



The Scottish Parliament
Pàrlamaid na h-Alba

Net Zero, Energy and Transport Committee

Nicole Paterson
Chief Executive Officer
SEPA

3 January 2025

Dear Nicole,

Proposed Environmental Authorisations (Scotland) Amendment Regulations 2025

When the Team from SEPA attended the Committee on 17th December they undertook to provide additional information on a number of issues relevant to the Regulations and its general regulatory role. These issues and some additional questions are set out below.

Customer hub

Members were interested to hear that SEPA was in the process of changing its out of hours contact centre by incorporating a more automated system, but that '24/7' contact would still be possible. The Committee would appreciate further information on the transition to the customer hub, including relevant dates, and on how SEPA will ensure no detriment to those in need of urgent assistance outside normal hours.

Transition (including digital transformation and fee structure)

The Committee is interested in the key milestones SEPA will need to hit, and further key workstreams that need to take place, to support implementation of, and smooth transition into the Integrated Authorisation Framework. The Committee appreciated hearing about the digital transformation work ongoing, including the development of a new digital application service for applications for permits, registrations and notifications, and a new online digital Public Register service relating to permits etc issued under the new Regulations. We understand you plan these systems to be ready for the Amendment Regulations coming into force. You also told us that you have consulted on revising your fee structure as part of the transition to the Integrated Authorisation Framework and the outcomes of this will be available in early 2025.

The Committee would appreciate receiving:

- Information on any key milestones or target dates that SEPA is working towards in 2025 regarding the readiness of the above digital systems or any other supporting infrastructure required to support the Integrated Authorisation Framework

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

- An update on the outcome of SEPA's consultation on its fee structure when that is available.

Call-in procedure

The Committee understands that the 2018 Regulations, as they stand, require SEPA to directly notify those who have made third-party representations on a permit application (e.g. members of the public who have objected to a proposal) of a proposed determination and that they may notify the Scottish Ministers in writing that they object to the proposed determination. This process also includes a statutory time period or 'stop the clock' period whereby SEPA must wait for confirmation from the Scottish Ministers as to whether they intend to call-in a particular application and any associated direction to SEPA.

The Committee understands that this 'call-in procedure' was modelled on a similar process in the water regulation regime (CAR regime), so SEPA has experience of applying this procedure within that regime over several years.

The Amendment Regulations remove these notification requirements and statutory time periods in the Integrated Authorisation Framework, but leave the general power of Scottish Ministers to call-in an application for determination.

The Committee is interested in understanding the implications of this change for public participation in environmental decision-making (including considering how this change 'balances' with the enhanced requirements for pre-application consultation).

On 16 December the Scottish Government wrote to the Committee setting out further information on the justification for the changes to the call-in procedure in the Amendment Regulations, stating in relation to previous experience with the call-in procedure:

"In total, Scottish Ministers have received third-party representations in relation to around 54 CAR applications (34 of which related to finfish farm applications, 15 to hydropower and the rest in relation to mining, a borehole and a distillery permit variations). To date, Ministers have only called in one finfish farm application (in 2016) but the application was withdrawn before determination.

In large part, objections received as part of the CAR call-in process related to issues outwith SEPA's remit (such as matters relating to the planning process) and the applicable criteria for assessing an application for authorisation and making a determination under CAR. There were frequently objections made with little or no supporting evidence. Whilst these objections demonstrated the concerns of those making representations, they were not generally of a nature so as to justify calling in an application to be determined by Ministers rather than by SEPA as the independent regulator".

The Committee understands that the Scottish Government is the policy-maker in this area in relation to what is in the Regulations. You set out in evidence that SEPA is required to follow the processes as they are set out and what is in the consultation outcome is reflective of the Scottish Government's experience of using this procedure, rather than SEPA's. However, the Committee is interested in fully

understanding the drivers for amending the call-in procedure, including any advice given by SEPA to the Scottish Government in this area. The Committee would welcome information on:

- If SEPA advised the Scottish Government on any implications, including benefits or risks of amending the call-in procedure as it is currently set out in the 2018 Regulations;
- Whether SEPA is content that the consultation outcome and Scottish Government response set out above also reflects SEPA's experience of how the call-in procedures have operated to support public participation in environmental decision-making, or if you have anything to add in this area.

Sewage Sludge

One of the changes that has been made between the draft and the proposed Amendment Regulations is that the default requirement to monitor nitrogen in the soil has been removed. The consultation response published by the Scottish Government in June 2024 states that in relation to soil sampling requirements for nitrogen in the draft Regulation:

“It was suggested that testing soils for total nitrogen is not required (in table 2). As this test is useful for only a limited number of waste types with a high carbon to nitrogen ratio to prevent nitrogen lock-up in the soil. We note that this can be managed via SEPA guidance on 6 those specific waste streams and not applied generally.”

The Committee is interested in better understanding the policy significance of this change to the Draft Regulations and why it is more appropriate to manage this through SEPA guidance. The Committee would welcome receiving more information on this including SEPA's view on whether this change impacts on the robustness of the revised regulatory regime for sewage sludge. The Committee asked SEPA about this during the evidence session and appreciate you did not have specific information available to you at that time, and appreciate your offer to provide further information separately in writing.

Ammonia emissions

The Committee is interested in the decision of the Scottish Government to seek to address ammonia emissions through pursuing good practice approaches, rather than increase regulation at this stage.

Given SEPA is a principal regulatory and advisory body on air quality, the Committee would appreciate more information on ammonia, including:

- What consideration have you given (including any advice provided to the Scottish Government) to potential regulatory mechanisms to tackle ammonia emissions;
- Since the Scottish Government published its decision to pursue this area through good practice in June 2024, what conversations have you had with the Scottish Government regarding how good practice will be developed and what role do you perceive SEPA having in this area;

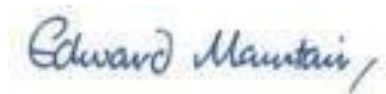
- SEPA explained in its evidence to the Committee that there have been updates made to the EU Industrial Emissions Directive (IED) which pertain to how large pig and poultry farms are regulated. Currently, this happens in Scotland through the Pollution Prevention and Control (PPC) regime which is being migrated into the Integrated Authorisation Framework. The Committee is interested in understanding what changes would have needed to have been made to the Amendment Regulations, if they were to align with updated EU law in this area, and what the implications of that would be for livestock management. Specifically, what consideration has been given within SEPA to aligning PPC thresholds with the updated EU Industrial Emissions Directive which we understand came into effect in August 2024, and what the implications would be of aligning pollution control regulation in Scotland with those changes (e.g. have you assessed the number of sites this would affect and advised the Scottish Government of this)

Engagement with ESS

The Committee would appreciate more information on what engagement SEPA has had with ESS regarding the content and implementation of the Regulations. In oral evidence, Committee members expressed an interest in more information on this and SEPA agreed further detail could be provided in writing.

It would be helpful, if possible, to have a response to these questions by 13 January so it can be considered alongside evidence from other stakeholders as we consider next steps in anticipation of the draft Regulations being relaid.

Yours sincerely,



Edward Mountain MSP

Convener

Net Zero, Energy and Transport Committee