

AGENDA ITEM No. 17(a)

To: Environmental Services Committee		Subject: Review of Legislation Relating to the Integration within the Environment Agency and the Scottish Environment Protection Agency
From: Director of Environmental Services Director of Planning and Development		
Date: 23 November 1998	Ref: 170mhlmr	

Introduction

In April 1996, the government established the Environment Agency (EA) in England and Wales and the Scottish Environment Protection Agency (SEPA) in Scotland. The intention of this initiative was to provide a more integrated approach to the protection and enhancement of the environment. These agencies took over the functions of the River Authorities/Boards, HM Industrial Pollution Inspectorate and the Waste Regulation duties formerly carried out by local authorities. These agencies have a duty to regulate the main pollution risks to air, water and land. However, as previously reported to Committee, anomalies exist between the two agencies, in relation to the regulatory duties pertaining to the control of atmospheric emissions. In Scotland, Part I Processes as defined in the Environmental Protection Act 1990, are part of SEPA's responsibilities.

Background

When these agencies were first established, it was recognised that the commitment to a more integrated approach to environmental protection, applied in two distinct ways:

- the level of integration which was perceived by the operator of the specific controlled process, and
- the level of integration which could be achieved within the agencies across several disciplines.

A high level of integration within SEPA, for example, may lead to simplified management of controlled processes.

The purpose of this consultation is to identify any barriers preventing the agencies from adopting this integrated approach to the protection of the environment, with a focus on the effectiveness of current legislation at operational level. The review will consider whether the harmonisation of relevant provisions under different legislation would be feasible and result in improvements in environmental protection and enhancement, customer service and business efficiency. In the event that this approach was considered feasible, then it would be necessary to establish whether this could be achieved by administrative means, management action or ultimately by a recommendation for legislative change.

Scope of Review

The review addresses a number of areas in the form of a critical analysis of existing regimes, procedures and legislative controls. In specific terms, a focus is placed on:

- the procedures or mechanisms currently used by the agencies, eg. an opportunity to consider a consolidated consent, authorisation or licence, in place of individual consents, etc.
- the simplification and rationalisation of control regimes, eg. radioactive and heavy industrial processes.
- the differences in legislation and the different ways in which these are operated. This is a crucial area which will determine the effectiveness of any initiative taken, which requires to recognise National Statute and also European Union legislation.

A number of associated issues are specifically excluded from the scope of this review, as outlined below:-

- the effectiveness of existing detailed legislative provisions
- the need for new legislative powers
- the legislation relating to fisheries, water abstraction and pollution and IPPC
- the option to integrate the agencies themselves

Response

In consultation with the Director of Planning, the following response is considered appropriate and corresponds to the section/question numbers and sequence outlined in the consultation document.

1. General

- (a) The Director of Planning and Development
The Director of Environmental Services
- (b) The Scottish Environment Protection Agency (SEPA)
- (c) Statutory consultations on applications for development and the maintenance of public records for pollution control consents

Statutory consultations on applications for alterations to site licences.

Statutory controls on Council operated landfill and civic amenity sites facilities.

Co-regulator in terms of specific provisions of the Environmental Protection Act, 1990.

2. An Integrated Approach

- (a) It is considered that SEPA takes a relatively integrated approach to environmental protection and enhancement, in relation to those areas for which it has responsibility. However SEPA is only one of the statutory bodies with these responsibilities, others include:-

- Unitary Authority Planning and Environmental functions

- ◆ Scottish Natural Heritage (SNH)
- ◆ Historic Scotland

As an example, where SEPA would have control over a specific industrial process, with relevant authorisation conditions, the overall and cumulative environmental impact may not be fully assessed, on the basis that one or more of the above statutory bodies may not require to be formally consulted. It is not considered appropriate to provide or transfer additional powers to SEPA from the above statutory bodies although support is recommended for a means by which an overview of applications for process authorisations, licences, etc. could be taken by all interested parties. This would address the currently perceived democratic deficit and ultimately enhance the level of public confidence in the control of such issues. It is suggested that such collaborative action could also be applied to specific research and development projects where interests and responsibilities for environmental protection and enhancement overlap.

- (b) SEPA's integrated approach to customer service is difficult to assess meaningfully, from a local authority perspective, in that we are not a 'customer' in terms of their service delivery. However, in specific instances of public complaint, our Council has provided a response appropriate to the circumstances and in a timely manner, where SEPA has been unable to respond as quickly, perhaps due to a lack of local presence.
- (c) One of the principal obstacles to SEPA providing an effective integrated approach, is the continuing existence of individual consent procedures for emissions to the air and water. This situation which is inherited from separate legislative controls, does not present in a sufficiently clear way, a process's overall impact on the environment and can result in three individual consents being required for one site. Applications for consents are often presented separately for consideration and over a period of months. This compartmentalism works against the objective of integration and the need for public transparency and understanding of site specific processes. It is recommended that consideration is given to a consolidated Site Consent Document or equivalent which would require to detail and present all consents relevant to the process or development.

3. Regulatory Mechanisms

- (a) the obstacles to integration identified in the response item 2(c) above concerns the regulatory mechanism which SEPA operates.
- (b) The response item 2(c) indicates the negative effects of the compartmentalised approach which is currently applied to environmental protection, due to separate consent procedures being required for emissions to air, soil and water.
- (c) At this stage, it is considered appropriate that a more integrated management and administrative approach, to specific sites and processes, combining all necessary consents should be considered. This would entail significant rationalisation to assessment criteria to be successful, ie. holistic approach, cost/benefit analysis, Best Practicable Environmental Option, etc. Amendments to primary legislation could follow if these objectives were unable to be met.

4. Charging

It is considered appropriate that policies on charging should be rationalised and take into account the following factors:-

- ♦ on the basis of the existing 'Polluter Pays' principle, the charge should recognise the degree of potential pollution from the process or development, the management and monitoring requirements over an assessed timespan and the long-term 'topping-up' effects of ambient pollution levels.
- ♦ the complexity of the process and application procedures, which may relate to one, two or three of the environmental media.

5. Similar Regulatory Regimes

The response item 2(c) addresses this issue.

6. Solutions

It is appreciated that SEPA and its' counterpart are in the early stages of establishing an integrated approach to pollution prevention and control. A review of all issues which affect this approach should be treated positively. A regulatory regime which is integrated and transparent to both regulators and the regulated is a sound base upon which to build. The following brief comments would assist this process.

- ♦ Perceived overlaps in responsibilities with other statutory bodies require to be managed in a consistent manner.
- ♦ Site specific Consent Documents, suitably summarised, would provide a clearer, more readily understood format and enhance levels of transparency
- ♦ Methods of improving the public perception of levels of democratic accountability should be initiated.

Recommendation

It is recommended that this joint report is utilised as the basis of a response to COSLA and/or the Scottish office.

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