



Response to the Scottish Government and SEPA consultation on an Integrated Authorisation Framework: Supporting Guidance, opened 28th September 2017 and closes 22nd December 2017

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Scottish Branch and, in particular, the Scottish Waste Working Party.

UKELA makes the following comments on the proposals.

CONSULTATION QUESTIONS

Question 1: is our public participation statement clear and understandable?

In general terms, yes it is clear and understandable. However, there remains some uncertainty as to which permit applications will be consulted on given that the word "some" is used.

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Question 2: are there any parts of the public participation statement you particularly agree or disagree with?

On page 6 there is a statement that anyone with an interest in an application that is not open to public consultation should contact SEPA. If an application is not consulted on then how will a potential respondent be aware of it?

In relation to the statement on third party call ins, there should be grounds states for SEPA's decision to consult in the first place.

Question 3: is there anything missing that you would have expected the public participation statement to have covered?

Some further information/clarification as to how any submissions which are submitted by members of the public as part of a participation process would be used.

There should be more indication of how the public will be able to find out what is going on and what a consultation process with involve. Perhaps some general comment about the regulatory website and efforts to get the message into the general press would be appropriate. Likewise, it would be useful to know how material "made available" is to be accessed.

In relation to the statement on third party call-ins, there should be grounds states for SEPA's decision to consult in the first place.

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Question 4: do you think any groups of people may be advantaged or disadvantaged by this statement?

No. However, ideally the regulations themselves should include the criteria for call-ins and for the decision to publicise in the first place. This is currently left to the discretion of SEPA.

Question 5: do you find the guidance on who can hold an authorisation clear and understandable?

In general terms, yes it is clear and understandable. However, there are a couple of points in respect of which UKELA considers further clarity could be provided:

- On page 5 under 'who is the person in control?': it would be prudent to note that 'a person in control' does not necessarily have to conform with all of the bullet points listed. A person could still be considered 'in control' if some of those but not all were applicable to them;
- In relation to the third paragraph on page 5 regarding subsidiary companies. If neither the company nor subsidiary has sufficient control then some guidance as to what should be done in that scenario would be helpful – i.e. by linking that statement to the next section on page 6.

Question 6: are there any parts of the guidance on who can hold an authorisation you particularly agree or disagree with?

No.

Question 7: is there anything missing that you would have expected the guidance on who can hold an authorisation to have covered?

UKELA consider that there would be merit in cross-referencing the guidance with the compliance assessment and charging schemes operated by SEPA to enable operators to have a full picture as to how those will work alongside the requirements

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of the authorisation framework (e.g. how the compliance assessment scheme will affect the application of the fit and proper person test).

Question 8: is our authorisation guide clear and understandable?

Yes, generally.

Question 9: are there any parts of the authorisation guide you particularly agree or disagree with?

Not specifically.

Question 10: is there anything missing that you would have expected the authorisation guide to have covered?

Not specifically.

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