Written submission from Scottish Water

Overview

Scottish Water is responsible for providing clean, safe drinking water and disposing of waste water over 95% of the households and businesses in Scotland, 365 days a year. With thousands of assets and tens of thousands of kilometres of networks across Scotland, Scottish Water represents the largest single organisation regulated by SEPA. We hold over 2,500 licences for activities regulated by SEPA and pay £11m annually to them in regulatory charges.

Scottish Water is supportive of the broad principles and objectives of the Regulatory Reform (Scotland) Bill as it provides the basis to deliver risk based, proportionate regulation. Additionally, we welcome the intention to deliver an integrated framework of environmental regulation in an effort to simplify the current regimes and deliver consistent regulation. We also acknowledge a need to broaden the range of regulatory powers at SEPA’s disposal, recognising that at present in many cases SEPA may have limited options for enforcement other than to refer incidents for prosecution.

It is our understanding that through this SEPA’s regulatory approach will vary according to the risks and actions of operators. There will be strong regulatory enforcement against those that wilfully operate outwith regulation and cause environmental harm, through to supportive work with operators actively seeking to improve their performance. We welcome this approach.

We would though like to have a greater understanding of how some powers in the Bill may be utilised, such as for SEPA to levy monetary penalties and courts to impose publicity orders. We would therefore welcome early sight of the guidance that SEPA would be required to publish on the use of their enhanced enforcement powers.

Specific Comments

Part 1 – Regulatory Functions

Section 4 – Regulator’s duty in respect of sustainable economic growth

We support a duty on regulators to exercise their functions in a way that supports sustainable economic growth. In many respects this may be seen as an extension of the public body duty that exists under the Climate Change (Scotland) Act. The three pillars of sustainability (environment, economy and society) need to be considered in an integrated way if we are to protect the environment such that it continues to sustain a healthy society.

Section 6 – Code of Practice Procedures

We are supportive of the development of a Code that is consistent with the principles of Better Regulation and supporting sustainable economic growth. We note that this Bill is intended to take forward key proposals from the previous consultation on a Better Regulation Bill, as well as the proposals for Better Environmental Regulation.
As such, it would be important to confirm the principles of Better Regulation within such a Code of Practice.

**Part 2 – Environmental Regulation**

*Section 10 – Regulations relating to protecting and improving the environment*

We would support the broad principles of this element of the Bill. The consolidation of regulatory regimes has the potential to simplify the regulatory approach across regimes. However, we would caution that it is important that in delivering such a consolidated regulatory approach it does not default to the more stringent regulatory regime. A proportionate approach to environmental regulation based on the risk to the environment should be implemented. We would be keen to work further with SEPA to understand how this might apply in the water sector

*Sections 13-16 – Fixed and Variable Monetary Penalties*

We would like to have a greater understanding of how fixed and variable fines will operate. In terms of fixed monetary penalties, we understand these are primarily targeted at low level environmental crime, but it is important that clarity is provided on the range of activities and offences that may be covered.

For variable monetary penalties we understand these may be targeted at more serious environmental crime, but as above additional information on the circumstances where they may be applied is important. In addition, it must be recognised that transferring the power to fine operators to SEPA carries with it a lower burden of proof than a court sanctioned fine.

Given this, we would welcome early sight of draft guidance that SEPA intends to issue on these enhanced enforcement powers.

*Section 22 – Cost Recovery*

Whilst we understand and support the polluter pays approach, we have some concerns regarding how the cost recovery element will be implemented. As an operator seeking to adhere to the regulatory requirements, we contribute considerable sums each year to SEPA to enable it to regulate our activities. We would expect this to cover routine investigations into non-compliance and to work with us on other aspects of environmental performance. It will be important to understand the financial and operational framework under which cost recovery would be implemented.

*Section 23 – Guidance as to use of enforcement measures*

We welcome the intention to issue guidance to SEPA in relation to the exercise of its powers, and would expect consultation with operators to support the development of such guidance. The guidance should seek to clarify issues such as the appropriate enforcement actions, level of monetary penalties and cost recovery.
Chapter 3 - Court Powers

Section 26 – Compensation Orders

Scottish Water wishes to have a better understanding of how these orders may operate in practice. As a national water and wastewater undertaker, Scottish Water has thousands of assets and tens of thousand of kilometres of pipeworks across Scotland. We are concerned that the implications of additional compensatory powers beyond the present system of fines may not be fully understood.

Section 28 – Publicity Orders

As for Compensation Orders, we would expect a clear framework for issuing publicity orders to be developed through further consultation.

Chapter 5 – General Purpose of SEPA

Section 38 – General Purpose of SEPA

We support the making of a general purpose for SEPA as laid out in Section 38.