

## SEPA's Change Proposals

**February 2011**

### Introduction

The FSB is Scotland's largest direct-member business organisation, representing around 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

Over the last decade, our members have become increasingly aware of – and bought into – the development and implementation of more resource efficient and environmentally friendly ways of operating their business. They are generally supportive of the need for environmental regulation. However, they have also noticed the growth and increasing complication of environmental regulation to which they are subject. The FSB therefore welcomes SEPA's commitment to reform and streamline regulatory systems according to the principles of better regulation. We also welcome the opportunity to submit our response on the above consultation.

### Question 1

**We believe that the current system of environmental regulation is unnecessarily complex and more costly to operate than it might be and that we should develop a world class, simplified and integrated system of environmental regulation. Do you agree?**

Yes. As stated above the FSB fully supports simplification of the environmental regulatory landscape.

### Question 2

**SEPA is proposing a new regulatory model. A risk assessment process will be used to assess which activities should be regulated at what level. The aim is to ensure that the level of regulatory control is allied to the risk and operator compliance. Do you agree?**

Yes. We welcome moves towards a more risk-based approach to regulation which will reward the responsible business and come down hard on the reckless or criminal.

### Question 3

**SEPA believes that far greater use, where possible, could be made of statutory obligations (e.g. General Binding Rules), notifications and registrations for lower risk sites. We consider there to be more proportionate and that they can reduce costs. Do you agree with this approach?**

Yes. However, it is important that businesses are made aware of their statutory obligations and have recourse to advice and guidance on compliance and good practice. The NetRegs website is a good source of advice for our members. Our members also welcome the opportunity to talk to – or arrange a consultation with – experts to reassure them about their interpretation of existing or new guidance and advice. Access to this kind of interaction is more important as SEPA moves towards a lighter touch approach to regulation.

### Question 4

**We intend to change our approach to site inspections, aligning more closely to the generally lower levels found across Europe, developing an audit based approach and retaining the flexibility to increase the frequency of inspections if we feel we need to. Do you agree?**

Yes. Although see above our response to question 3.

### Question 5

**We intend to explore the feasibility of more operator self monitoring, where this is appropriate. Initially this will focus on the water environment. Do you agree?**

Yes. Although see above our response to question 3.

### Question 6

**Do you support our proposal to use risk assessment to inform how we use our monitoring resources, resulting in a better balance of effort, with less water monitoring and where appropriate, increased air, soil and climate change monitoring?**

Yes. Changes to how SEPA uses its monitoring resources and the areas it decides to focus on may have a bearing on charges and fees paid by businesses for different licences and registrations. We would seek assurances that funds raised through fees and charges were spent on monitoring a relevant area of environmental concern, thereby ensuring transparency.

## Question 7

SEPA is proposing to adopt a risk-based approach to regulation, featuring less intervention for high performing sites and operators, with reduced intensity of inspections for lower risk sites. We want to support this with enhancement of our enforcement activities and robust penalties for non-compliance. Do you support this approach.

As indicated above, the FSB supports this approach.

## Question 8

SEPA's costs of enforcement are currently funded by grant-in-aid, whereas equivalent agencies in the UK can recover the costs of investigation from operators who have been successfully prosecuted. In addition, our work on developing cases for prosecution currently isn't chargeable. We consider that SEPA's costs for such work should be fully recoverable. Do you agree with this approach.

Yes. This provides an added incentive for compliance. However, we would seek assurances that any operator investigated and found not to merit prosecution should continue not have to cover the costs of investigation.

## Question 9

SEPA wants to move towards integrated permissions. This would include the use of single site licences (e.g. for sites currently requiring multiple permits) and operator or network level licences. Do you agree with this approach?

This approach would appear to be sensible. It is unlikely that many of our members would require integrated permission however.

## Question 10

Do you agree that, to cover these costs [of providing systems to support lower risk permissions], an annual charge should continue to apply to all operators deemed low risk or subject to simpler types of permits.

This would seem reasonable, particularly if the purpose of the charge and the service to the low risk operator met their needs and that the charge was proportional.

## Question 11

Do you agree that we should offer and be able to charge for [...] [optional, value-added] services [such as fast-tracking a permit application or an application checking service]?

Providing that these chargeable services did not adversely affect the delivery of statutory services, we would have no objection to this in principle. It is important to guard against 'optional, value-added' services, which attract a charge, becoming

unofficially necessary to get an application approved. Guidance and advice available to applicants at the start of their application journey needs to be sufficiently clear, accessible and comprehensive, so that additional services at a charge are not routinely required. The FSB would not be supportive of a chargeable service compensating for the failures of the application system.

## Question 12

**We want to be more flexible in the use of our monitoring resources in order to effectively monitor emerging issues and respond quickly to incidents. Do you agree?**

This would appear to be a sensible approach, which we would support. It is important, however, to balance this approach with the need for stability and consistency for users of SEPA's regulatory and advisory services.

## Question 13

**SEPA has a wide range of environmental expertise and we believe that we could charge for certain specialist and technical advisory services that are currently funded by grant-in-aid. Would you support SEPA charging for such services in future?**

We are rather unclear about what qualifies as 'certain' specialist and technical advisory services. Further information would be useful in order to answer this question effectively.

## Question 14

**We are proposing to apply SEPA's charges proportionately, depending on the level of environmental risk posed by the regulated activity, on operator performance and on the regulatory effort required. Do you agree?**

Yes.

## Question 15

**What are your views about the key features of a future funding model for SEPA?**

- 1. Charging based on risk and performance**
- 2. Flexible use of funding**
- 3. Cost recovery**

As to points 1 and 2, see our responses above. Regarding cost recovery approach, we accept that it is important to recover SEPA's costs of administration and enforcement. The proposal by SEPA to recover costs in line with their proportional and risk based approach would seem sensible. The FSB is cautious however about supporting charges based on 'cost recovery' because in many cases, the actual costs are difficult to quantify and therefore 'cost recovery' frequently eludes transparency. Moving

towards a cost recovery approach is an ideal opportunity to examine how it can be made more transparent.

## **Question 16**

**Do you agree that SEPA should be able to cover its costs across its income streams to enable it to allocate effort on the basis of environmental harm, including tackling environmental crime such as ‘freeloaders’ (i.e. who operate illegally without a licence)?**

It is difficult to agree or disagree with this proposal on the basis of the information provided. It goes without saying that funds should be available to prevent or mitigate environmental harm and tackle environmental crime. The question is whether it is the responsibility of the regulated to fund activity to tackle crime. The FSB supports SEPA’s role in this but believes that grant-in-aid funding would support this activity in a way consistent with the funding of other crime prevention activity.

## **Question 17**

**Do you think that there are additional routes to deliver better environmental regulation that SEPA can explore over and above the changes that we outline in this consultation?**

The FSB has no further comment at this time.

For further information on any of the points raised in this submission, please contact Mary Goodman, Senior Policy Advisor, email: [mary.goodman@fsb.org.uk](mailto:mary.goodman@fsb.org.uk) t: 0141 221 0775.