

Annex B

CONSULTATION QUESTIONS

Question 1 – Do you agree with the approach the Scottish Government has taken in seeking to align SEPA’s General Purpose with the National Performance Framework?

Yes No

Please explain your view

UKELA welcomes the inclusion of the statement at paragraph 2.4 of the draft Statutory Guidance which explicitly makes protecting and improving the environment the primary objective of SEPA in relation to sustainable development.

We also welcome the decision to include definitions of sustainable economic growth and sustainable development in the draft Statutory Guidance, however we have concerns about disparity in the definition of sustainable economic growth and its relationship with sustainable development in different government policy documents (discussed more in response to question 2).

To avoid the risk of an undue emphasis on economic aspects over others, we suggest paragraph 3.4 be altered so that *‘underpinning the health and wellbeing of communities’* comes before *‘as a stock of potential resources and assets able to produce value and ongoing services to Scotland’s economy’*. Also the phrase *‘for the long term’* is added after *‘ecosystem services’*. Accordingly the paragraph would read: *“SEPA’s approach should consider Scotland’s natural environment as underpinning the health and wellbeing of communities, providing a stock of potential resources and assets able to produce value and on-going services to Scotland’s economy. Maintaining this natural capital and enhancing the supply of water, land and living resources, is essential in supporting Scottish communities and businesses and SEPA has a particular role in contributing to the protection and enhancement of these ‘ecosystem services’ for the long term”*

Since the ability to adapt effectively to changing circumstances is vital in achieving long-term sustainability we suggest the word *‘resilience’* is added in paragraph 3.7 to read: *“Alignment with the NPF will help SEPA as an organisation manage the balancing judgements required in carrying out its functions to reflect the range of environmental, social and economic factors that underpin long term wellbeing, prosperity and resilience.”*

While we generally agree with the consistency offered by Section 20A of the Environment Act 1995, our concern is one of balance. Paragraph 4.2 of the draft Statutory Guidance sets out the 4 pillars of Scottish Government’s public service reform agenda which SEPA is expected to focus upon. This appears to demand that SEPA has an active role to play in the promotion of sustainable policies for the greater good of the Scottish population. However, this could place strains upon SEPA when trying to balance those demands with its principal aim of protecting and enhancing the environment as a whole. As we are aware, the environment is a lot wider than the wellbeing of the Scots and it is important to ensure that these expectations do not overshadow SEPA’s primary purpose of protecting and improving the environment. The draft Statutory Guidance does acknowledge that primacy is given to protecting and improving the environment at paragraph 2.4 which goes some way in addressing our concern. However, in the interests of clarity, we suggest that the Guidance states explicitly that this principle is also applicable where SEPA is expected to meet the four pillars of the Scottish Government’s public service reform agenda.

Question 2 – Does the Statutory Guidance reflect the wider ambitions of the Scottish Government’s public service reform agenda?

Yes No

Please explain your view

Given the layout and expectations placed on SEPA throughout the draft Statutory Guidance, it appears that the document is drafted in a way to advance the Scottish Government’s public service reform agenda. This is reflective of the pursuit towards achieving sustainable economic growth in line with this agenda.

In relation to the definition of sustainable economic growth, the wording used within the draft Statutory Guidance mirrors that used in the new Scottish Planning Policy (June 2014) meaning: *‘building a dynamic and growing economy that will provide prosperity and opportunities for all while ensuring that future generations can enjoy a better quality of life too’*. However it is worth highlighting that two important statements have been added within the draft Scottish Regulators Strategic Code of Practice under the Regulatory Reform (Scotland) Act 2014 as follows: *‘The health of Scotland’s communities and environment contribute to and are interlinked with the achievement of sustainable economic growth’* and *‘Economic growth that exceeds the limits of our environment or damages social and community cohesion is not sustainable.’* Taken together, the three sentences bring the definition contained in the Strategic Code closer to the true meaning of sustainable development than the definition in the Scottish Planning Policy. Even so, the Strategic Code’s definition still falls short of true sustainable development, as it maintains a growth imperative.

An earlier definition which reflects the same values as the draft Strategic Code of Practice was used in Planning Scotland’s Seas – Scotland’s National Marine Plan Consultation Draft. This defines sustainable economic growth as *‘building a dynamic and growing economy that will provide prosperity and opportunities for all, while respecting the limits of our environment in order to ensure that future generations can enjoy a better quality of life too’*. This interpretation makes respecting the limits of the environment an explicit condition of sustainable economic growth and is consistent with an ecologically focused interpretation of sustainable development. It is a slightly neater definition than the three phrases used in the Regulators’ Strategic Code of Practice. We suggest that the Scottish Government use either the definition of Sustainable Economic Growth set out in the draft Scottish Regulators’ Strategic Code of Practice or the one used in the Scotland’s Marine Plan Consultation Draft to provide greater clarity and consistency.

With regards to the three high level outcomes in Appendix A, the column referring to ‘health and well-being of people in Scotland is improving’ it states *‘Communities are protected by tackling the highest risks, noncompliance and environmental crime.’* It would be beneficial for the inclusion of additional wording to discuss environmental justice; as such it would read *‘Communities are protected by tackling the highest risks, noncompliance and environmental crime and by recognising the differential impacts of low-level environmental nuisances, to improve environmental justice.’*

The wording of the final section in this column is odd. What is the ownership referring to? It would be beneficial to add wording for it to read *‘Community concerns are responded to and resilience, learning and ownership is increased and engagement is encouraged.’*

Furthermore, under the same pillar it states *‘SEPA’s understanding of the environmental impact on human health is increasing, for example via a partnership approach to air quality issues, and this is informing positive action.’* This should be at the top of this pillar to signify its importance.

Under SEPA’s general purpose as inserted in Section 20A(2) of the Environment Act 1995, we are concerned that the use of the word ‘must’ could be seen as emphasising the need for SEPA to ensure that it is aligned with policy in respect of how it delivers its functions. We feel that how SEPA manages this obligation so as to balance it against the general aim under Section 20A(1) of the Environment Act 1995 could cause tensions. There is also the issue of balancing costs and benefits of the exercise of SEPA’s functions and how this may be now interpreted in terms of 20A. The need for reasonableness, justification and optimisation need to be maintained so that, in carrying its functions, the functions are not skewed where the expense is disproportionate to the seriousness of the harm.

Question 3 – Do you agree with this guidance being presented in a single document?

Yes

No

Please explain your view

We welcome the decision to present SEPA’s guidance in a single document as this significantly improves clarity, hopefully avoiding an overlap of matters and streamlining guidance.

Question 4: Do you agree with the proposed Ministerial Expectations beneath the High Level Outcomes for SEPA?

Yes

No

Please explain your view

The three high-level outcomes have been taken directly from SEPA’s new general purpose within Section 20A of the Environment Act 1995 – ‘*Scotland’s environment is protected and improving; SEPA contributes to the achievement of sustainable economic growth; and Health and well-being of people in Scotland is improving*’ – with specific ‘*Ministerial Expectations*’ beneath each. This seems sensible to provide further clarity to SEPA and the Expectations seem at an appropriate level to help guide SEPA in preparing their Corporate Plan.

Annex C

RESPONDENT INFORMATION FORM for Statutory Guidance for the General Purpose of SEPA

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately



1. Name/Organisation

Organisation Name

UK Environmental Law Association (UKELA) – Scottish Law Working Group

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate X Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

X Yes