

1.0 Title of proposal: Environmental Authorisation (Scotland) Regulations (EA(S)R) 2018: proposed amendments

1 This is a partial Business and Regulatory Impact Assessment (BRIA) for proposed secondary legislation to amend the Environmental Authorisations (Scotland) Regulations 2018 (the 2018 regulations).

2 This legislation is in the form of a Scottish Statutory Instrument that will amend the current regulations.

3 This document expands on the BRIA published in September 2017, alongside a public consultation.

4 There are four new activities, currently unregulated, that we are proposing to add into the EA(S)R. At this proposal stage we do not have full sight of the numbers or operations of businesses for these activities. Part of the aim of issuing a partial BRIA alongside the consultation paper on the regulations is to gather information about these activities to inform the development of a full BRIA, which will accompany the final regulations. As a result of the cyber-attack certain information from SEPA is more limited reducing our ability to fully complete the BRIA at this stage. We will conduct further analyses on these activities, including drawing on responses to the consultation, which will be published in the final BRIA.

2.0 Purpose and intended effect

2.1 Background

5 SEPA is the regulatory authority responsible for the authorisation and enforcement of the four main environmental regimes. These regimes cover radioactive substances, water, waste, and industrial emissions activities. The development of the relevant domestic legislation has been on a regime-by-regime basis over many years. This has led to similar but different requirements for the processes for each regime.

6 We are aware that currently environmental regulation is more complex than it needs to be. The four main environmental regimes regulate activities throughout Scotland and many sites (locations) have multiple authorisations (covering one or more activity). Regulating multiple authorisations requires different procedures, different monitoring arrangements and multiple inspections by different inspectors.

7 The 2018 regulations came into force in September 2018. These regulations set out the common procedures for an integrated authorisation framework. The aim of the framework is to integrate, as far as possible, the authorisation, procedural and enforcement arrangements relating to the four main environmental regimes. The 2018 regulations include the technical provisions for radioactive substances activities.

8 The framework is a key component of the joint Scottish Government-SEPA programme of policy, legislative and operational improvements. This will deliver a simpler, more risk-based, proportionate system of environmental regulation. It also

enables SEPA to deliver proportionate, joined up, outcome focussed regulation, whilst reducing the regulatory burden for operators.

9 The current regulatory controls cover a wide range of activities within each regime, however there are no specific controls for the activity of non-waste anaerobic digestion, whilst the controls for carbon capture and generator activities are limited. Also, in relation to sewage sludge activities the current controls do not offer suitable protection to the environment.

2.2 Objectives

10 The design of the 2018 regulations is to standardise, simplify, and streamline the process of SEPA's regulation of environmental activities. The integration of SEPA's four main environmental regimes will enable targeting of resources to the most hazardous and highest risk environmental activities.

11 We propose changes to the regulation of sewage sludge activities and to extend environmental regulation to incorporate carbon capture, non-waste anaerobic digestion and generator activities.

3.0 Consultation

12 We will hold a 12-week consultation on amending the 2018 regulations. This consultation seeks views on extending or changing the regulations to include four new activities. The consultation also sets out the extension of the technical requirements to include water, waste, and industrial activities so that the 2018 Regulations becomes the framework for environmental regulation in Scotland,

13 The consultation will be open to a wide range of stakeholders – industry, NGOs, trade associations, and private individuals.

3.1 Previous consultations

14 Proposals for an integrated authorisation framework have been subject to several public consultations, such as the joint [Scottish Government–SEPA consultation on Proposals for an Integrated Framework of Environmental Regulation](#) in 2012. This generated strong and widespread support, with proposals for simpler, more risk-based environmental regulation supported by 92% of respondents.

15 This is the first consultation seeking views in relation to the proposal of the four new activities.

4.0 Options

16 The policy intent is to complete the integration of waste, water, industrial emissions, and radioactive substances activities into the Environmental Authorisations (Scotland) Regulations 2018 (the 2018 regulations).

17 We are proposing changes to the regulation of sewage sludge activities and to extend environmental regulation to incorporate carbon capture, non-waste

anaerobic digestion and generator activities. A key objective for the 2018 regulations is to deliver environmental benefits.

18 The options considered are:

- **Option 1.** Extend the regulations to incorporate sewage sludge to land
- **Option 2.** Change the regulations to incorporate carbon capture activities
- **Option 3.** Change the regulations to incorporate non-waste anaerobic digestion activities
- **Option 4.** Change the regulations to incorporate generator activities

19 These changes are likely to impact the following stakeholder groups:

- Businesses
 - Already regulated businesses
 - Currently unregulated businesses of the proposed new activities
- Regulator
- Scottish Government
- Other public bodies including Local Authorities, NatureScot and statutory consultees
- Consumers of products produced by affected businesses
- General Public
- Communities – local to regulated businesses

20 The costs and benefits have been summarised, based on each impacted stakeholder group for each of the options above. At this stage we have limited information on the costs and benefits, which we are developing for the final BRIA. The description of all costs and benefits are in qualitative terms and, where possible, quantified, and monetised. We are unable to estimate the extent and scale of some of the impacts of the regulation proposed, particularly for some of the new activities.

21 The charging scheme for the new activities will be based on SEPA's current charging scheme. Charges by SEPA will facilitate full cost recovery for the regulatory activity. This will be the subject of a separate consultation.

4.1 Option 1. Change the regulations to incorporate sewage sludge to land.

22 The proposal means sewage sludge to agricultural land activities will need an authorisation for the first time. It will bring new requirements, for example preventing application of untreated sewage to land and tightening soil protection, that protect the environment. The draft regulations allow SEPA to regulate all aspects of sewage sludge use on agricultural land, including odour. From our initial investigations into this industry we anticipate this will impact on the six producers of sludge for application to land in Scotland and on sludge haulage and spreading contractors across Scotland.

23 The application of sewage sludge to land is currently subject to 'passive' regulation where operators must abide by certain rules but there are limited enforcement options, no cost recovery for SEPA and no system for checking that those who spread sewage sludge are 'fit and proper' to do this work.

24 This option proposes to move the entire system of managing sewage sludge into the environmental authorisation framework. This will require that operators be ‘fit and proper’ to carry out the activity and are subject to conditions necessary to protect the environment.

25 Alongside the introduction of sewage sludge to land as part of the regime, this option will simplify and integrate the whole system of applying waste to land. The new regime will enable those operators who apply waste to land to be authorised under a single permit reducing administrative costs.

26 There are further changes to the current regulatory requirements for the application of sewage sludge or any waste to land. The draft regulations now prevent the application of untreated sewage sludge to land, tighten the soil protection values and monitoring requirements and put relevant parts of the safe sludge matrix on a statutory footing.

27 The additional costs of this option will fall to the operators who apply sewage sludge to land and who will require a permit. They will have to pass a ‘fit and proper’ person test and pay subsistence fees for their permits. SEPA will need to conduct additional regulation but the additional fees paid by operators will cover these costs. In line with current policy and best practice SEPA’s charging scheme is designed so that the potential polluter is required to pay for the regulatory effort required to protect the environment. Customers (including Scottish Water) of the sewage sludge to land operators may end up paying these additional costs if they are passed on.

28 There will be multiple benefits associated with reductions in administration resource required by waste to land operators for whom the proposals will simplify the application process. SEPA will benefit from the simplified processes through reductions in administration requirements. There will be reductions in environmental impacts associated with applications of sewage sludge to land. It will also make it clearer for the public who to contact with respect to odour issues arising from this activity because SEPA will be empowered to act across the whole supply chain

29 Option 1: In general, based on previous sector discussions with stakeholders through previous consultations and informal engagements during 2023, it is expected that the benefits of this option (to SEPA, waste to land operators, general public, communities, and the environment) are likely to outweigh additional costs to operators (or their customers) who apply sewage sludge to land.

4.2 Option 2. Extend the regulations to incorporate carbon capture.

30 This option proposes to add, any activity, if not related to any activity already described in Pollution, Prevention and Control regulations for the capture of carbon dioxide from any other source, as an industrial activity requiring a permit. The types of activity that would require an authorisation are:

- Carbon dioxide removal (CDR) technologies such as Direct Air Capture
- Carbon capture and utilisation plant
- Carbon capture plant for the purpose of storing carbon dioxide.

31 This is an area where the market for this industry is developing. We have little information on the current scale of the sector, or potential new entrants over the next few years. The 2018 regulations enable a proportionate approach to environmental authorisations. Different levels of regulatory controls may be applied because of the developing nature of this sector. Further consultation by SEPA will be required to understand the environmental risks posed by the emerging technologies for this activity so that the appropriate level of authorisation (e.g. a permit or a registration) is applied. While this is an emerging industry, it is important that we address any potential environmental impacts, for example potential significant impacts on air and water quality and from noise. Due to this being an emerging industry no quantitative work has been undertaken, however qualitative work will be developed over the next few months to consider the potential costs and benefits of the proposed regulation and delivered as part of the final BRIA.

32 Under current legislation (PPC) carbon capture for geological storage is an activity requiring a permit, in line with the requirements of the Industrial Emissions Directive. This means that the:

- carbon capture plant must be located at an installation already carrying out another industrial activity listed in the PPC Regulations
- plant must capture carbon dioxide from a point source
- captured carbon dioxide is for the purpose of geological storage.

33 The role of carbon capture is evolving, and several types of carbon capture technologies are emerging. Many types of carbon capture technologies will not fit the current definition and therefore would be outside the controls currently set by environmental permits.

34 This new activity will provide a level playing field and ensure environmental risks are appropriately managed. The level of authorisation will be proportionate to the risk to the environment.

35 SEPA and business operators incur the main additional costs associated with this proposal. Additional charging income which comes from business operations will cover SEPA's additional costs. SEPA's charging scheme is consistent with current policy and best practice where the potential polluter is required to pay for the regulatory effort required to protect the environment. We do not know very much about the current scale of the industry that this proposal will bring into regulation. Introducing the regulations now, before the industry emerges, will enable operators to include costs of permitting and compliance in the early stages of development for their business plans.

36 Benefits are environmental and associated with controlling activities which have potential to cause environmental harm. Other benefits include improved clarity of regulation and introduction of a level playing field for businesses operating in this sector.

37 Option 2: the additional benefits to the environment (general public, local communities, environment, SEPA and businesses) and additional costs (to businesses) will be assessed as part of the final BRIA.

4.3 Option 3. Extend the regulations to incorporate non-waste anaerobic digestion.

38 This option proposes to add the anaerobic digestion of other (non waste) materials as an industrial activity, meaning they will require an authorisation. From initial investigations into the current market we are aware of 10 – 50 non-waste anaerobic digestion plants in Scotland that will be impacted by this regulation. In the waste sector there are currently 25 anaerobic digestion plants authorised in Scotland. The regulation of this sector is important to mitigate pollution (e.g. odour impacts on local communities and leakage from storage tanks into the water environment), and provide a level playing field across the anaerobic digestion sector.

39 Anaerobic digestion processes biomass (plant and animal materials) into methane or biogas for heating and power. The non-waste anaerobic digestion sector has a risk of pollution, particularly liquid effluent to the water environment and odour issues. Anaerobic digestion plant processing non-waste biomass present similar risks to the environment as those processing biomass.

40 Anaerobic digestion is important to the circular economy and net zero. Adding this activity will provide a level playing field for all operators of anaerobic digestion plant (whether waste or non-waste) and ensure the appropriate management of environmental risks with the aim of achieving proportionate and equitable regulation of anaerobic digestion activities based on risk to the environment.

41 The main costs and benefits from this option fall to operators of non-waste anaerobic digestion facilities, SEPA and local communities. The main costs are to operators of the facilities who currently do not require a permit to operate, they will incur costs associated with permit application (total for all operators estimated to be around £50,000/year) and possibly changing their operations to comply with permit requirements. SEPA's charging scheme is consistent with current policy and best practice where the potential polluter is required to pay for the regulatory effort required to protect the environment. As such, additional charging income which comes from business operations will cover SEPA's additional regulatory costs.

42 Beneficiaries from the proposal include the general public and local communities through reductions in potentially serious environmental incidents and general improvements to environmental protection. 25 currently permitted operators of waste based anaerobic digestion facilities will also benefit due to the levelling of the playing field with non-waste operators who are currently unregulated even though they give rise to similar environmental impacts.

43 Option 3: From the baseline information we have available we anticipate that the additional benefits to the general public, local communities, currently permitted operators and SEPA outweigh the additional costs associated with permit applications and changes to working practices for operators of non-waste based anaerobic digestion facilities.

4.4 Option 4. Extend the regulations to incorporate generators.

44 This option would apply regulatory controls to any combustion plant (or plants) that generates electricity and aggregates to greater than 1 MWth or more at a location. This will include any generator which supplies electricity, either to the grid or for independent production and use at site of generation. Bringing this into regulation will enable the consistent application of appropriate controls on the emissions to air across the UK. Air pollutants resulting from combustion plant which can impact on human health and the environment include oxides of nitrogen (NO_x) sulphur dioxide (SO₂) and dust. There is currently no centrally held information on the number of generators of this capacity in Scotland, although we anticipate this will be numbered in the 100's, from the informal knowledge we have of the sector.

45 Generators can be used in arrays to supply power and as back up to power supplied from the grid. Some may be operated intermittently to supply the grid to balance electricity supply and demand in real time. Additionally, standby generation is relied upon by island communities to provide additional peak supply and contingency in the event of subsea cable faults.

46 The use of unabated generators can have a significant impact on air quality, and plant with a capacity of 1 MWth or more already need an environmental authorisation. Sites where smaller plant aggregate to greater than 1 MWth can have an equivalent environmental impact. It will provide a level playing field and ensure environmental risks are appropriately managed, with the aim of achieving proportionate and equitable regulation of generation activities based on risk to the environment.

47 This option would subject these plants to similar controls as those that have been in place for specified generators in England and Wales since 2018, via the Environmental Permitting Regulations 2016. This intends to bring the operation of these generating plant up to modern emissions standards. For island communities, this could involve the upgrading of electrical distribution networks and/or facilitate the greater use of renewable/low carbon technologies to displace the current old fossil fuel power stations.

48 The main costs of this option will fall to operators of combustion plant which generate power and aggregate to >1MWth. We do not know the extent of these arrays at present but are aware of their use to supply island communities as power generation back up at peak usage times and/or times when there are faults with sub-surface cables, as well as on the mainland for multiple purposes. If the operators pass these additional costs of generation onto all consumers, then those in these communities may incur further costs. There are multiple potential benefits associated with this option including levelling the playing field with combustion generation operators who are already regulated, reducing environmental impacts associated with combustion plant for local communities and the general public, and potentially encouraging operators to switch away from combustion to low carbon electricity generation.

49 Option 4: Analysis of the current market and identification of the additional benefits and costs of this option will be undertaken in development of the final BRIA. While the proposed changes will bring improved air quality this will need to be assessed against the additional costs to operators. The main uncertainty is about

potential additional impacts on communities in the islands, and we will need further consultation with the operator or operators of generating plants before making a recommendation. The islands community impact assessment will also help identify the relevant information and evidence that will be taken into consideration in the final BRIA.

50 There is also a question in the consultation about whether to extend the threshold to other types of combustion plant, such as boilers and consideration will need to be given to the impact on those type of plant i.e. those generating heat.

Regulatory Impacts

51 The four environmental regimes were developed at an EU level and transposed into domestic legislation.

52 The intention is to have a single regulatory regime, incorporating the existing technical requirements, whilst standardising, simplifying, and streamlining the process for SEPA's regulation of environmental activities

53 The four new activities being proposed will fit into the single regulatory regime

Scottish Firms Impact Test

54 As set out in section 3 above, we will supplement the extensive industrial engagement conducted during the 2017 consultations with additional consultation with business, representative organisations and trade associations of varying sizes and sectors on the proposed changes. The final BRIA will include these results. This process will help to establish:

- Any anticipated impact on the competitiveness of Scottish companies with the UK, or elsewhere in Europe or the rest of the world
- The impact of the changes to businesses and sectors
- The likely cost or benefit to business.

Competition Assessment

55 This section helps to consider the impact of a regulation or policy on competition between producers, wholesalers, retailers, and importers in the Scottish Market. The assessment will follow the Competition and Market Authority guidelines, which outline how to determine any competition impact. These guidelines recommend considering four key questions to assess whether a proposed policy would have an impact on competition.

56 Included below is the first assessment, but by gathering additional information through the further consultation with businesses (referred to above) the final assessment will be more comprehensive.

Competition Assessment Questions.

Will the measure directly or indirectly limit the number or range of suppliers?

No. The new proposed activities would not limit the number or range of suppliers.

Will the measure limit the ability of suppliers to compete?

No. The new proposed activities would not limit the ability of suppliers to complete.

The policy for the new proposed activities (options 1-4) ensures a level regulatory playing field for all suppliers and operations of these activities.

Will the measure limit suppliers' incentives to compete vigorously?

No.

Will the measure limit the choices and information available to consumers?

No.

Consumer Assessment

57 It is important to consider the impact on consumers of products or services that during their production result in a reduction of local environmental capacity. The Scottish Government's definition of a consumer is "anyone who buys goods or digital content or uses goods or services either in the private or public sector, now or in the future".

58 The Scottish Government's Consumer and Competition Policy Unit specifies the questions below when determining the impact of proposed legislation on consumers. Included below is the first assessment. Further research and consultation will inform the final assessment.

Consumer Assessment Questions.

Does the policy affect the quality, availability or price of any goods or services in a market?

The proposed changes and new activities (options 1-4) would have the potential to affect the price of any goods or services in a market due to the application of these environmental regulations to these activities. In amending business models to incorporate adherence to the new environmental controls, producers and service users may choose to pass on some or all of their costs to consumers through increasing the price of their products. Any such decision would be a commercial one for industry to take, but the final BRIA will consider this 'cost pass through' effect.

Does the policy affect the essential services market, such as energy or water?

The proposed new activity "extend the regulations to incorporate generators" (option 4) relates specifically to regulatory controls to any combustion plant (or

plants) that generate electricity and aggregate to greater than 1 MWth or more at a location. We do not know the extent of these arrays at present but are aware of their use by island communities as power generation back up at peak usage times and/or times when there are faults with sub-surface cables. If the operators pass these additional costs of generation onto consumers, then these already disadvantaged communities may incur further costs. The islands community impact assessment will help identify the relevant information and evidence that will be taken into consideration in the final BRIA.

Does the policy involve storage or increased use of consumer data?

No.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

No.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

No.

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

No.

Test Run of Business Forms

59 SEPA's regulatory regimes are well established. The current regulatory regimes identify activities that require an authorisation, and provide access to the appropriate application forms. An update to the application process and forms will be required for these new activities.

Digital Impact Test

60 Changes to policy, regulation or legislation can often have unintended consequences, should government fail to consider advances in technology and the impact this may have on future delivery. This digital impact test considers whether the application of the changes will remain effective should business/government processes change – such as services moving online. Included below is the first assessment. Further research and consultation will inform the final assessment.

61 SEPA's regimes are well established, with associated digital processes for applications and enforcement. Currently, there is limited digital functionality for receiving applications and issuing authorisations, however SEPA has been able to provide an end-to-end digital licensing system for a small number of large volume – low risk activities. The draft Regulations provide the opportunity to simplify the process for other low-risk activities therefore increasing the number of activities that

can be authorised by an end-to-end digital solution. Furthermore, by integrating the current regimes into one regulatory process it significantly simplifies the development of a generic digital licencing system. All processes also have a non-digital option.

62 Overall, it is considered that the proposed legislation will have a positive impact on capacity for digital technology developments, as SEPA continues their build-back post cyber-attack.

Digital Impact Test Questionnaire.

Question 1. Does the measure take account of changing digital technologies and markets?

Yes, SEPA supports a digital service for the authorisation process, reporting, enforcement, and other requirements needed for a regulatory regime.

Question 2. Will the measure be applicable in a digital/online context?

Yes, SEPA supports a digital service for the authorisation process, reporting, enforcement, and other requirements needed for a regulatory regime.

Question 3. Is there a possibility the measures could be circumvented by digital/online transactions?

No.

Question 4. Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

No, for equality purposes these are available digitally and non-digitally.

Question 5. If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

No, as the policy for the proposed changes is to ensure a level regulatory playing field for all operators of these activities.

Legal Aid Impact Test

63 We do not expect any impact on Legal Aid, but the Scottish Government's Access to Justice Team will assess this as we develop the final BRIA.

64 SEPA's regulatory regimes are well established. These include enforcement processes where an activity takes place without an authorisation, or where there is non-compliance with the conditions of an authorisation.

Enforcement, Sanctions and Monitoring

65 Operators must have an environmental authorisation to undertake certain activities that may have an impact on the environment (radioactive substances, water, waste, and industrial emission). There are various levels of authorisation depending on the activity within each environmental regime. However, protection of the environment requires compliance with the environmental authorisation. Depending on the level of the environmental activity the operator may need to apply to SEPA for its authorisation.

66 SEPA is the enforcing regulatory body for the four environmental regimes (radioactive substances, water, waste, and industrial emission). The enforcement hierarchy enables SEPA to work with an operator to ensure compliance with its permit, and where breaches of an authorisation occur to escalate to the use of enforcement notices or referral of an offence to the Procurator Fiscal.

Implementation and Delivery Plan

67 We expect the Scottish Statutory Instrument to which this partial BRIA applies to be laid before the Scottish Parliament in Autumn 2024. Subject to the Parliamentary procedure, the Environmental Authorisation (Scotland) Amendment Regulations 2024 will come into force on 02 April 2025.

68 SEPA is the environmental regulatory authority. It would regulate these new activities, which includes making determinations on authorisation applications, together with inspecting, monitoring, and enforcing the conditions in an issued authorisation. SEPA will continue to be the environmental regulatory authority for these options.

69 The inclusion of these four new activities will require suitable transitional arrangements. This will enable businesses to be organised and to apply for the relevant authorisation, if required.

Summary and Recommendation

70 It is recommend that the four new proposed activities are included within the scope of the 2018 regulations. This will ensure a level playing field for all operators of an activity that may have an impact on the environment, where the environmental risks are similar by having a standardised, simplified and streamlined authorisation process.

71 Part of the aim of issuing this partial BRIA alongside the consultation paper on the regulations is to gather information about these proposed additional activities to inform the development of a full BRIA, which will accompany the final regulations. We will conduct further analyses on these activities, including drawing on responses to the consultation, which will be published in the final BRIA.