

Law Society of Scotland submission of 8 August 2023

PE1988/C: Review the process for disposal of household raw sewage

Thank you for inviting us to comment on the actions called for in the above petition.

You have asked for some information about the process and requirements during the conveyancing process regarding properties without a connection to a mains sewer or private septic tank and how SEPA registration is confirmed.

During the conveyancing process a contract is formed between buyer and seller, this contract is called the “missives”. The majority of Scottish solicitors use the Scottish Standard Clauses as the basis upon which the contract is formed. These clauses set out the generally accepted clauses and requirements and can be amended by agreement between the parties. It is worth noting that the Scottish Standard Clauses are not a Law Society of Scotland initiative (we do host these on our website as do other organisations). They are created and updated by a working group of solicitors, known previously as the Scottish Standard Clauses Working Party and more recently as the Scottish Conveyancers Forum.

There is a clause which covers drainage, which is Clause 11.4. You can find the clauses here -<https://www.lawscot.org.uk/media/373300/extract-ssc5.pdf>. If this clause is included in the missives then the seller confirms that the property is connected to mains drainage or otherwise a private drainage system with either a septic tank, treatment plant, or reed bed with relative outfall pipe and/or soakaway and all relative pipes, drains and connections. Further the seller must deliver evidence that the drainage system is registered or licensed with SEPA or any other appropriate authority.

If the drainage system does not have the appropriate consent then the seller would generally require to obtain SEPA registration and/or seek retrospective consent. It is understood that consent/registration is usually always given by SEPA. The Committee does not have experience of a situation where SEPA refused but it is likely that the transaction would not proceed without some further remedial works being carried out.

There were not noted to be many examples of a system which did not have a septic tank, however on the occasions experienced by some Committee members where the waste from a house drained into the sea, consent was granted by SEPA. This was granted on the basis that all reasonable endeavours should be used to secure a connection to a public sewer when one becomes available.

During the course of the conveyancing process, a Property Enquiry Certificate (PEC) will be obtained. This searches for Council records of the property and for any planning proposals, enforcement orders etc. If there were outstanding notices under the Environmental Protection Act 1990 recorded over the property in relation to the drainage system, then it is likely that this would show up on the PEC.

We hope that you find our comments helpful. If we can be of further assistance, please do not hesitate to contact us.