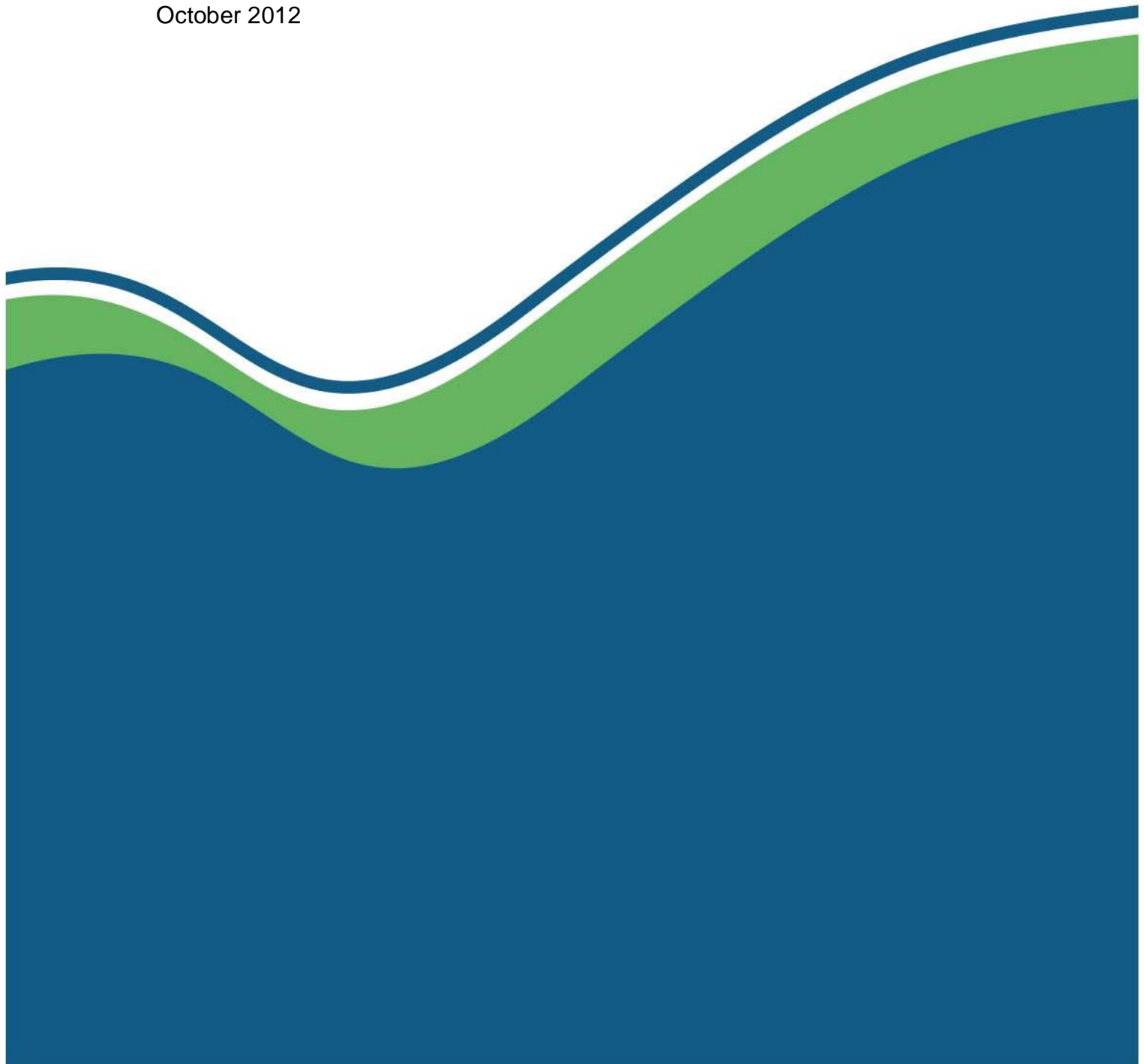




Consultation on Proposals for Future Funding Arrangements for the Scottish Environment Protection Agency

October 2012



Foreword

We are delighted to launch this consultation on our proposals to modernise SEPA's funding arrangements. Introducing a revised approach to SEPA's funding model is a key enabler of the broader changes that SEPA wishes to make, and that the Scottish Government wishes to see.

Earlier this year we launched a package of proposals for an integrated framework for environmental regulation. This funding package is a key underpinning element of that approach.

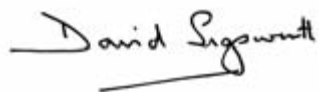
A new funding model is vital to the success of delivering our overall proposals - a risk based regulatory framework requires a risk based funding model. SEPA was established 16 years ago but still operates substantially under the same funding and legislative arrangement. We believe that now is the time to review these arrangements in the light of evolving circumstances.

This consultation therefore sets out SEPA's specific needs for a new funding approach and makes proposals to meet those needs. Our key proposal is the move to a flexible, risk based charging model to replace the activity based model SEPA currently has.

We have not developed these proposals in isolation. Our direction of travel is informed by extensive background research, ongoing discussions with stakeholders and by previous responses on funding from an earlier consultation. Responses to the 2010 and 2012 better environmental regulation consultations indicated that stakeholders support the direction of travel proposed on funding. This consultation takes that support and begins to build firmer proposals.

This consultation is a key step in a process of engagement on funding and part of a programme by SEPA to continuously improve. We believe that it is important that SEPA has a funding model that enables it to deliver the Scottish Government's purpose and contributes to effective protection of the environment for Scotland's people. Rather than being about raising new funding for SEPA, this new approach is about modernising SEPA's funding model to ensure it can deliver modern environmental protection as effectively as possible. The proposed approach should deliver efficiencies for SEPA and businesses.

We very much want to hear from businesses and other stakeholders on our ideas, and look forward to hearing your views.



David Sigsworth
SEPA's Chairman



Paul Wheelhouse
Minister for Environment and Climate Change

I. Introduction

Context

Protection and improvement of the environment should be a driver of sustainable economic growth and social development and the basis from which future prosperity is grown and quality of life in Scotland is maintained.

A clean and healthy environment is essential to the health and well-being of our citizens, as well as to the economic success of the country. It is a key part of the Scottish Government's Economic Strategy:

'Scotland's rich and diverse natural environment is a national asset and a source of significant international competitive advantage... its continuing health and improvement is vital to sustainable economic growth. Many of Scotland's growth sectors such as tourism, and food and drink depend on high quality air, land and water (Scottish Government Economic Strategy (2011)).'

Our environment is a complex system, providing a range of resources and services on which all life ultimately depends. Environmental resources include air to breathe, food to eat, water to drink, and shelter from the elements. But our environment also provides less obvious services, such as breaking down waste and absorbing carbon.

It is also the cornerstone of many of our well-established industries which rely on good quality air, land and water and the flow of resources for their products, services and reputations. The value of services provided by the environment to society in Scotland is estimated to be at least £20 billion per year¹.

For some time now, the Scottish Environment Protection Agency (SEPA) has been proactively preparing for future challenges, to better deliver the high level of protection and improvement that Scotland's environment deserves.

As part of this, the Scottish Government and SEPA consulted on proposals for the development of a new regulatory framework earlier this year. Further engagement on new funding arrangements for SEPA was promised at the time.

To realise the efficiencies and improvement in flexibility that are proposed in that consultation, new funding arrangements for SEPA are required.

A risk-based environmental protection agency that is working on the right priorities - using tools and approaches flexibly and in ways that both drive compliance and encourage best practice - needs to be funded simply and transparently.

The options that are presented in this consultation are intended to enable this, and are largely based on what is in place now but with some important shifts that reflect new environmental challenges and a need for SEPA to be far more flexible than now.

¹ Preliminary exploration of the use of Ecosystems Service Values in a Regulatory Context Report for SEPA by Environmental and Resource Economics Ltd (2010, unpublished) updating report by Williams, Kind, Roberts, Firth & McGlashan (2003) The Value of Scotland's Ecosystem Services and Natural Capital, European Environment, Vol. 13 no 2.

These proposals are not seeking to increase the amount of funds that SEPA raises but are focussed on ensuring that SEPA's funding system enables and supports the ongoing development of our better environmental regulation proposals. We believe they offer further opportunities to improve SEPA's efficiency and effectiveness, and also offer benefits to business by enabling the move to an outcome based approach.

Previous consultations

The Scottish Government and SEPA issued a joint consultation in May 2012 on Proposals for an Integrated Framework of Environmental Regulation².

These proposals are expected to bring about changes that will enable SEPA to focus greatest effort on those activities that pose the greatest risk, the poorest performers and illegal operators as well as on the environmental problems and issues that matter most to the people of Scotland.

The proposed new integrated framework of environmental protection is intended to build on SEPA's existing risk-based approach but will bring about greater effectiveness and proportionality in how SEPA operates. Achieving improved environmental outcomes is at the heart of what is proposed.

SEPA had consulted previously on the high level principles associated with delivering a better environmental regulation package in 2010³ and published the analysis from this in June 2011⁴.

What you told SEPA in 2010-2012

The 2010 consultation posed a number of broad questions about what a future funding model should look like.

In general, the responses showed support for:

- moving to a more proportionate and risk based charging scheme;
- changing the funding model to charge on the basis of risk and performance;
- achieving full cost recovery for regulatory requirements;
- covering all costs from income streams to enable allocation of resource on the basis of environmental risk and harm, including tackling environmental crime and free-loaders;
- continuation of a single annual charge applied to low risk or simpler permits;
- an incentivisation scheme that would benefit higher performing operators.

The May 2012 consultation focused on proposals for a new integrated framework of environmental regulation and didn't contain funding proposals. We have not completed a detailed analysis of the May 2012 consultation response yet, but our initial analysis plus meetings with stakeholders suggests strong support for the move to a more risk-based, integrated approach to environmental regulation. Many stakeholders, whilst expressing overall support for the direction, stressed that they wanted to understand the funding implications. Many also stressed that much relies on how SEPA implements the new framework in practice.

² www.scotland.gov.uk/Publications/2012/05/6822

³ www.sepa.org.uk/about_us/consultations/closed_consultations.aspx#BERConsultation

⁴ www.sepa.org.uk/about_us/publications/better_regulation.aspx

What proposals are set out in this consultation?

The key proposals upon which views are sought relate to:

- adjustments to SEPA's future funding, including:
 - integration of the current charging schemes into one framework.
 - charging that is less directly related to activity and developing a charging scheme that is based on risk and operator performance.
- building on the polluter pays principle by bringing in a charge that relates to the impact on the environment from the use of environmental resources;
- a new statutory purpose for SEPA.

Please note that this consultation is supported by a business regulatory impact assessment⁵.

What is the aim of this consultation?

We are seeking your views about possible changes to how Scotland's environmental protection system is funded as it relates to SEPA and to seek views from stakeholders, particularly the regulated community. We are not proposing to raise the funding level of SEPA via new mandatory charges nor are we seeking to substantially change the balance of funding between government and business charges. Indeed the overall package of measures proposed, consisting of an improved regulatory system and a new funding model, should allow for further improvements to SEPA's efficiency.

The intention is to develop an approach to funding SEPA which:

- is integrated and simplified;
- enables SEPA to become a risk-based and outcome focused regulator, tackling the environmental issues that matter most to Scotland and the environment;
- is capable of providing mechanisms to ensure full cost recovery for poor performance and incentivise good performance;
- supports the regulated community in delivering a clean and safe environment for the people of Scotland;
- is stable and resilient;
- is accountable and transparent;
- enables SEPA to fully support the Scottish Government's broader economic, social and environmental agenda.

This consultation does not set out any detailed figures relating to the level of charges but concerns itself with the principles of the overall funding arrangements for SEPA.

Clearly, if the proposals in this consultation do go forward for detailed design and implementation, further engagement and consultation will be needed on the mechanisms for recovery as well as the overall impacts.

⁵ www.sepa.org.uk/about_us/idoc.ashx?docid=9b7b98b3-9127-4211-ae33-194202b481e3&version=-1

Where should I send my response and what is the deadline?

We welcome your views on this consultation⁶ until 4 January 2013. You can respond by:

- emailing the feedback form⁷ to funding@sepa.org.uk;
- printing the form and sending it to: Sustainable Funding Model Consultation, Scottish Environment Protection Agency, Corporate Office, Erskine Court, Castle Business Park, Stirling, FK 9 4TR.

If you have any queries about any aspect of this consultation, please email funding@sepa.org.uk

Unless you specifically request your response to be treated confidentially, responses may be made publicly available.

Respondents should be aware that SEPA is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made.

Next steps

SEPA and the Scottish Government will collate and analyse the responses to this consultation and consider what the implications are for the proposals.

It is expected that SEPA and Scottish Government will agree on a preferred option following public consultation, and that detailed stakeholder engagement can then commence on developing the specifics further.

⁶ www.sepa.org.uk/about_us/consultations.aspx

⁷ www.sepa.org.uk/about_us/idoc.ashx?docid=c517dc35-98ed-450b-8ab0-5753b6183336&version=-1

II. SEPA's purpose

Background

SEPA was set up by the Environment Act 1995⁸. The Environment Act does not specify a statutory purpose or objectives for SEPA although SEPA's pollution control powers are stated as being:

'...exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of pollution of the environment.'⁹

The agency now has far wider responsibilities rather than pollution control alone.

The Environment Act 1995 also requires Scottish ministers to give guidance to SEPA with respect to aims and objectives which they consider it appropriate for SEPA to pursue in the exercise of its functions. This guidance must also set out the contribution to attaining the objective of sustainable development that it is appropriate for SEPA to make having regard to SEPA's responsibilities and resources. It also includes a number of general duties on SEPA in relation to natural heritage, recreation, water and costs and benefits.

Proposals

The proposal is to include in the legislation a single broad statutory purpose which would provide that SEPA's functions are exercisable for the purpose of protecting and improving the environment, including the sustainable management of natural resources and that, in exercising its functions in pursuit of that primary purpose, SEPA should contribute to improving the health and well-being of the people of Scotland and the achievement of sustainable economic growth.

This move away from defining SEPA's purpose simply in relation to pollution control recognises the broader role that SEPA now has. It also reflects the fact that having a good environment is integral to having a good economy and also that the way that SEPA works with business and other stakeholders can make a direct contribution to having a favourable business environment in Scotland. It expresses more clearly than the existing legislation the contribution that SEPA can make to sustainable development and reflects the emerging ecosystem services agenda which focuses on the natural services and resources that the environment provides for the benefit of humans and the economy.

Scottish ministers would be able to give guidance to SEPA on the implementation of the statutory purpose. If such guidance is given SEPA would be required to have regard to it.

The proposals will require amendments to the Environment Act 1995. This will include replacing the current provision under Section 31 (see above). It is also intended that sections 32, 34 and 39 be repealed.

We also propose amending the Environment Act 1995 to more appropriately reflect SEPA's role in compiling information on the environment. Section 33 of the Environment Act 1995 currently provides that SEPA shall compile information relating

⁸ Section 20

⁹ Section 33(1)

to 'pollution' for the purpose of carrying out its pollution control functions. SEPA does compile information on pollution but also compiles information on flooding and water resource use etc. The proposal is to give SEPA the power to compile information on the general state of the environment for the purpose of facilitating the carrying out of any of SEPA's functions. Information underpins the future success of a more outcome based approach to regulation.

Question 1

Do you agree with the proposed statutory purpose for SEPA? Do you also agree that SEPA should be given a power to compile information in relation to all its functions?

III. Current funding arrangements and future opportunities

SEPA's budget and expenditure

In 2011-2012, SEPA's overall budget of £76 million was comprised of:

- grant-in-aid (GiA) from the Scottish Government which accounted for around 52% of the funding.
- charging schemes and other income which accounted for around 48% in that year.

Application fees are charged for processing applications and preparing and issuing new authorisations. Application fee income varies annually (around £4-5 million).

Subsistence charges are issued annually to recover the costs of managing environmental risks and impacts including monitoring and reporting performance against licence and permit conditions, and working with customers to improve performance.

Some activities are purely chargeable whilst others are funded by GiA. Similarly, certain activities are funded by both charges and GiA monies.

For example, the processing of an application for a licence, carrying out an inspection or audit, regulatory sampling and enforcement action pre-referral to the Crown Office and Procurator Fiscal Service (COPFS) are all chargeable to regulated businesses.

Advice to government, strategic support and advice on policy and legislative development, emergency planning and contingencies, state of the environment monitoring, flood risk planning, flood warning, contaminated land and enforcement post-referral to the COPFS are all funded from GiA.

Investigating environmental events and incidents, corporate functions such as business planning, information technology or human resources, scientific monitoring and reporting all have elements that are funded by charges and GiA.

Details of how SEPA is currently funded and public finance safeguards are summarised in Annex 1 and in SEPA's financial accounts which are published each year.

SEPA has achieved 25% efficiency savings over the past five years, ahead of the implementation of the current better environmental regulation business changes. Savings have been made across both GiA and charges funded work. This reduction has been achieved by increasing business efficiency and by reducing staff complement by 17% over the last three years.

As part of its commitment to assist Scotland's economic recovery, SEPA has frozen its charges for the past two years. Overall during the period 2008-2012 charges have increased by only 6.4%, well below the UK Retail Price Index (RPI) increase of 17.7% for the same period.

Framework and safeguards

SEPA's funding model is set within a framework for financial management and public sector probity. As a non-departmental public body (NDPB), SEPA is accountable to the Scottish Parliament via Scottish ministers for the deployment of public funds and its charges to business.

SEPA must ensure that, taking one year with the next, expenditure and income balance. It must also maintain detailed trading accounts for charging schemes, as well as requiring 100% cost recovery from businesses for business related activities.

As part of the overall framework, guidance¹⁰ is available which sets out the rules with which SEPA must comply. Sections 41 and 42 of the Environment Act 1995 grant SEPA the power to make schemes imposing charges; lay out the requirements for public consultation on proposals for new or significantly amended charges and securing the approval of Scottish ministers.

SEPA and the Scottish Government are committed to ensuring that necessary safeguards remain in place while at the same time bringing SEPA's funding arrangements up-to-date.

Ministerial approval will continue to be required for both the level of GiA and the business charges proposed, and any increases will need to be fully explained and justified. Strict cost controls and efficiency targets will remain in place.

Question 2

Do you agree that the existing safeguards in terms of accountability, cost control and efficiency are adequate?

Tell us if any other safeguards are required.

The need to change

Sixteen years after the establishment of SEPA, the Scottish Government and SEPA recognise that changed policy and legislative contexts and future priorities create the conditions to improve the current funding arrangements.

The main issues and opportunities for change are:

The need to effectively support Scotland's economy and communities

The quality of Scotland's environment is vital to the health and well-being of our communities and many of our established industries. There is a need for SEPA's activities to be fully aligned with the Scottish Government's priorities for sustainable economic growth (as set out in the National Performance Framework), particularly in areas such as delivery of renewable energy targets, transition to a low carbon economy, delivering actions on climate change and in implementing the National Planning Framework. Facilitating this demands a different way of working and clearly

¹⁰ See for example : Scottish Public Finance Manual: www.scotland.gov.uk/Topics/Government/Finance/spfm/Intro; SEPA Financial Memorandum: www.scotland.gov.uk/Resource/Doc/55971/0016195.pdf

some of these issues have implications for businesses. This in turn requires a funding model that has the flexibility to deliver these ways of working.

Increased responsiveness to new issues

New environmental challenges are emerging faster than ever and SEPA is expected to anticipate and act quickly on these. The types of priorities that have emerged include climate change, diffuse pollution and sector-based issues such as illegal activity or emergency preparedness. Facing up to these can be complex and involve a wide range of organisations and partners and require increased responsiveness whilst at the same time considering the longer term implications, all of which is difficult to achieve using prescriptive approaches based on routine planned activities. Additionally, evidence suggests that the environmental protection system must continue to evolve to deal with continued pressures on the environment¹¹.

Improved flexibility

The current funding arrangements are regime-specific and based on planned activity. This creates inflexibilities and is limiting SEPA's ability to fund work that is unplanned and which may be good for the environment and which makes good business sense. This is because resource deployment is constrained by detailed charging scheme rules and previous assumptions rather than the current risks or genuine needs.

Reduced complexity

Related to the above, SEPA currently operates multiple charging systems, each with its own set of rules and charging factors and each requiring sign off by Scottish ministers. As such, there is an opportunity for administrative burdens to be reduced for SEPA and regulated businesses alike by bringing these schemes together. For example a single consultation and approval will be necessary to update and amend the framework instead of several, and one consolidated invoice can replace, in some cases, many invoices for a customer. Furthermore, removing the funding constraints from within individual charging schemes to one that is unified, simpler and more flexible is a key part of the proposals.

Changed behaviours

A key aspect of regulatory activity lies in the understanding and addressing of the factors which drive compliance behaviours. Currently, poorly performing operators require more staff time and draw unfairly on funds allocated to SEPA as GiA or from other charge payers.

Higher charges can change the behaviours of the poorest performers whilst at the opposite end of the spectrum, positive incentives can facilitate operators to go beyond the legal minimum.

Ensuring full cost recovery

SEPA's charging schemes currently under-recover in total, for example by 6% or £2.1million in 2010-2011. This is partly caused by poor performers, including sites which cause repeated complaints which need to be revisited and may be subject to legal enforcement action and those recurrently failing licence standards where SEPA

¹¹ <http://uknea.unep-wcmc.org>, <http://www.eea.europa.eu/soer>, http://ec.europa.eu/environment/resource_efficiency/pdf/com2011_571.pdf

will work with them to improve performance. Pre-application discussions on major projects which subsequently generate no or a relatively small amount of licensing income, also contribute significantly to under recovery, for instance the Beaulieu to Denny power line and major windfarm projects. Whilst these discussions can be very valuable, they are not currently funded by business charges. The gap that providing early support and upfront advice can create is bridged by GiA which in turn detracts from dealing with other priorities.

The new funding arrangements can create an opportunity for industry to develop sector or joint agreements with SEPA (Section V).

In addition, the income required to support major infrastructure and construction projects needs to be better understood and a suitable mechanism to ensure full cost recovery needs to be developed.

The problems and opportunities highlighted above strongly suggest that the status quo is not in the interests of either SEPA or regulated businesses.

Underpinning principles

SEPA has sought to align itself fully with the principles of better regulation for a number of years now. It first published its vision and principles for regulation in 2005¹², which have been a major feature of the work SEPA has contributed to the Regulatory Review Group¹³ who have themselves published a similar set of principles.

Table 1 sets out the principles on which the proposed changes to SEPA's funding arrangements will be based, as follows:

- risk-based and environment focused;
- flexible, targeted and problem focused;
- accountable, transparent and fair;
- stable and resilient;
- simple and proportionate.

Question 3

Do you agree that the principles, as set out in Table 1, are the right ones to inform the development of a new approach to funding?

If not, what other principles would you suggest should be considered?

¹² www.sepa.org.uk/about_us/publications/better_regulation.aspx

¹³ www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group

Table 1

1. Risk-based and environment focused	
Which:	Applies the polluter pays principle and positively influences environmental behaviours.
	Charges according to risk and performance rather than anticipated routine activity.
	Provides incentives for demonstrable environmental improvement and preventative action to pre-empt harm.
2. Flexible and targeted	
Which:	Is able to deploy more regulatory resource to target and tackle emerging environmental problems and priorities quickly and effectively.
	Is able to facilitate sector-based approaches.
	Supports compliance based regulation and the planned introduction of more joined up permissions.
3. Accountable, transparent and fair	
Which:	Makes it easy for regulated businesses to understand how charges are accounted for and spent.
	Provides stakeholders with an opportunity to give their views on regulatory priorities and environmental risks.
	Is fair and impartial.
4. Stable and resilient	
Which:	Provides certainty and stability in charge levels for charge-payers.
	Provides certainty and stability in income levels for SEPA.
	Enables SEPA to adapt, improve and change.
5. Simple and proportionate	
Which:	Is straightforward to understand and reduces administrative burdens for charge-payers.
	Is straightforward to understand and reduces burdens for SEPA in administering the charging regime.
	Reflects the full cost of dealing with poor performers.

Enhancing the polluter pays principle

A development of the polluter pays principle is explained below and represents an important additional dimension upon which SEPA and the Scottish Government propose to base the future funding arrangements. We consider it a further development of the principles suggested above and consistent with evidence on emerging environmental risks.

Environmental law has long used the principle that the polluter should pay:

‘The polluter-pays principle is the principle according to which the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution (source: OECD)’.

The polluter pays principle is therefore a well established tenet of international environmental law. The principle requires that the polluter should be financially responsible for the costs associated with the pollution that arises, either in terms of costs to human health or in terms of harm to the environment.

In terms of SEPA’s activities, this means ensuring the protection of the environment as a public good for the benefit of all, and as the foundation of a sound and sustainable business, via payments towards the cost of an overall environmental protection system. This reflects the fact that businesses can both impact on the environment as a public good, but also benefit from a clean and healthy environment in their core business activities.

Increasingly, problems of environmental risk and impact are associated with a broader range of problems than direct pollution, and are caused by use of environmental resources such as use of clean water, use of land and soil, drawing of physical resources from the environment and production of waste. Increasingly, it is the underpinning environmental services such as the purification of air, pollination or the recycling of nutrients which are under threat.

Businesses can cause harm to the environment by use of these resources or degrading of these services, and so their use requires an environmental protection system to ensure they are managed effectively for current and future generations. This use of environmental resources principle, building on polluter pays, should form a foundation for basing the design and implementation of future environmental protection systems and associated costs.

The Scottish Government and SEPA therefore wish to introduce a use of environmental resources principle as an important component of this system. Such a principle is in line with the emerging agenda around ecosystem services¹⁴, that is, ensuring and maintaining a flow of goods and services from the environment for the benefit of humans and the economy. Indeed the UK National Ecosystem Assessment indicated that pollution and use of natural resources remains two key drivers of ecosystem damage across the UK.

Question 4

Do you agree with the use of environmental resources principle being factored into charges to regulated business?

Tell us whether this is a principle you could support and a link to charges is justified or if you have an alternative view?

¹⁴ Ecosystem Services (Source- UK National Ecosystem Assessment) June 2011: <http://uknea.unep-wcmc.org>

High level accountability for priorities

In proposing to move towards a more flexible funding model that adjusts the presently strong link between charge and activity, it becomes even more important to ensure and maintain accountability for public spending in this area.

Our initial proposal is to refine the existing process that identifies the overall sum to be recovered from charging and the agreed set of priorities. This could be factored into spending review cycles, but also allowing for some flexibility to respond to changing circumstances, whilst retaining sufficient stability and clarity for businesses and stakeholders.

We envisage that the process would be:

- comprehensive in scope: covering all of SEPA's activities rather than those merely covered by business charges;
- informative and open in nature: seeking views from businesses, communities and stakeholders on environmental and regulatory priorities;
- integrated in approach: covering SEPA's regulatory priorities, environmental priorities, assessment of priority harms, scientific needs and emerging new issues and duties.

The high level process envisaged would deliver a three year funding settlement and be accompanied by a clear statement of the priorities that ministers wish SEPA to pursue. This would include clarity over the sums to be raised from GiA and from business charges.

IV. Core funding elements, key assumptions and possible options for SEPA's future funding

This section sets out:

- the core elements of the future funding arrangements for SEPA;
- presents the precursors to change, proposes two options and summarises the overall package.

SEPA has undertaken a review of a wide range of potential approaches to funding to inform these proposals. It examined a number of examples from other organisations across the world and assessed their fit with the principles set out above¹⁵. Many of the options were clearly not suitable or practicable within a Scottish context and did not fit with the identified principles or could not be delivered within the current constitutional settlement.

Overall funding package

These proposals are intended to support the overall protection and improvement of the Scottish environment, enable the simpler, fair system of environmental regulation we are developing, further develop the polluter pays principle and to provide a significant disincentive to poor performance.

The aim is to have a single charging framework which is simpler than the many separate charging regimes that currently exist. Flexible, risk based charging would enable a relaxing of the currently close link between charges and activity. This is a key feature of the overall funding package proposed for SEPA.

There will always be a link between the level of charges and the level of work SEPA undertakes with that business. Routine activities to support monitoring and compliance will still be needed but these would be carried out more flexibly and within the context of an outcome-led approach.

An important assumption in this consultation is that businesses that perform their environmental responsibilities poorly should pay the cost of SEPA's time and effort to bring them back into compliance and to address the harm caused.

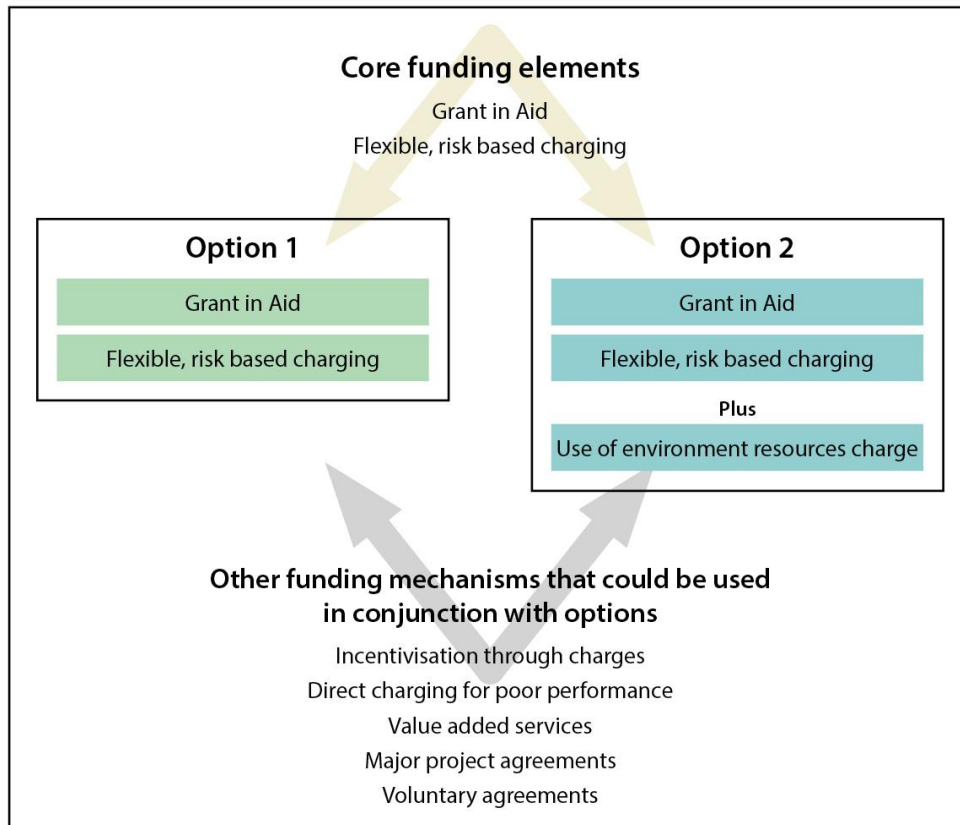
Core funding elements

The proposals outlined in this section are constructed around two core elements:

- A. retention of GiA;
- B. introduction of a more integrated and flexible charging system that is proportionate, based on environmental risk and operator performance.

In combination, (A) and (B) above, will ensure that many of the strengths of SEPA's existing funding model will be retained and built upon, whilst delivering against the principles discussed above.

¹⁵ www.sepa.org.uk/about_us/idoc.ashx?docid=107f76a0-da75-475c-bf90-481f8e0a4aa0&version=-1



Key assumptions and precursors for change

Relating charges to risk

The majority of respondents to SEPA's 2010 consultation believed that charges should be based primarily upon environmental risk. A much clearer focus on environmental risk and less of a focus on historically planned activity is a key driver of the new funding arrangements.

We therefore propose to develop an environmental risk assessment as the key link between the funds to be raised and the business and site activities to be controlled. This will be an overall integrated environmental risk assessment which:

- assesses the major threats and pressures to the Scottish environment;
- defines which of these are relevant to environmental regulation and to SEPA's activities;
- prioritises them in an integrated and robust manner, providing a basis to allocate the prioritised risks and impacts across existing regulated sites and activities.

There are a number of ways in which the environmental risk assessment could be undertaken. For example, the allocation rules could be based on environmental media (air, land and water), ecosystem service components (resources, receiving environment, and natural cycles) or particular priority themes (such as climate change, diffuse pollution etc.). Determining the detail of the risk assessment is a significant undertaking in its own right, and would be the subject of further

consultation and development with stakeholders. It is likely that the risk assessment could build upon the existing SEPA approach¹⁶.

An indication of the type of factors that could be included is described below.

Indicative risk assessment – for illustration only	
Environmental risk factors	The inherent hazard associated with an activity will be considered. Those presenting the highest overall hazard to the environment would score highest.
Location factors	The sensitivity of the receiving environment is a key determinant of risk. Proposals in the most sensitive locations would score highest e.g. proximity to population, conservation sites or air quality management areas.
Scale of activity	The scale of the proposed activity is also important in determining risk. The largest scale proposals would score highest.
Operator performance	Operator performance is also important in establishing risk. Those with a poor record of performance would score highest.
Charge = combined assessment	The overall charge would be based upon a combined assessment of the elements making up the risk. The smallest charges would be for high performing operators undertaking small scale, low risk activities in the least sensitive locations. The highest charges would be for poorly performing operators undertaking large scale, high hazard activities in very sensitive locations.

In summary, we believe that moving further to a risk-based approach to charging would:

- deliver a fair and objective basis for the allocation of charges, which provides for effective protection of the environment and which strongly supports the planned approach to regulation set out in the May 2012 consultation;
- better support the application of the polluters pays principle, with those having the highest potential or actual impact on the environment paying most for their charges;
- enable SEPA to more flexibly deploy its resources to target particular environmental risks.

Question 5

Do you support a move to a risk-based approach to charging based upon the principles discussed above?

Tell us what you think and if you have particular views on the design of the environmental risk assessment.

¹⁶ Existing approach - Dynamic Regulatory Effort Assessment Model - this combines the intrinsic hazard of a permitted site and the level of compliance with the permit. It works across media and regimes.

Incentivisation through charging

SEPA currently applies performance adjusted charging for the pollution prevention and control (PPC) charging scheme only¹⁷. SEPA could seek to expand this concept to include most regulatory activities with the provision of financial or other incentives for good performance.

Any such system should:

- be clear, and simple to understand;
- provide sufficient incentives to promote changes in behaviour;
- be value for money and avoid high administrative costs for businesses and SEPA;
- ensure no unacceptable constraints on SEPA's ability to regulate effectively;
- not prejudice income stability.

Most incentivisation schemes are based on relative rather than absolute performance, where the top performers are rewarded using funds raised from the poorest performers. This provides certainty of income for regulators and can encourage competitive innovation for continuous improvement.

While attractive as a concept, there are significant challenges with introducing such an approach to cover all regulated activities:

- Finding the correct incentive level may be very difficult. Too low and the incentive is insufficient, too high and it may jeopardise a stable income stream. The mechanism to transfer funds from higher charges on poor performers to incentives for good performers could become unwieldy.
- Such a scheme needs to be simple to operate and fairly applied and this is likely to be problematical if applied across a wide range of very different sites and operators.
- It has the potential to penalise those companies who may not necessarily be performing poorly, but who just have not performed as well relative to others.
- It is unclear whether such a scheme has widespread support from regulated industry.
- A further issue may arise from the adverse impact of removal of incentives the following year if a company fails to deliver in the previous year.

An alternative approach is the design of a 'beyond compliance' framework from which various benefits accrue to those operators or sites that demonstrate performance consistent with a very high level of performance.

Indicators of high level performance could include:

- significantly enhanced disclosure, including volunteered information;
- third party accredited management systems;

¹⁷ Since 2011-2012 subsistence charges have been adjusted by up to 10% for poor and excellent performance, according to the permit/site compliance assessment scheme (CAS) score. CAS scores are based on performance against permit conditions and wider environmental management criteria and are reported annually. Details of the CAS are on SEPA's website at www.sepa.org.uk/about_us/what_we_do/compliance_assessment.aspx

- compliance data, actual emission levels and measures to reduce direct impacts on the environment;
- voluntary adoption of higher emissions standards;
- consistency in performance over a number of years;
- proactive community engagement;
- adoption of wider mitigation measures.

The rewards for being able to demonstrate very high levels of trust and environmental performance may include:

- simpler permitting which places a lighter administrative burden on the operator but without compromising on minimum standards of environmental protection;
- annual performance reporting in place of monthly or quarterly reports;
- independent audits of recognised environmental management systems instead of site specific prescriptive emissions limits;
- public or other recognition of excellent performance.

SEPA's preferred approach is for any incentivisation scheme to be modelled around a 'beyond compliance' framework. This is consistent with our proposal in the May 2012 consultation for accredited permits by recognising the potential for earned autonomy based on performance.

Question 6

Do you think that SEPA should consider introducing a system for 'beyond compliance' incentivisation as part of its overall approach?

Tell us what you think and whether this should be via charges or a 'beyond compliance' framework.

Tackling poor performance

SEPA spends considerably more time and resource working with some poorly performing operators than is funded by the charge paid by those operators. This often leads to significant under recovery of costs and can act as a constraint on the amount of work that it can do to bring such operators into compliance.

We consider that poorly performing operators that demand a disproportionate amount of SEPA's resources to bring them into compliance should pay higher charges. This would reduce the burdens placed on other regulated businesses or the taxpayer. It is proposed that flexible, risk based charging should include the introduction of cost reflective charges once compliance falls below a trigger level.

The Environment Agency (EA) has introduced such charges.

The EA uses a banded compliance rating (A to F) to modify regulatory effort through their compliance classification scheme (CCS). The bands are reassessed annually using a points system where more serious breaches score a greater number of points. Compliance rating band F indicates situations where operators have the poorest level of compliance and annual subsistence charges are adjusted to a rate equivalent to 300% of the base charge.

A process would need to be developed to determine when such costs may be applied and to establish the level that such a charge should be pitched. An escalating charge dependent on the scale of poor performance may be appropriate.

Question 7

Is the concept of an intervention charge for poor performance something you would wish to see introduced?

Tell us if this seems reasonable or not?

There is also scope for those operators who perform very poorly to be charged on a cost of time and resources basis. Such an approach would provide 100% cost recovery and would also act as a disincentive to poor performance. In turn this could reduce the need to undertake formal enforcement action if operators improved their practices. Additionally, there are benefits to other businesses from knowing that poor performers will not compete with them unfairly.

Direct charging is fully consistent with the polluter pays principle in that only those performing very poorly would be liable for such a charge. We would envisage that such provisions would be used sparingly after other mechanisms had been exhausted and would be applied in line with clear procedures and thresholds of continued poor performance.

Question 8

Do you consider that SEPA should directly charge for time and resources spent in dealing with very poor performers?

Tell us what you think and what consequences there might be in introducing such a charge.

Taking into consideration the above assumptions the following section sets out two options for SEPA's future funding arrangements.

Core funding: option one

This option is based around the two core elements of GiA and a revised, more flexible, risk based charging framework.

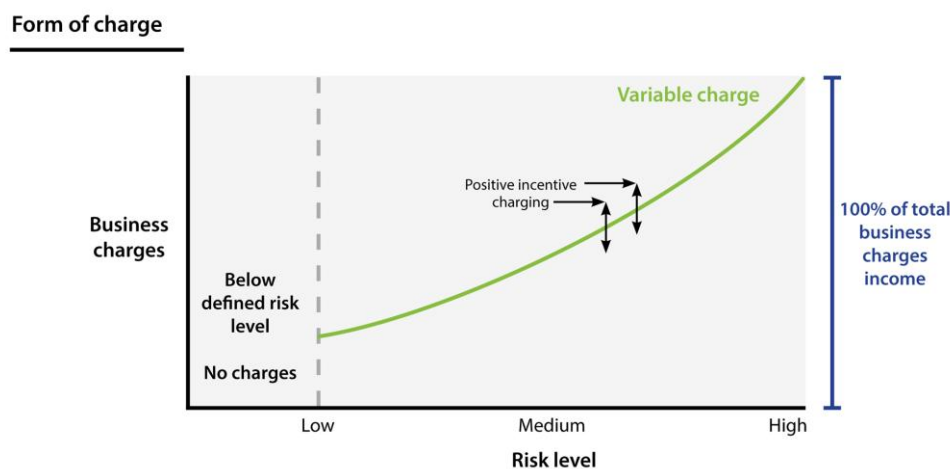
It is proposed that GiA would be retained in approximately the same proportion to business charges as at present. This element is an important part of SEPA's funding profile as it enables the agency to undertake wider environmental protection and improvement activities.

As mentioned previously, this includes flood risk management planning, operating a flood warning service, responding to planning consultations and addressing cross-cutting environmental issues for the public good. It also includes a role in promoting the understanding of the environment and the issues affecting it. Many of these are integral to the support that SEPA's work provides to the Scottish economy.

In addition, this option proposes a move to a flexible system of charging that is integrated and based on the environmental risk associated with an authorisation issued by SEPA. The proposals as described are intended for subsistence income only, with application charges remaining more closely linked to activity to reflect their transactional nature.

Key aspects of a new approach to charging are summarised in Figure 1.

Figure 1



Benefits of option one

The principal benefit from this option is that it links operator charges to environmental risk and operator performance. The effect being that the highest risks and poorest performance will attract the highest charges.

A unified charging framework will be simpler to understand and administer and more efficient by introducing common approaches to risk assessment, allocation of costs and tackling of performance.

Accounting for poor performance is fairer and increases effectiveness in driving positive behavioural change.

Core funding: option two

This option is the Scottish Government and SEPA's preferred option as it is considered to be best able to deliver the future stability, resilience and flexibilities needed for Scotland's environmental protection system and is most in line with the principles discussed above.

The same core funding elements of option one are in this option. Otherwise, the principal difference between the two options is that an environmental resource charge is proposed in option two by means of a standing charge component.

It is proposed that business charges would incorporate a flat-rate standing charge and a variable component, reflecting respectively the broad use of environmental resources principle and a variable, targeted set of charges based on risk and performance and designed to reflect the larger impacts and risks. Both elements would be incorporated into SEPA's existing charge collection systems.

How would standing charges work?

The annual subsistence charge would be comprised of a standing charge for all authorisation holders¹⁸ (excluding domestic septic tank registrations) and a variable charge related to the risk and impact of the activity.

It is proposed that the standing charge would be a practical application of the use of environmental resources principle mentioned earlier. The level at which to set this is part of this consultation: our initial thinking is to establish this at around 10% of SEPA's total subsistence income from regulated businesses. This represents approximately £3 million per annum¹⁹. The standing charge will not be additional income but redistribution of 10% of existing subsistence income across a wider charge base of existing regulated businesses. We are proposing that some current non-charge payers should contribute to SEPA's income by the payment of a standing charge.

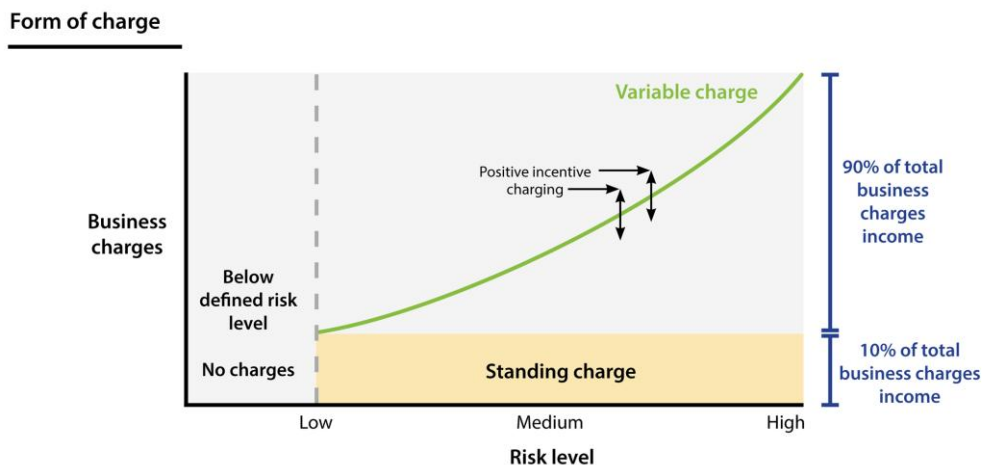
We propose to exclude septic tank discharges from the payment of standing charges because we do not want to target rural domestic activities which will continue to be registered only on change of ownership or if significant increases in volumes or point of discharge are proposed. They are not currently subject to subsistence charges. In general, we do not propose to introduce charges for activities managed by general binding rules (GBRs).

Overall there would be no net increase in the burden of subsistence charges arising from the new model unless agreed via existing charging approval arrangements. Figure 2 illustrates the way in which the charge could work.

¹⁸ Authorisation is used to mean licences, permits, registrations, exemptions and all other permissions currently in use but excluding general binding rules (GBRs)

¹⁹ Note that this is not additional income but a new way of raising funds.

Figure 2



Three yearly reviews are proposed which will look at the overall level of the standing charge and whether it needs to be adjusted. This will be based on the available evidence and further development of the risk assessment process.

Why is a standing charge necessary?

Currently many of SEPA's authorisations do not pay subsistence charges. These nevertheless have an environmental impact, and are subject to investigation and monitoring on an ad-hoc basis.

All of these activities benefit from the use of the environment in that discharges to water and emissions to air are made and the disposal of waste is carried out. Such activities contribute collectively to pressures on the environment in Scotland. The 'use of environmental resources' principle would ensure that these authorised activities contribute to the maintenance and improvement of the supplying or receiving environment.

These 'low risk' activities are not subject to complex risk assessment or regular compliance or impact monitoring. However, there are many such activities, the cumulative impact from which is significant and a standing charge, annually, for the benefit and use of the environment would reflect this. We therefore believe that this proposal is a practical application of the use of environmental resources principle, and a fairer means of sharing the costs of Scotland's environmental protection system.

It is proposed that all activities above the lowest level of risk would pay a charge based on a combined standing and variable charge.

How much is the standing charge likely to be?

Assuming subsistence charges are not increased for current charge payers (c12,000) and that approximately 3-5,000 new activities become liable for the annual standing charge, then a standing charge of approximately £150-200 per annum would be introduced.

SEPA currently issues c21,000 invoices each year, in April and September. Invoice payments are being migrated to online payment and the additional cost of issuing

additional annual standard charges could be absorbed within existing resources, whilst reducing overall complexity.

Question 9

Do you have any views on the balance that should be struck between the total levels of income generated from the standing and variable charges?

Variable charges

A standard approach to the assessment of risk and compliance across all permissions will provide the basis of the variable charge. The structure of SEPA's charge calculations currently vary widely between schemes and this needs to be simplified. Again, the integrated environmental risk assessment discussed in option one would provide a basis from which to calculate the variable charge.

The variable charge could be adjusted to reflect performance, whether excellent, very poor, etc. For example, a major chemical works would pay a charge consisting of a variable charge based on environmental risk, and including the flat rate standing charge element. Minor discharges to the water environment and lowest level waste exemptions (e.g. registrations) would pay the standing charge only (i.e. no variable charge).

Which activities may be subject to a standing charge only?

The following licensed activities are currently not liable to pay annual subsistence charges:

- c2,500 waste carrier renewals each year. A waste carrier licence is valid for three years.
- c1-2,000 waste exemptions (complex and simple) are issued or renewed annually
- Activities with Controlled Activities Regulations (CAR) registrations including smaller discharges, abstractions, impoundments and engineering activities.

Benefits of option two

- All of the benefits of option one are achieved in this option but this also delivers more fully on the principles that will underpin the future funding arrangements.
- This option applies the polluter pays principle (use of environmental resources principle) to a wider range of activities that use the environment, are currently regulated and which can impact upon it.
- Fairness and transparency are increased in that an effective environmental protection system for Scotland is funded from a wider base than the existing charge payers.

Question 10

Would you support?

- A. Option 1.
- B. Option 2.
- C. Neither of the options.

Tell us which option you would support and, if neither, please suggest an alternative.

V. Other potential approaches to funding

The 1995 Act gives SEPA broad powers to set charges which the agency has not fully explored to date. This has the potential to address some of the shortcomings of prescribed charging schemes. The possibility of additional cost recovery mechanisms being used in combination with a core charging scheme will therefore be explored but this would be a new approach and views are therefore sought.

Voluntary agreements

There are a number of examples where companies or sectors have entered into voluntary funding agreements with regulators to improve individual or sector wide performance²⁰. Such agreements could be introduced as part of SEPA's funding arrangements with a view to improving environmental performance across a whole sector, developing sector reputation or enhancing industry competitiveness. The principle of such agreements has been suggested previously- we now seek views on whether industry would welcome voluntary funding arrangements to support such agreements.

Specific initiatives could include programmes to:

- reduce environmental impact, reducing pollution incidents or tackling poor performance through business advice and support;
- investigate, test and introduce new cleaner and lower carbon technologies;
- support energy efficiency and waste reduction (i.e. more efficient use of resources);
- explore 'beyond compliance' activities such as low impact designs, green chemistry or life-cycle analysis and impacts.

There would be a clear need to ensure that, if agreed, any associated funding would be additional to any costs incurred to bring about baseline compliance and to avoid duplication with existing programmes from government bodies or other sectoral agreements.

Such approaches could, however, be a powerful way to support the implementation of sector-based working which is an important component of the Scottish Government and SEPA proposals for an integrated framework for environmental regulation.

Question 11

Do you support the concept of facilitating voluntary agreements?

Tell us where the priorities for such agreements should be and what issues need to be considered.

²⁰ See for example: www.cia.org.uk/Policyissues/HealthandSafety.aspx,
www.decc.gov.uk/en/content/cms/emissions/ccas/ccas.aspx,
www.wrap.org.uk/category/initiatives/courtauld-commitment

Value added services

In 2010, SEPA suggested that there was scope to consider direct charging for certain services that SEPA provides or to charge for certain enhanced services. These would not be compulsory additional charges, rather voluntary and optional.

This proposal was generally supported by the majority of respondents, particularly where this could lead to delivery of value added services. However, many respondents also highlighted concerns. They were keen to stress that there should be no conflict of interest with SEPA's regulatory role and that charges should be voluntary and agreed by the operator. There would also need to be a clear definition of the standard service to be provided.

It has been suggested that there is scope for SEPA to identify a range of value added services for which a fee could be charged.

The types of services that we envisage could include:

- providing dedicated resource to act as project manager, to act as a point of contact and internal co-ordinator for significant applications;
- providing validation services;
- charging for some pre-application services, particularly those for very large scale projects (see below);
- access to certain datasets that SEPA holds and maintain.

For example, SEPA could introduce a paid service for assessing the carbon balance of major developments, or of specific processes or activities, or could provide third party validation of such assessments.

Further views are invited so that specific proposals can be developed. The intention is that such services would:

- not be compulsory, but able to be initiated by the applicant or operator;
- not lead to a migration of core work to a paid service;
- be backed with clear service delivery and performance targets;
- be backed up by effective arrangements to ensure that SEPA's role as an independent regulator is maintained and protected at all times.

Question 12

Do you agree with the principles that would apply if value added services were to be introduced by SEPA?

Tell us if you agree with the concept of value added services and what principles should be applied?

Major projects

SEPA is actively involved during the planning and development stages of major and national infrastructure or construction projects as part of its commitment to protect the environment, support long term sustainable economic growth and helping to ensure that the right infrastructure is in place to facilitate transition to a low carbon economy.

SEPA's early involvement can result in potentially difficult issues associated with large scale projects being identified, addressed and resolved prior to submission of plans and licence applications. This helps to ensure that proposals that come forward are of good quality and this saves time, effort and cost.

The scale, complexity and environmental implications of some major projects, for example, the new Forth crossing, Hunterston and the Beaully to Denny replacement power line etc. demands a large resource commitment over an extended period. SEPA's involvement from the initial proposals through to the authorisations being sought ahead of construction and operation can be extensive and yet this may only generate a small income after a licence is issued.

The EA offers free pre-application advice to all developers but is currently developing a chargeable service for significant and complex new development proposals. The EA reports that feedback from pilot charging agreements with developers for the Olympics and Thames Gateway has been positive.

Permit application fees are set to recover the costs of processing an 'average' or 'normal' application. In calculating this average, SEPA does not include costs for major infrastructure and large scale commercial activities as this would increase fees across the board disproportionately and unfairly penalise many small business and individuals. As a result, SEPA substantially under recovers its costs for these very large scale projects.

The continuing under recovery of costs is not sustainable and there is scope to charge directly for this work as an alternative to across the board increases to application fees.

It is envisaged that the following aspects would need to be built into any charging for major projects:

- A process for identifying the threshold of projects for which SEPA could charge, for example, this could be restricted to new national developments designated in the National Planning Framework²¹ or be widened to include, for example developments of such scale that they are identified in Schedule 1 of the Environmental Impact Assessment (Scotland) Regulations 1999²².
- SEPA would continue to offer the existing service for all other pre-applications.
- Assigned resources, including a project manager, could be provided to ensure effective and timely delivery of SEPA's input.

²¹ www.scotland.gov.uk/Publications/2009/07/02105627/0

²² SSI 1999/1, as amended

- Use of formal agreements to identify responsibilities and performance deliverables, as well as to make clear that the charge does not guarantee a particular outcome and that SEPA remains a fully independent consulted authority and/or decision maker.
- The fees charged could reflect a time cost or be a fractional percentage of total project budgets. In Germany, charges are levied as a percentage of the total cost of the project, for example. Fees could possibly be in the order of 0.25-1% of project costs.

Question 13

Would you support the introduction of voluntary agreements as described for major infrastructure or construction projects as a contribution to supporting economic development and environmental protection?

Next steps

This consultation has set out a clear set of principles that should underpin SEPA's future funding model, together with a range of problems and opportunities that require to be addressed in order to allow it to continue its journey towards an outcome based agency. We have set out a package of measures, including our preferred option for a core funding model for SEPA. We welcome your views on our ideas and will listen carefully to any views expressed.

Annex 1 - explanation of current SEPA funding system

Grant-in-aid

Grant-in-Aid (GiA) is funding provided by Scottish Government to SEPA to fund agreed activities within broad parameters set by Scottish ministers. GiA funds those areas of work which are necessary for the protection and improvement of Scotland's environment but which are not recoverable through the charging regimes.

The level of GiA is determined by the Scottish Government spending review and covers existing and projected SEPA workload. The GiA funding is subject to annual parliamentary approval.

In 2012-2013, SEPA will receive £38 million as GiA from the Scottish Government representing around 52% of overall funding. GiA is often allocated to particular areas of work such as specific initiatives to deliver government priorities, new activities arising from legislation and development work on new areas of policy or legislation.

In addition to the activities discussed in the main consultation document, GiA is also used to cover the shortfall between the cost of our regulatory activities and the funds we recoup through our charges. In 2010-2011 this amounted to £2.1 million which represents almost 6% of total GiA. In line with reductions across all of the public sector, SEPA's level of GiA has fallen by 11% since 2010. This reduction has led to significant cost savings being made by increasing business efficiency and reducing costs by 25% since 2008-2009.

Charging schemes

SEPA has wide powers under the Environment Act 1995 (the 1995 Act) to make schemes imposing charges in relation to environmental licences²³. Any scheme must be approved by Scottish ministers who must have regard to the desirability of ensuring that the amounts recovered by SEPA are the amounts needed to be recovered to meet the full cost of carrying out its functions²⁴. SEPA also has a number of wide general powers to set charges²⁵

SEPA has powers to charge under the Environment Act 1995 for environmental licences and to recover the costs incurred by it in performing functions conferred by regulations, through charging schemes.

SEPA currently operates 14 separate charging schemes, each of which has its own set of rules, charges and administrative structures. The charging schemes have been developed from various directives, acts and regulations over many years. They have been tailored to reflect the language, layout and activities listed in each of the regulations. This clear association with the appropriate regulations has made it clear to charge payers why SEPA is charging them but has resulted in a number of differing schemes.

During the five year period 2008-2013 SEPA charges have been reduced in real terms, as overall, charges have increased by only 6.4%, well below the UK Retail Price Index (RPI) increase of 17.7%. Water abstraction charges have not increased during this same period. All charges have been frozen since 1 April 2010.

²³ Section 41 Environment Act

²⁴ Section 42 Environment Act 1995

²⁵ Sections 37(7) and 43

Current context for SEPA funding

Movements in SEPA funding

SEPA Funding (£000s)*	Outturn 2011-2012	Budget 2012-2013	Budget 2013-14	Budget 2014-15
Grant-in-Aid	39,007	36,397	35,897	35,897
Charging schemes	34,830	34,817		
Other income	2,149	820		
Total income	75,986 (-9.8%)	74,429 (-2%)		

*The Draft Budget figures are published in resource terms i.e. they include non-cash depreciation. Resource figures are as follows:

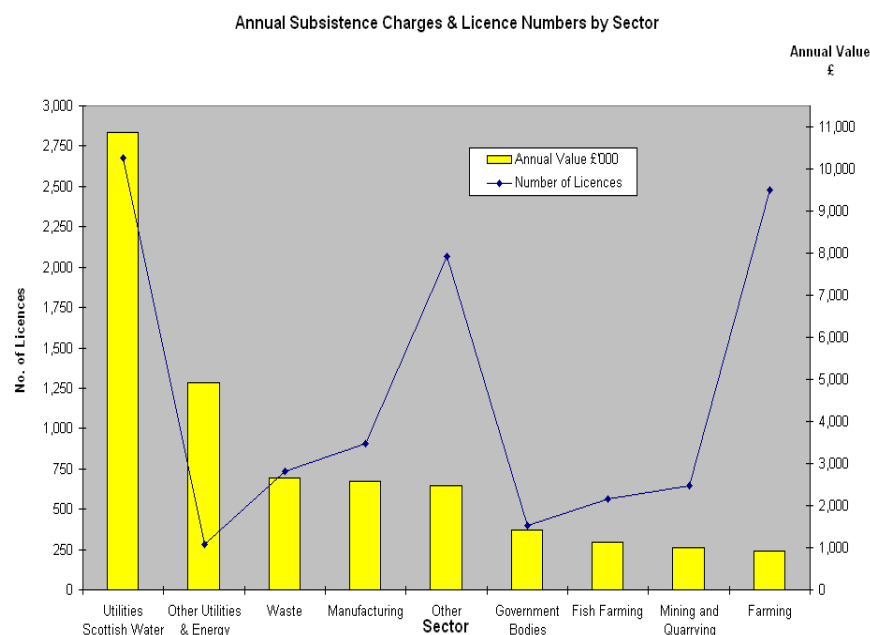
2011-2012 £44,764 outturn

2012-2013 £38,035 budget

2013-2014 £37,535 budget

2014-2015 £37,535 budget

Sector funding profile



Useful links

SEPA charging principles and schemes:

www.sepa.org.uk/about_us/charging_schemes.aspx

Current charging schemes:

www.sepa.org.uk/about_us/charging_schemes/current_charging_schemes.aspx

Scottish Public Finance Manual:

www.scotland.gov.uk/Topics/Government/Finance/spfm/Intro

SEPA financial memorandum 2005:

www.scotland.gov.uk/Resource/Doc/55971/0016195.pdf

HM Treasury guidance:

www.hm-treasury.gov.uk/psr_index.htm