



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Net Zero, Energy and Transport Committee**

Gillian Martin,  
Acting Cabinet Secretary for Net Zero and Energy  
Scottish Government

**3 December 2024**

Dear Cabinet Secretary,

### **Environmental Authorisations (Scotland) Amendment Regulations 2025**

On 3 December, the Net Zero, Energy and Transport Committee considered our approach to scrutiny of the above regulations.

We noted the length and complexity of the regulations, which span 289 pages. Not only do they consolidate the four main environmental regimes regulated by SEPA into a single 'Integrated Authorisation Framework', they make important changes to the law in some areas, for instance the regulation of sewage sludge, and expand SEPA's regulatory responsibilities into wholly new areas such as carbon capture.

The Committee also noted that there appear to be things the regulations might have done but did not do; for instance in relation to the regulation of ammonia.

Given all this, and the clear public interest in ensuring that the regulations are comprehensive, robust and workable, the Committee is disappointed that the Scottish Government did not engage with us about the content of the instrument in advance of it being laid, so as to ensure we could be as prepared as possible to scrutinise it within the strict 40-day deadline that applies for affirmative instruments.

We also ask you to note that the regulations have been laid at a particularly busy point in the Committee's calendar, coinciding both with Stage 1 scrutiny of a large, complex Scottish Government bill and the narrow window for Committees to consider and comment upon the Scottish Government's 2025-26 budget proposals. Laying the instrument at this time also means the Committee effectively having to ask stakeholders to provide comments on the instrument over the festive period, which some bodies may find challenging.

In view of the above, in order to ensure adequate time for the Committee to consult with stakeholders on this complex and important instrument and seek expert views on it, we ask the Scottish Government to consider formally withdrawing the regulations and then re-laying them early in the New Year. This is unless there is an

Contact: Net Zero, Energy and Transport Committee, The Scottish Parliament, Edinburgh, EH99 1SP. Email [netzero.committee@parliament.scot](mailto:netzero.committee@parliament.scot). We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

important reason why the regulations must be laid now. (We note that the earliest coming into force date for any part of these regulations is 1 June 2025.)

I would be grateful for a response to this proposal by **9 December**.

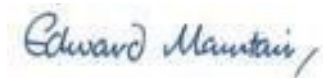
I know that you and Scottish Government colleagues do value having cooperative relations with the Committee and also ask for renewed effort (at both official and political level) to have effective dialogue over the remainder of this Parliamentary session about the Scottish Government's upcoming legislative plans and how they or any other key Scottish Government milestones may impact the Committee's work programme.

The Committee has, in the meantime, agreed a number of questions to put to the Scottish Government about the regulations, as set out in the annexe. I would request a response to these by **16 December**. (In the event that the instrument is withdrawn and relaid as suggested, I would be happy to push this date back.)

For information, the Committee has also agreed to write separately to a number of public bodies with an interest in the regulations and any responses we receive will be published. Withdrawing and re-laying the regulations would enable us to offer them a more realistic deadline to provide a considered response to our questions on this complex instrument.

This letter is copied to the Minister for Parliamentary Business and the Convener of the Delegated Powers and Law Reform Committee for information.

Yours sincerely,

A handwritten signature in blue ink that reads "Edward Mountain". The signature is written in a cursive style and is positioned above the printed name.

**Edward Mountain MSP, Convener**

## **ANNEXE**

### **Sewage sludge**

#### **Review**

The Environmental Rights Centre for Scotland (ERCS) stated in its 2023 consultation response that “The biggest concern for community members who have previously been impacted negatively by the practice of sewage sludge spreading is effective enforcement. A review of monitoring and enforcement should be conducted after the new authorisation regulations have been in place for a period of time (e.g. 1 year).” Will the Scottish Government review the implementation of the new regime for sewage sludge?

#### **Inspection/monitoring**

What are the inspection or monitoring requirements in relation to sewage sludge licences (including frequency or requirements for spot inspections) and do those requirements differ from other waste management licensing?

#### **Purpose of application**

Do the same requirements in relation to application to sewage sludge to land regardless of purpose e.g. are there different requirements for application to agricultural land versus application to restoration sites or for ecological improvement?

#### **Information provided and publicly available on authorisation**

What information will applicants be required to provide to SEPA as part of an authorisation for sewage sludge application to land, and will this information be publicly available on the SEPA register? Will an application be required to set out what other inputs are being used in relation to the same land (e.g. pesticides/other fertilisers) to enable a consideration of cumulative impact?

#### **Further research**

The 2016 report on sewage sludge and health, and recent ESS report on soil quality both highlight the need for more research, evidence and understanding of the impacts of sewage sludge (e.g. in areas such as microplastics and also noting stakeholder concerns about PFAS/‘forever chemicals’ in sewage sludge). How is the Scottish Government responding to those findings and recommendations? How will the Regulations support that increased understanding and evidence base e.g. through the provision of information on land uses, land input, monitoring or sampling requirements etc?

#### **Scottish Water/other producers**

How will producers of sewage sludge i.e. Scottish Water (or any others) be impacted by the regulatory changes, and what regulations is Scottish Water already subject to in relation to the storage or transfer of sewage sludge, including any requirements to test/sample for contaminants, and keep records or report in this area?

## **Impacts on households and small businesses**

What changes in the Regulations are likely to affect the ordinary householder (e.g. septic tanks, hot tubs) or small business (e.g. waste storage) and what is being done to ensure these are effectively communicated to support compliance?

## **General Binding Rules**

ESS said in its 2023 consultation response on the draft Regulations that the current language and format of General Binding Rules “could limit user comprehension, compliance and ultimately effective environmental regulation” and suggested simplified language in practical guides would be needed– what consideration did the Scottish Government give to this concern and recommendation and what is its response?

## **Integration of regimes into new tiers**

As a result of the Regulations, will any regulated activities move from being licensed activities to a lower tier i.e. registration or lower, or move from being registered activities into General Binding Rules? What is the justification in those cases and how will those changes be communicated to the relevant stakeholders?

## **EU alignment**

The consultation on the Regulations highlights how EU alignment with existing Directives has been taken into account in various areas. Given this is an evolving area, with changes at EU level (as part of the European Green Deal), including significant 2030 targets across energy, agriculture and waste – what are the future implications of maintaining EU alignment with environmental standards for these Regulations?

## **Call-in procedure and access to justice**

The Regulations remove the requirement for SEPA to notify a third party who has objected to a proposed licence that it proposes to determine the application, and notify the Scottish Ministers of the objection (and removes the requirement for SEPA to then allow 21 days for Scottish Ministers to decide whether or not to call-in an application).

The consultation sets out that “recent practical experience in respect of the similar call-in procedures under CAR has generally demonstrated that the procedure results in delays, rarely results in a change of outcome, and is of limited utility to the process of determining applications and variations under CAR”.

How did the Scottish Government analyse the current impact of the call-in procedure to support this conclusion?

How many times has the Scottish Government exercised the call-in procedure based on a third party objection, and what was the outcome of that?

Have any concerns been raised with the Scottish Government about the potential impact of removing the existing call-in notification procedure on access to environmental justice?

In the absence of the notification and 21-day requirements being removed from the 2018 Regulations, how might Scottish Ministers become aware that proposed applications are particularly controversial and face significant local opposition, for example?

### **Fit and proper person test**

Will a fit and proper test apply to all licences issued under the Regulations, and will this only apply to new licences or will the requirement be retrospectively applied to all licences? If the latter, what are the timeframes and resourcing implications of this?

### **SEPA public register**

What are the implications of the Regulations for SEPA's public register including:

When will new authorisations begin to appear on the public register?

How will the migration of existing licences to the new framework impact on the public register – is SEPA under a legal obligation to update the permits on the public register to reflect their new status or any new conditions?

Has SEPA set out or agreed a timescale with the Scottish Government for updating the public register in this regard?

### **Transition and resourcing**

What does the Scottish Government consider will be the cost of SEPA of transitioning to the new system (assuming there will be initial costs before the expected savings begin to accrue) and will that be reflected in the forthcoming Scottish Budget allocation to SEPA?

### **Guiding principles**

How has due regard to the guiding principles on the environment helped to shape the proposals, and did the Scottish Government make a written record of this consideration?

### **Ammonia**

What actions has the Scottish Government taken forward, or planned to take forward, to tackle the issues around ammonia emissions set out in the consultation and has increased regulation been ruled out? How will the Scottish Government monitor the impact of any voluntary measures adopted?

### **Changes made to the draft Regulations consulted on**

The level of detail provided in the Policy Note and BRIA makes it challenging to understand what specific changes have been made to the Regulations as a result of the consultation. Could the Scottish Government provide a 'tracked

changes' version of the Regulations, Or a table of changes, illustrating where the draft Regulations consulted on have been changed in the 2025 Regulations?