



SEPA's Revised Draft Enforcement Policy

October 2006

Introduction

- i. The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing over 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to prosper.
- ii. Regulation is a frequent cause of concern for small businesses. As the main regulator of ever-increasing environmental regulation in Scotland, SEPA's role in helping to improve the regulatory environment is extremely important. FSB Scotland therefore welcomes this opportunity to comment on SEPA's revised enforcement policy. While we appreciate how difficult achieving a change in culture can be for any organisation, it is particularly important that SEPA ensures the ethos of this revised enforcement policy is effectively communicated to frontline staff.

Consultation Questions

(a) Environmental Justice

SEPA's wish to express the importance of environmental justice as a relevant factor in enforcement policy is understandable, though we are unsure whether this requires a separate section, or whether it should be mentioned elsewhere in the document alongside other drivers of enforcement, or alternatively, end results of good enforcement policy.

As it currently stands paragraph 3 is a little vague. It does not seem appropriate to include a reference to future action in a formal enforcement policy.

(b) SEPA's Enforcement Policy

We endorse the aspirations set out in section 5, particularly the need for flexibility in the approach to securing compliance. We are particularly encouraged by SEPA's desire to reserve punishment and prosecution for persistent, serious or deliberate cases and focus on working with operators and raising awareness as a means of ensuring compliance. However, while flexibility to adapt to circumstances is required, this must be balanced with the need for consistency across Scotland. Anecdotal evidence from businesses suggests that different approaches/interpretations to regulation can sometimes emerge from different SEPA offices (and officers) and this can cause uncertainty for businesses.

(c) SEPA's Enforcement Principles

FSB Scotland accepts these principles, however we are concerned about the insertion of a comment regarding non-return of data. Since we are not aware of the scale of the problem currently posed by late or non-return of data we cannot comment on whether this needs to be addressed in enforcement policy. Nonetheless, if there is a problem with data returns then it is important to understand why the problem has arisen.

There are obvious concerns about the increasing administrative burden associated with complying with regulation – particularly for small businesses – and before there is any suggestion of a 'crackdown' on enforcement of returning data, it would be worth considering how SEPA can measure, reduce and simplify administrative requirements. FSB Scotland would be more than happy to discuss this issue in more detail.

FSB Scotland has previously urged the Scottish Executive to set out enforcement policy for new legislation at an earlier stage, rather than leaving all practical details to secondary legislation and 'guidance'. This would allow SEPA more time to develop enforcement positions in advance of the introduction of new duties. This is clearly a development that we would welcome.

(d) Referrals for Prosecution

We are satisfied with the circumstances outlined in this section.

(e) Improving Enforcement Outcomes

The suggestion that unlicensed sites and activities be a focus for enforcement activity should be balanced against the philosophy outlined in section 5 and accompanied by vigorous awareness raising activity.

The role played by individual officers of companies is generally an issue that will affect larger companies, since the actions of individuals (particularly the accountability of owner managers) are far more easily identified in small businesses. Nonetheless, it is an issue that must be handled delicately and sensitively by SEPA.

(f) Improving Use of Enforcement Information

In our view previous reporting of enforcement action has tended to focus too heavily on outputs, particularly in terms of successful prosecutions. This does not seem a particularly useful indicator of the implementation of a modern, effective enforcement policy and may be unlikely to convince SEPA officials to use the range of enforcement methods at their disposal. Future reporting should focus on a wider range of compliance activities of SEPA staff and, in line with Hampton Report recommendations, should also monitor the extent to which inspection and enforcement activity is proportionate to risk.

For further information on any of the points raised in this submission, please contact Susan Love, Policy Development Officer, on scotpu.policy@fsb.org.uk or 01259 723713.