

# Consultation on Proposals for Future Funding Arrangements for the Scottish Environment Protection Agency



## Scottish Environment LINK response

January 2013

### Summary

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society. LINK welcomes the opportunity to comment on the proposals for SEPA's future funding arrangements. We are generally supportive of steps that are being taken to integrate regulation to make it more resource-efficient and we recognise that the funding regime will be adapted to take this forward. It is critical that environmental protection and improvement remain central to any change in regulatory regime and that any changes are adequately monitored to determine effectiveness. SEPA must also retain scope to build in any new commitments that arise, for example, additional resource that will be needed for SEPA to undertake its responsibilities in relation to invasive non-native species in Scotland.

We set out our views in response to the consultation questions below but, in summary:

- We are broadly supportive of a shift towards a more effective regulatory regime and funding framework. It is critical that environmental protection and improvement remains at the heart of this and, to that end, that any changes are adequately monitored to ensure they deliver this.
- We do not agree that achievement of sustainable economic growth should be included in SEPA's statutory purpose.
- We support the principle of an environmental resources charge.
- LINK supports continuation of the current principle whereby charges are reduced for activities that improve or restore the water environment.
- We support the principle of a risk-based charging system, provided it recognises cumulative impacts activities, and we look forward to further details on this in due course.

### Question 1

**Do you agree with the proposed statutory purpose for SEPA? Do you also agree that SEPA should be given a power to compile information in relation to all its functions?**

We do not agree with the proposed statutory purpose. LINK supports the aspects relating to protecting and improving the environment, the sustainable management of natural resources and improving the health and wellbeing of the people of Scotland but we are concerned by the "achievement of sustainable economic growth" element. There is no clear definition of sustainable economic growth and, therefore, no assurance that it aligns with sustainable development principles. Therefore, its inclusion in SEPA's statutory purpose could ultimately undermine the achievement of environmental protection and improvement. Any statutory purpose for SEPA should refer to sustainable

development as this has a clear framework and a set of principles which the Scottish Government has signed up to<sup>1</sup>.

The consultation proposes that section 31 of the Environment Act 1995 will be replaced and that sections 32, 34 and 39 will be repealed. Section 31 is on 'Guidance on sustainable development and other aims and objectives'. Section 32 concerns SEPA having regard to the desirability of conserving and enhancing natural heritage, protecting and conserving sites of archaeological and historic interest, and preserving freedom of access. Section 34 includes that it shall be the duty of SEPA to promote the conservation and enhancement of the natural beauty and amenity of inland and coastal waters, and the conservation of flora and fauna which are dependent on an aquatic environment. We are not averse to the modernisation of legislation but we seek assurance that the intentions and duties captured by the sections proposed for repeal will be captured in new legislation and/ or is covered by existing legislation. As highlighted above, we are concerned that Section 31 would be replaced by a purpose with duties for the pursuit of sustainable economic growth rather than sustainable development.

Yes, we agree that SEPA should be given a power to compile information on the general state of the environment.

#### **Question 2**

**Do you agree that the existing safeguards in terms of accountability, cost control and efficiency are adequate? Tell us if any other safeguards are required.**

We have no comments on this.

#### **Question 3**

**Do you agree that the principles, as set out in Table 1, are the right ones to inform the development of a new approach to funding? If not, what other principles would you suggest should be considered?**

LINK is generally supportive of the proposed principles. However, we remind SEPA that environmental protection should be the overarching principle and this must not be undermined through any attempt to reduce administrative burden.

#### **Question 4**

**Do you agree with the use of environmental resources principle being factored into charges to regulated business? Tell us whether this is a principle you could support and a link to charges is justified or if you have an alternative view?**

LINK supports the environmental resources principle. Scotland's industries, including food, drink and tourism, depend entirely on the natural environment, be it through direct use of natural resources or through capitalising on Scotland's image as a country with iconic wildlife and a pristine environment. All business and industry depends in some way on the use of environmental resources, therefore, it is entirely appropriate for this to be reflected in charging.

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<sup>1</sup> *One future – different paths: The UK's shared framework for sustainable development*  
<http://www.defra.gov.uk/sustainable/government/documents/SDFramework.pdf>

Factoring in natural resource use into the charging regime has the potential to not only help provide the necessary revenues to support the management of this asset but also help incentivise processes and practice which encourage innovation and efficiency improvements.

#### **Question 5**

**Do you support a move to a risk-based approach to charging based upon the principles discussed above? Tell us what you think and if you have particular views on the design of the environmental risk assessment.**

LINK is broadly supportive of a charging system based on risk and operator performance. We feel strongly that any risk assessment must take into account the cumulative risk of activities. Agricultural diffuse pollution is the obvious example where some farming activities that contribute to diffuse pollution could singularly be deemed low risk yet, cumulatively, they have a significant negative impact on water quality at a catchment scale. Therefore, we are pleased by the suggestion that there would be scope for SEPA to determine priority themes on which to focus, with diffuse pollution being mentioned as an example. We look forward to further consultation on the detail of the risk assessment.

#### **Question 6**

**Do you think that SEPA should consider introducing a system for 'beyond compliance' incentivisation as part of its overall approach? Tell us what you think and whether this should be via charges or a 'beyond compliance' framework.**

We are generally supportive of the incentivisation of good performance. We have no strong views on whether this should be done through charging or the proposed 'beyond compliance' framework. Regardless of the means used to incentivise, we urge that it is adequately assessed and reviewed to ensure it contributes to environmental protection objectives.

#### **Question 7**

**Is the concept of an intervention charge for poor performance something you would wish to see introduced? Tell us if this seems reasonable or not?**

We agree that it is reasonable to introduce higher charges for poorly performing operators that use a disproportionate amount of SEPA's resources.

#### **Question 8**

**Do you consider that SEPA should directly charge for time and resources spent in dealing with very poor performers? Tell us what you think and what consequences there might be in introducing such a charge.**

While this proposal seems reasonable in principle, we have some concerns about the statement in the consultation document that this could "*reduce the need to undertake formal enforcement action if operators improved their practices*". Poor and negligent operators that are in a strong financial position might welcome a shift towards 100% cost recovery if this lessened the likelihood of enforcement action. Environmental protection must remain the primary consideration and enforcement action should not be delayed by SEPA spending more time advising and helping poor performers. Obviously, any activity that is causing environmental harm must be dealt with immediately. As we have outlined in our response to the earlier SEPA consultation, LINK agrees that SEPA should be able to fully recover costs associated with successful prosecutions.

**Question 9**

**Do you have any views on the balance that should be struck between the total levels of income generated from the standing and variable charges?**

We have no comments on this.

**Question 10**

**Would you support?**

**A. Option 1.**

**B. Option 2.**

**C. Neither of the options.**

**Tell us which option you would support and, if neither, please suggest an alternative.**

We support Option 2 which incorporates an 'environmental resources charge'. As per our response to Question 4, businesses either depend directly on natural resources or benefit from Scotland's image, and it is fair that this is recognised through the charging system.

**Question 11**

**Do you support the concept of facilitating voluntary agreements?**

**Tell us where the priorities for such agreements should be and what issues need to be considered.**

We support the concept but remind SEPA of the importance of tracking how well such agreements are delivering environmental protection and improvement objectives.

**Question 12**

**Do you agree with the principles that would apply if value added services were to be introduced by SEPA? Tell us if you agree with the concept of value added services and what principles should be applied?**

As we pointed out in the LINK response<sup>2</sup> to the Better Regulation consultation in 2011, we have concerns about proposals around 'value added services' as we believe that this places SEPA in the field of environmental consultancy. We are concerned that this might conflict with SEPA's role as an objective and independent regulator. Indeed, the consultation document states that this proposal would be "*backed up by effective arrangements to ensure that SEPA's role as an independent regulator is maintained and protected at all times*". We look forward to learning more about what those arrangements will be but, until then, our concerns remain.

**Question 13**

**Would you support the introduction of voluntary agreements as described for major infrastructure or construction projects as a contribution to supporting economic development and environmental protection?**

Where SEPA invests considerable staff time and resource into the planning and development stages of such projects, it would be sensible and appropriate for SEPA to be able to charge fees that reflect the time involved. However, we reiterate our point made in response to Question 12 that any voluntary agreements between SEPA and the developer must not affect SEPA's independence as a regulator.

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<sup>2</sup> <http://www.scotlink.org/files/policy/ConsultationResponses/LINKBetterEnvReg0211>

**This response is supported by:**

- RSPB Scotland
- WWF Scotland
- Froglife
- Woodland Trust Scotland
- Friends of the Earth Scotland
- Ramblers Scotland
- Archaeology Scotland
- Scottish Wildlife Trust

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