

Introduction to the Workshop on SEPA's Regulatory Charging Scheme

1 Purpose and Introduction

- 1.1 This paper provides a brief introduction to the December 2013 workshop on proposals for a new Regulatory Charging Scheme for SEPA.
- 1.2 Scottish Government and SEPA are working jointly to enable SEPA to take a more joined-up, flexible and risk-based approach – able to target effort where it is most needed. This work includes the environment aspects of the Regulatory Reform (Scotland) Bill and the development of a new Regulatory Charging Scheme. These will support changes in SEPA; enabling SEPA to drive organisational changes to target resources where they are most needed and helping to reduce SEPA's operating costs. It is stressed that the intent behind a new regulatory charging scheme isn't about increasing the overall amount collected via charging. It's about designing a better charging framework; one that is fairer, more risk-based, flexible and joined-up. We also want the new model to help incentivise good practice.
- 1.3 The December stakeholder workshop builds on previous engagement and provides an opportunity for SEPA and Scottish Government to present progress and outline proposals for the new scheme, prior to progressing towards detailed development.

2 Background

Development of funding proposals

- 2.1 SEPA currently has 14 charging schemes. These schemes have been progressively developed over many years to support individual regulatory regimes and as a result each scheme has its own set of rules, charges and administrative structures. The intention is to bring together the Scottish Charging Schemes to create a single Regulatory Charging Scheme to support the implementation of the new legislation. It should be noted UK-wide schemes (eg Emission Trading) and hourly-based charging schemes (such as those for nuclear sites) will remain outside of the Regulatory Charging Scheme.
- 2.2 In 2010, SEPA consulted on the high level principles associated with delivering a package of better regulation. In general, the responses showed support for the following proposals for charging:
- 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 including tackling environmental crime and free-loaders; and
 - an incentivisation scheme that would benefit higher performing operators.
- 2.3 In October 2013, Scottish Government and SEPA launched a "Consultation on Proposals for Future Funding Arrangements for SEPA." The key conclusions are listed below.
- 70% supported a set of principles (Annex 1) which the new charging scheme should comply with.

- 75% supported a risk-based approach to charging based upon the proposed principles;
- 90% supported the introduction to an intervention charge for poor performance;
- 63% supported the introduction of voluntary agreements as described for major infrastructure projects.
- 70% of respondents supported the introduction of a standing charge

2.4 A Stakeholder Workshop was held in June 2013 which explored the type of risk assessment mechanisms which could be used to construct the charging scheme. The feedback from this workshop has been used to develop the proposals which will be discussed at the December workshop.

SEPA’s Funding

2.5 In 2012/13, SEPA raised £35m from charging. This represented approximately 50% of SEPA’s funding. The remaining came from Scottish Government as Grant in Aid. The GIA funding was maintained at its current level at the last spending review..

2.8 During the period 2008-2014, SEPA charges increased overall by 8.4%, well below the UK Retail Price Index (RPI) increase of 20.3% for the period. This has been achieved by making significant cost savings through reviewing business processes, increasing business efficiency and reducing the staff complement.

3 Workshop structure: subsistence charges

3.1 The bulk of the workshop will cover the proposed process for determining subsistence charges. These are the charges which operators pay each year and which support the regulatory and environmental monitoring activities of SEPA. The workshop will consider in sequence four processes which determine the charges which a site has to pay. These are illustrated below and described in more detail afterwards.

Figure 1. The four processes which determine site charges.



Business Planning

3.2 SEPA’s business planning processes drive what the Agency does and determines how resources are to be allocated. Strategic priorities are determined with Scottish Government, via SEPA’s Corporate Plan, and will cover a period of between 3-5 years (yet to be decided). This Plan is approved by Ministers. It is proposed that the charging scheme is linked closely to each Corporate Plan and thereby to SEPA’s internal business planning processes. The objective is to ensure that the charges reflect the planned resource allocation. Any review of charges will be subject to consultation. The proposal is that charges will be set for the period of each Corporate Plan. This will result in a charging scheme which reflects, fairly and transparently, SEPA’s allocation of charges and a level of predictability for regulated business and SEPA for each planning cycle.

Guidance for grant-in-aid and charging

- 3.3 The Scottish Public Finance Manual (SPFM) provides guidance on what SEPA activities can be subject to cost recovery from charges. SEPA's existing charging schemes have developed iteratively over a number of years. It is proposed that the rules should be clarified so that it is clear what GIA funds versus what is covered by charges. As a result, some SEPA activities will move from being paid for by charge payers to GIA and others will move from being funded by GIA to charge payers. A summary of SEPA's interpretation of SPFM guidance is provided in annex II. The result of this rationalisation will be a clear and transparent basis of charging. This will mean that some charges will increase and some decrease.

Allocation rules

- 3.4 The previous consultation responses supported the concept of using risk assessment tools to allocate the charges across operators. A hierarchy of charge-allocation rules have been developed based upon feedback from the last workshop. This hierarchy will consist of:
- site-based risk assessment based up site complexity which reflects regulatory effort;
 - emission-based assessment which influences regulatory effort and determines environmental monitoring; and
 - environmental sensitivity/harm which also affects regulatory effort and environmental monitoring.
- 3.5 In order to calibrate the allocation rules, SEPA will estimate the resources it devotes to each sector (e.g. food and drink or electricity generation) and will use this to ensure that the appropriate levels of charges are set at a sector level.

Compliance charge

- 3.6 SEPA is at an early stage of developing proposals for ensuring that those who do not comply with their licences face additional charges which reflect the additional costs imposed upon SEPA. This will reduce the overall charge pressure upon those who comply with their licence conditions.

4 Workshop structure: other areas of work

- 4.1 SEPA has been reviewing the practicality of incorporating a standing charge as part of the subsistence charging scheme. The current view is that the standing charge introduces complexity but no practical advantage. It is proposed not to proceed with the standing charge.
- 4.2 Early options for developing the application fees component of the charging scheme will be discussed.

5 Opportunities for discussion

- 5.1 The meeting will allow a number of formal and informal opportunities to discuss the proposals and to consider how they can be developed.

Annex I Principles for charging scheme construction

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.

Annex II Rules for separating GIA from Chargeable SEPA Activities

1 Purpose

- 1.1 This paper explores the rules for defining how SEPA recovers its costs for particular activities from charges or from Scottish Government Grant-in-Aid (GIA). This work is at an early stage and the cost implications are currently being defined and will be presented at the workshop.

2 Legislative background

- 2.1 SEPA is funded from GIA and through charges, in broadly equal proportions. SEPA has powers to charge under Sections 41-43 of the Environment Act 1995 for environmental licences and to recover the costs incurred in performing its duties, through charging schemes.
- 2.2 Section 41 of the Environment Act 1995 (EA95) gives SEPA the powers to impose charges. Section 42 details charging scheme approval mechanisms and confirms schemes should achieve full cost recovery. Section 43 provides further incidental power to impose charges. EA95 has been augmented by subsequent legislation containing legal powers for specific regulations and setting fees and charges for individual schemes including; The Water Environment and Water Services (Scotland) Act 2003 (WEWS); Control of Major Accident Hazards (COMAH); Producer Responsibility; and, Emissions Trading (EU-ETS).
- 2.3 The income recovered by the charging scheme together with any grants paid to SEPA must, when taking one year with another, cover SEPA's costs.
- 2.4 SEPA is allocated grant-in-aid as part of the three-yearly Government spending reviews. The resources provided to SEPA by Government are in response to resource needs for particular functions, however, the resultant funding is not "ring fenced". As a result GIA funding is allocated to priorities defined within SEPA's Corporate Plan as agreed with the Scottish Ministers.

3 Financial background

- 3.1 Government sets out what is required in terms of funding, charging, financial accountability and governance in published guidance (see [SPFM: Legislative Background and Applicability](#)) The general principle for determining whether costs are attributable to a charging scheme is that the costs of undertaking an activity are chargeable to permit holders (or other charge payers) if the activity (such as compliance monitoring) is undertaken as a direct or indirect result of the existence of a relevant licence or permit or a permit holder benefits from the activity, for example, through relevant research and development. In line with this and the Government guidance SEPA applies the following broad principles in its charging setting process:
- charges should recover the full cost of the service;
 - charges should not deliberately set out to recover more than the cost of the service;
 - charges should reasonably reflect the cost of the providing the service;
 - there should be a clear and direct link between the charge payer and the benefits received; and
 - cross-subsidies are not good practice.
- 3.2 In broad terms SEPA expects to recover from operators the costs of regulation

together a proportion of the costs of environmental monitoring and support/overheads.

4 Policy background

- 4.1 The rules have been developed to ensure that they are aligned with the polluter pays principle.

5 Determining what is chargeable

- 5.1 As the existing charging schemes have developed over a period of time, as and when regimes were introduced, they reflect differences in how costs were allocated (i.e. as recoverable from t charges or from GIA). As part of the development of the regulatory charging scheme, there is an opportunity to standardise the rules. These rules proposed are listed below.

- 5.2 Rules for application fees.

- The average cost of processing an application for a permission type will be charged through the application fees. This will include the average cost of pre-application advice provided by SEPA.
- The average costs of reviews of permissions will be recovered from operators via application fees. These fees will include the average costs of preparing and issuing a revised permission.

Currently, under WEWS, reviews or applications which are undertaken to deliver environmental good (environmental service) are not subject to charges. The WEWS charging scheme guidance states that these costs should be covered by subsistence charge payers. We consider that the principle that the charging scheme should not provide a disincentive to those who are only aiming to deliver environmental improvement should be maintained and applied across the new scheme. SEPA consider, however, that this work should be funded by GIA and not charges.

- 5.3 Rules for subsistence charges:

- Operators will pay the average cost of the direct regulation for their type of site. This includes activities such as: visits to the site; communications with the site; estimates for environmental events and enforcement action. We consider that the full costs of events and enforcement action should no longer be borne by all charge-payers. Part/all of these costs will now be covered by individual sites who are responsible for these incidents as part of an additional performance charge imposed upon their subsistence charge.
- Operators will pay the regulatory and monitoring costs associated with managing sectoral compliance. This includes running of initiatives to promote good practice or improve compliance and work to ensure that all operators comply with legislation. This rule is not currently applied consistently across all charging schemes.
- Operators will pay the average costs of monitoring the consequences of their type of site upon the environment. They will also cover the costs of the resultant data analysis and reporting. If the monitoring has more than one function then costs will be allocated in proportion to the relative scale of the functions. This currently applies to WEWS charging scheme but has not been fully applied to other schemes. We are considering applying this rule to all parts of the charging scheme.

- Operators should pay a proportion of the costs of SEPA work which supports development of methods, models and procedures which are required to deliver SEPA's regulatory and environmental functions. Although this normally includes the costs associated with the implementation of new legislation we propose to cover the costs of SEPA's transformational change programme from GIA.
- Operators will pay a proportion of overhead costs (such as IS, administration, facilities and management costs).
- Operators will pay a proportion of depreciation costs.

5.4 SEPA activities not currently subject to cost recovery include the following.

- Enforcement costs associated with legal action after referral to the PF.
- Work on flooding (e.g. flood warning or flood risk assessment) is not cost recoverable. However, a small proportion of work associated with flooding involves assessing the flood risk implications of particular developments and this work is cost recoverable.
- River basin management planning has been set up to promote cooperation between a wide range of organisations who have an interest in the water environment. SEPA does not consider that it is appropriate to charge for the coordination for River Basin Management Planning. This work is therefore covered by GIA. SEPA is also considering moving other forms of strategic reporting from Charges to GIA.
- SEPA undertakes some work to monitor the impact of a sector but does not charge that sector for the work. Under these circumstances other charge payers should not have to cover the costs and the work will be funded by GIA. This applies to the following impacts:
 - Where General Binding Rules cover activities which cause diffuse pollution (eg agriculture or forestry), SEPA will not attempt to recover its costs.
 - Historic engineering activities have a major impact upon the water environment. Many of the structures are redundant and it is not possible to identify an owner. Environmental monitoring of the impacts of historic engineering activities and the assessment of options for restoration will be covered by GIA.