

Citizen Participation and Public Petitions Committee

19th Meeting, 2023 (Session 6), Wednesday
20 December 2023

PE1988: Review the process for disposal of household raw sewage

Petitioner	Sue Wallis
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to: <ul style="list-style-type: none">- review the process for allowing raw sewage discharge from homes into Scottish coastal waters- provide additional funding to SEPA for enforcement- introduce legislation to ban households from discharging raw sewage
Webpage	https://petitions.parliament.scot/petitions/PE1988

Introduction

1. The Committee last considered this petition at its meeting on [8 March 2023](#). At that meeting, the Committee agreed to write to the Scottish Environment Protection Agency (SEPA) and the Law Society of Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the Law Society of Scotland, SEPA and the Petitioner which can be found at **Annexe C**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 580 signatures have been received.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1988: Review the process for disposal of household raw sewage

Petitioner

Sue Wallis

Date Lodged:

16/11/22

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to:

- review the process for allowing raw sewage discharge from homes into Scottish coastal waters
- provide additional funding to SEPA for enforcement
- introduce legislation to ban households from discharging raw sewage

Previous action

Emails to Jenni Minto MSP (local MSP), and Michael Russell MSP (previous MSP).

Discussions with Scottish Water Directors & staff, and SEPA area manager & staff, there's a desire from them for change but a need for funding from elsewhere. Scottish Water claims not to have budget to connect homes to any local sewage networks and SEPA doesn't have budget to police the system.

Background information

Rural households have a legal right to discharge raw sewage to the sea; polluting waters and beaches. SEPA controls the approval and policing of the current process for these historic rights. Outfall pipes break and sewage is deposited on beaches at low tides. By SEPA's own admission their budget does not enable effective enforcement action to be taken. Many of the homes can't afford to connect to any sewer or have space/money for septic tanks/reed beds. Many do not want to change a system that is free waste disposal for them.

The Scottish Government should ban outfall pipes and allocate specific funding for SEPA to identify and enforce shortfall pipe correction. All activity/paralysis is put at the door of funding and only the Scottish

Government can break that impasse. Does the Scottish Parliament support this polluting process that is allowed in this day and age? Doing nothing to change it is supporting it.

Annexe B

Extract from Official Report of last consideration of PE1988 on 8 March 2023

The Convener: PE1988, lodged by Sue Wallis, calls on the Scottish Government to review the process for allowing raw sewage discharge from homes into Scottish coastal waters; provide additional funding to the Scottish Environment Protection Agency for enforcement; and introduce legislation to ban households from discharging raw sewage.

The SPICe briefing states that financial responsibility for the provision of private sewage treatment rests with the individual home owner or community. The Scottish Government response states that there are no plans to provide additional funds to Scottish Water to provide connections to households with private sewerage arrangements during the current investment period but households have the option to connect to the public network at their own expense and Scottish Water will make a reasonable contribution towards the costs of that project, should a new main be required. The submission states that the current register of septic tanks held by SEPA is incomplete and the number of unauthorised discharges is likely to be high. The Scottish Government notes that SEPA is reviewing its regulation of private sewerage systems.

The petitioner highlights the difference in approach to unauthorised disposals compared with that to dog fouling, where fines are issued to those who do not clear up after their dogs. She shares her experience of reporting issues to SEPA in 2019 and expresses concern that nothing has changed in almost four years. The petitioner questions the method of registering private water discharge with SEPA at the point of house sale: in her experience, several of the properties have been sold, but no change has happened as a result.

Do members have comments or suggestions for action?

Alexander Stewart: The petitioner makes some valid points. It is apparent that things have not really changed in that time. It would be useful to write to SEPA to highlight the issues that have been raised by the petitioner, seek information about the review of the regulation of private sewerage systems and ask whether consideration has been given to alternative approaches for identifying and authorising private sewage discharges. As I said, the petition makes some valid points, and I would keep it open in order to ask SEPA to clarify those issues.

The Convener: Are there any other comments? I have to say that, because the dog fouling issue was before the public eye, it led to a change in practice. I cannot help but feel that, if every member of the public was similarly subjected to the voiding of raw sewage into water, there would be much more public concern and engagement on the issue. The parallel that has been drawn is certainly valid. It is quite a visual parallel, and it leads me to believe that we should pursue the issue quite a bit further to see where we get with it.

Fergus Ewing: I agree with what both you and Mr Stewart have advocated. I add that I am slightly puzzled about how properties without a connection to either the main sewerage system or to a private septic tank can be sold. In house conveyancing in Scotland, it is standard for there to be a series of conditions about this without which it is difficult to see how anyone can purchase a house or, indeed, get a mortgage over a house. That might be of concern to lenders because there may not be a valid security.

I wonder whether, in addition to writing to SEPA, we could write to the Law Society to ask for its guidance about how, in practice, properties in this category are dealt with. I would be interested to see what is happening out there. If houses have no access to a sewage facility, I am not sure how they can be transacted on the market. I think that the petitioner refers to some properties having been sold.

The Convener: Yes.

Fergus Ewing: That point is ancillary to the petition, but it is part of the overall issue.

The Convener: That is helpful. Thank you for the suggestion. Having seen that concern, I was not sure where we would write to to resolve it, but that is a good suggestion.

Are members of the committee content to proceed on the basis of those recommendations?

Members *indicated agreement.*

The Convener: We will keep the petition open and write to the organisations accordingly.

Annexe C

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.

SEPA submission of 28 June 2023

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

The review of how best to deal with the regulation of private sewage systems across Scotland has not progressed as a result of other regulatory priorities, including our response to the ongoing water scarcity situation. However, the Scottish Government are currently developing water and wastewater policy to help improve the quality of our environment.

SEPA submission of 13 October 2023

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

Following on from SEPA's initial submission to the Committee of 28 June 2023 (by email), I can now provide a fuller response as follows:

SEPA has now completed its review of the approach to the regulation of private sewage discharges and has published a service level statement on its website:

[Small-scale sewage service level statement | Scottish Environment Protection Agency \(SEPA\)](#)

This statement describes the challenges that SEPA faces in taking action to deal with unsatisfactory discharges from private systems, and then goes on to describe the level of service that complainants can expect from now on.

The key point to note is that in the majority of cases SEPA will now restrict its response to providing advice and guidance, placing the onus firmly on owners and operators to ensure that treatment systems meet the required standards and are maintained in good working order.

In order to maintain a deterrent effect, SEPA will restrict compliance and enforcement activity to specific campaigns targeted on known problem areas or issues. This means that the limited resources we have are focussed on achieving notable outcomes.

Given that this is a new approach and the service level statement has only recently been published, it should be noted that SEPA has not yet taken any decisions on where and when to run compliance campaigns, but options are now being considered.

To provide further information to the Committee, I've also attached blank copies of letter templates to illustrate the type of standard communications that will now go out to owners of systems and complainants in response to the receipt of a complaint.

I hope that this latest submission serves to describe to the Committee the consideration that SEPA has given to this issue and the course of action that it now intends to follow.

Small-scale private sewage letter for complainants

Dear **Insert Salutation**

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (As Amended)

Complaint About Sewage Discharge

Thank you for notifying SEPA about the sewage discharge at XYZ.

Please find, attached, SEPA's Service Level for complaints about small scale sewage.

SEPA is limiting its response to complaints about private sewage to providing standard advice and guidance.

It is the homeowner's responsibility for ensuring their treatment system is maintained and repaired in good working order and does not cause pollution or nuisance. We have provided advice and guidance to the owner of the system so they can take steps themselves to rectify the problem and ensure it is operated, maintained, and repaired in good working order.

SEPA will continue to use intelligence from data gathered from public complaints to target campaign work about private sewage.

Please be aware, SEPA will not respond to repeat complaints about the same location.

Yours **Insert Closure (sincerely/faithfully)**

Insert Author's Name

Insert Author's Post Title

Insert Enc (if appropriate)

Insert cc: (if appropriate)

Small-scale private sewage letter for households

Dear **Insert Salutation**

THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND) REGULATIONS 2011 (AS AMENDED)

COMPLAINT ABOUT THE SEWAGE DISCHARGE FROM YOUR PROPERTY

SEPA has been notified that there is likely to be a potential nuisance/pollution problem associated with your sewage discharge.

Owners and operators of septic tanks or small private sewage treatment systems are wholly responsible for ensuring that their treatment systems are authorised by SEPA, maintained in good working order and do not cause pollution or nuisance to their neighbours. Failure to act could leave you at risk of a monetary penalty of up to £600. Not having an authorisation and/or causing harm or nuisance because your treatment system is not in good working order could lead to issues being identified in a Home Report and cause delays in selling.

You should take steps to identify whether your system is in good working order and that the pipework and outfall connecting to the treatment system are in a good state of repair. Links to advice & guidance about how you can identify problems and how you can rectify them, are provided below. Where you, or a contractor acting on your behalf, find deficiencies you (Cont./) should take action to rectify these as soon as possible. Please note any issues regarding wayleave, rights of servitude etc., that affect access to your system are a civil matter for you to resolve.

You should also ensure that your discharge is authorised by SEPA and that you are complying with the conditions of your authorisation, as these are legal requirements. Links to SEPA's website about how to get authorised, are provided below.

Should you wish to discuss what steps you can take to rectify problems with your treatment system, and how to get authorised, please contact your local SEPA office.

Yours **Insert Closure (sincerely/faithfully)**

Insert Author's Name

Insert Author's Post Title

Advice and Guidance

How to check if your sewage discharge is registered with SEPA, and how to apply to register your sewage discharge:

Advice and guidance on maintenance of septic tanks is available in the 'Septic Tank Guide' on SEPA's Website and for small package wastewater treatment systems a 'Guide for Users' can be downloaded from the British Water website:

<https://www.sepa.org.uk/regulations/water/septic-tanks-and-private-sewage-treatment-systems/>

Links to the Law Society of Scotland regarding buying and selling property in Scotland:

<https://www.lawscot.org.uk/for-the-public/what-a-solicitor-can-do-for-you/buying-and-selling-a-property/>

Petitioner submission of 5 December 2023 PE1988/F: Review the process for disposal of household raw sewage

There are 2 issues raised by this petition – the continued legal use of domestic outfall pipes for raw sewage directly into the sea, and the issue of non-repair of broken domestic outfall pipes that deposit raw sewage onto beaches.

For the long-term issue at the point of house sale, a query raised by the committee at the first hearing, there are 3 opportunities for the issue of outfall pipes to the sea to be addressed: home report; legal process during the sale; and SEPA's certificates of authority at point of sale.

1. From a recent home report for a house sale in Kames (the petitioner's local area) the surveyor wrote, "We have been informed that the drainage is private by means of direct outflow to the river (sic). The maintenance liability, rights of access and SEPA consents should be confirmed."

Petitioner's observation: The Home Report Surveyor system believes the responsibility lies with SEPA.

2. From the Law Society response: "... 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."

Petitioner's Observation: The Law Society believes the responsibility lies with SEPA and the hope for reasonable endeavours by the homeowner.

3. From SEPA's response: The key point to note is that in the majority of cases, SEPA will now restrict its response to providing advice and guidance, placing the onus firmly on owners and operators to ensure that treatment systems meet the required standards and are maintained in good working order.

Petitioner's Observation: SEPA pass responsibility to the homeowner, with the clear intention of not policing the outcomes.

In relation to the issue of broken pipes depositing raw sewage on the beach:

From SEPA's response: In order to maintain a deterrent effect, SEPA will restrict compliance and enforcement activity to specific campaigns targeted on known problem areas or issues. This means that the limited resources we have are focused on achieving notable outcomes... Given that this is a new approach and the service level statement has only recently been published, it should be noted that SEPA has not yet taken any decisions on where and when to run compliance campaigns, but options are now being considered.

Petitioner's comment: The SEPA area manager for Argyll (who kindly wrote the SEPA response) has stated to the petitioner that Kames is a complex issue and any campaigns would not be started there because of this complexity. So any compliance work that may be done by SEPA will be selective and will not help all areas.

From SEPA's response: Letters sent to households that have had complaints about their discharge state that "Owners and operators of septic tanks or small private sewage treatment systems are wholly

responsible for ensuring that their treatment systems are authorised by SEPA, maintained in good working order and do not cause pollution or nuisance to their neighbours. Failure to act could leave you at risk of a monetary penalty of up to £600.”

Petitioner’s comment: No mention is given for owners of raw sewage discharges as per this petition. The ‘could leave you at risk...’ section is typical of the non-dated, non-specific method that SEPA uses to hope that homeowners are responsible beings. SEPA staff have stated to the petitioner that they are fearful of using any court action available to them because of unknown costs that could be incurred. SEPA staff have stated to the petitioner that they do not have the funds or manpower to monitor the certificates they issue at point of sale for transitions to processed systems, or the agreements made by any homeowners to repair any broken pipes.

Petitioner’s Plea to the Committee

In relation to the outfall pipes legally discharging into the sea, please could you consider creating a new law that legally imposes timescales on changing to a private processing system or connection to the mains, perhaps initiated immediately on the sale of the property or with a time frame when there is continued same ownership. There then needs to be a checking process bestowed upon an authority, perhaps to the Environmental Warden of the Local Council who has responsibility for Dog fouling issues. SEPA staff have stated that they could not monitor any system without added funds.

In relation to the broken pipes issue, please could you consider creating a new law, perhaps similar to the Dog Fouling (Scotland) Act 2003, whereby someone (SEPA or Local Council) has the authority to issue fixed penalty notices to offending owners of broken pipes. The process is then straightforward for the issuing authority as per the Dog Fouling (Scotland) Act 2003.

Without these proposed legally binding procedures and timeframes being in place nothing will change, raw human excrement will continue to be spewed onto beaches and into shallow waters, and we will all have wasted our time by not acting to stop it. Please make change happen.