Written submission from SEPA

Part 2 of the Regulatory Reform (Scotland) Bill

We are writing to provide written evidence on Part 2 of the Regulatory Reform (Scotland) Bill. We will also be providing written evidence to the Economy, Energy and Tourism Committee on Parts 1 and 3 of the Bill.

As the Committee is possibly aware, Part 2 of the Bill has been developed jointly by Scottish Government and SEPA, with our stakeholders, and we support the provisions. This legislation helps a change agenda that we have been pursuing and delivering for several years now. Key aspects of this agenda have been and continue to be:

- Engaging much more with business and other stakeholders – so we can improve our focus on the wider needs of those influenced by our regulation
- Delivering and, where possible, improving our services, whilst living within our means
- Ensuring that environmental regulation is not unnecessarily burdensome on businesses
- Focusing our effort on the issues that matter most, working more in partnership with others and delivering more by way of measurable results for the environment, communities and the economy.

As part of this agenda, we have already reformed our scientific services, moved from having seven laboratories to two, reformed our advisory role and service on land use planning and played a key role in developing Scotland’s Environment Web – a partnership to provide a joined-up service on environmental information.

What Part 2 of the Bill Means for Us

We are committed to further transforming key areas of our work and some of this can only be achieved with the support of legislative change. Many of the proposals in Part 2 of the Bill draw from good practice from across the UK, Europe and beyond. The proposals have also been developed with our stakeholders and have gained strong support. We have made a strong commitment to our stakeholders to continue to work with them to shape the detail going forward.

Single Environmental Regulatory Framework

The Bill will enable the permissioning regime in Scotland to be simpler, more risk-based and more consistent. The scope of activities we regulate will not increase or decrease significantly as a result of the implementation of the proposed regulations – it is more about improving how we can regulate existing activities.

Our stakeholders have told us that they want a simpler, clearer, more joined-up and outcome-based approach and the new permissioning arrangements will help deliver that. We also want our staff to be able to focus their effort on working with partners and regulated business to achieve real, measurable outcomes rather than working
within unnecessarily complicated systems and procedures. Many operators currently hold multiple permissions from SEPA. The simplification enabled by the Bill will also help us to move to more joined-up permissions – for example single site or operator permissions.

New Enforcement Tools for SEPA

Understanding those we regulate and why they are compliant or not is a very important part of being an effective regulator. We want to work with those we regulate to encourage and support compliance, providing information, advice and support. We also need an effective approach to enforcement.

Our current options to deal with environmental offences are limited, inconsistent and give rise to a disproportionate use of criminal sanctions. We regulate across a wide range of operators, from criminals at one end to environmental champions at the other, with the careless, confused and compliant in between. The proposed new enforcement tools will enable us to take a more proportionate and effective approach to lower level offences. This should help us to influence behaviours at an earlier stage and prevent problems from escalating into more serious offences. Cases involving anything other than minor environmental harm or involving deliberate or reckless behaviour will still be referred to the Procurator Fiscal.

We recognise the responsibility being placed on us in being given these new enforcement tools. There are a number of proposed safeguards in place and we will be working with the Crown office and Procurator Fiscal Service who will be issuing us guidance on how we should apply these enforcement measures. We will also engage our stakeholders on changes to our enforcement policy.

There will still be an important role for the criminal courts. As part of our change agenda we are starting to do more to target operators involved in criminal activities or whose negligence leads to significant impacts on the environment and communities and whose actions undermine legitimate business. We welcome the provisions aimed at giving the courts a wider range of sentencing options.

General Purpose for SEPA

The Bill also proposes a new statutory purpose for us. If enacted this will be the first time that we will have been given a single general purpose by Parliament. We welcome the broad primary purpose of protecting and improving the environment and that this includes managing natural resources in a sustainable way. Our environment is a complex system, providing a range of natural resources and services on which life ultimately depends and which need to be managed sustainably.

We also welcome the fact that the statutory purpose recognises the contribution we already make and will continue to make to health and well being and the economy. We believe that our work can and does deliver multiple benefits; for the environment, communities and the economy.
Many of the mainstays of Scotland’s economy, such as established industries like tourism, agriculture and the food and drink trade, depend on our high quality air, land and water. Effective regulation can stimulate business innovation and achieving compliance or going beyond it can be a powerful marketing tool for business. We also recognise that the way we work can help to create the right conditions for new investment and business, whether this is how we organise ourselves to support emerging sectors down to how quickly we process applications for new permits.