

Compliance Assessment Scheme: Consultation Analysis and Response

1. Introduction

- 1.1 As Scotland's environmental regulator, SEPA issues a range of environmental licences, permits and authorisations designed to control activities that could, if uncontrolled, lead to pollution or harm of the environment. Compliance with these permits is important in ensuring that the environment, and human health and wellbeing are protected.
- 1.2 SEPA has measured compliance using its Compliance Assessment Scheme (CAS) since 2009. We are currently revising the scheme to make it fairer, more consistent and proportionate for those we regulate with greater focus on breaches that cause most harm to the environment as well as persistent poor practice. We also want the scheme to be simpler to use and understand for SEPA and businesses.

2. Way Forward

- 2.1 SEPA's Regulatory Strategy, One Planet Prosperity, sets out SEPA's ambitions to deliver environmental protection and improvement (environmental success) in ways that also create health and well-being benefits (social success) and sustainable economic growth (economic success).
- 2.2 A key part of this strategy is to drive all those remaining businesses not yet meeting standards into full compliance with the environmental laws in Scotland. To achieve this, we support those we regulate to meet their legal obligations and reach compliance quickly, easily and cost effectively.
- 2.3 The review of CAS is an important part of this process. It will ensure that our measure of compliance is fair and proportionate. Achieving full compliance is the minimum requirement we expect and is the first step for businesses to become more sustainable.

3. Public Consultations

- 3.1 In September 2015, we consulted on proposals to review CAS. We received strong support for the proposals, including simplification of the scheme, focusing on breaches which cause environmental harm and a shift to continuous assessment instead of annual reporting.
- 3.2 We have continued to develop the scheme in line with the 2015 consultation and the feedback received from stakeholders. Revised proposals were consulted upon between August and November 2017. This document provides a summary and analysis of the responses to each consultation question and outlines the next steps in development and publication of the new scheme.

SCOTTISH ENVIRONMENT PROTECTION AGENCY

3.3 We received 46 responses from permit holders and interested trade bodies.

4. Timing for implementation of the new scheme

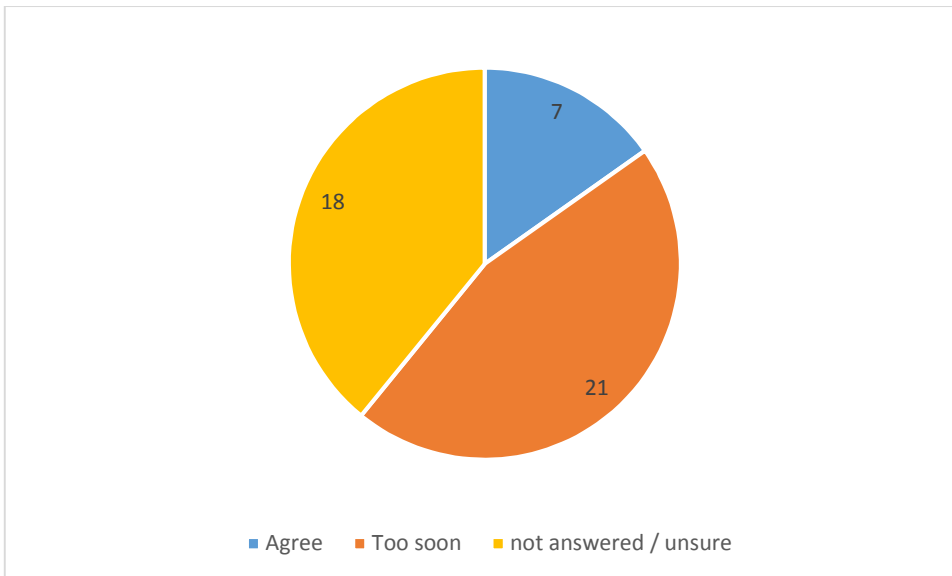
4.1 The consultation outlined a proposal to launch the new scheme on 1 January 2018 with a link to charging from April 2019 (based on 2018 CAS results).

Question 1 Do you have any comments on the proposed timing of the scheme?

4.2 Table 1: Summary of responses to question 1

Answer	Number	%
Agree with timing	7	15%
Disagree with timing - Too soon	21	46%
Not answered or unsure	18	39%
Total	46	

Figure 1. Responses to question 1



4.3 Of those who answered:

- Fifteen respondents requested more detailed consultation between SEPA and operators prior to implementation in order to gain additional understanding, particularly in relation to the definition of Major non-compliance and to provide an opportunity for operators to contribute to development of the manual and annexes.
- Concern was raised about the short time period available for finalising and publishing the revised manual. It was also noted that additional time is required

SCOTTISH ENVIRONMENT PROTECTION AGENCY

for operators to update their processes and undertake communications regarding the new scheme.

- c. A small number of operators suggested that the link to subsistence charging be delayed to allow the new scheme to stabilise and operators to better understand the financial impact of the new CAS.

SEPA Conclusion

- 4.4 We understand concern over the suggested time period for implementation of the new scheme, particularly due to the level of change proposed.
- 4.5 Respondents also raised concerns about the proposed assessment categories and how compliance assessments are reported which require more detailed engagement to resolve (as discussed below).
- 4.6 For these reasons we will delay introduction of new CAS. We will use the additional time to further refine the scheme and work with stakeholders including permit holders, trade organisations, SEPA staff, NGOs and community groups to develop, trial and increase understanding of the new scheme.
- 4.7 The existing scheme (as published on the [SEPA website¹](#)) will be used to assess permit compliance in 2018.
- 4.8 We will delay the introduction of the Compliance Factor until the second year of the operation of new CAS. This means that the first year of new CAS scheme will not impact subsistence charges.

5. We propose to simplify the categories of compliance

- 5.1 Table 2. Comparison of the proposed CAS categories with those in the existing scheme and the 2015 consultation.

Existing CAS (annual assessment)	2015 Consultation (monthly assessment)	Proposed CAS (monthly assessment)
		Not assessed
Excellent	Compliant	Compliance
Good	Broadly compliant	Non-compliance
Broadly compliant		
At risk	Improvement required	
Poor	Poor	Major non-compliance
Very Poor	Very Poor	

Question 2. Do you have any comments on the proposed new categories?

- 5.2 Forty-four respondents answered this question, of these:
 - a. Eighteen respondents expressly support the direction of travel for the new scheme including simplification of the categories, focus on environmental harm

¹ <https://www.sepa.org.uk/regulations/authorisations-and-permits/compliance-assessment-scheme/compliance-assessment-scheme-manual/>

SCOTTISH ENVIRONMENT PROTECTION AGENCY

and improved data and information. However there were a number of concerns outlined below.

- b. Twenty-seven object to the reduction in categories of compliance, expressing concern that only permits currently classified as Excellent will be classified as in Compliance in the new scheme, while existing categories of Good and Broadly compliant will be classified as in Non-compliance. This is seen as “down grading” of operators compliance and creating a “cliff edge” between Compliance and Non-compliance.

Respondents offered various solutions including reverting to the categories under the 2015 consultation (table 2 above), re-introducing an intermediary category akin to Broadly Compliant or renaming Non-compliance to Minor non-compliance.

There is particular concern over the reputational impact of a perceived drop in compliance due to the change of categories, and the stigma attached to operators previously classified as Good being seemingly “down-graded” to Non-compliance despite no change in performance. This could impact general public perception, customer retention as well as internal investment decisions.

- c. Fifteen expressed concern over the ability of complex site with a large number of conditions to achieve compliance. A number of operators advocated some form of proportionality for complex sites for example categorising a licence as being in Compliance when >90% of conditions are assessed as in Compliance.
- d. Respondents also feel that the proposed summary of licence compliance is too simplistic; for example, failing to distinguish between an operator which has failed 1 out of 100 conditions and an operator which has failed 99 out of 100 conditions, thus over-exaggerating minor issues and being open to misinterpretation.

Other operators supported the introduction of monthly reporting which will allow users to see trends in operators’ actions. A desire was expressed to ensure information is available, allowing the reader to see reasons for any recorded Non-compliance.

- e. Twenty-one expressed concern that administrative or minor breaches which cause no environmental harm could cause a whole permit to be classified as in Non-compliance, thus failing to distinguish between a single minor breach and more significant issues.
- f. Similarly, until SEPA completes its licence review, there is potential for out-dated conditions to impact licence compliance.
- g. Fifteen respondents believe that it is important for SEPA to take into account operators intention or action taken to resolve or mitigate breach when assessing compliance, as well as noting when an incident is out-with the operator’s control.

It is noted by operators, particularly in the aquaculture, chemicals and energy sectors, that often issues can take considerable time to resolve, for example when they necessitate capital investment to improve plant and infrastructure. Respondents therefore assert that improvement plans should be taken into account when deciding when to return a site to compliance – this is particularly important because in the future long-term Non-compliance will have a significant impact on annual charges.

SCOTTISH ENVIRONMENT PROTECTION AGENCY

- h. Five respondents wished to see an additional category of beyond compliance recognised by CAS.

SEPA Conclusion

- 5.3 While there was significant support for revision of our CAS and the general direction of travel, we recognise the concerns outlined above.
- 5.4 It is very difficult to compare results from the old and new schemes due to the shift from annual to monthly compliance reporting. For example, while a single breach under the old scheme could drop an operator from Excellent to Broadly compliant for the entire year, the same breach under the new scheme would only move the operator into Non-compliance for 1 month then the assessment would return to in Compliance for the following 11 months i.e. 92% Compliance for the year (provided the breach was resolved within the month and no other breaches occur).

Figure 2. Effect of 1 incident of non-compliance under existing and proposed CAS

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Existing	Broadly Compliant											
Proposed	NC	C	C	C	C	C	C	C	C	C	C	C

- 5.5 Indeed when the new scheme was applied to historic assessments, the sample saw no significant increase in time spent in Non-compliance; due to the focus on more significant instances of Non-compliance, many assessments of Broadly Compliant under the existing scheme, were assessed as in Compliance under the proposed scheme. The sample also showed a reduction in time spent in Major non-compliance compared to time spent as Poor or Very poor.
- 5.6 We do understand the concerns of operators as expressed in their consultation response. We will therefore consider options for addressing these concerns. In 2018 we intend to engage widely with stakeholders to consider the further development of the proposal. As part of this work we will undertake modelling and trials to assess the impact of the new scheme on compliance assessments and test some of the suggested alterations to the scheme.

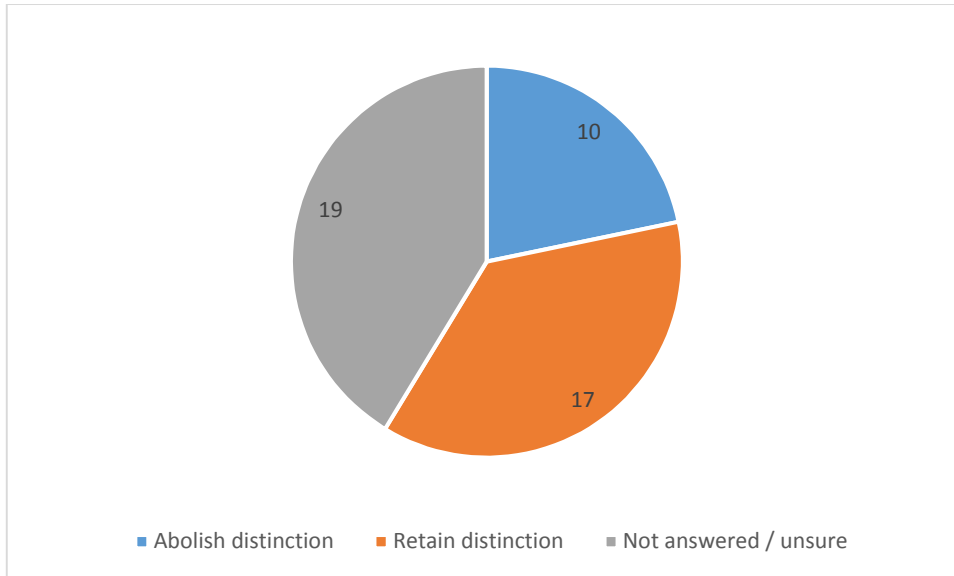
6. We no longer propose to distinguish between EMC and ELCs.

Question 3. Do you have any comments on this approach to defining compliance?

- 6.1 Table 3: Summary of responses to question 3

Answer	Number	%
Abolish distinction	10	22%
Retain distinction	17	37%
Not answered or unsure	19	41%
Total	46	

Figure 3. Responses to question 3.



- 6.2 Of those who responded, the majority wish to retain the distinction between administrative and environmental limit conditions, particularly where the former has no potential to harm the environment. This is strongly linked to the proportionality and reputational arguments discussed in the previous section.

SEPA Conclusion

- 6.3 The proposal to remove distinction between EMCs and ELCs will be further explored during stakeholder engagement sessions in 2018.

7. The consultation provides an example of the annex which will define Major non-compliance

Question 4. Are there any changes that you would like to see in the criteria for defining major non-compliance listed in Annex 1?

- 7.1 We received 21 responses to this question. These request clarity on a number of specific scenarios as well as more general guidance on interpretation of language such as what is meant by a ‘prolonged period’, ‘managed in an effective manner’ and ‘impact on the environment’.
- 7.2 There was a preference for more detailed and specific criteria for defining Major non-compliance to ensure consistent application by SEPA across all regions and regimes.
- 7.3 A number of operators felt unable to comment on the example annex and await publication of the full annexes.

SEPA Conclusion

Full draft annexes will be developed prior to the commencement of the stakeholder engagement work and will form part of discussions and trials throughout 2018.

SCOTTISH ENVIRONMENT PROTECTION AGENCY

8. The consultation outlines how we will assess compliance

- 8.1 To achieve compliance all relevant permit conditions must be met. Where a relevant permit condition is breached, the permit will be assessed as being in non-compliance, or major non-compliance.

Question 5. Are there any changes that you would like to see to the way in which we propose to assess compliance?

- 8.2 Responses to this question have been addressed in the preceding sections including:
- While many operators see how the new CAS fits with SEPAs Single Authorisation Framework and work to review and simplify SEPA permits, there is concern over the current number of outdated or inappropriate licence conditions which have the potential to impact a permit compliance rating.
 - Concern that small technical or administrative breaches will be treated in the same way as more significant issues.
 - Desire for SEPA to take mitigating circumstances into account when assessing on going non-compliance, particularly the adoption and adherence to improvement plans.

9. In the future we propose to take other environmental obligations into account when assessing compliance.

Question 6. Are there any other environmental obligations that you consider should be included in the future development of the scheme?

- 9.1 We received 15 responses to this questions, with 12 supporting inclusion of other environmental obligations and three disagreeing.
- 9.2 Of those who supported inclusion of other obligations; there was a strong desire to consider all incidences of illegal activity whether or not it directly relates to a licence condition.
- 9.3 It was noted that if taking into account obligations out-with a licence, those holding exemptions and those without a SEPA licence should also be subject to assessment to maintain a level playing field.
- 9.4 A number of respondents felt they could not respond until they see the full proposal in a future consultation.

SEPA Conclusion

- 9.5 Responses received show support for inclusion of other environmental obligations. We will develop proposals for what obligations could be included and how they are assessed and consult on this separately after the new scheme has been implemented.

SCOTTISH ENVIRONMENT PROTECTION AGENCY

10. Additional comments on the proposal

Question 7. Are there any other comments that you wish to make about the proposals?

10.1 A number of additional comments and questions were raised about the proposed scheme. These have been grouped and summarised below:

Comment	SEPA Conclusion
Where a variable or fixed monetary penalty is applied in relation to a specific instance of non-compliance, will this be excluded from calculation of the compliance factor to prevent the operator being penalised twice for the same incident?	The intent of SEPA's charging scheme is to recover the costs from those responsible for generating them. Fixed monetary penalties are as the name suggests penalties for not complying with legal requirements.
Process for contesting an assessment of compliance needs to be clear and simple. There was some concern that 10 days is insufficient to review and dispute an assessment.	The draft CAS manual will outline the process for contesting a compliance assessment and will form part of stakeholder discussions.
The consultation states that 'Non-compliance will always be recorded against the month in which it began. If a non-compliance continues into a second month (or more), the non-compliance will be marked against the subsequent month if it lasts for 15 days or more of that month'. Two respondents expressed concern that this will lead to breaches being treated differently depending upon the date that they fall.	SEPA agrees and has reviewed how to treat non-compliance which continues into a second month. Non-compliance will be rolled over into the subsequent month where it lasts for 31 days or more. The impact of this change will be assessed during trials of the new scheme in 2018.