

**Public Participation and
Consultation in SEPA
Regulatory Regimes
(R50063PUR)
Final Report**

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Abbreviations Used:

CAR	Controlled Activities Regulations
COMAH	Control of Major Accidents and Hazards
DPA	Data Protection Act
DETR	Department of Environmental Transport and Regions
EA	Environment Agency
EHS	Environment and Heritage Service
EIR	Environmental Information (Scotland) Regulations
EPA	Environmental Protection Act
FAQ	Frequently Asked Questions
FOI	Freedom of Information (Scotland) Regulations
FTE	Full Time Enquiry
HSE	Health and Safety Executive
IPPC	Integrated Pollution Prevention and Control
IT	Information Technology
MEP	Member of European Parliament
MP	Member of Parliament
MSP	Member of Scottish Parliament
ND	No Date
NGO	Non-Governmental Organisation
NVZ	Nitrate Vulnerable Zone
NWS	National Waste Strategy
OECD	Organisation of Economic Cooperation and Development
PPC	Pollution Prevention and Control
PPCR	Pollution Prevention and Control Regulations
PPD	Public Participation Directive
PR	Public Relations
PROR	Producer Responsibility Obligations (Packaging Waste) Regulations
RBMP	River Basin Management Planning
RLF	Recycled Liquid Fuel

RSA	Radioactive Substances Act
SE	Scottish Executive
SEA	Strategic Environmental Assessment
SED	Sustainable Economic Development
SEPA	Scottish Environment Protection Agency
SNH	Scottish Natural Heritage
SSSI	Site of Special Scientific Interest
UKAEA	United Kingdom Atomic Energy Authority
UNECE	United Nations Economic Commission for Europe
UWWTD	Urban Waste Water Treatment Directive
WEWS	Water Environment and Water Services Act
WMLR	Waste Management Licensing Regulations

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Executive Summary

Aims and objectives

The research was commissioned to support the Scottish Environment Protection Agency's (SEPA) objective of ensuring the effective involvement of interested parties in regulatory decision making. In particular, the research was undertaken to investigate the differences in public involvement across the different regulatory regimes and to what extent consistent approaches could be adopted whilst still meeting legislative requirements. Specific objectives were:

Review of legislation

- To provide a detailed overview of provision for public participation and/or consultation in each of the regulatory regimes under which SEPA operates, and of the aims that participation is intended to meet in each case
- To highlight variations between regimes in terms of the consultation and participatory methods stipulated (statutory periods, what stage in the process consultation occurs, how publicised, how views are to be taken into account, etc)
- To identify where participation and consultation are restricted in scope by the legislation, and where the legislation sets minimum standards which may be exceeded where appropriate.

Identification of best practice

- To identify examples of good practice used by SEPA in ensuring effective public involvement while meeting the requirements of the legislation, and by other agencies (e.g. Environment Agency) in similar regulatory contexts
- To consider the suitability of these best practice examples across the range of regulatory regimes
- To recommend where improvements to current practice can be made which are compatible with those regulatory regimes.

Methodology

The project involved three phases:

1. A legal review of the regulatory obligations
2. An analysis of good practice (from published reports) and current practice (from 14 in-depth interviews with SEPA and staff from other regulatory agencies)
3. A synthesis of the legal and current practice findings.

Why involve the public?

The right of the public to participate in environmental decision-making is enshrined as one of the three pillars of the Aarhus Convention (UNECE, 1998), which the UK has ratified. In summary, citizens must have access to information, be entitled to participate

in decision making and have access to justice in environmental matters. Aarhus reflects the move towards ‘participatory democracy’ whereby citizens take part in decision making themselves rather than solely through their elected political representatives.

The benefits of public involvement can be summarised as leading to better choices; more acceptable solutions and therefore less conflict; and increasing the capacity and confidence of members of the public to take responsibility for the environment. A successful public involvement programme will not necessarily overcome all opposition, resolve all differences or replace planning or regulatory processes. However, the benefits of public involvement are most likely to be felt if a good assessment of the context, objectives, time and resources leads to the appropriate choice of approach.

Public involvement can occur at a number of points on the ‘ladder of participation’ (see **fig 1.1 on page 4- 5**) ranging from information provision by an agency to the public through to delegated authority for the public to decide for themselves. The first challenge for a regulatory agency is to decide which rung is most appropriate in any particular situation. The legitimacy and conduct of any process relies on the people who take part in it; whilst the outcome of any process will be dependent on the application of appropriate techniques in a professional manner. The ability to do so is dependent on adequate resources and a commitment to learning from previous experiences. Finally, future public involvement and consultation processes are reliant on building good will. This can be achieved by honouring participants’ contributions with a clearly communicated decision making process and final outcome. Thus, any public involvement process takes place as part of larger cycle, building on previous decisions that may have involved the public, and influencing processes that may take place in the future.

Findings

The synthesis of the findings from the legal review and the focus on good practice indicates that there are few statutory constraints to public involvement in decisions under the regulatory regimes. These constraints relate to the degree to which the decision is constrained by other, intersecting, legislation (e.g. statutory designations). They also relate to the statutory time limits available for public involvement, although these limits can be extended if agreed with the applicant. Furthermore, these constraints do not prevent good practice being implemented at the lower rungs of the ladder (i.e. through the proactive provision of information).

The regulatory regimes provide minimum standards of public involvement and these vary across regimes. The regulatory regimes for water, PPC and waste management have statutory obligations for public involvement through the inclusion of information on the public register and a specified written consultation process in certain circumstances. The producer responsibility and radioactive substance regulatory regimes have no specific provision for direct public involvement, though there is some provision for making information available to the public¹. However, SEPA is able to exceed these minimum standards for each regime if it so chooses.

¹ Both regimes allow for input by statutory consultees, the producer responsibility regime provides for the maintenance of a public register of information and with regard to radioactive substances, SEPA must

There is a key distinction between public involvement and the involvement of statutory consultees. All four sets of regulatory regimes (Water, PPC, Waste and Radioactive Substances) oblige SEPA to notify statutory consultees directly, but the public rely on an advertisement to notify them about statutory consultation processes. Furthermore, all the regimes fail to specify the manner by which public involvement influences the decision making process beyond stating that the agency has an obligation to consider public representations.

The Statutory Guidance to SEPA on Sustainable Development, combined with SEPA's Corporate Plan, suggest that SEPA could be expected to exceed these minimum requirements where appropriate. These minimum requirements are indeed, in some cases, currently exceeded in practice. Past consultation processes for all four regimes have:

- Notified community groups, politicians and environmental groups as well as the statutory consultees
- Developed communication and media strategies
- Provided printed information to affected households and businesses
- Developed print and electronic resource packs including Frequently Asked Questions (FAQ)
- Provided opportunities for face to face communication (surgeries, exhibitions, public meetings, attending community liaison meetings, focus groups)
- Provided draft and final decision documents in print and on websites.

Furthermore, the UKAEA has developed a transparent multi-criteria decision making process which it implements using a stakeholder panel (including members of the public). The fact that the regime with least obligation for public involvement (Radioactive Substances) is the one that has the most developed public involvement processes highlights how the statutory requirements do not necessarily constrain public involvement.

These findings suggest that to some extent the degree to which the public is involved is at the discretion of the agency. In the above cases, the catalyst for exceeding the statutory minimum has been actual or anticipated controversy. However, it seems that many decisions have been *ad hoc* rather than based on transparent and uniform principles. Good practice in public involvement requires principle-led choices rather than either *ad hoc* choices or rigid adherence to pre-determined procedures. These principles might include broader criteria than merely avoiding conflict, such as recognising opportunities to make better decisions and improve public understanding of regulation through two-way dialogue; or considering criteria like environmental justice. Furthermore, controversy created by a few loud voices may mask more salient views held by the 'silent' majority.

maintain copies of all applications, documents issued by it, documents sent to statutory consultees and records of convictions to which the public are to have reasonable access.

The decision to exceed the regulatory minimum will also be determined by organisational priorities, resource availability and corporate culture. Good practice suggests the decision should be made at the local level, but using corporately agreed principles. SEPA differs from other agencies (Environment Agency, Scottish Water, UKAEA) in not having dedicated outreach officers for these processes. There is also a tension between the aims of effective regulation for a single licence (proportionate, equitable, predictable, ensures environmental quality) and the overall remit of SEPA, which includes a statutory responsibility for sustainable development and a commitment to an engaged and proactive citizenship. In general, it is appropriate for SEPA to focus on proactive provision of information and well-run consultation processes for specific regulatory regimes rather than open-ended participatory processes. Proactive information provision and well run consultations should contribute to better decisions, less resistance to decisions and educated, active citizens. However, poorly-run processes will increase public distrust of regulators.

Summary Recommendations

SEPA should therefore consider three areas:

- When and how to work beyond the statutory minimum
- How best to run such processes if such a decision is made
- Where further research is required.

SEPA Internal Policy²

- Develop a corporate set of principles regarding public involvement (see references e.g. Environment Agency), including transparent criteria for choosing when to exceed minimum regulatory requirements
- Develop a tool-kit of various techniques to be used as part of a well-defined process where each technique is suitable for the particular goal at that stage
- Develop a guide to public involvement in regulatory decision making for the public
- Adopt a consistent approach across all regulations and media where possible
- Develop and implement a diversity and access policy (different languages, different formats) for communications
- Develop electronic versions of public registers with a common access portal on the web
- Consider how to make web and public register a ‘one stop shop’ with better links to FAQs, example previous consultation responses and example decision documents
- Ensure staff understand what terms regarding public involvement mean and their implications³
- Ensure that staff understand that public involvement in regulatory decision making is more than managing public relations

² Wherever possible, the development of the principles and toolkit should be done collaboratively with members of the public, rather than an exclusively internal process.

³ Note that the glossary provided in the Annex Seven is a legal glossary of terms that do not always fit with the way terms are used in good practice guidance documents or in practice.

- Ensure staff know and understand the legal requirements to consult or involve the public in decision making across the regimes they work with and are updated as changes to regimes are introduced
- Develop a process for capturing⁴ and analysing consultation responses, including how DPA, FOI, EIR affect the way data is collated and stored
- Develop a process for communicating the decision and how the decision was made
- Develop a learning network to draw on existing skills within the organisation and pool experience
- Monitor and evaluate public involvement processes - then implement the lessons learnt
- Respect people's right not to participate in a particular formal process – this does NOT mean they are not interested or affected by the issues
- Reflect on why people may distrust the agency and learn from past experiences
- Sustain commitment to future processes by acting on expressed concerns and communicating contributions were used.

Running Processes

- Clarify the decision making process, including the boundaries of what can be considered, and communicate this at the start of the process
- Ensure all participants have the capacity to participate as equals
- Communicate why a particular approach, or rung of the ladder, has been chosen
- Make it easier for the public to get involved (e.g. sending documents on the public registry to them or placing documents in local centres)
- If using methods that restrict numbers, use stakeholder analysis to recruit participants according to appropriate criteria and communicate the reasons for the selection
- Recognise the potential drawbacks in depending on elected bodies and community councils as sole representatives of community opinion
- For written information provision, pilot printed and electronic information on non-SEPA staff
- For face-to-face techniques, establish agreed process rules and use professional facilitators and/or trained project officers to enforce them
- Plan and budget for implementation of solutions arising from public involvement, including building and supporting partnerships and networks
- Communicate the final decision directly to participants and explain how the decision was made.

Further Research:

- Interview participants in past processes for their evaluation of good practice and how they could participate more effectively
- Interview non-participants to find out what the public think and how/if they want to be involved in future

⁴ For example, the public might expect views aired at meetings or informally to officers to be taken into account in decision making and may not submit a formal written consultation response.

- Additional interviews with agency staff to improve analysis of why and how statutory requirements are exceeded
- Interview applicants about their perspectives on public involvement in regulatory decision making, particularly with regard to policies on when and how to exceed statutory requirements
- Development of a decision making process for exceeding statutory requirements, taking into account the benefits of increased public involvement and any costs borne by the agency and/or the operator
- Compare and contrast regulatory requirements under planning type processes with those under regulatory decision making processes to establish possibilities for harmonizing consultation and participation processes across all decision making
- Develop a flow chart of decision making processes illustrating how processes are related, which are integrated and which are similar
- Undertake an external evaluation of SEPA's current web site and future plans for expansion to ensure adequate accessibility.

Chapter One: Introduction

The introduction provides:

- The theoretical and policy context for the discussion
- The structure of the report.

1.1 Public participation and consultation in environmental decision making

1.1.1 Purpose of the research

The research was commissioned to support the Scottish Environment Protection Agency's (SEPA) objective of ensuring effective involvement of interested parties in regulatory decision making. In particular, the research aims to investigate the differences in public involvement across the different regulatory regimes and the extent to which consistent approaches could be adopted whilst still meeting legislative requirements. Specific objectives were:

Review of legislation

- To provide a detailed overview of provision for public participation and/or consultation in each of the regulatory regimes under which SEPA operates, and of the aims that participation is intended to meet in each case
- To highlight variations between regimes in terms of the consultation and participatory methods stipulated (statutory periods, what stage in the process consultation occurs, how publicised, how views are to be taken into account, etc)
- To identify where participation and consultation are restricted in scope by the legislation, and where the legislation sets minimum standards which may be exceeded where appropriate
- To compare and contrast approaches from these regulatory regimes with selected approaches from Europe and elsewhere.

Identification of best practice

- To identify examples of good practice used by SEPA in ensuring effective public involvement while meeting the requirements of the legislation, and by other agencies/government (e.g. Environment Agency, Environment and Heritage Service) in similar regulatory contexts
- To consider the suitability of these best practice examples across the range of regulatory regimes
- To recommend where improvements to current practice can be made which are compatible with those regulatory regimes.

1.1.2 Policy drivers and political context

The right of the public to participate in environmental decision-making is enshrined as one of the three pillars of the Aarhus Convention (UNECE, 1998), which both the UK and the European Community (among many others) have ratified. In summary, the principles of the convention highlight individual rights to a healthy environment and

individual duties to protect their environment for present and future generations. In order to assert this right and observe this duty, citizens must have **access to information**, be **entitled to participate in decision making** and have **access to justice in environmental matters**. The convention has been ratified by the UK and is implemented by the European Community through the Public Participation Directive. It has been implemented in Scotland through a variety of both specific pieces of cross-cutting legislation such as the Freedom of Information (Scotland) Act (2002) and Environmental Information (Scotland) Regulations (2005) and through the insertion of specific provisions in regulatory regimes such as Pollution Prevention and Control and the Water Environment and Water Services Act (2003).

The Aarhus Convention is an example of the emergence of ‘participatory democracy’. Within developed-world democracies, there has been a shift towards an ideology of participatory decision making that extends involvement in decision-making beyond traditional ballot box democracy. Widening participation in environmental decision-making to include the public and stakeholders is desirable because technocracy (the process whereby the State governs on the basis of advice from a ‘closed’ circle of ‘experts’) is no longer considered an appropriate form of environmental governance for Europe. Participatory democracy is part of broader social trends, such as the emphases on sustainable development, increasing public scepticism surrounding the ‘objectivity’ of the science used in environmental decision-making; and partnership working (see Fischer, 2000).

These trends are reflected in ‘top-down’ legislative and political drivers in the global arena (e.g. the Brundtland Report; principle 10 of the subsequent Rio Declaration, 1992; and the Johannesburg Declaration, 2002) and are also evident in ‘bottom up’ citizen protests and movements. There is increasing recognition of the need to build greater dialogue between scientists and citizens (e.g. European Union’s Sixth Framework Programme projects on Science and Society) and regulation is increasingly requiring the active involvement of interested parties from the very beginning of the regulatory process (e.g. Environmental Impact Assessment - Directive 2003/35/EC, European Commission, 2003). Furthermore, government and its associated public agencies are increasingly seeing themselves as service providers to their customers, thus members of the public have the right to influence how public monies are spent. As such, participation in decision-making has come to be perceived as a democratic right and is altering the culture of UK local authorities and regulatory agencies (for a summary see Petts and Leach, 2000).

SEPA is required to involve the public in decision making at the regulatory decision making stage, as well as in relation to planning type activities such as River Basin Management Planning. All obligations are derived from legislative sources passed by the UK parliament or the Scottish Parliament, see for example statutory guidance to SEPA under Environment Act (1995) (Scottish Executive, 2004) which reflects the Scottish Executive’s Policy Priorities (2004) and Management Statement (2005) for SEPA. These obligations are reflected in SEPA’s Vision for Regulation (SEPA, 2005); Service Charter

(SEPA, No Date); Corporate Plan (SEPA, 2005); and its Publication Strategy (SEPA, 2004).

1.1.3 Theories of public participation

The Aarhus convention recognises that improved access to information and public participation in decision making can enhance the quality and implementation of decisions. This is because:

- Ensuring that a wide variety of viewpoints are considered when defining the problem will assist decision-makers in understanding the interlinked nature of the problems facing our society. This is best achieved by eliciting views from a spectrum of perspectives. Thus, decisions are not only better informed but new or unexpected problems are highlighted and creative solutions discovered. This is called a **SUBSTANTIVE RATIONALE** (better decisions)
- Attempts to resolve problems by implementing a decision or a policy will be more effective if a broad coalition supports the proposal and works together to deliver it. A transparent process in which conflicting concerns, claims and views are considered can increase public trust in the final outcome. It can help to resolve problems before they become entrenched, and can reduce misinformation and therefore mistrust. This is called an **INSTRUMENTAL RATIONALE** (increased legitimacy, less conflict)
- Improving the understanding and confidence of citizens and stakeholders has broader implications for building an active civil society by encouraging responsibility for the issue and educating people about how agencies make decisions. This is called a **NORMATIVE RATIONALE** (increased capacity and confidence). (After Stirling, 2005; OECD, 2004).

These objectives mean that public involvement should not be judged solely according to technical or scientific criteria. Instead, processes should be judged by the equity and transparency of decision making and the degree to which these processes inspire reflection and responsibility for the final decision (see **section 3.2.4**). These approaches can be contrasted with adversarial styles of decision-making, where ‘contesting groups [...] generate competing technical knowledge claims for the purpose of gaining an advantage in policy debates’ (Busenberg, 1999: 2). This adversarial approach can lead to stalemate or poorly informed decisions.

There are specific aspects of environmental decision making that reinforce the above drivers for public involvement. These include:

- Complexity – ecological systems have complex, non-linear and dynamic interactions
- Uncertainty – agencies have imperfect scientific knowledge and many regulatory process are complex and therefore indeterminate
- Large-scale – many causes and effects of environmental change extend beyond the site in question and impacts may be felt over generations
- Irreversibility – many life-supporting functions cannot be restored if critical thresholds are breached.

These factors mean that decision-making must be flexible to react to changing circumstances. Imperfect knowledge means that decision making will be based on probabilistic, value-based judgements. Furthermore, shifts in social attitudes leading to decreasing public trust in science have further undermined technically based approaches to environmental regulation, leading to public demands for greater transparency in environmental decision making.

However, the term public participation is used in many different ways by different people, often interchangeably with terms like public involvement, public engagement and public consultation. **Participation**, or a participatory approach, tends to refer to the active involvement of individuals and/or groups in a process influencing or contributing to decision-making whereby participants set objectives, undertake joint analysis and reach decisions together. An example might be having a citizen group design a monitoring strategy. **Consultation** tends to refer to a more passive yet still two way communication between the decision maker and individuals or groups. Views are gathered but there is no obligation to act on them beyond ensuring they are given ‘fair consideration’. An example might be providing written comments to a consultation document and receiving notification of the final decision. **Provision of information** is communication from the decision maker to the public who access the information. It can be a first step in further processes but at this stage full control of the issue is retained by the decision maker (see **section 3.2.1**).

Any of these stages could be described as engaging or involving the public, although the degree of engagement or involvement increases as the extent of influence on the outcome increases. There are many typologies or approaches that seek to distinguish between these forms – most famously the ladder of participation (see **Figure 1.1**). The key issue is the relative balance of power and control between the participants and the instigators. The number and depth of benefits from public involvement increase as you progress up the ladder. Govan *et al.*, (1998: 9) believe that the normative and instrumental effects are only felt at higher rungs, and the substantive effects at the consultation stage. Information provision can contribute to some normative benefits but very little else. Thus, those who advocate a more participatory democracy often imply that working towards the bottom of the ladder is inferior to power sharing approaches. However, different ‘rungs’ are appropriate for different processes or stages in the process as will be explained in **section 3.2.1**. In this report, we will refer to public involvement when we mean working at any rung of the ladder.

Figure 1.1: Ladder of participation

Level of Participation	Description
Self-Control	Local groups decide within their own framework with agencies only supporting
Full delegation	Local group can make all decisions within a pre-set framework
Limited delegation	A local group can make some decisions
Deciding together	Working together to generate ideas and options and choosing the best way forward

Consultation	Views are sought but there is no commitment to act on them
Passive Provision of Information	People are told what is happening
No Participation	

Source: adopted from Brown *et al.*, 2001

1.2 Structure of the report

The introduction has laid out some key themes that will be developed throughout the report, namely:

- Debates over the meaning and extent of public access to information, consultation and participation
- Debates over why the public should be involved in environmental decision making
- Tensions between technical and participatory approaches to environmental decision making.

In order to ensure the report is fit for its purpose (i.e. brief and to the point) these debates have not been fully explored.

Chapter two outlines the methodology used for the research, emphasising both the analysis of published data (the regulations and other policies and guidance) and of primary data collected from interviewees. **Chapter three** provides a short overview of good practice for public participation in regulatory regimes (which differs from the more commonly available guidance on public participation in environmental planning). **Chapter four** summarises the obligations in the legislation, illustrating the diversity of obligations and highlighting the opportunities to implement good practice; whilst **Chapter five** summarises the diversity of current practice under different regulatory regimes and within different agencies, including illustrating where current practice meets good practice in the literature. **Chapter six** provides a synthesis of the two strands of the research, leading to the conclusions and recommendations in **Chapter seven**.

Chapter Two: Methodology for Research

This chapter briefly explains the methods of data collection and analysis for the material contained in the following chapters.

2.1 Literature review

The emphasis of the 'learning from good practice' part of the project was to explore current practice within SEPA and other regulatory agencies, so the purpose of the literature review was to provide context and shape the criteria by which to analyse the empirical findings. Peer-reviewed, web-based and 'grey' (contract reports, conference and workshop proceedings) literature was reviewed (see **references** for the selected material). These publications were selected from a literature search and from existing sources utilised in previous and current projects. With regard to context, the focus was on providing a summary of current understandings of the terms consultation and participation; reasons to adopt consultation and participation approaches and the drivers for the change from technical to more inclusive approaches to regulating the environment. The criteria for analysis required a more critical review of the literature, as there is an apparent mismatch between the philosophy pervading much of the literature (enabling, empowering, opening up issues for public debate), the philosophy of the legislation (providing clarity, certainty and precision for operators and regulators to make decisions least likely to be challenged) and, by implication, the implementation by agency staff on the ground. Existing published examples of process design, selecting representatives, selecting tools, and implementing processes were considered in the light of their applicability to regulatory situations. Likewise, there are many published sets of criteria for evaluating participatory approaches (see for example, Blackstock *et al.*, forthcoming for an overview) but given the mismatch described above, many of these could not be applied in a meaningful way.

2.2. Review of legislation

The legislative regimes examined were agreed between the research team and SEPA at the kick-off meeting to be those focusing on public involvement in regulatory decision making. Four areas were identified as priorities for review: the regimes relating to the regulation of activities impacting on the water environment; the Pollution Prevention and Control regime; regimes relating to activities involving radioactive materials; and those regimes dealing with the regulation of waste management activities. In addition some legislation imposing general obligations, such as the Environmental Protection Act 1990 and the Environment Act 1995 were reviewed to place the specific obligations in context.

The aims of the review were to: draw out the specific obligations SEPA operated under; illuminate similarities and differences between the public involvement obligations across legislative regimes; and illuminate the extent to which the obligations were restrictive or permissive, thus preventing or leaving open the possibility for greater public involvement than legislated for. To reflect these three distinct aims the review was conducted in a number of stages each with a different focus.

The first stage, a general review of SEPA's obligations to ensure public involvement and a review of provision for public consultation, revealed the precise source of the relevant obligation, the general nature of the obligation, the aims of the regulatory regime and the purpose that participation or consultation should fulfil within that regime. As this resulted in huge and unwieldy tables, these are not included in the report but very brief summary tables have been included (see **Annex One**). Their implications were developed in stage two.

The second stage (see **Annex Two**) comprised a more detailed analysis of the obligations to reveal the precise structure of each provision for participation or consultation. Issues examined included

- the timing of participation and consultation activities (at what stage in a process they take place and the length of time allocated to them)
- the inclusiveness of these processes (whether they are aimed at particular sections of society or unrestricted)
- automatization of application (whether it automatically applies to all possible processes, programmes, plans and strategies or not)
- the means of publicising the process and the means of publicising outputs from the process, the comprehensiveness of the process (whether the public or stakeholders are consulted on all aspects of the regulated activity or not)
- the mechanism by which the process is conducted (for example, through the submission of written contributions, participation in public meetings, or participation in workshops)
- the steps taken after the participation is conducted.

The third stage comprised further analysis drawing out the extent to which the regulatory regimes are restrictive or permissive in their approach to participation and consultation. This has been illustrated using pictorial references (see **Annex Three**). Issues examined included whether participation is limited to certain identified stakeholders, or is aimed at the public generally or at identified stakeholders with the possibility for contribution from others; and the extent to which the mechanisms for participation are restricted, for example to written submissions, or the extent to which multiple mechanisms may be used.

The final stage was to have been a review of literature to identify similar regulatory regimes from Europe and elsewhere to draw out similarities and differences of approach between the regimes in Scotland and elsewhere. Public participation in regulatory decision making has not received much, if any, attention in the literature and no references could be found on this point in the time available on the regimes in other countries. The only alternative would have been to carry out a complete comparative study of another country's or other countries' legislation. This would be a considerable research project in its own right beyond the scope of this study.

2.3 Learning from current practice

The empirical data consist of transcripts and field notes from interviews with key

informants in SEPA and other agencies; unpublished reports and website information, all focussed on specific case studies. The data collection focussed on collecting information about different regulatory regimes rather than about different public involvement methods in order to provide the maximum possible integration with the review of the legislation. However, it also encompassed data on SEPA's procedures and policies to provide context for the opinions expressed in the interviews and the decisions contained in written materials.

The interview sample was agreed between the research team and SEPA at the kick-off meeting. The optimum number of interviewees was set at 12, reflecting a balance between comprehensiveness and feasibility. Two further contacts were added to the original list, arising from suggestions from interviewees, resulting in a total of 14. The sample was planned, seeking maximum variability across regulatory regimes; across SEPA's geographical area; across different agencies and across different occupational interests (policy, communications, regulatory teams). The sample contained 7 staff from SEPA (five with a national remit and two with area remits); and 7 staff from other agencies, namely the EA, UKAEA, Scottish Water and HSE.

It should also be highlighted that the views of participants in regulatory processes, rather than the project officers, are of critical importance. Participants may have different criteria for success and give different impressions of whether an approach could be seen as good practice from their perspective. However, time and resources prevented this additional aspect being explored (see **Chapter seven**).

The analysis was qualitative, looking for themes arising from the responses and the other data that explained why certain approaches might be taken and the diversity or convergence between different cases. Individual responses were cross-checked within interviews to see if there were contradictory answers, or if information given to one question shed light on another answer. Answers to each question were also compared across the range of interviewees. Finally, emerging themes were explored within and between interviews. Whilst descriptive statistics are used for illustration, quantitative analysis is not possible given the sample size as results would not be statistically significant, nor could the strengths of correlations be calculated. Also, quantitative analysis provides verifiable patterns of cause and effect but does not provide an analysis of why such patterns occur. Without understanding the reasons for certain attitudes and actions, it is difficult to design appropriate policy or procedural responses.

2.4 Synthesis

The synthesis took a structured approach. Firstly, the outputs of the legislative review (**Chapter four**) were used to interrogate the empirical findings from the interviews and case study reports to see to what extent practice is actually constrained by legislation, and how individuals reacted to such barriers. Where the legislation did not constrain action, the data was analysed to understand why choices were made and if any other constraints (culture, resources, tradition) were in place. Secondly, the outputs of the literature review (**Chapter three**) were used to indicate whether current practice within SEPA could be

considered good practice (remembering that good practice is not a blanket prescription but a judgement on whether approaches are fit for purpose) and if not, where the gaps were. The outputs from the literature review were also used to think about the notion of 'fit for purpose' given SEPA's overall remit (see **section 1.1.2**). The recommendations are based on the research team's expert judgement, informed by the synthesis and analysis from the research, as to possible policies to close the gaps between current and good practice that are not constrained by legislation.

Chapter Three: Good practice drawn from the literature

This chapter considers good practice in terms of participation, consultation and the provision of information in order to provide a framework for evaluating the current practices discussed in **Chapter five**. This chapter provides an overview of:

- Fundamental principles of good practice
- Defining the extent of public involvement
- Appropriate selection processes for participants
- Appropriate application of tools
- Appropriate implementation and resourcing issues.

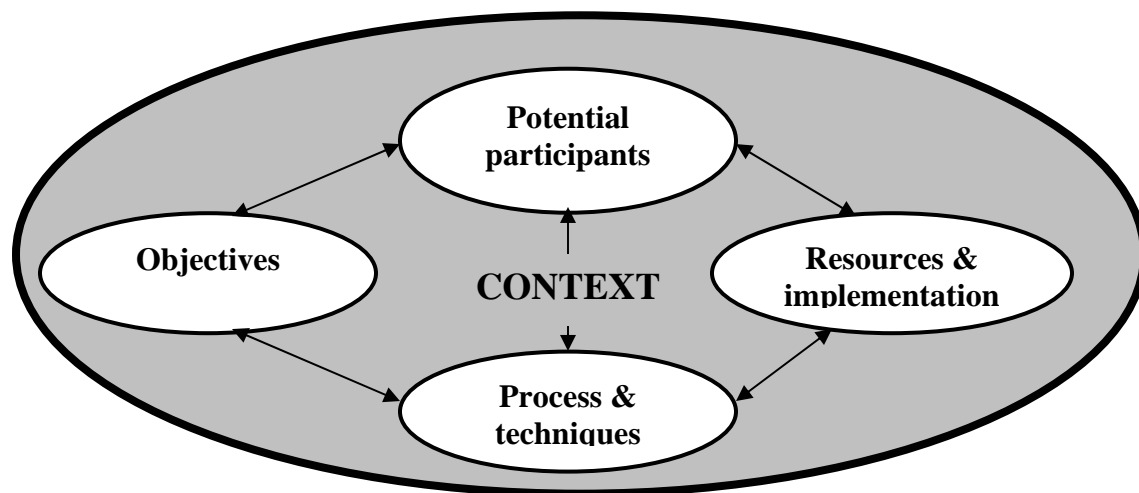
3.1 What is good practice?

This report uses the term good practice, rather than best practice, as the consensus from the literature is that there is no prescription regarding ‘how to do’ public involvement, rather every process must be fit for its purpose and its context. Thus, the purpose of sharing good practice examples is not to try to copy them, but to identify what factors contributed to their success and understand how to apply and adapt these lessons in other contexts. The focus is on learning about principles, rather than copying procedures.

However, public involvement relies on some shared, fundamental principles:

- People have the right to be informed and to influence decisions that affect them.
- Processes can support but not replace management and decision making (which in a regulatory situation, is done by the agency)
- Expert opinions should not be valued more than community opinions – both offer a range of views and possible solutions
- The process is as important as the product, as it is the process that can build capacity and trust for long term benefits
- Processes should draw on participants’ energy and problem solving abilities but not exploit them as a PR exercise or exhaust them by asking too much of them.
- The process should make a difference to the final decision.

There is increasing recognition that successful involvement processes depend not only on the nature of the process (**section 3.2.1**) but also on who is involved (**section 3.2.2**), its quality (**section 3.2.3**) and the extent to which the outcomes are actually taken on board (**section 3.2.4**). Thus, involvement is more likely to be successful if its goals are well-defined and the process is selected or designed after a careful and iterative analysis of the nature of the decision concerned, the potential participants, the resources available and the wider context in which it takes place. **Figure 3.1** demonstrates this ‘horses for courses’ approach.

Figure 3.1: Model for determining ‘what sort of approach?’

(Source: adapted from Clark *et al*, 2001: 69)

3.2 Elements of good practice

3.2.1 Defining the extent of public involvement

Much of the good practice guidance available is relevant to higher rungs of the ladder of public involvement (see **Fig 1.1** page 4. 5). These processes referred to in the literature refer to *opening up* discussions in order to explore different opinions, gather more information and create new (and better) solutions for implementation (**section 1.1.2**). It could be argued that these goals are most appropriate for decisions about voluntary management measures or for designing new regulations or for influencing planning decisions, which are considered to be more flexible and amenable to incorporating multiple perspectives on an issue. Some of this guidance may therefore be inappropriate for participation in decision making associated with implementing **regulatory** regimes, where there is currently little specific guidance on public involvement in decision making.

Environmental regulatory regimes usually have considerable numbers of ‘non-negotiables’ that have to take precedence, regardless of public opinion. Applying ‘opening up’ techniques when the decision making process is in fact ‘closed down’ to very specific areas of discussion will only frustrate participants (OECD, 2004) . In turn, this can fuel a negative cycle of distrust in the agency, whereby participants feel their input is sought to legitimate a decision that has already been made, and that their energy expended in putting forward criticisms and solutions has been wasted. This is a major contributor to consultation fatigue.

This relates to the discussion about which ‘rung’ on the ladder of participation is most appropriate (see **Fig 3.2**). It may be inappropriate to use processes designed for power sharing when the nature of the engagement means that one party must control the agenda and set very tight boundaries on the solutions that can be developed (e.g. Govan *et al.*, 1998:13 believe that legal and accounting mechanisms are not flexible enough for higher rungs of the ladder). However, literature on regulation does suggest some discretion in the implementation of regulations, so there may be greater opportunities for input from the public than statutory requirements might imply (see **Chapter six**).

It is also important to consider the risks or potential problems that may be encountered by not working at higher rungs of the ladder. Working at lower rungs, especially if information provision is poor and discussion of options is limited, may result in poor choices as views being put forward are based on little more than existing preconceptions. Even within consultation processes, tight boundaries on what can be considered can reduce the credibility of the process as well as the scope for improving understanding and determining solutions. Thus, there are opportunity costs in terms of benefits foregone (better solutions, increased trust, better capacity) of working on lower rungs of the ladder (see Saunders and Tickner, 2001). It is worth noting that many studies recognise that social capital is slow to build up but quickly lost (e.g. Davies and Burgess, 2004).

Figure 3.2: Guidance on choosing different levels of public involvement

Rungs on Ladder	
Inform when	Factual information is needed but the decision is effectively made
Consult when	The purpose is to listen and get information (when decisions are being shaped and information could improve them)
Co-decide when	Two way information is needed because individuals and groups have an interest in and/or are affected by outcomes and there is still an opportunity to influence the final outcome
Delegate when	Stakeholders have capacity, opportunity and influence to shape a policy that affects them
Support when	Institutions want to enable and have agreement to implement solutions by stakeholders, stakeholders have capacity and have agreed to take up the challenge of developing solutions

Source: OECD, 2004:11

An internal process (i.e. one without any public involvement) may be appropriate for emergency decisions, or for routine decision-making where potential participants do not find the issue at hand sufficiently engaging to warrant their time and energy. However, it is still appropriate to provide information (with caveats regarding national interest and commercial confidentiality) on the outcome of these decisions. Indeed, opinions might vary about what is important enough to warrant public involvement, and providing information allows citizens to explore issues further if they so desire. The regulator may think the decision is routine but public perception may differ, particularly if the decision coincides with a change in public opinion regarding risk to human or environmental health. Equally, the public may have expectations of involvement, so it is good practice to offer an opportunity to provide views rather than to assume that no-one is interested. Furthermore, it is important to communicate the issue clearly in such a way that allows

the public to judge whether they are interested or affected by the outcome of the decision (Cuff, 2003).

The above provides guidance for single processes. However, public involvement should be seen as an ongoing, cumulative process rather than considered in terms of one-off projects. The success of any process will be dependent on external factors like the political and cultural context. Any process will have been shaped by prior history. For example, as highlighted in chapter four, decision making will be constrained by prior legislation e.g. designations made under the Nature Conservation Act (2004). Equally public perceptions of the agency or the issue will be coloured by memories of prior decisions and processes. It is important to take account of, and learn lessons from, earlier processes to avoid mistakes and show respect for previous efforts made by participants to provide information and solutions.

Therefore, when thinking about appropriate approaches or ‘rungs on the ladder’ it is important to recognise that whilst informing might be appropriate at one stage of the regulatory process, there may have been consultation on the creation of the regulatory regime or development control issues affecting the site of the activity; and there may be a partnership approach regarding the management of the activities (through input to community planning processes or community monitoring projects). Equally, given constrained time frames within statutory consultation processes (see **Chapter four**), ongoing liaison, dialogue and capacity building with local communities and interest groups means that all parties are better able to respond (or choose not to respond) when formal processes are initiated. Most guidance suggests the earlier the public are involved, the more meaningful is their involvement (e.g. Cuff, 2003).

3.2.2 Appropriate processes to select public representatives

In conjunction with considering the level of participation required, instigators must consider who should participate. Theories of participation indicate that all those whose interests will be affected should be somehow represented in the decision making process, regardless of whether or not of whether they choose to participate directly themselves (O’Neill, 2001). This echoes the Aarhus definition which defines the concerned public as those affected, likely to be affected by or having an interest in environmental decision making. Generally, decisions are relevant to all who either use or benefit from the environmental good in question. The legitimacy of any form of public involvement is dependent on transparent, accountable and credible methods of representation to link individuals and groups to decision makers (Govan *et al.*, 1998), and to ensure that all interests are taken into account. Deciding whose voices are included in the process involves relationships of power as outcomes may differ depending on who is involved. This has important implications for equity and legitimacy if certain groups are missing from the process.

The literature uses a variety of terms like ‘stakeholder’, ‘citizens’ and ‘the public’ when discussing representation in public involvement. ‘Stakeholders’ tends to imply representation of formal bodies who will be involved in managing the environmental

issue in question. The term ‘citizen’ is normally used to suggest an active agent with the right and responsibility to participate in issues affecting their lives and who do so from a commitment to the ‘public good’. However, ‘the public’ is often used in ways that suggest a passive ‘left over’ group defined in opposition to stakeholders, lacking in motivation and appropriate knowledge. Members of the public are treated as if they were a homogenous group¹ and there is confusion in the literature regarding whether members of the public represent particular individual, private interests or the collective public opinion.

Selection processes

Holmes and Scoones (2000) suggest that there are five types of selection procedures: (1) open invitation resulting in self selection; (2) stakeholder identification and invitation; (3) criteria-based random selection of citizens, (4) random selection of citizens and (5) combinations of the above (see also Kallis *et al.*, 2004). There is guidance on the trade off between ensuring manageable numbers for face to face discussion; and claiming that the process has involved enough people to represent the voice of the ‘public’. However, this point is not developed here as most statutory requirements, following the Aarhus Convention, require all interested parties to be given the opportunity to participate in consultation processes.

However, there is a place for ‘stakeholder analysis’ in order to direct outreach work aimed at informing the public and encouraging the various interested parties to become involved in consultations and participatory processes. ‘Stakeholder analysis’ is a structured and rigorous approach to identifying the types of people to target for information provision, ensuring opportunities to take part in consultations or to participate in more deliberative events. It requires asking the question: whose views are needed and why? The substantive, normative and instrumental purposes for public involvement (see **section 1.1.3**) all suggest the need to target a diversity of views.

Thus, excluded groups, the ‘silent majority’ and community leaders/opinion formers are all valid participants, but obtaining their views requires very different approaches, respecting the differential capacity of potential participants in terms of the time and resources upon which they can draw. It is not always appropriate to involve all potential participants in an intensive process or to insist everyone take part in group processes. Given that most members of the public and representatives of voluntary groups have limited time and energy to expend on participatory and consultative processes, effort should be made to make the processes enjoyable and accessible.

The public includes both individuals and members of groups representing the public good (e.g. consumer groups, pressure groups, NGOs etc). Sometimes, individual citizens are treated as an ‘ideal type’ of some socio-demographic or interest group – they are an example of that group. However, this assumes that they are explicitly representing the voice of that group (e.g. women or older people) without checking this is true. It also assumes that these groups are homogenous. When individuals are representatives of a group, they are expected to communicate the collective voice of the group they represent.

¹ It would be more appropriate to refer to ‘publics’, rather than ‘the public’, but this is rarely done.

If an individual is selected as a representative of a broader constituency, issues of their mandate, accountability and authority to act arise. As Dryzek (2000) highlights, the delegate model assumes that the representative has been selected to represent a pre-determined position; whereas the trustee model implies the representative has the capacity for freedom of action on behalf of the constituency. However, ensuring effective communication between representatives and their publics is problematic and can lead to arguments that individuals do not reflect the will of their constituency.

Whilst stakeholders can be selected from existing governance/ institutional/ corporate/ NGO structures, members of the public do not have formal representatives beyond elected officials and bureaucrats, who do not fully represent the diversity of public views. This gives rise to competing claims about public representation, as elected representatives may not actually represent the diversity of views of their constituency. For example, communities can be physically located in a town or area; but can also be physically scattered but linked through a common interest or identity. All communities and groups have their own internal divisions, which further complicate representation (see Brown *et al.* 2001). Thus, the most amenable or the loudest voices are often the least typical of the community they represent! (Botes and Van renberg , 2000). However, it is often better to include individuals or groups who are seen as ‘troublemakers’ as excluding them will lead to them creating problems later (Brown *et al.*, 2001). Past history can often illustrate who these individuals or groups might be.

Access, Opportunity and Ability to get involved

Public involvement depends on both the opportunity and the ability to take part. For example, a member of the public may have a formal opportunity to take part, but may not have access in practice. Accessibility covers a number of issues including physical access and linguistic access. For example:

- Is the building where the information or meeting is held appropriate for those with disabilities?
- Is the medium for written information accessible for those with visual disabilities?
- Do all the affected people understand English? Or ‘techno-speak’?
- Can those with paid or carer responsibilities, or those on low incomes, attend meetings or access written materials²?

It may be more appropriate to use existing networks and meetings to convey information and gather opinions than add another set of meetings to attend or a website to be read, although the frequency of these meetings may not fit the statutory requirements for consultation. These issues require the instigator of the process to put themselves in the shoes of the members of the public and recognise that the particular consultative or participatory process is just one competing priority for limited time and energy.

People’s ability to participate on an equal footing can be compromised by social inequalities such as differences in age, gender and educational background. A commitment to increasing public involvement, be it in absorbing information, responding

² Where necessary, attention should be paid to ways of facilitating presence through provision of childcare, transport and/or payment for those attending in their own time, rather than as part of their professional duties; incentives to take part in processes can be a useful way to increase involvement.

to consultations or taking part in participatory processes, requires an investment in building capacity within the public. It is possible to use informal networking (Wilcox, 2003) to build capacity and social capital in communities of place and of interest. This links back to the notion of locating these processes in the broader relationships between agencies and the public and ensuring that members of the public understand how the issue might affect them (see **section 3.2.1**).

Some members of the public may need assistance with understanding technical or scientific information and it is good practice to assist with this. However, decision makers often assume that ‘the public’ are ignorant when it comes to matters regarded as scientific and technical, thus assuming that members of the public can have nothing useful to say about these aspects of decisions (Irwin 2001). However, many members of the public may be knowledge rich – particularly as decisions about complex environmental processes laden with uncertainty rely on many forms of knowledge. These include ‘expert’ technical expertise but also experiential knowledge of their local context (Irwin, 2001; Fischer, 2000) and procedural knowledge (Clark *et al.*, 2001).

Examples of experiential or local knowledge include detailed specific knowledge of particular places: for example, how water levels change in response to rain; knowledge of the location of a rare plant or animal. Process knowledge includes understandings deriving from their life experience such as the way authorities and bureaucracies tend to work, how people tend to behave and how well technologies function. Furthermore, members of the public may accept abstract scientific knowledge *per se* but question the application of specialists’ knowledge claims to particular places based on their own experiential knowledge (e.g. Burgess *et al.*, 2000). Finally, members of the public will have differing perceptions and understandings of the issue at hand which will colour their acceptance of the decision unless, through engaging with and learning from alternative views, they understand and accept the judgements made (see **section 3.2.1**).

Any process must enable participants to interpret, compare and integrate these different forms of knowledge and decision makers need to ensure that different types of knowledge are treated on their merits and not, for example, brushed aside as ‘non-scientific’. Whatever their basis all knowledge claims should be interrogated on the same terms and subject to the same standards as evidence with the aim of achieving a better understanding of reality. Moreover, such scrutiny can expose uncertainties and knowledge gaps as well as correcting factual inaccuracies.

3.2.3 Appropriate techniques

Appropriate and effective techniques are required to deliver the benefits of public involvement. Numerous techniques have been developed, and many publications provide information on their strengths and weaknesses, how to select between processes, and guidelines for good practice (see Involve, 2005; OECD, 2004; Wilcox, 2003; Clark *et al.*, 2001; DETR, 2000). Many techniques are designed for processes suited to higher rungs of the ladder and may not be suitable for consultative or information processes.

Figure 3.3 shows how different tools fall along the continuum of involvement, from fully delegated processes to information provision. It is more appropriate to use the tools to the right where there is no need for an iterative and responsive process. Whilst the ‘ladder’ is a useful typology to indicate the need for a ‘fit for purpose’ approach, some of the drawbacks include assuming that ‘higher’ is ‘better’. Well implemented approaches on lower rungs can be equally powerful for public involvement, particularly where planned as part of a wider cycle of building citizen capacity for participatory democracy. Likewise, different people have different requirements, so most guides suggest using a range of approaches that cover both individual and collective approaches (OECD, 2001, 2004; Wilcox, 2003). For example those who are not comfortable communicating in large groups should be given the opportunity of contributing in a written or a one-to-one process. Individuals and groups can be involved through a passive provision of information or through virtual and in-person interactive tools (Cuff, 2003); but it is only through participatory collective processes that social learning can be achieved.

Figure 3.3: Tools along the spectrum of approaches to public involvement

Source: Richards *et al.*, 2004; OECD, 2004; Wilcox, 2003; Saunders and Tickner, 2001)



However, for brevity, this section focuses on four categories of approach³ most often used in regulatory consultation processes:

- Media and communication strategies
- Electronic and printed information provision
- Written consultation processes
- Face to face processes.

³ These processes can be used sequentially or in various combinations, they are not either/or options.

A communications strategy is essential as a good process will be useless if people are or feel excluded through not knowing about it. The costs of such a campaign are dependent on the publications used, the mode (advertising or media release) and whether external PR consultants are used. The media provide information to members of the public but do not provide a direct mechanism for feedback. Media strategies should target not only the local press but also specialist/interest group publications to increase the penetration of the information. Using adverts is an expensive but controlled way of presenting information, whereas news releases or features are cheaper but are at risk of being co-opted into a 'good story'. The media extends beyond print, as many people listen to local radio and research has found that the local TV news is the most trusted medium for news about science (European Commission, 2004).

Written information should be concise and clearly laid out. Information is only useful if it can be understood or interpreted by the intended audience so it must be written in simple language with no jargon – piloting virtual and printed material with the target audience will establish this. Provision of information electronically (internet, email and text messaging) is increasingly used but is only accessible by those who use computers or mobile phones. However it is good practice to also provide printed materials to mirror website content for those who are not e-literate and to distribute this in the appropriate areas. Furthermore, the quality of the information will be dependent on who prepared the document – public confidence is likely to be higher if information on the issue is available from multiple sources, and if they are given the opportunity to question the content (Hemmati, 2002). When planning the content, it is important to consider what information members of the public might need to participate meaningfully and to provide details of where they can get assistance or more information. The costs involved in preparing high quality material could sometimes be better spent in engaging in two way discussions; and can risk giving the impression that the decision has already been made (Wilcox, 2003).

Consultation documents should highlight the purpose and objective of the consultation, with a clear steer on what issue the public are asked to respond to, why these issues are significant, a deadline, a timetable for what happens next and a contact for further queries. Previous evaluations (Brown *et al.*, 2001) suggest that drafts should look like 'drafts' to indicate that the decision has not already been made, although this may not be appropriate given that the applicant for a licence is likely to wish to present themselves as highly professional. The consultation process (likewise for face to face processes) has to be well planned to ensure that the inputs, processes and outputs lead to information which can be considered during the decision making process. The costs of printed leaflets will depend on the volume of the print run and the choice of distribution channels. Website costs are very reasonable if pages are added to existing sites by an in-house team although interactive sites also require a moderator. Saunders and Tickner (2001) estimate that it would cost £7,500 to email 110,000 people. Printed consultation document costs are additionally dependent on the staff time required to respond to comments.

Face to face processes range from empowering deliberative events (e.g. citizens juries) to more traditional provision of information at public meetings. These techniques tend to build trust as they show that the decision maker is listening and allow those present to express their views. However, this requires that staff must listen and that views are adequately recorded and addressed (see **section 3.2.4**). With regard to face to face processes (such as surgeries, presentations to groups, public meetings), it is important to make the process accessible by choosing a venue that is central, convenient, yet private enough for discussing sensitive issues. The venue must be accessible for all members of the public (e.g. close to public transport yet with adequate car parking). Reasoned debate rather than ‘grandstanding’ is more likely to occur if the event is planned and the venue laid out for small group workshops than an adversarial ‘us and them’ arena (Brown *et al.*, 2001; Wilcox, 2003). Likewise, using trained and independent facilitators can keep the process focussed on the issues at hand in a way that makes participants feel engaged rather than ignored.

There should be agreed process rules regarding the conduct of individuals and any decision making processes that reflect the values of democracy, equity, transparency, inclusion, legitimacy and flexibility. This particularly concerns differences in capacity between individuals (see **section 3.2.2**) as all individuals have the right to express their opinion so long as they respect the process rules. Equally, it should be recognised that any process will be vulnerable to hijack by the loudest voices or those who want conflict to further their own agenda. Whether trained facilitators are used or not, face to face processes demand that staff have good social and communication skills. Additional feedback can be generated by providing comment sheets at meetings and sealed collection boxes or freepost envelopes to allow them to be returned at their leisure. Finally, they should be affirming and enjoyable events to encourage future involvement. Saunders and Tickner (2001) estimate that running focus groups or public events would cost £5,000 to £20,000 dependent on size of event and number of staff required, with capacity building processes costing more.

For all approaches, there are certain generic issues of timing, costs and history to consider. For example, will the timing of any process be affected by significant calendar dates (e.g. school holidays or the date of another local event)? The costs provided above (based on Saunders and Tickner, 2001) must be interpreted carefully. Passive provision of information may be cheaper but the agency has no idea of whether the information is read or how it is interpreted. Likewise, money saved by spending less on engaging the public may be spent many times over in responding to negative media and pressure campaigns, or fighting legal battles. There is also the opportunity cost of reduced trust in the agency which is hard to put a price on as it affects the ability of any agency to regulate with public confidence. Finally, it is sensible to seek advice about what has been previously tried, what worked and what didn’t in that particular context. Processes should build on existing traditions of communicating with the public, existing websites for printed information or existing meetings and networks.

3.2.4 Implementation and resources

A dominant message from the literature is that a lack of involvement is often because previous experiences have led to frustration, and it is vital to communicate the outcome of any two-way dialogue to participants. The most meaningful way to acknowledge participants' contributions is to explain how their information was used and, if possible, provide ways to stay involved with the issue (Wilcox, 2003). It is also important that non-participants can find out about the process and the outcomes, as they may have been interested but unable or unwilling to participate at the time. Thus, there ought to be an open and genuine commitment to whichever rung of the ladder is seen as appropriate within the wider cycle of setting objectives, planning delivery and learning through doing (Govan et al, 1998).

Another dominant message is to ensure that any process is adequately resourced. Without appropriate resource, staff will not be able to deliver and thus the public may have expectations that are unmet. This is especially true when working at higher rungs of the ladder, where processes are flexible and open-ended and therefore very difficult to cost accurately. These resources include funding, time, skills and training. For example, staff involved in a consultation or participatory process will have to negotiate between different positions, scrutinise different forms of evidence, communicate technical issues simply and be able to re-assure worried individuals (after de Marchi and Ravetz, 2001). These skills can be seen as an investment in institutional capacity.

Cuff (2003) notes that it is vital to have the commitment of all staff involved, particularly as front line staff are the eyes and ears for the agencies so it is important to let them know what is going on and how they can contribute. Adequate resources result from management and broader organisational support and this often requires changes in organisational culture including how processes are funded, time allocated, the transparency of decision making and a willingness to plan for the uncertain and unknown, with all the associated risks this entails. Indeed, (Govan *et al.*, 1998) suggest that if there is not strong commitment from within an organisation then there should be investment in developing it before trying to work effectively with the public.

Section 3.2.1 highlighted how any process was part of wider process of social learning. Increasingly regulatory agencies are adopting adaptive management approaches to dealing with environmental issues, recognising the importance of accepting uncertainty and therefore the need to continue to learn from listening, evaluating current practice, planning (based on resources) and then taking action (Brown *et al.*, 2001). Thus on-going evaluation is a key part of implementing participatory and consultative processes. Indeed, the only way to discover the cost-effectiveness of any approach is to evaluate the inputs, process, outputs and outcomes and to assess what might have happened if such an approach was not taken. Evaluation should be part of a routine that aims to improve through learning, not to criticise.

Measuring inputs and outputs are (relatively) simple accounting exercises. Evaluating public involvement relies on judging the quality of the process using generic criteria (see for example Blackstock *et al.*, forthcoming). These criteria all build on Webler's (1995)

seminal ‘fairness’ and ‘competence’ criteria. Fairness relates to participant access to, and influence of participants within the process, whereas competence relates to dealing with knowledge within the process, including procedures for authenticating knowledge claims and resolving disputes. However, the emphasis varies depending on the perspective of the participants, sponsors or the wider public. For example, Cowie and O’ Toole (1998) identified four perspectives to evaluate the effectiveness of a process: a rational perspective that values a goal-centred and efficient decision process; an empirical perspective that values accountability; a consensual perspective that attaches most importance to improving understanding, communication and co-operation and leading to a supportable decision; and a political perspective which stresses the legitimacy and credibility of the decision. Evaluation is also affected by who is doing the evaluation.

The outcomes anticipated by theory – greater understanding, wider legitimacy and engaged citizens – are less amenable to either easy definition or straightforward analysis. Linking process outcomes to tangible environmental change is problematic due to time lags between cause and effect and other, external, pressures on the system. Equally, linking process to better quality decisions or changes in the thinking, behaviour and relationships is problematic as the context and character of a problem, the perspectives, knowledge and experience of participants, and the political, social, economic, environmental and institutional context can all exert a significant influence on these outcomes, regardless of the quality of the process design and execution. However, there is a lack of learning from past experiences of public involvement, especially ‘bad practice’, yet it is only from practice that we can learn.

3.3 Conclusions

A successful public involvement programme will not necessarily overcome all opposition, resolve all differences or replace planning or regulatory processes. However, the benefits of public involvement are most likely to be felt if a good assessment of the context, objectives, time and resources leads to the appropriate choice of approach. The legitimacy and conduct of any process relies on the people who take part in it; whilst the outcome of any process will be dependent on the application of appropriate techniques in a professional manner. The ability to do so is dependent on adequate resources and a commitment to learning from previous experiences. Finally, future public involvement and consultation processes are reliant on building good will through honouring participants’ contributions with a clearly communicated decision making process and final outcome.

Chapter Four: Regulatory Obligations

This chapter provides an overview of the regulatory obligations for public involvement, starting with SEPA's general obligations for public involvement and then focussing on the four regulatory areas (Water, PPC, Waste and Producer Responsibilities and Radioactive Substances). Each of these sections considers:

- Under what circumstances public involvement is required
- The nature of the obligation
- The characteristics of the processes prescribed
- Further legislative constraints on decision making and
- Provision of information to the public.

Some commentary is also made on other activities such as SEPA's obligations under COMAH.

4.1 Introduction

This chapter focuses on regulatory decision making. Many of the processes examined, however, are tied to planning type procedures such as town and country planning procedures, the development of river basin management plans, the designation of nitrate vulnerable zones and, increasingly environmental impact assessment procedures. That is, planning decisions that impact on the regulatory decision making process, will often have been made in advance of the regulatory decision and these planning decisions may have been arrived at in part as a result of public participation processes.

The relationship between these processes is outwith the scope of this report, but it is an area that should be borne in mind when considering good practice in public involvement. In particular, should the levels of information provided or opportunities for involvement vary across regulatory decision making and planning processes which appear to the public to be closely related, they may question those variations and lose faith in particular decision making processes. Alternatively members of the public may erroneously assume that if they make representations at the planning stage those representations will be carried forward to be considered when regulatory decisions are made. Equally applicants may raise questions where they believe their applications to be subject to overlapping processes giving the public or stakeholders double opportunities to make the same comments or raise the same issues regardless of their appropriateness. The public and small stakeholder groups in particular may also lack the resources needed to participate in multiple processes.

A second general point to bear in mind in reading the obligations is that there are a number of other obligations arising under other pieces of legislation such as the Nature Conservation Scotland Act 2004 that must be taken into account when making regulatory decisions. That act for example requires SEPA to consult with SNH where an authorised or permitted activity or other activity may impact on a Site of Special Scientific Interest. This then may lead to an added obligation to consult in relation to authorisations and licensing activities under the water, PPC and waste regimes. These obligations are not discussed in detail here as they do not specifically relate to public participation, but rather to the issues SEPA must take into account in making decisions. Reference is, however, made to the impact such obligations may have on public involvement throughout the chapter.

4.1.1. Broad Themes

In examining the legislation covered in this chapter attention has been paid to three broad themes: the provision of information to the public, consultation with statutory consultees and involvement of the public in decision making through public consultation. This may appear to be a broader focus than the study required, however, all can fall within the broad heading of public involvement as indicated earlier in this report. Moreover, the Aarhus Convention specifically provides for both public participation and the provision of information to the public. In addition consultation with statutory consultees could conceivably provide for representation on behalf of the public through a stakeholder group.

4.1.2 Organisation

This chapter is divided into six further sections. The first introduces the general obligations SEPA is subject to. The next four sections summarise the obligations in relation to regulatory decisions on the water environment, PPC, waste and radioactive or hazardous substances, the sixth and last section provides a general summary and comparison of the regimes. The material here can be read as a guide to the more detailed summaries provided in the tables in **Annex Two**. It is also supplemented by the tables in **Annex One** which provide very brief summaries in tabular form of the obligations and the pictorial tables in **Annex Three**, the purpose of which is described in more detail below.

4.2 General Obligations¹

In addition to specific legislative obligations with regard to regulatory decision making (and planning) SEPA is guided by three broader instruments: its management statement, (Scottish Environment Protection Agency: Management Statement 2005) policy priorities (Policy Priorities Relevant to the Scottish Environment Protection Agency 2004) and the Sustainable Development guidance issued by the Scottish Executive (The Scottish Environment Protection Agency (SEPA) and Sustainable Development: Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995).

These require or at least indicate that SEPA ought to engage the public in decision making processes. Indeed the statement of Policy Priorities indicates that while SEPA has taken significant steps towards ensuring that the public has access to information in line with the UK's obligations under the Aarhus Convention regarding openness, there is scope for increasing public participation in decision making.

¹ Legislation and other documents covered: The Scottish Environment Protection Agency (SEPA) and Sustainable Development Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995; Nature Conservation (Scotland) Act 2004; Scottish Environment Protection Agency: Management Statement 2005; Policy Priorities Relevant to the Scottish Environment Protection Agency 2004.

These statements indicate that an obligation to facilitate public involvement underpins all of SEPA's work whether it is expressly required in legislation or not. Thus one ought to interpret all of the legal obligations with regard to public participation, consultation and provision of information as representing the minimum required of SEPA. There is a potential for an exception to this if the legal regimes made it clear that the opportunities to involve the public were restricted to those provided for under the legislation. Thus each legislative obligation has to be looked at in turn to establish the extent to which the obligation is permissive or restrictive. The tables produced in **Annex Three** illustrate this using a series of arrows, squares and question marks. (These tables provide no comment on the content of the obligation.) The symbols used are as follows:

- ▲ open ended i.e. it could be exceeded
- ▼ restrictive i.e. there appears to be no scope to involve groups/individuals other than those listed or to use a procedure other than that described
- ? discretionary as to who to involve or how to conduct the process
- where no information is provided on how the obligation is to be fulfilled
- △ where there is no express prohibition on exceeding the obligation

The legislative regimes ought also to be considered in the light of case law dealing with the meaning of consultation. While the case law does concentrate on consultation, the commentary provided here ought also to be taken to apply to public participation procedures or public involvement procedures as the case law is concerned with what is required to secure procedural fairness and the same sorts of issues will arise under each of these processes. Space does not permit an exhaustive discussion of this case law; instead some key points can be drawn from it at this stage. Consultations must be carried out in such a way as to meet the standard test of procedural fairness if they are not to form the basis of an action in judicial review. In other words they must be adequate to meet this test (*R v. Governors of Haberdashers' Aske's Hatcham Schools, ex parte ILEA* [1989] COD 435, *R v. Devon County Council, ex parte Baker* [1995] 1 All ER 73). What amounts to adequate or proper consultation was discussed in *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168: "consultation must be at a time when proposals are still at a formative stage. Second, that the proposal must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response. And finally fourth, the product of consultation must be conscientiously taken into account in finalising any statutory proposals." In addition consultations should include discussion of all major options. Failure to do so is irrational, which may mean that any decision arrived at is quashed at a later date: *R(Medway Council) v Sec of St for Transport* [2003] JPL 583. Consultation need not, however, lead to consensus on the final decision. It is sufficient to show that a proper consultation has been held and the product of the consultation taken into account: (*R(Smith) v East Kent Hospital NHS Trust* [2002] EWHC 2640). All of these points supplement the detail provided in the legislative regimes discussed below.

4.3 Water Environment²

4.3.1 Obligations

One of the first things that is obvious about the legislation in this sector is that it does not expressly refer to public participation. Obligations that fall within the broad category of public involvement do, however, arise at a number of points in the regulation of activities impacting on the water environment:

- Applications for and granting of water use licences and discharge authorisations
- Variations of water use licences
- The transfer of water use licences
- The surrendering of water use licences
- The suspension or revocation of water use licences
- Appeals against any of the above decisions in relation to water use licences.

The last of these – the appeals process – is not a process run or heard by SEPA. In this process appeals against SEPA’s decisions are taken to a third party, generally appointed by the Scottish Ministers. Discussion of these processes is, however, included here on the basis that it forms a part of the decision making process as a whole. Decisions made at appeal will inevitably influence future decisions by SEPA in so far as they indicate the reasonableness of SEPA’s decision.

4.3.2 Content of obligations

These obligations vary in nature. All provide for the provision of information to the public through the inclusion of information in public registers of information. In some instances this is the only obligation imposed on SEPA. In other instances provision is also made for consultation or participation. What might be described as the greatest obligations on SEPA occur in relation to the authorisation of discharges of certain industrial waste waters into receiving waters which provides for consultation with statutory consultees and gives the public the opportunity to participate through the submission of written comments to SEPA. The next level of obligation can be split into two – those obligations providing for public participation and those providing for consultation with statutory consultees. Public participation (again in the form of the submission of written comments to SEPA) is provided for in respect of granting of water use licences and decisions relating to the surrender of water use licences and in the appeals processes relating to various decisions. Consultation with statutory consultees is provided for in procedures relating to the variation of water use licences and to a limited extent when enforcement notices are issued.

4.3.3 Variations in how obligations are framed

Again distinctions can be highlighted in relation to the ways in which these obligations are framed. Some provide that only a defined list of statutory consultees

² Legislation covered: The Urban Waste Water Treatment (Scotland) Regulations 1994²; Water Environment and Water Services (Scotland) Act 2003; Water Environment (Register of Protected Areas) (Scotland) Regulations 2004; Water Environment and Water Services Controlled Activities (Scotland) Regulations 2005.

may be involved, while others provide a more open ended list of consultees or participants. Again the most open ended list is found in relation to the granting of water use licences. Similarly the list of consultees provided in relation to the variation of water use licences and the provisions relating to public participation in decisions on the surrender of water use licences are open ended. This then provides an opportunity to expand involvement in the decision making processes which is particularly pertinent in relation to variation of licences. As noted above the procedures for variations do not provide for public participation, however, the open ended list of consultees may provide an avenue for involving stakeholder groups representing the public in this decision making process, if that were deemed to be appropriate. By contrast those lists of consultees related to enforcement notices, authorisation of discharges of certain industrial waste waters into receiving waters and appeals procedures are restricted lists. Again this is particularly relevant in relation to the issuing of enforcement notices where there is no provision for involvement of the public in decision making. The restricted list of consultees makes this exclusion of the public absolute.

These variations in processes can be characterised in terms of Holmes and Scoones's (2000) classification of selection procedures detailed in chapter three. Thus the open nature of the public participation obligations in relation to the granting of water use licences, in decisions on the surrender of water use licences and in authorisation of discharges of certain industrial waste waters into receiving waters will inevitably lead to self selection of those who choose to become involved. By contrast the restricted provisions for participation in appeals procedures are more likely to be characterised as stakeholder invitation (the regulations merely provide that whoever hears the appeal may decide who may be heard in addition to the appellant and SEPA, who may both ask to be heard if they are not automatically).

All of the lists of consultees whether open ended or restricted can be characterised as processes providing for stakeholder identification and invitation. The distinction between them is that in the open ended list (found in relation to the granting and variation of water use licences) SEPA has some discretion as to which bodies or individuals to involve. The provision of this discretion has the benefit of allowing good practice to develop beyond what is provided for in the legislation.

The discussion to this point relates to the inclusiveness of the processes, but there are other ways to characterise these processes focusing on the extent to which the mechanics of the process are prescribed by legislation. Here issues such as timing, advertising and whether the processes are to be conducted orally, face to face or via written submissions are considered.

Prescribed Process Mechanisms: Advertising and Notification

One of the first steps in facilitating participation is advertisement of the decision making process. In relation to activities impacting on the water environment the provisions for advertisement almost always appear to be expressed restrictively (see Table 1 in **Annex Three** for a pictorial illustration of variations). That is the regulations prescribe the type of information that must go into any advertisement of decision making process and the timing at which adverts are to be placed. The only stage of the process that this does not apply to is in relation to the appeals process where the content of notices is not prescribed, but here an additional obligation arises

in that SEPA must notify those who made representations to it at the earlier decision making stage, or who appear likely to be affected by the outcome of the appeal or the appeal's existence. While this prescription of advertisement content may appear problematic, in fact a significant degree of discretion is left to SEPA as to the exact content of advertisements, as in most instances the regulations simply detail the types of information to be included. In addition, the level of prescription that is seen has two advantages. It should ensure that sufficient information is provided to the public to enable them to understand the nature of the matter being decided upon and how they might participate. The second advantage is that a certain uniformity in advertisements should facilitate public understanding through recognition of advertisements from their content. In general SEPA also has discretion as to where the advertisements should be placed: whether in a local newspaper, in a public place, on the internet or elsewhere. There is then flexibility and the opportunity for practice to adjust to the particular needs of the public, the decision making process, or the location in which the activity is to be conducted.

There is also separate provision for the express notification of certain statutory consultees under the Urban Waste Water Treatment (Scotland) Regulations 1994 (details in Table 2 **Annex 2**) where applications for discharges are made. Again this will facilitate their contribution to the decision making process.

Prescribed Process Mechanisms: Decision-making and Time-limits

The regulations provide, on the whole, little information on the decision making mechanisms to be used and how participation or consultation is to take place. (As noted earlier (**section 4.2**) what information there is should be read in light of the discussion of adequacy in consultations in the case law.) In general provision is made for written submissions to be sent to SEPA by the applicant, the public where they have a right to make submissions and consultees (for details see Table 1 **Annex 2**) but there is no provision for an ongoing process involving either the public or statutory consultees in analysis and actual decision making save that account must be taken of any written submissions received from them. At the same time there is no provision for other mechanisms such as hearings or public meetings to be used. Equally however the use of other mechanisms is not expressly excluded. One constraint on adopting other approaches, however, may arise in the form of the time limits imposed on decision making processes, discussed below. (Again the one area that is different is in relation to appeals, where it is open to the individual appealing to indicate whether the appeal should be dealt with in writing or by a hearing. The person hearing the appeal can also decide whether any hearing should be heard in public or private.)

All decision making processes have time limits imposed relating to either when they are to take place or how long the process may take (detailed in Table 1 **Annex 2**). The time limits vary from 30 days to four months (which may include the time in which the application is advertised) according to the decision to be made and appear designed to allow for representations to be made and considered without unduly delaying the decision. The one potential difficulty with them is that they may make it difficult or impossible to adopt alternative mechanisms even where those mechanisms may lead to better practice in facilitating public participation and so to better decisions.

Implications

Combining the information on mechanisms to be used and time limits on decision making suggests then that although the regulations do not proscribe other public participation mechanisms being used in decision making the emphasis is firmly on the use of written procedures which are not iterative. These processes appear to fit more closely with the description of consultation procedures described in **Chapter 1** rather than to the description of participatory procedures.

4.3.4 Further legislative constraints

One particularly important point to be considered in relation to the granting of water use licences is that SEPA is obliged to take account of the risk to the water environment in taking its decision and have regard to the requirements of various pieces of legislation (detailed in Schedule 4 of the Water Environment Water Services (Controlled Activities) (Scotland) Regulations 2005). The relevance of this for public involvement is that these pieces of legislation may effectively dictate the decision SEPA must take in a given circumstance. The effect then could be to negate, or apparently negate the opportunities for the public to participate or for account to be taken of their submissions. This is a similar point to the general point raised earlier that there may be an interaction between planning type decisions and processes and regulatory decisions and processes. In that, for example, the decision to designate an area as a nitrate vulnerable zone or as a protected area may impact on the licences that can be granted or the conditions that must be included in any licences granted. Again it points to the decision making procedures being more accurately characterised as consultation procedures than as participatory procedures.

4.3.5 Provision of information to the public

Lastly, one of the key aspects of public participation is ensuring that the public are informed. Besides the provisions regarding the advertisement of applications etc. there are two other ways that information is provided to the public and statutory consultees on decisions: by way of entry in the public register of information maintained by SEPA and by way of notification.

SEPA is obliged to maintain public registers of information. Of particular relevance to the regulatory decision making in relation to the water environment are the registers maintained under regulation 35 of the Water Environment and Water Services (Controlled Activities) (Scotland) Regulations 2005 and under Article 41 of the Control of Pollution Act 1974.

Under both sets of regulations the Public Register is required to be a comprehensive database of information on all aspects of the regulatory decision making process. The contents of the register are specified in the regulations themselves and provision is made for applications for the exclusion of certain confidential information. What is not specified is the exact form that the register must take, but it is required to be freely accessible by the public at all reasonable times. The lack of specificity as to form does provide for the development of best practice in the provision of information. Thus if, for example, it is found that best form is an electronic database which is easily searchable there is nothing in the regulations to prevent such a form being used. However, the wording of the Environmental Information (Scotland) Regulations

(2004) suggests that any electronic database or registers would have to be additional to paper based registers rather than replacements for them.

4.4 Pollution prevention and control³

4.4.1 Obligations

Unlike the legislation dealing with the Water Environment, the legislation relating to Pollution Prevention and Control does expressly refer to public participation though perhaps not as often as one might anticipate. In addition there are a number of obligations that fall within the broad category of public involvement:

- Applications for and granting of permits for the operation of installations or mobile plants falling within the regime
- Variations of permits
- The transfer of permits
- The surrendering of permits
- The suspension or revocation of permits
- Appeals against any of the above decisions in relation to permits

As with the Water Environment the appeals process is not a process run or heard by SEPA. In this process appeals against SEPA's decisions are taken by a third party, generally appointed by the Scottish Ministers. Discussion of these processes is, however, included here on the basis that it forms a part of the decision making process as a whole. Decisions made at appeal will inevitably influence future decisions by SEPA in so far as they indicate the reasonableness of SEPA's decision.

4.4.2 Content of obligations

Again the obligations vary in nature. All provide for the provision of information to the public through the inclusion of information in public registers of information. In some instances this is the only obligation imposed on SEPA. In other instances provision is also made for participation. This occurs in relation to the granting of PPC and landfill permits and variation of PPC permits both of which provide for participation by statutory consultees and the public through the submission of written comments to SEPA. Under these regulations statutory consultees are notified of applications and if they seek to make comments do so under the same procedures as the public. The regulations are not, however, prescriptive in this sense and it is, on a plain reading of the regulations, possible for greater interaction to occur between statutory consultees and SEPA or the public and SEPA. (There is also some provision for public participation in relation to appeals, and interestingly NGOs promoting environmental protection are deemed to have an interest in appeals proceedings under the PPC (Public Participation) Regulations).

³ Legislation covered: Environmental Protection Act 1990; Pollution Prevention and Control (Scotland) Regulations 2000; Landfill (Scotland) Regulations 2003; Pollution Prevention and Control (Public Participation etc) (Scotland) Regulations 2005.

4.4.3 Variations in how obligations are framed

The list of statutory consultees to be notified of applications is in some senses open-ended in that there is a defined list of statutory consultees to be notified of different types of decision making processes, there is a provision for the Scottish Ministers to add more bodies or groups to the list as appropriate and the regulations do not expressly exclude the possibility of SEPA notifying other bodies on its own initiative. However, reading the regulations as a whole indicates that SEPA does not have discretion here and is in effect limited to notifying those bodies identified in the regulations or by the Scottish Ministers. In effect then the list of consultees is restricted, although given that the public have equal rights of participation as consultees, this may not be terribly significant, particularly as the obligations regarding public involvement are open ended with respect to who may be involved. The distinction between the processes is that the identified statutory consultees are given notice of the relevant application, whereas the public must simply be alert to the advertisement of such applications. It is, therefore, far more likely that the statutory consultees will be aware of and contribute to these decision making processes than that the public will.

Again the processes can be characterised in terms of Holmes and Scoones's (2000) classification of selection procedures. Thus the open nature of the public involvement obligations in relation to the granting of PPC and landfill permits and variation of PPC permits will lead to self selection of those who choose to become involved. By contrast the restricted provisions for participation in appeals procedures are more likely to be characterised as stakeholder invitation (the regulations provide that those people notified in earlier proceedings are also to be notified of an appeal and have a right to be heard at the appeal). Similarly the lists of statutory consultees to be notified of applications etc. can be characterised as processes providing for stakeholder identification and invitation, however, they do not appear to provide for SEPA to use discretion in developing best practice in involving other stakeholders.

The discussion now turns to other ways of characterising these processes focusing on the extent to which the mechanics of the process are prescribed by legislation. Here issues such as timing, advertising and whether the processes are to be conducted orally, face to face or via written submissions are considered.

Prescribed Process Mechanisms: Advertising and Notification

Advertisement of the decision making process is again provided for in the PPC regime, however it is restricted to the advertisement of applications for permits under the PPC regime and Landfill Regulations. The first set of advertising provisions relate to advertisement of applications and are expressed more loosely than those relating to the Water Environment (see Table 2 in **Annex Three** for a pictorial illustration and cf Tables 1, and 2 in **Annex Three** for illustration of variations). Though they are more loosely framed they are still restrictive in nature and so subject to the same comments as those under the Water Environment. One significant difference is that draft determinations must also be advertised so the public have notice of the decision SEPA intends to make and can target their comments specifically to it. Again the content of the adverts is specified in the regulations as is the fact that they are to be advertised on SEPA's web page or, if SEPA believes it appropriate to do so, elsewhere. The one weakness in the regulatory approach lies in the emphasis on the use of the internet for advertising draft decisions. This is

potentially problematic in terms of good practice in that, if followed through, it may, as noted in **Chapter three**, mean that those individuals with no access to the internet are excluded from the decision making process. There is also express provision for the notification of certain statutory consultees as indicated above, both in relation to applications and in relation to appeals.

Prescribed Process Mechanisms: Decision-making and Time-limits

The regulations provide little information on the decision making mechanisms to be used and how participation is to take place. In general, provision is made for written submissions to be sent to SEPA by the applicant and, in relation to applications, by the public and statutory consultees (for details see Table 3 **Annex Two**) but there is no provision for an ongoing process involving the public in analysis and actual decision making. At the same time there is neither provision for other mechanisms such as hearings or public meetings to be used nor are such other mechanisms expressly excluded. Again SEPA may, however, be constrained in its ability to adopt other approaches by time limits imposed on the decision making processes. Again the one area that is different is in relation to appeals, where it is possible for the appeal to be dealt with in writing or by a hearing. The regulations indicate that the person hearing decides how the appeal should be dealt with and can also decide whether any hearing should be heard in public or private.

All decision making processes have time limits imposed relating to either when they are to take place or how long the process may take (detailed in Table 3 in **Annex Two**). For example, where an application to *vary* a permit is made, the time limits on decision making vary from 49 days from the date the application is received if no representations are made to SEPA, and 63 days from that date when representations are made. These periods include the time taken to notify the applicant of the need to advertise their application and a 28 day period of advertising. By contrast where an application for a permit is made, the time period for decision making is four months from the date an application is received (or longer where agreed by the applicant), again including a period within which the applicant must be notified of the need to advertise their application, and an advertising period (see generally Table 3 **Annex Two**). In cases where a short time frame for decision making operates it will be extremely difficult if not impossible to adopt alternative mechanisms, even where those mechanisms may lead to better practice in facilitating public participation and so to better decisions.

Implications

Combining the information on mechanisms to be used and time limits on decision making again suggests that, although the regulations do not proscribe other public participation mechanisms being used in decision making, the emphasis is firmly on the use of written procedures. As noted earlier, these processes fit more closely with the description of consultation procedures described in **Chapter 1** rather than with the description of participatory procedures.

4.4.4 Further legislative constraints

One further point to be considered in relation to the granting of permits and licences is that SEPA is obliged to take account of COMAH safety reports and determinations under Articles 5-7 Council Directive 85/337/EEC in deciding whether or not to grant

a permit under the PPC regime. These may then effectively dictate the decision SEPA must take in a given circumstance, negating, or apparently negating the opportunities for the public to participate or for account to be taken of their submissions. Again this point has been made earlier regarding the water environment and in relation to the interaction between planning decisions and processes and regulatory decisions and processes. Indeed that latter relationship is expressly referred to in relation to the issuing of permits to operate landfill sites. Such permits may only be granted where planning permission has already been granted if it is required. Again it points to the decision making procedures being more accurately characterised as consultation procedures than as participatory procedures.

4.4.5 Provision of information to the public

As is the case in relation to the water environment, there are a variety of ways in which the public is informed of decisions and decision making processes in relation to activities falling within the PPC regime. Besides the provisions regarding the advertisement of applications etc. provision is made for informing the public and statutory consultees of decisions: by way of entry in the public register of information, by advertising on SEPA's web page and by way of notification.

The maintenance of a public register of information under the PPC regime is provided for under section 27 and Schedule 9 of the Pollution Prevention and Control (Scotland) Regulations 2000. Again the Public Register is a comprehensive database of information on all aspects of the regulatory decision making process. The contents of the register are specified in the regulations themselves and provision is made for applications for the exclusion of certain confidential information. What is not specified is the exact form that the register must take, but it is required to be freely accessible by the public at all reasonable times. The lack of specificity as to form again provides for the development of best practice in the provision of information in the same way as it may develop under the water environment regime.

4.5 Waste management and producer responsibilities⁴

4.5.1 Obligations

Like the legislative regimes dealing with the water environment, those dealing with waste management and producer responsibilities do not refer expressly to public participation. Obligations that fall within the broad category of public involvement do, however, arise at a number of points in the regulation of activities falling within this regime:

⁴ Legislation covered: Environmental Protection Act 1990; Waste Management Licensing Regulations 1994; Producer Responsibility Obligations (Packaging Waste) Regulations 1997; Control of Major Accident Hazards Regulations 1999; Nature Conservation (Scotland) Act 2004.

(NB Although the COMAH regime is covered here, it does not really fall within the general heading of regulatory decision making regimes SEPA has responsibility for. SEPA's role in relation to it is as a consultee not as the agency running the decision making process).

- Applications for and granting of authorisations and waste management licenses and producer registration
- Variations of authorisations and waste management licenses
- The transfer of waste management licenses
- The surrendering of waste management licenses
- The suspension or revocation of waste management licenses
- Appeals processes

4.5.2 Content of obligations

These obligations vary in nature. All provide for the provision of information to the public in some form. Most do so through the inclusion of information in public registers of information, the one exception being the COMAH regime, which allows for information to be provided to the public near the plant as required and without the need for requests by the public, however, this obligation falls on the operators of the plants and not on SEPA.

In some instances, such as the under the Packaging Waste regulations, the provision of information is the only public involvement type obligation imposed on SEPA (see Table 5 **Annex Two**). In other instances provision is also made for consultation or participation. The procedures covering the granting and variation of waste management licences provide for consultation with statutory consultees and for public involvement through the submission of written comments. The waste management regulations themselves are slightly obscure in that no guidance is given in the regulations as to how this consultation is to take place save that notice has to be served on the statutory consultees notifying them of their right to make comments and of how long they have in which to make comments, nor is public participation specifically provided for. The granting of licences, however, essentially follows the same procedures as provided for the granting of permits under the PPC regimes with a few added provisions detailing which bodies must be consulted in certain circumstances (see Tables 3 and 4 **Annex Two**). Where an application is made to surrender a waste management licence provision is made for consultation with the relevant local authority. Again, the regulations are not prescriptive and it is, on a plain reading of the regulations, possible for greater interaction to occur between statutory consultees and SEPA or the public and SEPA.

The procedures for applications for registration of producers under the Packaging Waste regulations make no provision for consultation or participation and are framed in such a way that it appears there is no scope for either, though again neither are prohibited (see Table 5 **Annex Two**). Having regard to the general aims of those regulations, however, one would not anticipate seeing consultation or public participation operating here.

4.5.3 Variations in how obligations are framed

Given the limited nature of SEPA's public participation obligations in relation to the COMAH Regulations and Waste Packaging, this section in effect relates only to the characterisation of the consultation and participation obligations under the Waste Management Licensing provisions. As noted these largely follow the PPC regime and thus are subject to the same comments as those made in that section. The list of

statutory consultees to be notified of applications under the PPC regime has been added to by the Scottish Ministers under the Waste Management Licensing regulations. As noted earlier, reading the regulations as a whole indicates that SEPA is in effect limited to notifying these identified bodies, making the list of consultees restricted. However, once again the public have equal rights of participation as consultees, thus opening up the process.

The same characterisation in terms of Holmes and Scoones's (2000) classification of selection procedures can be applied. Thus the open nature of the public participation obligations in relation to the granting of waste management permits will lead to self selection of those who choose to become involved. The lists of statutory consultees to be notified can be characterised as processes providing for stakeholder identification and invitation, however, they do not appear to provide for SEPA to use discretion in developing best practice in notifying stakeholders.

The discussion now turns to other ways of characterising these processes focusing on the extent to which the mechanics of the process are prescribed by legislation. Here issues such as timing, advertising and whether the processes are to be conducted orally, face to face or via written submissions are considered.

Prescribed Process Mechanisms: Advertising and Notification

Advertisement of the decision making process again follows the PPC regime, thus the same comments apply here. The first set of advertising provisions relate to advertisement of applications and are expressed more loosely than those relating to the Water Environment (see Tables 2 and 3 in **Annex Three** for a pictorial illustration and cf Tables 1 to 3 in **Annex Three** for illustration of variations). Though they are more loosely framed they are still restrictive in nature and so subject to the same comments as those under the Water Environment. One significant difference is that draft determinations must also be advertised so the public have notice of the decision SEPA intends to make and can target their comments specifically to it. Again the content of the adverts is specified in the regulations as is the fact that they are to be advertised on SEPA's web page or, if SEPA believes it appropriate to do so, elsewhere. The one weakness in the regulatory approach lies in the emphasis on the use of the internet for advertising draft decisions. This is potentially problematic in terms of good practice in that, if followed through, it may, as noted in **Chapter 3**, mean that those individuals with no access to the internet are excluded from the decision making process. There is also express provision for the notification of certain statutory consultees as indicated above, both in relation to applications and in relation to appeals.

Prescribed Process Mechanisms: Decision-making and Time-limits

Again the regulations provide, on the whole, little information on the decision making mechanisms to be used and how participation is to take place. In general, provision is made for written submissions to be sent to SEPA by the applicant and, in relation to applications, by the public and statutory consultees (for details see Tables 3 and 4 **Annex Two**) but there is no provision for an ongoing process involving the public in analysis and actual decision making. At the same time there is neither provision for other mechanisms such as hearings or public meetings to be used nor are such other mechanisms expressly excluded. Again SEPA may be constrained in its ability to adopt other approaches by time limits imposed on the decision making processes.

Again all decision making processes have time limits imposed relating to either when they are to take place or how long the process may take (detailed in Table 3 and 4 in **Annex Two**). For example where an application to vary a permit is made the time limits on decision making vary from 49 days from the date the application is received if no representations are made to SEPA, and 63 days from that date when representations are made. These periods include the time taken to notify the applicant of the need to advertise their application and a 28 day period of advertising. By contrast where an application for a permit is made the time period for decision making is four months from the date an application is received (or longer where agreed by the applicant) again including a period within which the applicant must be notified of the need to advertise their application and an advertising period. (See generally Table 3 and 4 **Annex Two**). In cases where a short time frame for decision making operates it will be extremely difficult if not impossible to adopt alternative mechanisms even where those mechanisms may lead to better practice in facilitating public participation and so to better decisions.

Implications

Combining the information on mechanisms to be used and time limits on decision making again suggests that, although the regulations do not proscribe other public participation mechanisms being used in decision making, the emphasis is firmly on the use of written procedures. These processes, as noted earlier fit more closely with the description of consultation procedures described in **Chapter 1** rather than to the description of participatory procedures.

4.5.4 Further legislative constraints

One significant issue to be taken into account in deciding waste management licence applications etc is the fit with the town and country planning process. Waste Management Licenses cannot be granted unless all necessary planning consents have already been obtained. This means then that the public will effectively have had an opportunity to comment on the application at an earlier stage in many instances. In addition account must be taken of COMAH safety reports and determinations under Articles 5 to 7 of Council Directive 85/337/EEC.

4.5.5 Provision of information to the public

Again the commentary provided in relation to the PPC regime applies here as those provisions apply equally here. Thus besides the provisions regarding the advertisement of applications etc. provision is made for informing the public and statutory consultees of decisions: by way of entry in the public register of information, by advertising on SEPA's web page and by way of notification.

The maintenance of public registers of information under the PPC regime is provided for under section 27 and Schedule 9 of the Pollution Prevention and Control (Scotland) Regulations 2000 with additional prescription on the content of the registers contained in section 10 of the Waste Management Licensing Regulations. Again the Public Register is a comprehensive database of information on all aspects of the regulatory decision making process. The contents of the register are specified in the regulations themselves and provision is made for applications for the exclusion of certain confidential information. What is not specified is the exact form that the register must take, but it is required to be freely accessible by the public at all

reasonable times. The lack of specificity as to form again provides for the development of best practice in the provision of information in the same way as it may develop under the other regimes.

4.6 Radioactive substances⁵

4.6.1 Obligations

As with some of the other regimes no specific reference is made to public participation under the regulatory regimes relating to radioactive substances. These regimes, however, differ from the others in that there really is no provision for public participation. There is provision for consultation with statutory consultees however in relation to the following:

- Authorisation of disposal of radioactive waste
- Transfer of authorisations
- Revocation and variation of authorisations.

4.6.2 Content of obligations

In each of these instances SEPA is obliged to consult with certain prescribed statutory consultees and with any other public or local authority it deems to be relevant. There is no provision saying that others may not be consulted with, however, the tight framing of the consultation requirements indicates that consultation is only to be with government bodies and that there is no scope for consultation with other types of bodies let alone for public participation proper.

The only obligation that arises related to public participation is the obligation on SEPA to maintain copies of all applications, documents issued by it, documents sent to statutory consultees and records of convictions which the public are to have reasonable access to (subject to restrictions relating to trade secrets.) The regulations are worded in such a way as to suggest that SEPA is not required to keep a register, however, again there is no prohibition on it doing so.

The obligations should, however, be read in conjunction with the Environmental Information (Scotland) Regulations 2004. These provide a minimum obligation with regard to the provision of information to the public: that SEPA is obliged to make information on authorisations likely to have significant impact on the environment available electronically or as a minimum to have electronic notification of the existence of such information. (Certain exclusions from the obligation apply in relation to information likely to impact on national security etc and for personal data under the Data Protection Act.) It is also under an obligation to organise such information. Clearly many authorisations under the Radioactive Substances regime will fall within the heading of authorisations likely to have a significant impact on the environment. Thus information must be organised and there must at least be electronic notification of the existence of the information.

⁵ Legislation covered: Radioactive Substances Act 1993, Radioactive Substances (Appeals) Regulations 1990, The High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005.

4.7 Comparison of regimes

The common themes that emerge across the regimes are as follows:

In each there is provision for making information on decision making available to the public. In most of the regimes this is provided through the maintenance of public registers which can be maintained in any form thought appropriate by SEPA. These should provide information on both the applications submitted and the decisions made amongst other information. This allows for practice to develop to take account of best practice in delivering information. The only regime that differs from this is that covering radioactive substances which makes no provision for a public register, just for the maintenance of documents. The other three areas (water, PPC and waste) provide guidance as to the content to be recorded in the register and thus provide for uniformity and minimum content. In many instances there is also specific provision for notification of the start of decision making processes or for notification of draft determinations.

- Radioactive substances obligations on provision of information restrictive, but leave scope for this being exceeded
- All others contain permissive obligations giving scope for good practice in provision of information to develop.

There is provision in each regime for consultation with statutory consultees. In some of the regimes it may be possible to read the legislation in such a way as to provide for consultation with other stakeholders identified by SEPA as appropriate consultees (Water Environment) but this is not the case in the other regimes. Again, the regime covering radioactive substances makes it clear that the only consultees should be government bodies of one form or another, though there is no actual prohibition on consulting others.

- Water Environment obligations on involvement of statutory consultees are permissive – involvement of statutory consultees can expand beyond what is provided for in the legislation both in terms of who counts as a statutory consultee and in how they are consulted
- PPC and Waste Management are more restrictive, but do not expressly prohibit SEPA exceeding the legislative requirements
- Radioactive substances obligations on involvement of statutory consultees framed as restrictive suggesting that legislative requirements should not be exceeded, though there is no actual prohibition on this.

Public involvement per se is provided for in relation to water, waste and PPC regulatory decisions, but in all cases all that is provided for is advertisement of the decision making process and an opportunity for the public to submit written comments. The processes as described in the regulations are not iterative and there is no provision for face to face meetings, workshops etc. Equally, however, such processes are not expressly prohibited by the regulations so may be possible. Having regard to SEPA's general obligations described at the start of this chapter then it may be appropriate to develop fuller procedures than are described in the legislation. In deciding whether or not this is appropriate, however, attention must be paid to the time limits within which decisions must be made. These may preclude the adoption of fuller public involvement procedures. In many cases if SEPA fails to meet the time

limits it will be deemed to have refused the application (whether it is for a licence or permit to be granted, varied, transferred or otherwise.) There is one exception to this rule - in r. 25 (5) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005 regarding determination of application for surrender: if SEPA has failed to determine the application within the period specified in paragraph (1) the application will be deemed to be granted at the end of that period.

There is then little scope for timescales to be changed within the legislative regimes. In addition the need to ensure procedural fairness to the applicant dictates against the extension of time frames beyond what the applicant will agree to. These may make other forms of participation impractical. Again, as indicated earlier the interaction between decision making in planning type processes and decision making in the regulatory processes may also dictate against fuller involvement of the public in decision making at this stage for reasons of procedural fairness.

- Radioactive substances regime does not provide for public participation, all others do and are permissive – public participation can expand beyond what is provided for in the legislation except to the extent it is restricted by time limits on decision making.

Finally, there are a number of other matters not expressly covered in this summary but which are covered in the tables in the annexes. For example under several of the regimes there is an obligation to provide information on decisions to bodies such as the Scottish Executive and branches of the European Union. These obligations (detailed in the tables in **Annex Two**) are mostly neatly characterised as reporting activities rather than as activities relating to public participation. For that reason they are not included in this summary.

Chapter Five: Current practices

This chapter introduces the analysis of current practices of public involvement in specified regulatory regimes drawn from the interviews and the analysis of supporting documents. The chapter summarises:

- Sample and case study descriptions
- Definitions
- Appropriate Approaches
- Working with the Public
- Appropriate techniques
- Implementation and Resources.

5.1 *Sample and case study descriptions*

Fourteen staff from five different agencies were interviewed to ascertain in what ways they had implemented the obligations for public involvement in regulatory regimes (see Annex Four to see the interview guide). Eight respondents had national remits, with the others working at a regional or local level. Respondents had worked for their agencies for between 3 and 27 years (recognising precursor bodies to SEPA and the EA). The respondents came from a variety of professional backgrounds: five came from a communications background (with one other in an operational job but with a long history of communications work); seven came from regulatory and operational backgrounds (implementing and enforcing regulations) and two worked in policy areas (focussed on developing policy and implementing policies rather than regulating specific enterprises). The ratio of men to women was equal.

The variety of backgrounds was reflected in the variety of case studies that the interviews focussed on. Some respondents talked generically about public involvement and consultation, illustrating their comments with a range of regulatory and policy examples. Others talked specifically about a particular regulatory regime or a specific technique but not about a specific application. Finally, some respondents focussed on the application of regulatory regimes or techniques to a case study location or project (described in **Fig 5.2**). Some did all three¹. However, others may not have been prompted to discuss the issue, or may have run out of time to raise it, so a lack of comment does not necessarily imply that they do not have an opinion on the matter. The regulations discussed and specific case studies are described in **Fig 5.1** and **Fig 5.2**.

¹ Care must be taken when interpreting the statistics. The figures give a flavour of the frequency of issues being commented on and therefore likely importance of the issue, rather than an accurate count.

Fig 5.1: Regulatory regimes discussed by the interview respondents

Specific Regimes /Interview IDs	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total
WEWS								X				X		X	3
CAR				X				X			X	X		X	5
PPC	X	X	X	X	X			X	X	X			X		9
Landfill			X	X				X							3
Rad Subs	X			X				X	X				X		5
Packing Waste			X	X				X							3
COMAH				X			X	X							3
EPA			X	X				X	X	X			X		6
Waste Mangnt		X	X	X	X			X	X						6
Contaminated Land			X	X				X	X						4
Nature Conserv			X	X				X		X					4
Env Act – Air			X	X				X	X	X					5
Env Act – NWS			X	X	X			X	X						5
Env Asst Act			X	X			X	X							4
EIA regs			X					X			X				3
Flood Defence			X						X		X				3

Fig 5.2: Specific case studies

Regime	Description	Location
PPC/IPPC	Changes to conditions on licence for power station, in particular, seeking to burn tallow	NE England
EPA part one – waste on land/waste management licensing	Changes to conditions regarding type of waste allowed to process at municipal land fill site; enforcing conditions due to emissions problem	Southern Wales
EPA part 2a, contaminated land	Housing developed on unauthorised chemical tip from 1960s – serving notice on the responsible person to remediate the site	Southern Wales
Radioactive Substances Act 1993	Monitoring and enforcement at the Dounreay Plant	North West Scotland
EPA parts I and II (now PPC)	Brand new 160,000 tonnes per annum waste incinerator – licence application	Eastern Scotland
PPC/IPPC	Changes to conditions on licence for cement works	Wiltshire

5.2 Definitions

There was no consistency in definitions of participation and consultation provided by respondents. Their answers fell into three categories. Firstly, only seven gave definitions that fitted with those commonly found in the literature. In the words of one respondent: *“Participation is more proactive and not just a paperwork exercise”*... *“Consultation conjures up images of ‘the document is on the internet if you want to see it’ ... “Consultation comes into participation, but I don’t think participation necessarily comes in to consultation.”* Interestingly, the discussions that followed during the interview indicated that in at least three cases, this distinction between participation and consultation collapsed in practice, with the terms being used interchangeably. This suggests that the practice is unlikely to reflect good practice. We echo the words of one respondent: *“...need to watch we are not using the term Public Consultation for just the basic promotion and liaison exercise”*

Secondly, three suggested that consultation was more active than participation, which they equated with communication and information provision. Some respondents (N= 4) did not distinguish between participation and consultation, using the words as one phrase.

Finally, two respondents felt that their agencies had a remit to act on behalf of the public, which somewhat contradicts the ethos of active public involvement. Only two respondents explicitly noted that participation should enable members of the public to get involved right at the beginning of the decision making process in order to shape the process rather than just respond to an agenda set by others. Many of the more detailed definitions touched on the issue of the limits to consultative or participatory processes, in terms of giving decision making powers to the public, and this is discussed in **section 5.3**. The definition of ‘the public’ is covered in **section 5.4**.

The definitions of effective regulation also varied in their content and philosophy. The most common element (N =7) was the need for regulatory sanctions to be used as a last resort, with an emphasis on the agency having a relationship with the regulated and encouraging them to comply with regulations without having to enforce them. However, five of these commented on the tension between regulation and relationships (see **section 5.3**). Six respondents felt that effective regulation had to result in a positive environmental outcome; and six also mentioned the need for regulation to be proportionate, fit for purpose and not a burden on the regulated. Two of these extended the issue of burden to SEPA, arguing that regulation had to take account of limited resources. Five respondents felt that effective regulation had to be fair and consistently applied. Surprisingly, given the context of the research, only five respondents mentioned the need for the regulations to be understood and accepted by both the regulated and the wider public.

5.3 Appropriate approaches

5.3.1 Statutory requirements as perceived by respondents

Most respondents were confident they understood the statutory requirements for consultation and participation (see **Fig 5.3**). Whilst respondents did seem very knowledgeable about the statutory requirements, they often provided very little detail. Respondents were not asked to recite the statutory requirements, so failure to mention an issue does not mean they are unaware of their obligations. Our analysis of how their understandings match our interpretation of the legislation can be found in **Chapter six**.

Fig 5.3: Respondents’ perceptions of their statutory duties

Regulation	Comments
COMAH	Agency only required to notify operator of ‘public information zone’ – operators have the legal duty to engage with the public
Past IPPC/PPC	One respondent knew the agency required to put application on public register and consult with statutory consultees One respondent very clear about requirements for public registry and operator obligations One respondent outlined the ‘minimal regulatory regime requirements’: adverts, public register, consider views provided as written representations
New PPC under PPD	One respondent commented on the new requirement under the PPD to place draft permit on the internet but was unsure if it had to go onto public register; and whether it was the full permit; also confusion about whether the draft permit was advertised, or just the initial application
EPA contaminated land	One respondent noted there was no obligation to consult with the community
Radioactive	One respondent unsure of statutory requirements (although practice indicates exceeds all those

Substances Act	relating to consultation requirements) – liaises with technical project team and regulatory agencies to ensure meeting regulatory requirements One respondent felt that some staff working on Radsubs might be unsure of the statutory requirements due to the history of exceeding them
Env Act: Nat Waste Strategy	One respondent noted there was no statutory requirement to consult on the production of the National Waste Strategy One respondent recognised that all Area Waste Plans will have to go through PPD in future (due to requirements of SEA) and <i>"It is set out quite clearly in the regulations that you have to go out and who you have to engage with and the timescales you have to engage with"</i> including how to set out decision making process"
Waste regulations (2005)	Responsibility for consultation with Scottish Executive
UWWTD	One respondent (not SEPA staff) unclear about requirements for consultation and relies on the project team to ensure meeting regulatory requirements
WEWS/CAR	One respondent understood requirement for application and consultation responses to go on the public registry (which differs from the COPA regime) One respondent believed that CAR did not stipulate statutory consultees and highlighted the need for an electronic resource in addition to the public registry (for registrations, simple and complex licence applications); only complex licences to be advertised
EPA waste on land: waste management Licensing	One respondent emphasised knowledge of who to consult

Furthermore, one respondent raised the point that whilst the agency staff understand the specific requirements for individual regulatory regimes, the public does not distinguish between different regimes and expects a consistency of information provided. Thus, they are frustrated by the differences between regulations regarding information kept on the public register: *"Joe public can't understand why if the waste inspection reports are on, why can't the air inspection reports be on. And we say, the regs say so. And they say regulations: pfff! We say, sorry but we didn't make them!"* This can be connected to the comments made by respondents regarding the lack of public understanding of what the regulatory regimes allowed the agencies to do (made by ten respondents).

Six respondents mentioned the influence of the Public Participation Directive (PPD) and three the Aarhus Convention, although one of the respondents was unclear about the relationship between the two. Generally, the PPD was mentioned with specific reference to PPC, and the Aarhus Convention with reference to a more generic shift in agency culture towards consultation. However, there was often a subtle shift, with the former recognised as part of regulation and the latter part of corporate strategy and therefore, implicitly, not directly the responsibility of the regulatory staff. One respondent did highlight the importance of having a legislative driver for moving to a more pro-participatory culture in SEPA.

Six respondents noted that the public had access to information under the Freedom of Information (Scotland) Act (FOI) and the Environmental Information (Scotland) Regulations (EIR), and that SEPA has a publications strategy to ensure that printed information is available to the public if they request it. However, as one respondent noted, these regimes are treated separately to planning and delivering participation and consultation processes. Equally, responses suggest that there is still an onus on the

members of the public to (a) know what information they seek and (b) to follow bureaucratic procedures to gain the information.

However, many of the respondents argued that the specific regulations were only part of the picture. For example, COMAH has no requirement for public consultation but the Health and Safety at Work Act requires the HSE to consult with the public (although how and in what circumstances were not explained). Equally, Scottish Water is obliged to consult with their customers under the Act that created the agency. SEPA has obligations to engage with the public under its remit, established in the Environment Act 1995 and reinforced by subsequent policy directions from the Scottish Executive, but this statutory obligation was not mentioned by any SEPA respondents.

5.3.2 Exceeding statutory requirements

Respondents clearly indicated where they felt they exceeded their statutory responsibilities (see **Fig 5.4**). Interestingly, two respondents emphasised that they had gone beyond what the regulations required with the agreement of the operator, even when this put an additional burden on the operator in terms of preparing the material. In three cases, the respondent was adamant that it was in the operator's interest to engage effectively in order to ensure the application was not resisted by the local community. Comments on the techniques used by respondents for public involvement are found in **section 5.5**.

Fig 5.4: Respondents' perceptions of where they exceed their statutory duties

Regulation	Comments
COMAH	Attends local community liaison group meetings
IPPC/PPC	Generic: attended public meetings held by operators to provide information on SEPA's role Case One: held public meetings and surgeries; expanded stakeholders to include politicians, environmental and community groups, copies in local libraries, media and communications strategy Case two: always goes beyond statutory consultees to include those they know are interested in the issue or the site; gave residents' group a draft permit for comment (prior to the implementation of PPD) Case three: put information and application on the website, expanded stakeholders to include politicians, environmental and community groups; media campaign; provided two copies for the public registry, provided CD-ROMs of the information
EPA contaminated land	Using the Environment Agency's 'Building Trust in Local Communities' Toolkit to engage with local householders, public servants and politicians as well as operator, to assess possible remediation strategies
EPA waste management Licensing	Attended public meetings, expanded stakeholders to include politicians, environmental and community groups, media and communications strategy
Env Act: Nat Waste Strategy	Action plans do not require consultation, but as a matter of good practice public consultation does take place. Will do additional consultation in cases where the Executive are keen to promote more public engagement
Waste Regs (2005)	Worked with SE on consultation document; ran own consultation processes with operators
UWWTD	Uses 'Consultation Code' for public engagement including holding surgeries and public meeting, working with range of stakeholders, communications and media strategy, information provision
CAR	Identifying consultees to notify regarding licence applications despite having no direct requirement in CAR (although there are broader requirements for involvement under WEWS Act).
Radioactive Substances Act	Uses internal and external stakeholder panels (includes local residents) with transparent multi-criteria decision making process; media and communications strategy; public exhibitions; focus groups; newsletters

5.3.3 Why work on higher rungs of the ladder?

There was a wide range of views on the extent to which the regulatory stipulations frame the process of public involvement and consultation. On the one hand, a respondent stated: “*our duties and our roles [are] quite specific. The regulations are there*”. Another felt that the advert was all that was required to honour the obligation to inform the public of applications, putting the onus on the public to be proactive (and scrutinise the public notices daily?) On the other hand, many respondents (N = 8) noted that just following regulations had resulted or could result in a fierce backlash from the public. Another respondent felt that going beyond the regulatory requirements would result in a better outcome for the environment and make it easier for SEPA to do its job more effectively.

This latter view indicates the perspective that participation and consultation has to be seen as part of a wider process of building relationships in order to regulate effectively (N = 8). These comments spanned three areas: public as watchdogs; public confidence and trust; and monitoring public perceptions. Firstly, respondents noted that the public provide useful intelligence on environmental conditions, assisting them with detecting breaches of conditions or possible environmental damage. Secondly, respondents noted that social trends mean that the public are less deferential to technical expertise and are more critical of technical solutions. This requires greater transparency in licence decision making processes and the need to build trust with the public to prevent decisions being challenged, or to protect the legitimacy of the agency to regulate the environment. Thirdly, maintaining relationships with the public (communities of place and communities of interest) allows the officers to judge if and when specific applications are likely to cause controversy, thus allowing them to take a risk-based decision about how participatory a process is required to meet public expectations. Provision of information, education and capacity building were mentioned by two respondents as part of this relationship.

The case studies provided some illuminating examples of the importance of understanding both history and context. Respondents (N = 9) noted how past history influenced how the public perceived their agency and coloured the way in which the public engaged in consultation processes – “*So mud sticks - that history can be hard to get rid of*”. However, only one respondent explicitly commented on the need to build on past strategies and consultation processes and communicate what is changing and why. Seven respondents noted how they relied on local intelligence (from both their own staff and contacts within the community) to help them understand what issues were pertinent, who to consult and what techniques to use, providing tacit confirmation of ongoing relationships for effective regulation.

Three respondents indicated that participation and consultation approaches have to recognise the physical setting, the culture of the area and the dispersal of the population. Two commented on how the socio-economic context of the process had an important bearing on how to conduct the process and the issues that were likely to be considered important by the public. Three respondents highlighted the importance of recognising the political context. Politicians can influence public opinion and had used the waste management, UWWTD and PPC case studies to further their own political interests. With

the waste management case study, the media coverage of research findings on public health issues inflamed the situation, highlighting how external factors have to be considered when planning and implementing such processes.

Anticipated conflict emerged as a key dimension for the decision as to when and how to exceed statutory requirements. Eight respondents noted that they felt it was essential to engage (generally face to face) where they believed that at least some members of the public were likely to contest the decisions being made. Often, the agencies are fulfilling their statutory obligations (and may not be able to alter their position – see below), but members of the public do not accept this position. These respondents indicated that in these cases it is essential to proactively engage with the public, by maintaining avenues for dialogue but also illustrating how they were responding to the concerns being raised (see **section 5.6**). They argued that conflict can not be avoided but can be managed, and conflict will emerge whether the agency consults or not. Four respondents noted that once a controversy erupts, it is almost impossible for the agency to recover control of the agenda and reverse the cycle of misinformation, mistrust and confrontation. In two cases, respondents spoke of staff being harassed by angry members of the public; and three spoke about aggressive and antagonistic public meetings which left staff feeling unable to engage with the issues effectively.

The strongest message emerging from the respondents with regard to the appropriate approach was the need to clearly communicate the boundaries of the process. As seven respondents explicitly noted, the regulatory agency has to make a regulatory decision, and any consultative or participatory process cannot replace or erode their authority to do this. However, five respondents felt that it was difficult to balance the regulatory remit with building relationships. Two examples illustrate the point: firstly, when conditions meeting the demands of the public (or one section of the public) might be challenged by the operator; secondly when forming close relationships with stakeholder groups jeopardises public perceptions of regulator neutrality. Three respondents also indicated that the public were often confused about the agency remit for broad strategic policies e.g. sustainable development, community planning and the more prescriptive regulatory approaches. One respondent used the UWWTD as an example: *“We are supposed to have this duty for sustainable development and we’ve got this precautionary principle, and people would see those as enabling them to comment. But if we are dealing with a Scottish Water asset then Ministers have decided what is important and what is not on their [the public’s] behalf so as a result it might seem that we never seem to listen to their comments”*.

Ten respondents explicitly raised the fact that the public did not understand the nature of the constraints on regulatory decision making processes. For example, respondents explained that a PPC licence can only be considered on the grounds of environmental impact and technical operations – issues regarding the siting of the plant or the pre-determined environmental quality standards are not negotiable. This is unsurprising, given that only four respondents had explained the decision making criteria as part of the

consultation process²! The EA policy of publishing a simple summary decision document is an example of good practice in this area. Four respondents did not explain the decision making processes as this is not current policy – three recognised that they will have publish a draft determination under the revised PPC regulations but one was unsure if this would be required. Although a couple of respondents described the process of logging all representations or complaints, no respondent commented about proactively using information from consultations to inform other aspects of the agency’s work, or passing on information to other agencies.

One respondent recognised the irony of his earlier complaint regarding the public sending inappropriate representations during the interview: *“It’s difficult if you’ve never tried to get across to them or have anything that explains to them what the system is”*. They went on to connect this failing to the public’s distrust of the agency - *“and if they are not informed about it, and why should they know about the technicalities of it all, and the legislation that drives [the agency], then they will just experience that as frustration”*. Eight respondents explicitly noted that any process must clearly communicate the extent to which the public can influence the decision and the criteria that can be considered. However, this message was implicit in the discussions with all respondents.

The desired outcome for any process is to ensure that the public understand and support the decision making process. Thus, even if they are unhappy with the final outcome, they are more likely to accept it. However, as four respondents wryly noted, there will be cases where some people are never satisfied: *“You can communicate with them well, you can do all best practice and as is their right they will continue to oppose vigorously”*. Their experiences illustrate that whilst working on higher rungs of the ladder can help with building relationships, developing trust and therefore improving the legitimacy of the regulator in the eyes of the public, it will not eradicate conflict as individuals and groups will still continue to use any process to try to achieve their own interests. However, taking a proactive participatory approach can demonstrate a commitment to transparency and partnership working and avoid being labelled *“defensive, reluctant, and [getting] all the dis-benefits from being viewed that way”*.

5.4 Working with the public

5.4.1 Defining the public

Again, there was no consistency in definitions of the public provided by respondents. Most offered non-exclusive definitions (*everyone, all those outside the agency* etc). Only three respondents explicitly recognised that the public consisted of different groups with their own needs, whereas eight respondents contrasted the general public with specific stakeholder groups (e.g. industry, the regulators, the Scottish Executive) who were perceived as well defined groups, with specific expertise and interests³. Two respondents

² Another three respondents explained the decision making process during the interview but it was unclear if this was ever communicated to the public. Another two explained how requests for further information were processed but did not explain how the information was used in decision making.

³ Four respondents felt that the term stakeholder could be interchangeably used with the term ‘public’.

felt that the agencies did not always need to interact directly with members of the public, as they are represented by stakeholders (using examples of industry groups and politicians). These findings, together with the language used, e.g. *Joe Public, the average boy and girl in the street, the general public* suggests that ‘the public’ is viewed as a left-over homogenous group, and is perhaps not well understood. There was also a suggestion that working with defined stakeholders (the usual suspects) could provide SEPA with greater control of the decision making process. However, this would increase the agency’s exposure to criticism from those who felt excluded from this process.

Only six of the respondents defined the public with reference to having an interest or stake in the issue. Of these, most referred to local communities of place and their perception of the environmental or economic impacts of the decision on their own lives. Only one referred to the difference between a community of place (impacts due to proximity to a site) and a community of interest (impacts on a specific aspect, e.g. wildlife or on jobs). Also, only two of these respondents opened up the definition beyond local ‘publics’ to the ‘general public’ – one to discuss how to act in the ‘public interest’ in terms of sustainable development and one to discuss how any interaction influenced how the public perceived the agencies and the industries they regulated. The issues of scale, public interest and public perceptions were raised by other respondents during the interviews but not explicitly with reference to the definition of the public.

Six of the respondents had undertaken stakeholder analyses when planning public consultation processes. One respondent noted that the public may not agree with the agency stakeholder analysis – they gave the example of how residents in a neighbouring town insisted on taking part in a consultation, even though the stakeholder analysis had not considered them. Whilst local residents were highlighted as important stakeholders for public engagement processes, these respondents tended to spend more time describing what one respondent called “the usual suspects” – MEPs, MPs, MSPs, Local Authorities, NGOs, pressures groups, business and trade organisations, community councillors, students, health boards and school boards. Two respondents explicitly acknowledged that the public were engaged via these intermediaries rather than directly as individual citizens. Others commented on the role that ‘movers and shakers’ play in shaping public opinion. Some stakeholder groups (namely the politicians and business interests) were also referred to by four respondents, indicating that they did *de facto* stakeholder analyses which were shaped by the statutory process and expanded to include those with whom they had a relationship (through community planning, history or formal partnership arrangements).

This focus on using intermediaries to represent the public is problematic given that five respondents noted that there had been problems with community gatekeepers distorting communications or acting in their own self-interest instead of communicating the perspectives of their constituents. Only three respondents recognised that local communities may well encompass a variety of (often conflicting) views and that multiple community views have to be considered. Another three respondents noted that processes must engage with both the vocal elements of the community, but also with the ‘silent majority’. Only one respondent made the point that communities are dynamic and views

change over time, with new perspectives emerging as and when new individuals engage with the process.

5.4.2 Access to the decision-making process

Whilst all members of the public have nominal access to regulatory decision making through advertising the application and providing specified information on the public register, eleven cases from the interviews involved a concerted effort to reach out and involve the public in decision making⁴. None of the respondents were aware of research on how members of the public would like to be engaged as part of a consultative process, although two respondents noted that there was research on how stakeholders wished to receive information, one noted that their agency had researched how to consult with their statutory consultees and one respondent had informally noted preferences at an area level. A couple of respondents felt such research was not necessary as decisions regarding process, stakeholder analysis and techniques should arise from using good practice (e.g. the Environment Agency's 'Building Trust in Local Communities' toolkit).

Only two respondents had considered the accessibility of the face to face events that they were holding in terms of public transport and disability. One respondent provided documents in a local library as the registry was inconvenient for the local residents; and another respondent felt that every SEPA office ought to hold copies of the public register. However, another three felt that the location of the registries were immaterial as members of the public could request information to be sent to them (however, this option is not communicated to the public unless they ask SEPA). All respondents asked felt that any requests for information in different formats or different languages would be accommodated but there is no agency policy on this at present. Three respondents gave examples of where consultations have used documents in translation in areas with sizeable ethnic minority populations.

Five respondents felt that providing material electronically would improve the accessibility of information to members of the public. However, there are degrees of access, as for example, placing material on websites only provides access to those with access to the internet, ability to use the internet and who are aware the information is there. In the one case study, the pdf file proved difficult to open and this may have limited people's ability to view the information. Some websites are easier to navigate than others, and one respondent acknowledged the need to improve the SEPA site and make it more interactive.

With regard to ensuring that information could be understood, seven respondents highlighted the need to use 'plain English' for printed documents and face to face communication. Only three recognised the need for a hierarchy of information provision, from summaries written for the public 'with a reading age of 11' to those with detailed technical understandings. Only one had considered piloting documents with a lay audience to check they were understandable. Three of the respondents who worked in communications noted there were tensions between ensuring the technical/regulatory

⁴ Setting up 'by invitation' stakeholder groups does not give members of the public access to decision making.

content was correct and making the summary documents readable. Only two respondents noted that members of the public had been given multiple sources of information on the issue (from the agency and from dissenting pressure groups). Only three commented that the agency must try to put itself in the shoes of the public and think about why a citizen might be interested and what information they would therefore need to effectively engage in the process.

Three respondents commented on occasions when officers had assisted members of the public and applicants to understand licence applications. Four respondents explicitly stated that they felt engaging the public in technical decisions was misguided as individuals lack the technical expertise to respond effectively. However, they did acknowledge that this depended in part on the application in question. However, another four respondents recognised the degree of expertise held by individuals in local communities; with two technical officers noting that public representations can provide new information or suggest new approaches to the problem. One example is the involvement of a community pressure group in designing the monitoring regime for a PPC application. Only four respondents commented that members of the public needed appropriate information in order to effectively participate (see also comments on decision making in **section 5.4**) and that engagement processes were educational, building capacity for both the public and staff.

5.5 Appropriate techniques

The techniques used within case studies are illustrated in **Fig 5.3** below.

Fig 5.3: Summary of techniques described by respondents

Technique	Rung on the ladder	Collective or Individual
Monitoring group (n = 1)	Deciding together	Collective
Community Liaison Meeting (n = 7)	Consultation or co-deciding	Collective
Site visits (n = 2)	Consultation	Individual or Collective
Drop in surgeries with displays (n = 5)	Consultation	Individual or Collective
One to one meetings (n = 1)	Consultation	Individual
Mailed Invitation to provide representations (n = 7)	Consultation	Individual
Visiting operators (n = 2)	Consultation	Individual or Collective
Public Meetings (n = 4)	Consultation	Collective
Door to door visits (n = 3)	Consultation	Individual
Questionnaires (n = 4)	Consultation	Individual
Focus groups (n = 2)	Consultation	Collective
Politician Briefings (n = 2)	Consultation	Individual or Collective
Presentations on Agency decision and remit (n = 3)	Passive info or consultation	Collective
Press releases (n = 8) - Radio (n = 2)	Passive information	Individual
Press briefings & campaigns (n = 2)	Passive information	Individual
Provision of printed information (n = 3)	Passive information	Individual
Newsletters (n = 5)	Passive information	Individual
Posters (n = 2)	Passive information	Individual
Public Register (n = 4)	Passive information	Individual
PR displays at events (n = 1)	Passive information	Individual
Information on the website (n = 10)	Passive information	Individual
FAQS (n = 3)	Passive information	Individual
Printed material in local libraries (n = 2)	Passive information	Individual

Adverts (n = 3)	Passive information	Individual
Public displays (n = 3)	Passive information	Individual or Collective

5.5.1 General comments

Many respondents used a combination of information provision and consultative processes, for example using media releases, and mail shots of leaflets to inform residents not only of the issue but also of consultative processes (written documents and meetings). As a respondent noted, any process (be it communication, written consultation or face to face processes) must engage with both the vocal elements of the community, but also with the ‘silent majority’. Another respondent touched briefly on the difference between individual processes (that may be interactive e.g. a consultation on the web) and group processes and was unsure if more IT based solutions might preclude the development of a group consensus that more face to face collective processes tend to develop. Many general comments have been developed within **section 5.3** and **section 5.4** above.

5.5.2 Communication strategies

The need for a communication strategy was raised by 3 respondents. Their comments closely link to the discussion of stakeholder analyses above (see **section 5.4.1**) Communication with the local opinion formers (media, politicians, interest groups) is required to firstly, establish the most effective way to communicate with the public; secondly establish a route to pass the information to their constituents and thirdly, to control the PR aspects of communication and ensure the ‘right’ message is communicated.

The importance of ensuring consistent messages was highlighted by four respondents, who had worked hard to ensure that all communications were checked for both content and consistency, particularly when working in partnership with other agencies. Four respondents highlighted how tardy internal communication could prevent the delivery of timely and accurate information when required. The quality of the message was dependent on the communicator thinking about their audience (raised by 3 respondents) – *“if people don’t get the message and understand what is going on, you don’t blame the receiver, you look at the sender of the message and what you could do to improve that.”*

Most respondents felt it was essential to let the public know that a consultation process is ongoing and that the media is a powerful way to achieve this. Only two respondents mentioned the radio as a form of media, and no respondent mentioned using the television. These respondents were referring to media releases to generate a news story, as those who mentioned advertising were dubious as to how many people read the public notices. Newsletters, posters and mail shots were also used to let the public know about consultation processes and provide information. Only one respondent noted that low turn-out at an event may have been due to lack of advertising rather than assuming the public were not interested. Only one respondent made reference to *ongoing* communication using newsletters although another respondent did discuss using community liaison groups as a way to continue two-way communication with the local community.

5.5.3 Written information provision

The accessibility of the information is discussed in **section 5.4.2** above. One respondent praised SEPA's written consultation documents as 'well written' – however he was commenting on a consultation process with stakeholders rather than the public. Another felt that the UKAEA website was a good practice example to follow for providing information on consultation processes. Another couple of respondents felt that it was up to the operators to ensure clear communication of the content of the application. Another additional point raised by three respondents was the need to plan and communicate how consultation processes dealt with issues of confidentiality, the Data Protection Act and information that was available or withheld under the Freedom of Information Act before strategies were launched.

The provision of information on the website was considered to be an increasingly important aspect of information provision – with one describing a 'step-change' in the web statistics over the last year. However, two respondents felt that the public would not automatically know where to find the information if they were not directed to a site, which was why several respondents publicised their website through a communications strategy. Some respondents (N = 3) felt that the onus was on the public to make the effort to find the information on the website and elsewhere. Their comments should be framed by the link they made between expending resources on outreach and the lack of resources to use on other tasks (see **section 5.6.2**).

Two respondents explicitly highlighted the fact that the internet should not replace other methods – *“putting information on the website is not the same as consultation or participation, it's the back-up to that. It allows people to access lots of information but it's not the same as actively seeking and promoting the fact that there's some new information we want feedback on, or going to key stakeholders to explain what's going on.”* Three respondents provided written and electronic versions of the information to allow people to choose the format they preferred. One respondent placed printed information in the local library and another four provided take away printed material at their drop-in sessions. One respondent suggested that the internet should not replace face to face relationships as some people did not like using IT. However, they noted that some like the anonymity of the web, particularly if people wish to express a different view from dominant members of their community.

5.5.4 Face to face processes

Despite no regulatory regime requiring face to face processes, a number of respondents have used individual and group techniques. Most respondents who talked about building trust also used face to face processes (N = 4), and implied that trusting relationships require personal contact and commitment. Whilst most processes were group events, three respondents noted the importance of offering one to one discussions. These are more suitable for people who are not confident in speaking up in group situations. They also provide an opportunity to have deeper and more extended discussions, which greatly increased the (two-way) transfer of knowledge.

However, this does not mean that face to face processes are easy to run. One practical issue brought up by three respondents was the inability to judge how many members of the public were likely to attend an event, making choosing venues and arranging staffing levels very difficult. This was one reason for using drop-in sessions rather than public meetings.

Other respondents also talked about using drop-in sessions and surgeries in preference to public meetings because public meetings have a tendency to become adversarial (see **section 5.3.2** above). Once this occurs, the agency staff are in an impossible position – as one respondent explained, once hecklers start getting support from the rest of the audience, staff find it very difficult to get them to sit down without being rude and if anyone shows disrespect to the audience then the agency has lost the debate. However, it is impossible to continue a presentation with people interrupting and shouting from the floor.

Three respondents reported using independent facilitators to run group processes to keep order and ensure that the process is run smoothly. Using external staff is often perceived as a way to ensure neutrality and objectivity, particularly when the facilitator also writes the report of the meeting. Another respondent used independent chairs for meetings for the same objective. One respondent suggested that all those engaging in face to face consultation processes sign up to a code of conduct that ensures individuals behave in a respectful and constructive manner.

5.6 Implementation and resources

5.6.1 Feeding back the decision

Less than half of the respondents had provided feedback on the final decision to members of the public responding to consultations. Only one of these respondents came from SEPA. Four respondents provided feedback through a public or community liaison meeting; and five respondents used a summary decision document that was distributed using a newsletter, mail-shot, press release and/or website. Of these, three commented on the need to provide a combination of a simple summary of the decision and a more detailed technical document explaining how the decision was made. Another two respondents recognised that feedback ought to be provided in order to show the public that their views were acknowledged, but did not provide details of how this was handled for any particular case. Two others noted that feedback should have been provided in their case study but other tasks took priority. Only four respondents noted how they fed back information from the public internally as well as externally – using internal project team meetings.

There was a very interesting discrepancy amongst the SEPA respondents. One respondent felt that a summary of the responses to a consultation process, and the final decision should be published on the public register; two noted that they should be but weren't and two felt it was up to the public to request the information on the final decision if they wanted it. Several respondents recognised that PPD, FOI and SEA meant that they were now required to demonstrate how responses were taken into account. One respondent felt

SEPA needed an internal policy on how to analyse and summarise representations most effectively. However, one respondent felt that PPD only required the publication of a draft permit rather than explaining the decision making process. One respondent noted that representations and issues raised that fell outwith the remit of the consultation would be passed to another part of the organisation. Another described an internal database system used for environmental licence monitoring. (Other responses suggested that ‘non-legitimate’ issues raised would be ignored).

There is a difference between acknowledging a representation and explaining the decision making process and its final result. Four respondents explicitly noted that all correspondence was acknowledged; with three of these explaining that they tried to respond in the most appropriate medium for the individual (email, phone or letter). However, only two of the respondents included information about how the individual’s points were being considered in these letters. Two respondents felt that there was no statutory requirement to explain how comments are considered and thus it was up to the individual officer to respond (implying that they were unlikely to). However, this contradicts the views expressed by other respondents who were adamant that members of the public wanted to know both how their individual issues had been considered, and to get an overview of the range of issues raised and how the final decision had been influenced by them. See **section 5.3.3** for more on decision making processes.

5.6.2 Resources

All respondents bar one⁵ commented on the tension between adopting participation and consultation processes and the lack of resources. As one respondent put it “...*at the end of the day, if I’m spending more and more time on nebulous public consultation and being too proactive when I’m not sure that’s what the public need to know, then I don’t have a team that’s actually inspecting the ... sites to prevent the major accidents*”. However, one respondent eloquently describes why this approach might be short-sighted: “*There are fairly limited actual statutory requirements but the real world means you don’t have much choice – even if [you] go totally by the book, if a community aren’t happy then you will have to do some participation and consultation anyway. It will just be under different hats – they will complain to MPs, ombudsmen, media, send letters – then you end up in an engagement process that takes up time and resource but is not called that or seen as a statutory requirement. You might as well do it properly, holistically, on the front foot to start with*” (this was supported by three other respondents).

These findings relate back to **section 5.3** whereby respondents suggested that the degree of proactive consultation (and therefore resources) is assessed in light of anticipated public reaction to the issue – with respondents implying they employed an implicit screening approach based on possible controversy. A number of respondents echoed their definition of effective regulation by noting that the approach has to be proportionate to the scale of environmental risk and public interest. Some respondents pointed out that it

⁵ This was a very short interview that focussed on the role of communication in public engagement.

was difficult to plan the resource requirements for participation and consultation processes, as by their nature, processes are open ended and do not work to organisational timetables. Although the regulations stipulate consultation periods and assessment periods, the case studies indicate that the timetable for decision making is dictated in part by the operator, the actions of local partners and statutory consultees, and public opinion. Indeed, the case studies illustrated that two respondents had experienced public meetings of over 300 people – a turn-out that took them by surprise and was very hard to manage – yet in another, equally contentious case, a public meeting attracted less than ten people.

Two respondents commented that getting public representations on a licence application is very rare. However, another case study received over 100 representations regarding a licence application. Three respondents believed that the public must be actively encouraged to respond and only then can a low response be seen as evidence of lack of interest. Only one respondent noted that a low response might be because the public felt ‘it was a done deal’. Two respondents felt that there are cases when proactive consultation processes are not required – in both cases when there had been prior consultation phases and there was limited scope for the public to alter the outcomes.

It proved difficult to quantify the degree of effort that exceeding regulatory requirements entails. In one case study (change to IPPC licence condition), the respondent felt that the impact of the consultation was probably about 0.5 – 1 FTE for a year. However, they pointed out that this may have reduced the resources that would have to be deployed to react to a disgruntled public. The evaluation of a respondent involved in another case study, where the regulatory agency struggled to win public acceptance for four years and had to participate in two public inquiries, felt that the application of increased resources early on would have saved staff time, £500,000 in technical studies and the damage to the agency’s reputation. Certainly, respondents discussing one case study believed that whilst going beyond the regulations might have resulted in an additional 0.25 FTE for about a year, it potentially saved them a great deal of work – there were no visits to the registry; and the 12 representations were focussed on the criteria that SEPA could consider (compared to over 3,000 received by the local authority regarding the planning application). Furthermore, some respondents noted that the resource input would decrease as they built on and learnt from previous processes (e.g. adapting the website pages and FAQ).

An essential aspect of the resource is the staff members involved in these processes. As one respondent described it, working with the public requires staff with special qualities – “*a cool head and thick skin*” – but above all, commitment and respect for the public as they can only build effective relationships through demonstrating their integrity through their own actions. One respondent commented on using external expertise to supplement their own knowledge (albeit on technical issues). Another four respondents commented on how project teams normally consist of technically qualified staff who do not necessarily have outreach and communication skills. They felt that all organisations have a diversity of staff, some of whom are better at communicating than others. Respondents noted that team work was fundamental to delivering participation and consultation processes, but three explicitly raised problems of poor internal

communications. As one respondent highlighted, staff have to build up respect and trust internally as well as externally: “... need to build up internal relationships and an internal network based on good reputation based on doing a good job”. Many of the comments relate to individual attitudes and agency culture that are discussed in **section 5.6.3**.

A comment raised by ten respondents was the need for training and skills to enable staff to deliver participation and consultation processes most effectively. However, two of these related to getting training on the technical aspects of new legislation. Four respondents noted the need for media and communications training, which was focussed on ensuring that the public are communicated with effectively rather than skills associated with more interactive consultative or participatory processes. The other four focussed on the importance of having facilitation and conflict resolution skills to allow effective engagement and the ability to build relationships with the public for ongoing interaction.

Five respondents commented on getting outside expertise to assist (two discussed hiring communications experts to help with communication planning, two used the Environment Council for training and as independent facilitators and one used the Consultation Institute). However, several respondents highlighted the need to build capacity within the organisation. The emphasis was on ensuring staff understand the principles of public engagement, rather than the procedurally driven development of techniques, as “*If you understand what it is you are trying to do and you can understand the processes you can use, then you’ll see the value in what you’re trying to do at the end of the day and you’ll see what you can get out of it*”.

5.6.3 Corporate culture

Capacity to deliver participation and consultation processes is partly dependent on resources, particularly skilled staff (see **section 5.6.2**), but also on individual attitudes and corporate culture. Responses to questions on agency performance were illuminating⁶. The average response regarding how interested individuals were in what the public say was 3.6 (with responses ranging from 1 – 5). Several respondents felt that attitudes had changed over time and organisations were increasingly recognising the need to be seen to work with the public. However, two respondents raised the tension between listening to the public and meeting statutory requirements and three felt that some sectors of their organisations did not see how the views of the public affected their work.

The average response to the efficacy of staff at running processes was 3 (with responses ranging from 0 - 5). Four respondents felt it was extremely variable – for example, one person rated their case study at 4.5 but overall score was 2. Five respondents felt the ability to deliver effective public involvement and consultation has to improve; whilst another three respondents (not from SEPA) felt that the capacity to deliver had improved

⁶ Note that respondents often qualified their responses by claiming they could not speak for the whole organisation, or gave a range of figures for different parts of the organisation. Space does not permit us to show these details.

dramatically following investment in training. One respondent noted that the participants in the processes ought to be asked.

The average response to the relevance of public engagement to the agency's remit was 4.3 (with responses ranging from 2 - 5). All recognised that public input was important to their agency but six qualified their answers, explaining why they had not given a 5 rating. One respondent felt many other things were as or more important. Five raised the tension between retaining their authority as a regulator with responding to public opinion. However, another five respondents (who rated their answers as 5 – absolutely central) felt that without public involvement and consultation processes, the agency could not function effectively.

Respondents commented on their agency's internal procedures in relationship to participation and consultation. Three noted that there were no consistent or clear processes regarding how to do it and one felt it was important to share experiences and learn from individual staff to avoid acting in an ad hoc manner. This can be contrasted with the EA, Scottish Water and UKAEA respondents who commented on the recent learning experiences within their organisations whereby the organisation had adopted a flexible set of principles and processes that staff were able to develop and work with to ensure that all approaches were fit for purpose. However, four SEPA respondents emphasised the importance of having explicit guidance and developing generic models to apply consistently.

Only five respondents commented on undertaking regular internal reviews of processes in order to evaluate processes and learn from these findings in order to improve practice in the future. Two respondents spoke about external formal reviews of their processes. Four respondents had asked for feedback on the process from members of the public, although in two cases this was described as market research, suggesting that the emphasis was on learning about the respondents rather than reflecting on the agency's performance.

These points are summarised, albeit rather bleakly, by one respondent: “*we don't have the right attitude as an organisation (although I make an exception for some individuals), we don't have the resources (although I think it's a lot less work intensive than many people fear it to be) and we don't have the skills widely enough, or developed enough to be able to deliver effective public participation*”.

Chapter Six: Synthesis of legal and current practices

This chapter focuses on comparing the legal requirements to current practices, and current practices to good practice and noting where the legal requirements allow the agency to achieve better practice than currently is the case. The discussion is structured around the following themes:

- Options for the public to be informed, to be consulted, to participate
- Effective Regulation – constraints and opportunities for public involvement
- Defining the public
- Implementation – techniques, context and resourcing.

Conclusions and recommendations are provided in **Chapter seven**.

6.1 *Public information, consultation and participation*

Chapter four highlights that only regulations relating to Pollution Prevention and Control explicitly recognise any obligation for public participation, though others do contain obligations that fall within the broad scope of public involvement. This to some extent reflects the transposition of the Public Participation Directive in Scotland, as that document provides more for public involvement than for public participation as understood in the literature. There are obligations for SEPA to provide information and offer opportunities for written consultation processes in certain circumstances within regulatory regimes applying to water, waste management and producer responsibilities. The only obligation for radioactive substances is for SEPA to maintain copies of documentation that the public can access (reinforcing the general obligations regarding access to information under the EIR).

These regulations state the minimum requirement. There is nothing in any of the regimes that prohibits greater public involvement, although the distinction between open ended and restrictive lists of statutory consultees (see **Chapter four**) highlights where the language of the regulation suggests a more restrictive approach is to be taken. However, the statutory guidance described in **section 4.2**, combined with the corporate plan (Outcome: a respected environment: protected, informed and engaged communities), suggests that SEPA should be expected to exceed these minimum requirements, where there are benefits to doing so. The considerable evidence of where agencies already go beyond statutory requirements (see **Fig 5.4**) indicates that is both possible and desirable to do this. But given that respondents' attitudes to exceeding these minimum requirements varied tremendously, direction as to when and to what extent they should be exceeded is required.

Our analysis of current practices (see **section 5.3.2**) suggests that SEPA does not work above the consultation rung of the ladder for regulatory decision-making, and it is rare for this rung to be exceeded by any agency when working with regulatory regimes¹ for reasons discussed below in **section 6.2**. Good practice requires the agency to consider

¹ There is a difference between SEPA's engagement with the public for regulatory regimes and for broader strategic planning regimes e.g. River Basin Management Plans, Community Planning Partnerships or Strategic Environmental Assessment.

the implications of working at the lower rungs in terms of substantive, instrumental and normative benefits foregone (see **section 1.1.3**). Indeed, some respondents recognised the importance of working with members of the public in order to gain local knowledge (substantive); to help combat distrust and resistance to the final decision (instrumental) and to engage informed members of the public in ongoing protection of the environment (normative) but very few were able to explicitly outline the reasons for public involvement in regulatory regimes. As respondents differed in their definitions of participation and consultation, it is unlikely that many are clear about what rung of the ladder they are working on and why.

There are a number of issues to be considered when informing the public or providing consultation opportunities. Firstly, members of the public should have free access to information. Both good practice and current practice reviews raised issues regarding accessibility surrounding the physical location of the information, the formats in which it was provided, the language it is written in, and the ability of non-technical individuals to interpret the information. In particular, providing information in multiple formats (printed and electronic, with a hierarchy of complex information) is important. Provision of information is an opportunity to engage and educate members of the public, one of SEPA's statutory duties.

Secondly, members of the public need to know what information is available and why it is important or relevant to their lives. This implies a pro-active communication strategy using multiple media and face to face networks if the agency wishes to follow good practice. This does not mean relying on opportunities offered by FOI or EIR or putting information on the public register or the website, as these put the onus on the public. Not many members of the public know where to look, know when to look, to know what to ask for, or how to interpret the regulatory requirements. By anticipating the public's FAQ, it is possible to save staff work but, more importantly, it improves public trust in the agency – making the public fight for information could appear to indicate that the agency is trying to hide something.

It would also be good to ask the public how, when and about what they would like to be consulted, as no respondent was clear on this aspect. The agency should not assume that members of the public are not interested, or feel an issue is not important or that individuals are not able to participate without asking them first. Both good practice and current practice highlighted the importance of the agency thinking from the perspective of the member of public. For example, the differences between regulatory regimes (see **Chapter four**) are historical, the result of piecemeal revisions, and serve to confuse and frustrate the public. There is little in the legislation to prevent the agency taking a more uniform approach to, for instance, how consultations are advertised. While the various regulatory regimes often prescribe the type of information to be included in advertisements and where those advertisements are to be placed a great deal of discretion is left in SEPA's hands. The only real restrictions are to ensure that the operator is not inconvenienced or the approach is not disproportionate.

6.2 Effective regulation and the public

The regulatory regimes contain little direction on public involvement in decision making beyond the obligations to publicise the decision making processes; opportunities to contribute to it; to consider representations received; and ensure that the decision is not delayed beyond the statutory period, unless agreed to by the applicant. Effective regulation, as outlined in SEPA (2005) and described by respondents, requires efficient, proportionate, transparent and effective processes which result in sustainable outcomes. It is beyond the scope of this report to consider to what extent the issue of proportionality impinges on SEPA's ability to exceed the regulatory requirements when doing so may place an increased burden on the operators. Effective regulations also need to be well understood by the public and other stakeholders (see above on confusion between regimes). Effective regulation, above all, rests on the agency maintaining its accountability and legitimacy and these are directly affected by public perceptions of SEPA. Thus effective regulation requires working effectively with others and being perceived as transparent and approachable, rather than a procedurally driven application of the law. Current practice accounts of conflict between the agency and protesters regarding actual and planned decisions should be considered in this light.

The guidance on ensuring that processes are flexible and adapted to the context is at odds with the emphasis on having objective, predictable routines for implementation of regulatory regimes. However, this does not prevent public involvement, it merely constrains the ability to work on higher rungs of the ladder (as SEPA maintains control over key aspects of the decision making process). There are only four constraints that the legislation places on public involvement in regulatory decisions: firstly, the time period for decision making; secondly the criteria for granting the licence; thirdly, the 'non-negotiables' that other legislation places on the issue under consideration; and finally where commercial confidentiality or national security dictate that information should not be made public. It is clear from current practice that not all staff actually understand when and how they are able to exceed regulatory requirements.

Time periods for decision making vary between regimes (from 28 days to four months) and are detailed in **Chapter four** and **Annex two**. The implications of these restrictions are discussed in **section 6.4** but restrict the ability to adopt flexible and open-ended processes. The decision making process, at least with regard to how representations are considered, is not detailed in any of the regulatory regimes. This does not preclude SEPA providing information to the public on the decision making process. Both good and current practices indicate that explicitly outlining what aspects of the decision will be considered by SEPA is vital.

Equally, it is good practice to explain the relationship that the particular decision making process has with previous processes and other related processes (at the local and national level) such as RBMP or land use planning. **Chapter four** highlights where the regulatory regimes have legal 'non-negotiables' that have to take precedence, no matter how high quality the deliberations might be. For example, water regulatory regimes have to take account of prior designations, and waste regulations must take account of COMAH and

local authority planning decisions. These boundaries to decision making have to be clearly communicated.

This raises the issue of the degree of interpretation in regulation, with respondents possibly overstating the ‘technicality’ of what is essentially a value-laden decision. As both good practice and current practices suggest, decisions are not merely technical as there are often multiple possible solutions, the final decision may be reliant on relationships to implement and enforce, and any decision will only be implementable if the public perceive it as valid and justifiable. It is beyond the scope of this report to engage with this further, beyond noting that most good practice consultative and participatory techniques use ‘communicative rationality’ rather than ‘technical rationality’ for decision making². By choosing to highlight the latter, the ability for the public to participate in decision making is considerably diminished.

The decision making process should be clearly communicated during the consultation period, and the final decision should also be communicated. PPC and Waste Management Licensing regimes are the only regimes where a draft determination has to be issued, giving the option for further public consultation. An interpretation of current practice suggests that not all staff are clear about this; probably due to its recent implementation and the specialised nature of each regime.

Many regimes have an appeals process as part of the decision making process. Appeals are heard by a third party (as chosen by Scottish Executive) who has the power to decide the process undertaken and the decision made. However, they also place an obligation on SEPA with regard to publicising the process. SEPA is obliged to contact those who have made representations and allow them to make further representations during the appeals process. This allows members of the public to comment if they were actively involved in the initial consultation, but in some instances it appears that there is no opportunity for members of the public to offer representations to an appeal if they did not make initial representations. The exception to this is where provision is made for those who are likely to be affected or who have a particular interest to be notified of an appeal as under appeals against PPC permitting decisions and water use licensing decisions. In these cases such individuals (or groups) may make written submissions to the appeals process.

The effect is, overall, to suggest that not all members of the public will be notified of the existence of this part of the decision making process. Against that is the fact that all appeals processes have provision for hearings to be held in public and where this happens the public part of the hearings must be advertised. Notwithstanding this fact there does appear to be the potential for a gap in the public’s awareness of and involvement in the appeals processes.

However, no regulatory regime prevents SEPA from publishing information on what decision was made or how responses were taken into account. Good practice would suggest that information on what was decided, on what grounds the decision was made

² Communicative rationality prioritises the quality of informed debate (the careful consideration of multiple perspectives) whereas technical rationality prioritises specific forms of evidence and analytical methods.

and how this reflected the representations from the public should always be made available. This is an opportunity to educate the public about how decisions are made and is an investment in increasing the capacity of the public to respond more effectively in future. Current practice indicates that this is rarely done by SEPA and in fact some believe they are not able to provide additional information on decision making. One respondent noted that guidance was needed on how to summarise responses and communicate the decision making process. Good practice highlights the importance of planning how to integrate multiple forms of knowledge and how to weight different opinions (which refers back to the comments on technical versus communicative or deliberative rationality).

Good practice also highlights the importance of acknowledging representations and thanking individuals for their involvement. Whilst this is done as a matter of routine, the content of the letters could be more informative regarding how the representation will be used in decision making. Feedback should be provided to any interested member of the public (by media releases, website update and newsletter) to illustrate that the agency is interested in, and has responded to, public opinion. The fact that public representations are rare cannot be interpreted to mean that the public are not interested in the issue unless the agency is certain that the public are aware of the issues, understand the implications, understand to what degree they can influence the decision and within what time period and, most importantly, believe that their concerns will be considered. Given the comments regarding the answer to question 4a (see **Annex four**), this is questionable. Information screened out is lost – not passed on or acted on very well. Finally, feedback should be provided internally, with information that is pertinent to SEPA or its partners but not to the actual decision being passed on, acted upon and the respondent informed of this fact.

6.3 Defining the public

All the regulatory regimes require provision of information to the public and many oblige SEPA to provide the opportunity for the public to comment on specific decisions. In this way, there is ‘free’ access to the process and respondents are self-selecting (notwithstanding comments made about accessibility in **section 6.1** above). The legal definition of the public refers to one or more legal or natural persons or their associations, organisations or groups. Current practice indicates a diversity of views of who the public are, what their needs, interests and concerns might be, and that many officers rely on their own assumptions as there is little guidance available to them. This is despite the increased emphasis on the public as an important customer for the environmental agencies.

There is variation in the way that regimes stipulate the statutory consultees who are invited to respond. In some cases, SEPA is given a list of statutory consultees with the provision that others can be added to the list as appropriate, as for example, under waste management legislation. (It is not always clear whether the power to add statutory consultees to the list rests with SEPA or elsewhere, nor whether those listed should be consulted in all cases. In some cases the power to add statutory consultees is specified to rest with the Scottish Ministers, for example, under the PPC regime). Similarly under the

waste licensing regime it is clear that those to be added to any list relate to the specific application - i.e. individuals whose interests may be affected by the particular proposal. In other instances the legislation is worded very restrictively, for example, the Radioactive Substances Act (1993) only refers to other government bodies as possibilities to be added to the list of consultees.

This suggests that in some instances the possibility of involving stakeholders in consultation processes is restricted by the legislation. Given, however, that none of the regimes actually prohibit the involvement of other stakeholder groups in the consultation process, there is scope for SEPA to engage with the public through stakeholder groups representing communities of place and of interest, particularly acknowledging where decisions may have implications for local and (inter)national publics. (N.B. the PPC regime specifically refers to environmental NGOs as potential stakeholders, a group which represents a different sector of the public.) This opportunity to engage with the public through stakeholder groups is most effectively realised by employing stakeholder analysis in conjunction with local intelligence. However, good and current practice indicate that this should be supplemented by opportunities for individuals to contribute – SEPA should go beyond the ‘usual suspects’³.

The difference between statutory consultees and the public suggests that the public are not treated as a legitimate stakeholder in the way that statutory consultees are, because the public have to seek opportunities to contribute to decision making, whilst statutory consultees are effectively encouraged to respond by being notified directly under most of the regimes. This may appear to contravene the spirit of the Aarhus Convention in one sense, but is also understandable given the limited resources available. To legally oblige SEPA to contact every member of the public for every application would be unmanageable and counter-productive. Moreover, there is no prohibition in any regime that prevents SEPA from actively seeking views from the public or any stakeholder – the open-ended or restrictive categories discussed here only refer to those considered *statutory* consultees.

Stakeholder analysis can be used to understand the diversity of the public and recognise the different needs of individual citizens. Both current and good practice highlight the importance of involving the opinion formers who may be formal stakeholders (politicians, media, industry spokespeople) but may also be charismatic locals who are active in informal ways. However, it is also vital to seek the views of the silent majority to ensure that decisions made are based on the full spectrum of public opinion. As good and current practice make clear, public opinion is not homogenous and officers will have to deal with conflict between those they are consulting.

Consulting the public can have substantive (better solutions) and normative (active, informed citizens) benefits. Whilst good practice recognises citizens have important knowledge to be used, current practice indicated a range of views from respect to an assumption that decisions were too technical for public involvement. Good and current practice indicate that information should be provided to assist the public with responses.

³ See Sherlock et al (2004).

Written information should come from multiple sources, to improve public confidence that the agency is not ‘spinning’ the facts. The public should be provided with a contact in the agency who can help interpret the technical information, and the staff member should be skilled at science communication. The regulatory regimes state that certain information must be made available on public registers but do not prevent the agency from implementing the above good practices or providing additional information. The only exceptions relate to commercial confidentiality and national security.

6.4 Implementation

As **Chapter four** makes clear, the regulatory regimes do not prohibit the use of innovative information provision, consultation or participatory processes. Many of the processes examined, however, are tied to other regulatory regimes such as land use management decision making procedures (for example, town and country planning procedures, the development of river basin management plans, the designation of nitrate vulnerable zones and, increasingly environmental impact assessment procedures). Equally many of the regimes require account to be taken of limitations placed on decision making by other statutory regimes. These regimes may effectively dictate the decision SEPA must take in a given circumstance. These place constraints on the degree of public involvement that is possible, but within these constraints the processes are relatively adaptable.

The obligations set minimum standards – advertising certain applications and variations, providing written information on the public register (and in some cases, on the internet), allowing for written representations from the public, and in limited cases, providing a draft determination for further comment. Current practice indicated that these have been exceeded in the past, and there is no explicit legal impediment to prevent this happening more frequently. The discussion of general obligations on SEPA in Chapter 4 indicated that it may be appropriate, and even expected, for SEPA to exceed these minimum requirements. For example, there is nothing to prevent printed and electronic material being provided (as the regulatory regimes do not specify the format of the public register), or to prevent this information being distributed rather than merely placed on the public register. Stipulated information in adverts and on the register is a minimum, not exclusive, requirement⁴ and there is some discretion as to where and how the information is advertised. For example, in addition to the public notice, officers have used radio and newspaper media releases, posters and leaflets.

Good practice highlights the need to work from a set of principles, enabling the selection of appropriate techniques, rather than defined procedures (see **section 8.3**). For example, the EA have a toolkit for public involvement but in the main, do not set guidance on when to exceed statutory requirements centrally. These decisions are devolved to local managers who have a better understanding of local conditions and ongoing local relationships. However, the approach requires a shared set of transparent principles about when and why to exceed statutory requirements to ensure predictability and equity that are required for effective regulation.

⁴ There is also no requirement to use ‘legalese’ so long as the meaning of the advert complies with the statutory requirements.

However, the timing of the public involvement is prescribed by the regulatory requirements for limited decision making periods. For example, some water regimes only allow 30 days for the decision to be made (including the period of advertisement). Furthermore, the start of this defined period is not determined by SEPA, but by the operator (as it begins when the application is received). The period of public involvement is even more constrained, for example where an application is made to vary a permit under the PPC regime, it is limited to 28 days. The legislation suggests that alterations to these regimes are possible if agreed with the applicant. However, current practice indicates that the agency is able to consider representations beyond this date at their discretion, so long as the final decision is not delayed. This timing does make iteration difficult, but feedback on the final decision does not appear to be affected by statutory time periods.

There are ways of circumventing these constraints. Good practice highlights the importance of using appropriate tools for the conditions, and highlights that the greatest benefits will develop from well-designed interactive group processes (usually face to face but interactive IT is an option). This does not mean adversarial public meetings. Handled carefully, with clear communication of the limits to citizen control⁵, techniques like participatory appraisal may be useful to map out conflict and identify issues. These low tech and low cost techniques allow the recording of people's experiences and views in a quick and user friendly manner and the process can be framed so it can be used to explore perceptions of risk pathways or physical layouts or technical problems or the distribution of costs and benefits.

The regulatory time constraints highlight the importance of seeing any consultation on individual decisions as part of a broader cycle. Good practice illustrates that any public involvement process has four phases: initiation, planning, participation and continuation. It is only the third phase that is constrained by statutory requirements. Ongoing relationships with operators and with the communities of place and of interest allow early warning of potential applications and of likely public concern. This also relates to comments on context, whereby effective involvement processes respect and adopt local traditions of public involvement (including recognising past history and building on past strategies) and use local networks to understand local conditions. Current processes will influence future events in their turn.

Furthermore, whilst working on a higher rung of the ladder is often inappropriate for specific regulatory decisions, there is no reason why members of the public should not be actively involved in designing a monitoring strategy; lobbying to change regulations or contributing to strategic, community or land use planning decisions. There is no legal impediment to officers informing and encouraging the public to put effort into a more

⁵ Many practitioners would question the use of participatory appraisal techniques at lower rungs of the ladder because PA's main principle refers to 'handing over the stick' i.e. giving the citizens control of the data collection, data analysis and decision making. However, our suggestion refers to collecting data from local people to be used by agency staff in decision making rather than empowering them to make their own decisions.

appropriate strategy or at a more appropriate time in the regulatory cycle. As **Chapter four** and current practice indicate, it is often unclear how individual regulatory regimes relate to this ‘wider picture’ and the public are often poorly informed about the process of developing, implementing and updating environmental regulations.

Finally, effective implementation of public involvement in regulatory decision making requires adequate resources and project planning. The trade off between resources expended and the opportunity costs of not effectively consulting the public is highlighted in **section 5.3.3**. Recommendations are provided in **Chapter seven**.

6.5 Conclusion

Fig 6.1 summarises the overall synthesis of findings. It indicates that there are few statutory constraints to the pro-active provision of information and to public consultation on decisions under regulatory regimes. This is illustrated by the fact that the UKAEA stands out as operating very good practice despite the legislation they operate under being apparently the most restrictive. This suggests that the degree to which the public is involved is at the discretion of the agency and is determined by organisational priorities, resource availability and corporate culture rather than due to statutory restrictions.

Figure 6.1: Summary of the regulatory requirements and how these were exceeded.

	Water Regimes	PPC	Waste & Prod Resp	Radioactive Substances
Areas with statutory obligation for public involvement	Applications for and granting of water use licences and discharge authorisations; Variations of water use licences; Transfer of water use licences; Surrendering of water use licences; Suspension or revocation of water use licences; Appeals against any of the above decisions in relation to water use licences	Applications for and granting of permits for the operation of installations or mobile plants falling within the regime; Variations of permits; Surrendering of permits; Appeals against any of the above decisions in relation to permits	Applications for and granting of authorisations and waste management licenses and producer registration; Variations of authorisations and waste management licenses; Surrendering of waste management licenses; Appeals processes	No specific provision for public; provision for consultation with statutory consultees on: Authorisation of disposal of radioactive waste; Transfer of authorisations; Revocation & variation of authorisations.
Statutory means for public involvement	Inclusion of information on public register for all above; consultation on authorisation of discharges of certain industrial waste waters into receiving waters; the surrender of water use licences; and in the appeals processes relating to various decisions	Inclusion of information on public register for all above; consultation and participation* on granting of PPC/ landfill permits and variation of PPC permits; Appeals against any of the above decisions in relation to permits	Inclusion of information on public register for all above except COMAH's local hazard plan; consultation on granting and variation of waste management licences; surrender of licences only require consultation with local authority; Producer Responsibility regulations makes no specific provision for public involvement	None
Statutory Consultees	Restricted lists for enforcement notices; authorisation of discharges of certain industrial waste waters into receiving waters; and appeals	Restricted lists in that responsibility of Scottish Executive, not of SEPA, to add to list	Waste Management Licensing has restricted list of statutory consultees - responsibility of Scottish Executive to add to list	Prescribed statutory consultees + any other public or local authority deemed to be relevant

Public Participation and Consultation in SEPA Regulatory Regimes

	procedures			
Advertising	Regulations prescribe the information contained and timing of advertisement (except for appeals) but not the location/means	Restricted to the advertisement of applications for permits under the PPC regime and Landfill Regulations; information prescribed; draft determinations must go on website	Follows PPC regime	Not applicable
Provision of Information	Comprehensive database of information to be held on public register; Notification of statutory consultees under UWWTD	Comprehensive database of information to be held on public register; Notification of statutory consultees	Follows PPC regime	Obligation on SEPA to maintain copies of all applications, documents issued by it, documents sent to statutory consultees and records of convictions, to all of which the public are to have reasonable access
Timing of decision making	30 days to 4 months	Variation of licence: 49 days (if no representations made) to 63 days from date of representations made; Advertise for 28 days; New Application for licence: 4 mths	Follows PPC regime	Not applicable
Decision Making process	No comment beyond obligation to consider public representations (where they have a right to make submission)	No comment beyond obligation to consider public representations (where they have a right to make submission) except for appeals which can be in writing or through a public or private hearing,	No comment beyond obligation to consider public representations (where they have a right to make submission)	Not applicable
Non-negotiables	Obligations under CAR; Obligations arising from prior designations (e.g NVZ)	Obligations to take account of COMAH; Articles 5-7 Council Directive 85/337/EEC	Waste Management Licenses cannot be granted until planning consents obtained. Must take account of COMAH; Articles 5 to 7 of Council Directive 85/337/EEC.	Not applicable
<i>Existing Good Practice</i>	<i>UWWTD consultation: notified community groups, politicians and environmental groups beyond statutory consultees; Techniques included surgeries and public meeting; communications and media strategy; printed information provision distributed to households. CAR: expanded list of consultees</i>	<i>PPC consultations: notified community groups, politicians and environmental groups beyond statutory consultees; Techniques included surgeries and public meeting; copies of application in local libraries, on website and CD-ROM; media and communications strategy; provision of draft decision document</i>	<i>Waste Management: notified local householders, public bodies and politicians beyond statutory consultees; Techniques included public meetings; community liaison groups; media and communications strategy</i>	<i>Uses internal and external stakeholder panels (includes local residents) with transparent multi-criteria decision making process; media and communications strategy; public exhibitions; focus groups; newsletters</i>

Source: Chapter Four and Chapter Five

* The legislation uses the term "participation" though it then describes something that the literature would term "consultation"

Chapter Seven: Conclusions and recommendations

7.1 Conclusions from the findings

Chapter six indicates that there are few statutory constraints to the proactive provision of information and to public consultation on decisions under regulatory regimes. The key restraints are the limitations on time available to carry out the decision making process (the legislation requires decisions to be made within set time limits, unless otherwise agreed with the applicant¹) and the varying legislative requirements to take account of decisions made under previous processes. This suggests that the degree to which the public is involved is largely at the discretion of the agency and is determined by organisational priorities, resource availability and corporate culture rather than due to statutory restrictions.

Involve (2005) indicates that public involvement must link **purpose, context and process** in order to achieve positive outcomes (see also **Fig 3.1**).

Purpose relates to what the public involvement is trying to achieve. This requires an explicit recognition of the fact that members of the public, the agency and the applicant may have multiple objectives, and these have to be prioritised for effective regulation. This relates to the need to clearly define which rung of the ladder (see **Fig 7**) is appropriate for a given process. Working at higher rungs of the ladder should maximise substantive (better solutions), instrumental (accepted solutions), and normative (informed citizens) benefits, but regulation requires SEPA to maintain firm control of the decision making process, meaning that working above the rung of consultation is unlikely. Nevertheless, there are degrees of proactive engagement even within the lower rungs of information provision and consultation. The findings suggest that a principle-based approach should be adopted to determine when statutory requirements are to be exceeded. Up to now, it seems that actual or anticipated controversy was the catalyst for these choices, which suggests an instrumental focus for public involvement, attempting to diminish controversy that would potentially delay the decision making process and reduce the authority of the agency. Nevertheless, proactively going beyond statutory requirements and following good practice should also increase the substantive and normative benefits of a process, whereas poorly managed or reactive processes are likely to increase public mistrust.

Figure 7: Choosing which rung of the ladder to work on for regulatory decision making

Rungs on Ladder	
Inform	To support processes further up the ladder To explain the process of public involvement To explain decisions taken To educate about environmental regulation

¹ However, it should be noted that the regulatory regimes only cover the consultation period, and do not constrain preparatory or follow up processes aimed at greater public involvement.

Consult	To listen and get information to help make decisions: note this can also cover decisions about how to run public involvement processes; and how to manage ongoing monitoring of the regulated activity
Co-decide	More appropriate for planning approaches and development of legislation which set the scene for regulatory decisions
Delegate	Unlikely to be suitable for regulatory decision making
Support	Unlikely to be suitable for regulatory decision making

Adapted from: OECD, 2004:11

Context refers to the historical, local and institutional conditions that affect processes. There is a tension between the aims of effective regulation for a single licence (proportionate, equitable, predictable, ensures environmental quality) and the overall remit of SEPA, which includes a statutory responsibility for sustainable development and a commitment to an engaged and proactive citizenship. Thus, public involvement in regulation must be seen as one aspect of a broader organisational approach to public involvement in the sustainable use of the environment. This tension is illustrated by the perception of those interviewed that the public do not understand the boundaries of SEPA's remit for regulatory decision making, or how they can effectively engage with the process. Thus, it would be useful to ask members of the public about their understanding of regulatory decision making to see if these perceptions are accurate.

Process refers to the techniques used, the resources provided in terms of time and staff, public capacity to contribute to the process, and organisational culture. The findings describe a range of techniques that are appropriate for information provision and consultation, including examples of what to avoid. Processes need to be well planned, and guidance is required for selecting which techniques to use, how to ensure that decision making is transparent, how to inform the public of decisions, and how to evaluate and learn from each experience. The following recommendations are based on the wealth of experience amongst the agencies' front-line staff that could be usefully pooled, and form the basis for a learning and training network. There is also a need to move away from procedurally based working to empowering staff to apply principles in order to deliver targeted outcomes in terms of facilitating public involvement. For example, the EA experience highlights the importance of devolving decisions to exceed statutory requirements to the local managers, whilst providing strong support from the corporate outreach team. Local managers then apply nationally agreed principles from their toolkit. This balances the need for transparent and predictable processes that are also fit for purpose and for the particular context. Given the mixed messages from the appraisal of agency attitudes to public involvement, it seems that a shift in corporate culture towards more open and active involvement has not yet fully occurred.

7.2 Recommendations

SEPA should therefore consider three areas:

- When and how to work beyond the statutory minimum
- How best to run such processes if such a decision is made

- Where further research is required.

SEPA Internal Policy²

- Develop a corporate set of principles regarding public involvement (see references e.g. Environment Agency), including transparent criteria for choosing when to exceed minimum regulatory requirements
 - Develop a tool-kit of various techniques to be used as part of a well-defined process where each technique is suitable for the particular goal at that stage
 - Learn about principles rather than copying procedures (see **section 3.1**)
 - Build on and adapt generic tools e.g. websites, FAQ, leaflets.
- Develop a guide on effective regulation for the public - how to comment, where to get information, what licences mean, when and how to comment and what comments are considered relevant, what purposes the decision making processes fulfil, how they compare with or overlap with other related decision making processes, what the aims of the regulatory regimes are, and what issues are non negotiable (i.e. dictated by the legislation)
 - Assist the public to submit relevant representations by using modifiable templates available in print or on the website
- Adopt a consistent approach to advertising and information provided on public registers across all regulations and media where possible
- Develop and implement a diversity and access policy (different languages, different formats) for communications
- Develop electronic versions of public registers with a common access portal on the web
- Consider how to make web and public register a ‘one stop shop’ with better links to FAQs, example previous consultation responses and example decision documents
- Ensure staff understand what terms regarding public involvement mean and their implications³
- Ensure that staff understand that public involvement in regulatory decision making is more than managing public relations
- Ensure staff know and understand the legal requirements to consult or involve the public in decision making across the regimes they work with and are updated as changes to regimes are introduced
 - Ensure staff understand and communicate the limitations on SEPA’s ability to respond to representations imposed by legal regimes (for example, need to take account of decisions or limitations imposed by other statutes).
- Develop a process for capturing⁴ and analysing consultation responses, including how DPA, FOI, EIR affect the way data is collated and stored

² Wherever possible, the development of the principles and toolkit should be done collaboratively with members of the public, rather than an exclusively internal process.

³ Note that the glossary provided in the Annex Seven is a legal glossary of terms that do not always fit with the way terms are used in good practice guidance documents or in practice.

- Develop a process for communicating the decision and how the decision was made
- Develop a learning network to draw on existing skills within the organisation, pool experience and identify further training needs
 - Gaps identified by interviewees include media training, facilitation skills, conflict resolution skills, communication skills and qualitative data analysis.
- Monitor and evaluate public involvement processes - then implement the lessons learnt
 - Develop an internal good practice working group to share experiences
 - Use of formal evaluation processes will provide data for cost-effectiveness or cost- benefit analysis
 - Avoid over reliance on internet resources and on access statistics as a means of evaluating the effectiveness of the internet.
- Respect people's right not to participate in a particular formal process – this does NOT mean they are not interested or affected by the issues
- Reflect on why people may distrust the agency and learn from past experiences
- Sustain commitment to future processes by acting on expressed concerns and communicating how contributions were used.

Running Processes

- Clarify the decision making process, including the boundaries of what can be considered, and communicate this at the start of the process
 - Capture issues raised that are not relevant to the current decision – pass on to the appropriate contact
- Ensure all participants have the capacity to participate as equals
- Communicate why a particular approach, or rung of the ladder, has been chosen
- Make it easier for the public to get involved (e.g. sending documents on the public registry to them or placing documents in local centres)
- If using methods that restrict numbers, use stakeholder analysis to recruit participants according to appropriate criteria and communicate the reasons for the selection
- Recognise the potential drawbacks in depending on elected bodies and community councils as sole representatives of community opinion (see **section 3.2.2**)
- For written information provision, pilot printed and electronic information on non-SEPA staff
- For face-to-face techniques, establish agreed process rules and use professional facilitators and/or trained project officers to enforce them
- Plan and budget for implementation of solutions arising from public involvement, including building and supporting partnerships and networks
- Communicate the final decision directly to participants and explain how the decision was made

⁴ For example, the public might expect views aired at meetings or informally to officers to be taken into account in decision making and may not submit a formal written consultation response.

- See **Annex Five** for good practice summary decision document from EA

Further Research:

- Interview participants in past processes for their evaluation of good practice and how they could participate more effectively
- Interview non-participants to find out what the public think and how/if they want to be involved in future
- Additional interviews with agency staff to improve analysis of why and how statutory requirements are exceeded
- Interview applicants about their perspectives on public involvement in regulatory decision making, particularly with regard to policies on when and how to exceed statutory requirements
- Development of a decision making process for exceeding statutory requirements, taking into account the benefits of increased public involvement and any costs borne by the agency and/or the operator
- Compare and contrast regulatory requirements under planning type processes with those under regulatory decision making processes to establish possibilities for harmonizing consultation and participation processes across all decision making
- Develop a flow chart of decision making processes illustrating how processes are related, which are integrated and which are similar
- Undertake an external evaluation of SEPA's current web site and future plans for expansion to ensure adequate accessibility.

Chapter Seven: Conclusions and recommendations

7.1 Conclusions from the findings

Chapter six indicates that there are few statutory constraints to the proactive provision of information and to public consultation on decisions under regulatory regimes. The key restraints are the limitations on time available to carry out the decision making process (the legislation requires decisions to be made within set time limits, unless otherwise agreed with the applicant¹) and the varying legislative requirements to take account of decisions made under previous processes. This suggests that the degree to which the public is involved is largely at the discretion of the agency and is determined by organisational priorities, resource availability and corporate culture rather than due to statutory restrictions.

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- Ensure staff understand what terms regarding public involvement mean and their implications³
- Ensure that staff understand that public involvement in regulatory decision making is more than managing public relations
- Ensure staff know and understand the legal requirements to consult or involve the public in decision making across the regimes they work with and are updated as changes to regimes are introduced
 - Ensure staff understand and communicate the limitations on SEPA’s ability to respond to representations imposed by legal regimes (for example, need to take account of decisions or limitations imposed by other statutes).
- Develop a process for capturing⁴ and analysing consultation responses, including how DPA, FOI, EIR affect the way data is collated and stored

² Wherever possible, the development of the principles and toolkit should be done collaboratively with members of the public, rather than an exclusively internal process.

³ Note that the glossary provided in the Annex Seven is a legal glossary of terms that do not always fit with the way terms are used in good practice guidance documents or in practice.

- Develop a process for communicating the decision and how the decision was made
- Develop a learning network to draw on existing skills within the organisation, pool experience and identify further training needs
 - Gaps identified by interviewees include media training, facilitation skills, conflict resolution skills, communication skills and qualitative data analysis.
- Monitor and evaluate public involvement processes - then implement the lessons learnt
 - Develop an internal good practice working group to share experiences
 - Use of formal evaluation processes will provide data for cost-effectiveness or cost- benefit analysis
 - Avoid over reliance on internet resources and on access statistics as a means of evaluating the effectiveness of the internet.
- Respect people's right not to participate in a particular formal process – this does NOT mean they are not interested or affected by the issues
- Reflect on why people may distrust the agency and learn from past experiences
- Sustain commitment to future processes by acting on expressed concerns and communicating how contributions were used.

Running Processes

- Clarify the decision making process, including the boundaries of what can be considered, and communicate this at the start of the process
 - Capture issues raised that are not relevant to the current decision – pass on to the appropriate contact
- Ensure all participants have the capacity to participate as equals
- Communicate why a particular approach, or rung of the ladder, has been chosen
- Make it easier for the public to get involved (e.g. sending documents on the public registry to them or placing documents in local centres)
- If using methods that restrict numbers, use stakeholder analysis to recruit participants according to appropriate criteria and communicate the reasons for the selection
- Recognise the potential drawbacks in depending on elected bodies and community councils as sole representatives of community opinion (see **section 3.2.2**)
- For written information provision, pilot printed and electronic information on non-SEPA staff
- For face-to-face techniques, establish agreed process rules and use professional facilitators and/or trained project officers to enforce them
- Plan and budget for implementation of solutions arising from public involvement, including building and supporting partnerships and networks
- Communicate the final decision directly to participants and explain how the decision was made

⁴ For example, the public might expect views aired at meetings or informally to officers to be taken into account in decision making and may not submit a formal written consultation response.

- See **Annex Five** for good practice summary decision document from EA

Further Research:

- Interview participants in past processes for their evaluation of good practice and how they could participate more effectively
- Interview non-participants to find out what the public think and how/if they want to be involved in future
- Additional interviews with agency staff to improve analysis of why and how statutory requirements are exceeded
- Interview applicants about their perspectives on public involvement in regulatory decision making, particularly with regard to policies on when and how to exceed statutory requirements
- Development of a decision making process for exceeding statutory requirements, taking into account the benefits of increased public involvement and any costs borne by the agency and/or the operator
- Compare and contrast regulatory requirements under planning type processes with those under regulatory decision making processes to establish possibilities for harmonizing consultation and participation processes across all decision making
- Develop a flow chart of decision making processes illustrating how processes are related, which are integrated and which are similar
- Undertake an external evaluation of SEPA's current web site and future plans for expansion to ensure adequate accessibility.

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Annexes

The annexes are presented in the following order:

- Annex One** Provides a summary of those processes where SEPA has to make regulatory decisions
1. Water Environment and Water Services
 2. Urban Waste Water Treatment
 3. Environmental Protection Act
 4. Pollution Prevention and Control
 5. Waste Management Licensing
 6. Producer Responsibility
 7. Radioactive Substances
- Annex Two** Tables relating to details of the statutory obligations for public involvement
Provides detail on those processes where SEPA has to make regulatory decisions together with tables providing details on some other processes SEPA is involved in
Tables included
1. Water Environment and Water Services
 2. Urban Waste Water Treatment
 3. Environmental Protection Act
 4. Pollution Prevention and Control
 5. Waste Management Licensing
 6. Producer Responsibility
 7. Radioactive Substances
 8. Control Of Major Accidents and Hazards
- Issues highlighted across the tables include:
- timing (at what stage in a process they take place and the length of time allocated to them)
 - inclusiveness (whether they are aimed at particular sections of society or unrestricted)
 - automatization of application (whether it automatically applies to all possible processes, programmes, plans and strategies)
 - means of publicising the process and the means of publicising outputs from the process
 - comprehensiveness of the process (whether the public or stakeholders are consulted on all aspects of the regulated activity or not)
 - mechanism by which the process is conducted (for example, through the submission of written contributions, participation in public meetings, or participation in workshops)
 - steps taken after the participation is conducted
- Annex Three** Pictorial summaries of different processes grouping them according to related sets of regulations. It must be kept in mind, however, that there are more overlaps between regimes than indicated in each individual table – details given in the regulatory chapter
1. Water
 2. PPC
 3. Producer Responsibility
 4. Radioactive Substances
- Key to symbols obligation is:
- open ended ie it could be exceeded – indicated with an upward facing arrow ▲
 - restrictive i.e. there appears to be no scope to involve groups/individuals other than those listed or to use a procedure other than that described – indicated with a downward facing arrow ▼
 - discretionary as to who to involve or how to conduct the process - indicated by a question mark ? and
 - where no information is provided on how the obligation is to be fulfilled - indicated with a solid square ■
 - though obligation is restrictive there is no prohibition on it being exceeded

**Annex
Four
Annex
Five
Annex
Six**

Copy of the interview guide for the interviews with agency staff

Good practice summary decision document

Glossary of Legal Terms

Annex One – Summaries of Regimes

Table One: Water Environment and Water Services Act

Activities related to Water Environment and Water Services Act/Regulations	Consultees	Participants	Advertisement consultation/participation	Decision making mechanism	Restrictions on decisions from other regimes
Register of protected areas	No provision for consultation	No provision for participation	Nothing specified	<p>Form in which register maintained Not prescribed SEPA may prepare and maintain the register in any form. r. 2 (3) of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004; r. 33 (4) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p> <p>Publication of existence of register SEPA shall publish the register on its website. r. 2 (3) of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004</p>	Nothing specified
Register of controlled activities	No provision for consultation	No provision for participation	Nothing specified	The register maintained by SEPA may be kept in any form	Nothing specified
Application for determination of commercial confidentiality of information r. 35 WEWS (Controlled Activities) (Sc) Regs	No provision for consultation	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Register of protected areas and controlled activities
Water Use Licence r. 12 of the WEWS (Controlled Activities) (Sc) Regs 2005	Nothing specified	Any member of public has 28 days in which to submit written comments to SEPA from date of advertisement of application	SEPA to serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served.	Written submission	<p>Planning type decisions</p> <p>Risk to water environment</p>

Annex One – Summaries of Regimes

					Requirements of other relevant legislation
Request for variation of water use licence r. 21 (1) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005	No provision for consultation save under appeals	Any affected person has 28 days in which to submit written comments to SEPA from date of advertisement of application	SEPA to serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served	Written submission	Entry in public register
Transfer of water use licence r. 22 (1) of the WEWS (Controlled Activities) (Sc) Regs 2005	No provision for consultation	None save that SEPA may require parties to provide more information	Nothing specified	Nothing specified, probably by written submission	Entry in register
Surrender of water use licence r. 24 (1) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005	No provision for consultation	Any member of public has 28 days in which to submit written comments to SEPA from date of advertisement of application (r. 13) and SEPA must take these into account (r 13 (5))	SEPA to serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served	written submission	Entry in register
Suspension and revocation of water use licence r. 26 (1) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005	No provision of consultation save re appeals	No provision of participation save re appeals	Nothing specified	Nothing specified, probably by written submission	Entry in register
Enforcement notice R. 28 of the WEWS(Controlled Activities) (Sc) Regs 2005	The owner or occupier of land which will be affected by the notice; and any person who might be required under paragraph (2) to grant or join in granting any rights, in respect of the rights which that owner, occupier, or person, may be required to grant. r. 30 (3) of the WEWS (Controlled Activities) (Sc) Regs 2005	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Appeals	No provision for consultation	The appellant and SEPA and any other persons that the appointed person permits to be heard	Nothing specified	May be in writing or oral hearing	

Annex One – Summaries of Regimes

Table Two: Urban Waste Water Treatment Directive

Activities related to Urban Waste Water Treatment Regulations	Consultees	Participants	Advertisement of consultation/participation	Decision making mechanism	Restrictions on decisions from other regimes
Application for consent for discharges of treated urban waste water subject to r. 6 of the Urban Waste Water Treatment (Scotland) Regulations 1994	No provision for consultation	No provision for participation	Nothing specified	Written submission	Planning type decisions
Revocation of consents and alteration and imposition of conditions S. 37 (1), Control of Pollution Act 1974	No provision	No provision	Nothing specified	Written submission	Planning type decisions
Discharges of certain industrial waste water into receiving waters R. 8 (1), The Urban Waste Water Treatment (Scotland) Regulations 1994	No provision	No provision	Nothing specified	Written submission	Planning type decisions

NB discharges from industrial plants are governed by the PPC Regime.

Table Three: Pollution Prevention and Control

Activities related to Pollution Prevention and Control Regulations	Consultees	Participants	Advertisement of consultation/participation	Decision making mechanism	Restrictions on decisions from other regimes
Application for Permits for industrial operations not detailed separately below. (listed in Schedule 1 Part 1 – covers Energy Industry, mineral, Oil and Gas refining, metal production and processing, mineral industries, chemical industries, pulp & paper, carbon; tar & bitumen, coating and textile printing, dye, ink & coating production; timber, rubber, treatment of animal & vegetable matter & food production	Re Part A activities – the Health Board, the Food Standards Agency, where it will release substances into a sewer – Scottish Water, to an SSI – SNH or English Nature as appropriate, to a harbour – the harbour authority, nuclear installations or COMA activities – the Health and Safety Executive, the local authority; re Part B installations, impacting on SSSI – SNH For all applications any other persons the Scottish Ministers note.	Public	After 14 days of application and within 42 days of application applicant to advertise the application– (a) in the case of an application for a permit to operate an installation or Part A mobile plant, in one or more newspapers circulating in the locality in which the installation or mobile plant covered by the application will be operated; and (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant, in the Edinburgh Gazette. para. 5, Schedule 4 of PPCR paras 6, 6A & 7 details the information to be given in the notice For new installations: Draft determinations to be advertised on SEPA web page para 15 B sched 4 and content of adverts specified in para 15C includes notification of right of anyone to make written or electronic representations to SEPA within 28 days from date of advertisement also must explain the decision making process and where the final decision will be registered/advertised	Done by SEPA following paper representations	Planning type decisions, e.g. land use; visual impact, transport offsite.
SED installations	As above	As above	As above	As above	Planning type decisions

Annex One – Summaries of Regimes

(conducted by Solvent Emission (Scotland) Regulations 2004) r. 7 of PPCR; r 3 (6) of SER					
Waste Incineration Installation r. 7 of PPCR	As above	As above	As above	As above	Planning type decisions Must take account of need for planning permission
Landfill Sites r. 7 of PPCR	As above	As above	As above	As above	As above permit can only be granted if planning permission has been granted where that is required and operator is deemed to be fit and proper (reg7) See also Waste Management Licensing procedures
Variation of permits r. 13 (1) of PPCR	Owners of land over which a right may be granted	public	Application to be advertised in local paper and for Part A installations in Edinburgh Gazette, content of advert prescribed (Sched. 7 para 4(9)) For substantially changed installation: Draft determinations to be advertised on web and wherever else deemed appropriate by SEPA. Content of advert specified includes how public can participate Sched 7 para 7 Where application likely to impact on another State information is to be sent to them via Scottish Executive for bilateral negotiation Sched 7 para 10	Not specified	Planning type decisions

Annex One – Summaries of Regimes

Variation of Landfill permit r. 13 (1) of PPCR	As above	As above	As above	As above	Account to be taken of 8, 9 or 9C or regulation 10 of the Landfill Regs 2003
Transfer of permits r. 14 (1) of PPCR	No provision for consultation	No provision for participation	Nothing specified	As above	Nothing specified
Application to surrender a permit for a Part A installation or Part A mobile plant r. 15 (2) of PPCR	No provision for consultation	No provision	Nothing specified	No provision	Nothing specified
Revocation of permits r. 17 (1) of PPCR	No provision for consultation	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Suspension notices r. 20 (1) of PPCR	No provision for consultation	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Enforcement notices r. 19 (1) of PPCR	No provision for consultation	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Appeals	Within 14 days of receipt of copy SEPA to notify the bodies listed in Sched 4 para 9, any person who made representations earlier in the process & anyone with a particular interest	Nothing specified	Where appeal to a Scottish Minister is to be heard in public: publish a copy of the notice in a newspaper circulating in the locality in which the installation or mobile plant is to operate and serve a copy of that notice on any of the people notified earlier in the proceedings	May be by way of hearing or dealt with in writing	Nothing specified

Annex One – Summaries of Regimes

Table Four: Waste Management Licensing

Activities related to Waste Management Licensing Regulations	Consultees	Participants	Advertisement of consultation/participation	Decision making mechanism	Restrictions on decisions from other regimes
Application for a waste management licence or for the surrender or transfer of a waste management licence r. 2 of the Waste Management Licensing Regulations 1994 (WMLR)	With the appropriate planning authority and the Health and Safety Executive; and consider any representations about the proposal	Public	Application to be advertised following PPC regime Draft determinations to be advertised on SEPA web page para 15 B sched 4 of PPC regulations and content of adverts specified in para 15C of PPC	Written submissions	Planning type decisions
Registration in connection with exempt activities r. 18 (4C)(b) of WMLR	No provision for consultation	No provision for participation	Nothing specified	Written submissions	Planning type decisions
Variation of waste management licences Conducted by the Environment Protection Act 1990, S. 37 (1) of EPA	The owner, lessee or occupier of any land likely to be affected; and the holder of licence	Not specified (but see PPC regs where appropriate)	By notice served on all deemed consultees	Written submissions	Planning type decisions
Revocation of waste management licences S. 38 (2) of EPA	No provision for consultation	Not specified	By notice served on all deemed consultees	Written submissions	Planning type decisions
Suspension of waste management licences S. 38 (6) of EPA	No provision for consultation	Not specified	By notice served on all deemed consultees	Written submissions	Planning type decisions
Surrender of waste management licences S. 39 (1) of EPA	Appropriate planning authority	Not specified	Nothing specified	Nothing specified, probably by written submission	Planning type decisions
Transfer of waste management licences S. 40 (2) of EPA	No provision for consultation	No provision for participation	Nothing specified	Written submissions	Planning type decisions
Public registers S. 64 (1) of EPA	No provision for consultation	No provision for participation	Nothing specified	Written submissions	
Appeals	No provision for consultation	No provision for participation	Nothing specified	Written or hearing process	

Annex One – Summaries of Regimes

Table Five: Producer Responsibility

Activities related to Producer Responsibility Obligation (Packaging Waste) Regulations	Consultees	Participants	Advertisement consultation/participation of	Decision making mechanism	Restrictions on decisions from other regimes
Application for producer registration R. 5 of Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (PROR)	No provision for consultation	No provision for participation	Nothing specified	Written submissions	Planning activities
Application for registration of a scheme R. 12 (1) of PROR	No provision for consultation	No provision for participation	Nothing specified	Written submissions	Planning activities
Application for accreditation R. 21B of PROR	No provision for consultation	No provision for participation	Nothing specified	Written submissions	Planning activities
Public register R. 26 (1) of PROR	No provision for consultation	Members of the public	Nothing specified, may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information contained in it.	Written submissions	Regulatory activities
Entry and inspection R. 28 (1) of PROR	No provision for consultation	No provision for participation	Nothing specified	Written submissions	Planning activities

Table Six: Radioactive Substances

Activities related to Radioactive Substances Act/Regulations	Consultees	Participants	Advertisement of consultation/participation	Decision making mechanism	Restrictions on decisions from other regimes
Registration relating to use of radioactive material and mobile radioactive apparatus s. 7 of Radioactive Substance Act (RSA)	Local authority No provision to notify public	No provision for participation	Nothing specified	Nothing specified, probably by written submission	A nuclear site licence is in force in respect of a site
Authorisation of disposal of radioactive waste S. 13 (1) of RSA	The Food Standards Agency and the Health and Safety Executive, local authorities, relevant water bodies or other public or	No provision for participation	Nothing specified	Nothing specified, probably by written submission	

Annex One – Summaries of Regimes

	local authorities				
Authorisation of accumulation of radioactive waste S. 14 (1) of RSA	No mention of consultation or participation	No mention of consultation or participation	Nothing specified	Nothing specified, probably by written submission	
Transfer Of authorizations to dispose of waste S. 16 A of RSA	local authorities where transfer takes place The Food Standards Agency and the Health and Safety Executive, local authorities, relevant water bodies or other public or local authorities	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Revocation and variation S. 17 (1) of RSA	No provisions for consultation	No provisions for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Enforcement notices s. 21 of RSA	No provision for consultation	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Prohibition notices s. 22 of RSA	No provision for consultation	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Variation of registration regarding high-activity source r. 3 of HASS Regulations 2005	No provision for consultation in decision making	No provision for involvement of others in decision making	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Variation of authorization regarding high-activity source r. 4 of HASS Regulations 2005	The Food Standards Agency and the Health and Safety Executive, such local authorities, relevant water bodies or other public or local authorities	No provision for participation	Nothing specified	Nothing specified, probably by written submission, with SEPA on its own taking account of written representations	Nothing specified
Site security r. 6 of HASS Regulations 2005	Consult with the police and such other persons as it, or he, considers appropriate concerning the measures. r. 3 (3) of HASS Regulations 2005	No provision for participation	Nothing specified	Nothing specified, probably by written submission	Nothing specified
Appeals s. 26, 27 of RSA	All those consulted at first stage to be notified of appeal	Nothing specified	Secretary of State to publish notice of public hearings in at least one newspaper circulating in the locality in which the activity which is the subject-matter of the appeal is or would be carried on; and to notify all those consulted in the appeal	Either party may request a hearing (which may be wholly or partially private) otherwise in writing (S. 27 (3) of RSA S. 27 (3) of RSA and r. 4 (1), r. 6 (1) of Radioactive substances	

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Table Seven: Environment Protection Act

Activities related to Environment Protection Act	Consultees	Participants	Advertisement of consultation/participation	Decision making mechanism	Restrictions on decisions from other regimes
Authorisations: general provisions s. 6 (2) of the Environment Protection Act 1990 (EPA)	Health and Safety Executive, Scottish Executive, Scottish Water, SNH, local authority and where relevant, harbour authority, local fisheries committee, petroleum licensing authority SI 507 1991 reg 4	Referred to but not specified in Act may be in related instruments Schedule 1, para. 2 (5) of EPA	Published within 28 day period beginning 14 days after application is made: SI 507 1991 Reg 5	Nothing specified, probably by written submission	Not specified
Transfer of authorisations s. 9 (1) of EPA	No provision for consultation	No provision for participation	Nothing specified	Written submission	Not specified
Variation of authorisations by enforcing authority s. 10 (2) of EPA	Referred to but not specified in Act may be in related instruments	Referred to but not specified in Act may be in related instruments	The holder shall advertise the action in the manner prescribed in regulations made by the Secretary of State. Schedule 1, para. 6 (2)	Nothing specified	Not specified
Variation of conditions etc: applications by holders of authorisations S. 11 (1) of EPA	Referred to but not specified in Act may be in related instruments	Referred to but not specified in Act may be in related instruments	The holder of the authorisation shall advertise the application in the manner prescribed in regulations made by the Secretary of State. Schedule 1, para. 7 (2)	Nothing specified	Not specified
Revocation of authorisation S. 12 (1) of EPA	No provision for consultation	No provision for participation	Nothing specified	Written submission	Not specified
Enforcement notices S. 13 (1) of EPA	No provision for consultation	No provision for participation	Nothing specified	Written submission	Not specified
Prohibition notices ¹⁴ (1) of EPA	No provision for consultation	No provision for participation	Nothing specified	Written submission	Not specified
Appeals for the authorisation	No provision for consultation	No provision for participation	Notice to be served on those SEPA deems to have an interest, those who made representations to SEPA, statutory consultees reg 11 SI 507 1991 and where there is to be a public hearing it has to be advertised in a newspaper in the locality at least 21 days before the hearing reg 13 SI 507 1991	Written submission or in the form of hearing	Not specified
Waste management licences S. 35 (1) of EPA See also table four	The appropriate planning authority and the Health and Safety Executive, SNH	Not mentioned	Nothing specified	Nothing specified, probably by written submission	Need for planning consent Take account of submissions from statutory consultees
Variation of waste management licences Conducted by the	The owner, lessee or occupier of any land; and the holder of licence	Not specified	By notice serve on everyone deemed appropriate by SEPA	Written submission	Need for planning consent

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Environment Protection Act 1990, S. 37 (1) of EPA See also table four					
Revocation of waste management licences S. 38 (2) of EPA See also table four	No provision for consultation	No provision	By notice serve on everyone deemed appropriate by SEPA	Written submission	Not specified
Suspension of waste management licences S. 38 (6) of EPA See also table four	No provision for consultation	No provision	By notice serve on everyone deemed appropriate by SEPA	Written submission	Planning consent, conditions of licence
Surrender of waste management licences S. 39 (1) of E See also table four PA	Appropriate planning authority	No provisions	Nothing specified	Nothing specified, probably by written submission	Planning activities Take account of representations from planning authority
Transfer of waste management lic See also table four ences S. 40 (2) of EPA See also table four	No provision for consultation	No provision for participation	Nothing specified	Written submission	Not specified
Public registers S. 64 (1) of EPA	No provision for consultation	No provision for participation	Nothing specified	Not specified	Not specified
Appeals regarding waste management licences	No provision for consultation	No provision for participation	Nothing specified	Written process or hearing	
Appeals regarding to Restrictions and prohibitions on serving remediation notices	No provision for consultation	No provision for participation	Nothing specified	Nothing specified	

Annex Two: Statutory Obligations for Public Involvement

Table One: Water Environment and Water Services Act

Name of exercises related to water environment and water service	Initial matters	Information provided	How provided
Register of protected areas	SEPA must, for each river basin district—(a) by 22nd December 2004 prepare, and (b) thereafter maintain, a register of the protected areas lying (whether wholly or partly) within the district in accordance with regulations made by the Scottish Ministers. S. 7 (1) of Water Environment and Water Service Act 2003; r. 2 (1) of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004	<p>A description of all bodies of water identified under section 6.</p> <p>2. A description of all bodies of water designated— (a) for the protection of economically significant aquatic species, including those designated under— (i) Council Directive 79/923/EEC of 30th October 1979 on the quality required of Shellfish Waters; and (ii) Council Directive 78/659/EEC of 18th July 1978 on the quality of freshwaters needing protection or improvement to support fish life; (b) as recreational waters, including those designated under Council Directive 76/160/EEC of 8th December 1975 concerning the quality of bathing water; and (c) as nutrient sensitive areas, including those designated as— (i) vulnerable zones under Council Directive 91/676/EEC of 12th December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, and (ii) as sensitive areas under Council Directive 91/271/EEC of 21st May 1991 concerning urban waste water treatment.</p> <p>3. A description of all areas designated for the protection of habitats and species where the maintenance or improvement of the status of water is an important factor in the protection of those habitats or species, including such areas designated under— (a) Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora; and (b) Council Directive 79/409/EEC of 2nd April 1979 on the conservation of wild birds.</p> <p>4. A map indicating the location of the protected area.</p> <p>5. A description of the legislation (including Community legislation) under which the protected area has been identified or designated.</p>	<p>When available</p> <p>SEPA must make the register available, at all reasonable times, for public inspection free of charge. S. 7 (6) of Water Environment and Water Service Act 2003;</p> <p>Form in which register maintained Not prescribed SEPA may prepare and maintain the register in any form. r. 2 (3) of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004; r. 33 (4) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p> <p>Publication of existence of register</p> <p>SEPA shall publish the register on its website. r. 2 (3) of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004</p>
Register of controlled activities	SEPA to maintain register of activities listed in next column except where information is deemed to be confidential	<p>(a) any application made to SEPA for an authorisation;</p> <p>(b) any notice to the applicant by SEPA under regulation 20 or 26;</p> <p>(c) any advertisement published pursuant to regulation 13 and any representations made by any person in response to such an advertisement, other than representations which the person who made them requested should not be placed in the register;</p> <p>(d) in a case where any such representations are omitted from the register at the request of the person who made them, a statement by SEPA that representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations in question);</p> <p>(e) any authorisation granted, or deemed to be granted, under these Regulations;</p> <p>(f) any authorisation imposed by SEPA;</p> <p>(g) any application made to SEPA for the variation, transfer or surrender of an authorisation;</p> <p>(h) any variation, transfer and surrender of any authorisation granted by SEPA;</p> <p>(i) any suspension or revocation of an authorisation granted by SEPA;</p>	<p>When to be available</p> <p>SEPA must make the register available, at all reasonable times, for public inspection free of charge. S. 7 (6) of Water Environment and Water Service Act 2003; r. 33 (3) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p> <p>Form in which maintained</p> <p>The register maintained by SEPA may</p>

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		<p>(j) any notice issued by SEPA withdrawing or modifying a variation notice, a notice of surrender or a notice of suspension or revocation.</p> <p>(k) any enforcement notice, issued by SEPA;</p> <p>(l) any notice issued by SEPA withdrawing or modifying any enforcement notice;</p> <p>(m) any notice of appeal against a decision by SEPA or a notice served by it and of the documents relating to the appeal mentioned in paragraph 2(a), (d) and (e) of Schedule 9;</p> <p>(n) any representations made by any person in response to a notice given under paragraph 6 of Schedule 9, except where the person making the representation has requested that the representation be omitted from the register;</p> <p>(o) where paragraph (n) applies a statement that representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations);</p> <p>(p) any written notification of the determination by the Scottish Ministers of an appeal and any report accompanying any written notification;</p> <p>(q) any monitoring information relating to the carrying on, or the causing or permitting of the carrying on, of a controlled activity under an authorisation granted by SEPA which has been obtained by it as a result of its own monitoring or furnished to it in writing by virtue of a condition of the authorisation or under regulation 32(2);</p> <p>(r) in a case where any monitoring information is omitted from the register by virtue of regulation 34, a statement by SEPA, based on the monitoring information from time to time obtained by or furnished to it, indicating whether or not there has been compliance with any relevant condition of the authorisation;</p> <p>(s) any other information furnished in compliance with a condition of the authorisation, a variation notice, enforcement notice, suspension notice or works notice, or by virtue of regulation 32(2);</p> <p>(t) any direction given to SEPA under any provision of these Regulations; and</p> <p>(u) convictions for offences under these Regulations.</p>	<p>be kept in any form.</p>
<p>Application for determination of commercial confidentiality of information r. 35 WEWS (Controlled Activities) (Sc) Regs</p>	<p>Where information is required applicant can apply for a determination that the information is commercially confidential</p> <p>If SEPA receives info that it thinks may be commercially confidential it has to tell the applicant and give them an opportunity to apply (r. 36)</p>	<p>Time Limits</p> <p>SEPA to decide within 28 days of application being made. Failure to do so deemed to be rejection of application</p> <p>Restraints on decision making</p> <p>Commercially confidential information only to be included in register with consent of business operator or if it must be included in pursuance of a direction under reg. 39 Information is only commercially if SEPA has determined that putting it on the register would prejudice to an unreasonable degree the commercial interests of that individual or business. (r. 39. The Scottish Ministers may give to SEPA a direction as to specified information, or descriptions of information, which the public interest requires to be included in the register, notwithstanding that the information may be commercially confidential.)</p>	

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Regulatory activity			
Name of exercises related to water environment and water service	Initial application	Determination of the license or application	Appeals on decisions
Water Use Licence	<p>Application process</p> <p>Application made in writing in such form as SEPA may require, and accompanied by–(a) any charge prescribed in accordance with Schedule 5; and (b) such information in such form as SEPA may reasonably require. r. 12 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Who applies</p> <p>Person wanting to conduct controlled activity.</p> <p>Notification of application</p> <p>required where SEPA considers that the controlled activity has or is likely to have a significant adverse impact on the water environment. SEPA to serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served. form of the advertisement to specified in notice together with the text to be included in the advertisement; and the publications or locations in which the advertisement should be placed; and (d) the dates between which the advertisement should be placed r. 13 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notice to specify that those affected have 28 days to make written representations to SEPA</p>	<p>Determination of application</p> <p>Opportunity to comment</p> <p>Any member of public has 28 days in which to submit written comments to SEPA from date of advertisement of application (r. 13) and SEPA must take these into account (r 13 (5))</p> <p>Other submissions and info.</p> <p>SEPA can request any further info it needs to be supplied within a set period or can carry out inspections r. 14 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Other things to be taken into account</p> <p>the risk to the water environment posed by the carrying on of the activity referred to in the application;(b) what steps may be taken to ensure efficient and sustainable water use;(c)–(i) the legislation referred to in Part 1 of Schedule 4, and (ii) regulation 24(5); and(d) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4. r. 15 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>SEPA may, in authorising such an activity, impose such conditions as it considers necessary or expedient for the purposes of protection of the water environment. r. 8 (2) of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Who decides</p> <p>.SEPA on the basis of the information before it. R.15</p> <p>Process</p> <p>Nothing specified appears to be written process on the basis of written submissions</p> <p>Time limits on decision making</p> <p>r. 16 of the WEWS (Controlled Activities) (Sc) Regs 2005 (1) for an authorisation under regulation 8, within 30 days; and(b) for an authorisation under regulation 9 within 4</p>	<p>Who may appeal</p> <p>r. 46 (a) applicant whose application refused or deemed to be refused or who has been granted a form of authorisation which is different from the form of authorisation which that person believes ought to have been granted; or who is aggrieved by the terms and conditions attached to that person's authorisation (i.e. only applicants can appeal)</p> <p>Time limit</p> <p>Must be within 3 months of decision being made</p> <p>Appeal is to</p> <p>Scottish Ministers</p> <p>Start of process</p> <p>written notice together with the documents specified Para. 1, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notification of others</p> <p>When appeal made a copy is to be sent to SEPA a copy of that notice together with copies of the documents specified. Para. 1, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>within 14 days of receipt of copy of the notice of appeal SEPA to notify–(a) any person who made representations to SEPA with respect to the subject matter of the appeal; and (b) any person who appears to SEPA to be affected or likely to be affected by, or have an interest in, the subject matter of the appeal. Para. 6, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>SEPA shall, within 14 days of sending a notice under paragraph 6–(a) notify the Scottish Ministers of the persons to whom and the date on which the notice was sent; Para. 8, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p>

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		<p>months, beginning with the date on which it receives the application; unless otherwise agreed in writing with the applicant r. 16 This excludes periods of advertisement or periods when SEPA waiting for requested information r. 16 Failure to decide within time limits is equated to a refusal of the application r. 16</p> <p>Notification of decision.</p> <p>SEPA to notify applicant – if application refused reasons for refusal to be given r 15</p> <p>May grant it as an authorisation or licence with or without conditions. Under regs 8 & 9</p> <p>Notification to public</p> <p>Entry in public register detailed above. R 33</p> <p>Public participation is then limited to a right to make written submissions.</p>	<p>Proceedings</p> <p>May be in writing (below) or oral hearing (immediately below)</p> <p>Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they must do so in any case where a request is made by the appellant or SEPA to be so heard. Para. 10, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>SEPA shall within 14 days of sending a notice under paragraph 6 indicate whether it wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations. Para. 8, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notification of hearings Only applies to those held wholly or partially in public</p> <p>In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers shall, at least 21 days before the date fixed for the holding of the hearing– (a) publish a copy of the notice mentioned in paragraph 12 in a newspaper circulating in the locality in which the controlled activity is carried on or is to be carried on; (b) serve a copy of that notice on every person mentioned in paragraph 6 who has made representations to the Scottish Ministers. Para. 13, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Who may be heard</p> <p>the appellant and SEPA and any other persons that the appointed person permits to be heard.</p> <p>Notification of decision</p> <p>a report to the Scottish Ministers in writing which shall include the conclusions and recommendations of that person or the reasons for not making any recommendation. Para. 18, Schedule 9 of the WEWS (Controlled Activities)(Sc) Regs 2005</p> <p>Written proceedings Para. 20, Schedule 9 of the WEWS (Controlled Activities) (Sc) Regs 2005</p>
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			<p>SEPA to submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents and copy to appellant</p> <p>The appellant shall make any further representations by way of reply not later than 28 days after the date of submission of those representations by SEPA and copy to SEPA</p> <p>Appellant and SEPA to have at least 14 days to respond to representations from the notified third parties</p> <p>Time limits may be extended as agreed with the parties and further exchanges of representations may be required.</p> <p>Notification of decision</p> <p>notice to the appellant of determination of the appeal and reasons for that determination, plus copy of any report. Also to be given to SEPA and to anyone else notified of the appeal or who made representations Para. 26 and 27 Schedule 9 of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p>
		<p>Power of Scottish Ministers</p> <p>r. 17 – may direct SEPA to refer any decision to them for determination.</p>	
Request for variation of water use licence	<p>A responsible person or operator may apply to SEPA for a variation of an authorisation granted under regulation 8 or 9. r. 21 (1) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p> <p>Notification of application</p> <p>required where SEPA considers that the controlled activity has or is likely to have a significant adverse impact on the water environment. SEPA to serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served. form of the advertisement to specified in notice together with the text to be included in the advertisement; and the publications or</p>	<p>Variation by SEPA</p> <p>Decision making process</p> <p>Where SEPA begins process</p> <p>Nothing specified except SEPA to serve notice on applicant specifying–(a) the variations being made to the authorisation; and (b) the date on which the variations are to take effect which shall not be less than 3 months from the date on which the notice was served. r. 20 of the WEWS (Controlled Activities) (Sc) Regs 2005 (</p> <p>(3) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation</p> <p>No provision for consultation or participation save under appeals.</p>	<p>Who may appeal</p> <p>The following persons, namely:– (d) a person who has been served with a variation notice under regulation 20(2) or is aggrieved by the conditions attached to that variation notice; (e) a person who has been refused the variation of an authorisation on request under regulation 21;</p> <p>Time limits for appealing two months beginning with the date of the notice which is the subject matter of the appeal beginning with the date of the notice which is the subject matter of the appeal.</p> <p>Procedures</p> <p>Apply the appeal procedure above</p>

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	<p>locations in which the advertisement should be placed; and (d) the dates between which the advertisement should be placed r. 13 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notice to specify that those affected have 28 days to make written representations to SEPA</p> <p>SEPA may vary terms under r 19</p>	<p>Where applicant applies for variation</p> <p>Follow same process as for applications above.</p> <p>Decision options Grant or refusal – refusal to be accompanied by decisions r. 21 (3)-(5) of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notification of decision</p> <p>Notice served on applicant specifying–(a) the variations being made to the authorisation; and (b) the date on which the variations are to take effect, ed. (5) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.</p> <p>Notification to public</p> <p>Entry in public register detailed above. R 33</p> <p>Participation limited to right to make written representations as above.</p>	
<p>Transfer of water use licence</p>	<p>Application by</p> <p>Holder of authorisation and transferee</p> <p>r. 22 (1) of the WEWS (Controlled Activities) (Sc) Regs 2005</p>	<p>Decision making process</p> <p>Opportunity to participate</p> <p>None save that SEPA may require parties to provide more info in accordance with r. 14</p> <p>Issues to be taken into account</p> <p>SEPA must be satisfied that the person to whom the authorisation is to be transferred will secure compliance with the terms, limitations and conditions specified in the authorisation, or relevant part thereof. r. 22 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Time limits on decision making</p> <p>2 months unless longer agreed with applicant in writing if fails to make a determination in this time then transfer granted r. 22 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notification of decision</p>	<p>Who may appeal 46. Appeals to the Scottish Ministers The following persons, namely:– (f) a person whose application under regulation 22 for SEPA to effect the transfer of an authorisation has been refused; or who is aggrieved by the conditions attached to that person's authorisation to take account of such a transfer;</p> <p>Time limits on appealing</p> <p>4. Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given– Within two months of the date of the notice which is the subject matter of the appeal;</p> <p>Procedures</p> <p>Apply the appeal procedure demonstrate above</p>

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		<p>To applicant along with reasons for any refusal r. 22 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>If application granted copy of amended authorisation to be sent to transferee, or partial transfers give new authorisation to the new responsible person and copy of amended authorisation to existing responsible person.</p> <p>r. 23 of the Water Environment (Controlled Activities)(Scotland) Regulations 2005 .</p> <p>Notification to public</p> <p>Entry in register under r.33</p>	
<p>Surrender of water use licence</p>	<p>Where an authorisation granted under regulation 8 or 9 is in force and either-(a) it is intended to cease the authorised activity; or (b) the authorised activity has ceased.</p> <p>r. 24 (1) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p> <p>Who applies</p> <p>Authorisation holder</p> <p>Notification of application</p> <p>required where SEPA considers that the controlled activity has or is likely to have a significant adverse impact on the water environment.</p> <p>SEPA to serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served.</p> <p>form of the advertisement to specified in notice together with the text to be included in the advertisement; and the publications or locations in which the advertisement should be placed; and (d) the dates between which the advertisement should be placed</p> <p>r. 13 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notice to specify that those affected have 28 days to make written representations to SEPA</p>	<p>Decision making process</p> <p>Opportunity to comment</p> <p>Any member of public has 28 days in which to submit written comments to SEPA from date of advertisement of application (r. 13) and SEPA must take these into account (r 13 (5))</p> <p>Other submissions and info.</p> <p>SEPA can request any further info it needs to be supplied within a set period or can carry out inspections r. 14 of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Must also assess risk to environment and direct steps to be taken to minimise it.</p> <p>Time limits on decision making</p> <p>Decisions to be made within two months or within such longer period as it may agree with the applicant in writing.. This excludes periods of advertisement or periods when SEPA waiting for requested information Failure to decide in time limits is taken to be a grant of the application. 25 of WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Decision making process</p> <p>Not specified – presumably in writing taking account of written submissions to it. – apparent contradiction between advertising and lack of information on decision making.</p> <p>Notification of decision</p> <p>(3) Where SEPA grants an application, the notice given</p>	<p>Who may appeal</p> <p>46. Appeals to the Scottish Ministers</p> <p>The following persons, namely:-</p> <p>(g) a person whose application to surrender an authorisation under regulation 24(3) has been refused or who is aggrieved by the conditions attached to that authorisation in order to take account of the surrender;</p> <p>Time limits on appealing</p> <p>4.</p> <p>Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given-</p> <p>Two months beginning with the date of the notice which is the subject matter of the appeal;</p> <p>Procedures</p> <p>Apply the appeal procedure demonstrate above</p>

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		<p>under paragraph (1) shall specify the date on which the authorisation ceases to have effect.</p> <p>(4) In the case of a partial surrender, if SEPA is of the opinion that it is necessary to vary the authorisation to take account of the surrender, it shall send a notice to the applicant specifying– (a) variations to the authorisation consequent on the partial surrender; and (b) the date on which the authorisation, as varied, takes effect.</p> <p>Notification to public</p> <p>Entry in register under r. 33</p>	
Suspension and revocation of water use licence	SEPA may at any time suspend or revoke an authorisation (in whole or in part) by serving a notice on the responsible person or operator, as the case may be. r. 26 (1) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005	<p>Notification</p> <p>(2) A notice under paragraph (1) shall specify–(a) in the case of a partial suspension or partial revocation, the extent to which the authorisation is being revoked or suspended; (b) the date on which the suspension or revocation shall take effect, which shall be at least 28 days after the date on which the notice is served; and (c) the reasons for the suspension or revocation.</p> <p>r. 26 (2)-(3) of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p> <p>Notification to public</p> <p>Entry in register under r. 33</p> <p>No provision of consultation or participation save re appeals</p>	<p>Who may appeal</p> <p>46. Appeals to the Scottish Ministers The following persons, namely:– (h) a person whose authorisation has been suspended or revoked (in whole or in part) under regulation 26;</p> <p>Time limits on appeal</p> <p>4. Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given– ; appeal must be made , before the date on which the revocation takes effect;</p> <p>Procedures</p> <p>Apply the appeal procedure demonstrate above</p>
Enforcement notice	SEPA may serve an enforcement notice where there has been or is likely to be a contravention of an authorisation of a controlled activity, significant adverse impacts on the water environment or direct or indirect discharge into groundwater of any of the substances listed in Schedule 2. R. 28 of the WEWS(Controlled Activities) (Sc) Regs 2005	<p>Obligation to consult prior to serving notice</p> <p>SEPA where it is reasonably practicable to do so to consult the owner or occupier of land which will be affected by the notice; and(b) any person who might be required under paragraph (2) to grant or join in granting any rights, in respect of the rights which that owner, occupier, or person, may be required to grant. r. 30 (3) of the WEWS (Controlled Activities) (Sc) Regs 2005</p> <p>Notification</p> <p>notice on the responsible person, or the operator, as the case may be, content of notice specified includes the steps to be taken by the person responsible or the operator which SEPA considers to be necessary or appropriate to prevent,</p>	<p>Who may appeal</p> <p>46. Appeals to the Scottish Ministers The following persons, namely:– (i) a person on whom a notice has been served under regulation 28(2), or who is aggrieved by the terms of that notice; and</p> <p>Time limits on appealing</p> <p>4. Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given– Within 21 days beginning with the date of the notice which is the subject matter of the appeal</p>

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		<p>mitigate or remedy the contravention of the authorisation, the adverse impacts on the water environment or the direct or indirect discharge into groundwater.</p> <p>.</p> <p>(5) SEPA may impose such time limits as it considers appropriate in a notice under paragraph (2) and may describe a time limit by reference to the completion of steps or any other requirement specified in that notice. r. 28 of the Water Environment (Controlled Activities)(Scotland) Regulations 2005</p>	<p>Procedures</p> <p>Apply the appeal procedure demonstrated above</p>
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Table Two: Urban Waste Water Treatment Directive

Name of exercises related to urban waste water treatment	Initial application	Determination of the license or application	Appeals on decisions Not all of information specified regarding appeals procedure
<p>Discharges of treated urban waste water subject to r. 6 of the Urban Waste Water Treatment (Scotland) Regulations 1994</p>	<p>An application to SEPA. S. 34 (1), Control of Pollution Act 1974</p> <p>(See also comment at end re applicability of PPC procedures)</p> <p>Notifying to public</p> <p>Obligation to publish in the prescribed form notice of the application or instrument in two successive weeks in a newspaper or newspapers circulating in the area or areas in which the places are situated at which it is proposed in the application that the discharges should be made or, as the case may be, at which discharges are the subject of consent given by the instrument, and the area or areas appearing to SEPA to be in the vicinity of any controlled waters which SEPA considers likely to be affected by the discharges and in Edinburgh Gazette S. 36 (1), Control of Pollution Act 1974</p> <p>Notifying to particular bodies</p> <p>To Scottish Water and to each local authority in whose area it is proposed in the application that a discharge should be made or in whose area a discharge is the subject of consent given by the instrument and, in the case of an application or instrument relating to coastal waters, relevant territorial waters or an application relating to waters outside the seaward limits of relevant territorial waters, to the Secretary of State. S. 36 (1) (b), Control of Pollution Act 1974</p>	<p>Actual decision making</p> <p>It shall be the duty of SEPA, (a) to give the consent either unconditionally or subject to conditions or to refuse it; and (b) not to withhold the consent unreasonably. S. 34 (2), Control of Pollution Act 1974</p> <p>Time limits on decision making</p> <p>four months beginning with the date when an application for consent is received by SEPA, or such longer period agreed upon in writing between SEPA and the applicant. Failure to adhere to time limits means consent applied deemed to be refused. S. 34 (2), Control of Pollution Act 1974</p> <p>If it appears to SEPA that a person has, without SEPA's consent, caused or permitted matter to be discharged in contravention of section 30F(2) to (4) of this Act and that a similar contravention by that person is likely, SEPA may if it thinks fit serve on him an instrument in writing giving its consent, subject to conditions specified in the instrument, for discharges of a kind so specified; but consent given in pursuance of this subsection shall not relate to any discharge which occurred before the instrument giving the consent was served on the recipient of the instrument. S. 34 (3), Control of Pollution Act 1974</p>	<p>Who may appeal</p> <p>Limited to applicants who may appeal conditions or notice contain terms or the period specified which are unreasonable</p> <p>Appeal is to</p> <p>Secretary of State</p> <p>Start of process</p> <p>Nothing specified</p> <p>Notification of others</p> <p>Secretary of State has to secure that SEPA has served notice of the reference on the persons who made the representations and to take account of any further written representations relating to the application which are received by him from those persons within a prescribed period.</p> <p>Proceedings</p> <p>No detail on whether proceedings are written or oral</p> <p>At any stage of the proceedings on a reference to the Secretary of State in pursuance of this section he may, and shall if so directed by the Court of Session, state in the form of a special case for the decision of the court any question of law arising in those proceedings. . S. 39 (6), Control of Pollution Act 1974</p> <p>Notification of decision</p> <p>Nothing specified</p>
<p>Revocation of consents and alteration and imposition of conditions</p>	<p>SEPA may from time to time review any consent given in pursuance of section 34 of this Act and the conditions, if any, to which</p>	<p>Notification</p> <p>Required to make revocation effective</p>	<p>Appeals process</p> <p>As above</p>

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	<p>the consent is subject; and subject to the following section SEPA may revoke the consent if it is reasonable to do so or make reasonable modifications of the said conditions, or, in the case of an unconditional consent, provide that it shall be subject to reasonable conditions specified in the notice. S. 37 (1), Control of Pollution Act 1974</p> <p>Each instrument signifying the consent of SEPA in pursuance of section 34 of this Act shall specify a period during which no notice under s.37 (1) or (2)(c) is to be served in respect of the consent without the written agreement of a person making a discharge in pursuance of the consent; and the said period shall be a reasonable period of not less than four years beginning with the day on which the consent takes effect. S. 38 (1), Control of Pollution Act 1974</p> <p>SEPA shall at regular intervals review and, if necessary for the purposes of complying with this regulation, modify or revoke consents given under the said Part II. R. 6 (3), The Urban Waste Water Treatment (Scotland) Regulations 1994</p> <p>Restriction on variation and revocation of consent and of previous variation</p>	<p>Matters to be taken into account by SEPA Directions from Secretary of State S. 37 (2), Control of Pollution Act 1974</p> <p>Time limits on serving notices Each notice served by SEPA (except a notice which only revokes a consent or conditions) shall specify a period during which a subsequent notice in pursuance of that subsection which alters the effect of the first-mentioned notice is not to be served without the written agreement of a person making a discharge in pursuance of the consent to which the first-mentioned notice relates; and the said period shall be a reasonable period of not less than four years beginning with the day on which the first-mentioned notice is served. S. 38 (2), Control of Pollution Act 1974</p> <p>Time limits on decision making A restriction imposed under subsection (1) or (2) of this section shall not prevent the service by SEPA of a notice by virtue of section 37(1) or (2)(c) of this Act in respect of a consent given under section 34(3) of this Act if—(a) the notice is served not more than three months after the beginning of the period specified in section 36(1)(c) of this Act for the making of representations with respect to the consent; and (b) SEPA or, as the case may be, the Secretary of State considers, in consequence of any representations received by it or him within that period, that it is appropriate for the notice to be served. S. 38 (4), Control of Pollution Act 1974</p>	
Discharges of certain industrial waste water into receiving waters	This regulation applies to discharges of biodegradable industrial waste water from plants representing 4,000 population equivalent or more belonging to the industrial sectors listed in Schedule 5 which do not enter urban waste water treatment plants before discharge to receiving waters. R. 8 (1), The Urban Waste Water Treatment (Scotland) Regulations 1994	Apply the application procedure above, in addition... SEPA also obliged to secure that any authorisation granted in respect of that process includes conditions in respect of the discharge of such waste water on or after 31 December 2000 which are appropriate to the nature of the industry concerned. R. 8 (3), The Urban Waste Water Treatment (Scotland) Regulations 1994	Apply the appeals procedure above
Name of water environment and water service exercise	Initial matters	Information provided	How provided
Information required in connection with implementation of the Directive	It shall be the duty of every local authority and SEPA to give to the Secretary of State such information as he may by notice require to enable him to fulfil the obligations imposed on him. R. 13 (1), The Urban Waste Water Treatment (Scotland) Regulations 1994	(a) under Article 16 of the Directive to publish every two years a situation report on the disposal of urban waste water and sludge in Scotland; and (b) under Article 17 of the Directive to establish, update and provide the Commission with information on a programme for implementation of the Directive. R. 13 (1), The Urban Waste Water Treatment (Scotland) Regulations 1994	Any such notice may specify the form and manner in which, the period within which or the times at which such information is to be given. R. 13 (2), The Urban Waste Water Treatment (Scotland) Regulations 1994

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r. 12 SEPA shall keep available , at all reasonable times, for inspection by the public free of charge–(a) the maps referred to in the definition of “estuary” in regulation 2(1), which relate to estuaries ; (b) [...] (c) particulars of certificates issued by it under regulations 4(2), 5(3) and 5(5)(b). (5 (3) relates to discharges into sensitive areas 5(5)(b) to certification of certain areas

r. 4(2) SEPA may certify that the establishment of a collecting system for urban waste water is not justified because it would produce no environmental benefit;

r5 (3) relates to discharges into sensitive areas 5(5)(b) to certification of certain areas

In both of these cases there is no mention of decision making processes or appeals processes

NB A case decided in January 2006 *United Utilities Water plc v. Environment Agency* High Court of England and Wales (Queen's Bench) 13 January 2006 noted that the PPC Regulations apply to some categories of waste water treatment facilities. Operators will then have to apply for authorisations under that regime. Both parties have lodged notices of appeal, so it is possible that the decision will be overturned. The PPC Regulations already apply to waste water from industrial plants

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Table Three: Pollution Prevention and Control (Scotland) Regulations 2000

Name of PPC exercises	Initial application	Determination of the license	Appeals on decisions
<p>Industrial operations covered by PPC regs not detailed separately below. (listed in Schedule 1 Part 1 – covers Energy Industry, mineral, Oil and Gas refining, metal production and processing, mineral industries, chemical industries, pulp & paper, carbon; tar & bitumen, coating and textile printing, dye, ink & coating production; timber, rubber, treatment of animal & vegetable matter & food production</p>	<p>r.7 & Sched 4 paras 1-3</p> <p>application in writing (or electronic form acceptable to SEPA containing information prescribed in the schedule</p> <p>Notifying the public</p> <p>Subject to paragraph 23, the applicant shall, within a period of 28 days beginning 14 days after the day on which the application is made, advertise the application–(a) in the case of an application for a permit to operate an installation or Part A mobile plant, in one or more newspapers circulating in the locality in which the installation or mobile plant covered by the application will be operated; and (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant, in the Edinburgh Gazette. para. 5, Schedule 4 of PPCR paras 6, 6A & 7 details the information to be given in the notice</p> <p>Notifying particular bodies</p> <p>Sched 4 para 9 SEPA shall, within 14 days of receiving an application for a permit, give notice of the application to</p> <p>Re Part A activities – the Health Board, the Food Standards Agency, where it will release substances into a sewer – Scottish Water, to an SSI – SNH or English Nature as appropriate, to a harbour – the harbour authority, nuclear installations or COMA activities – the Health and Safety Executive, the local authority; re Part B installations, impacting on SSSI – SNH or English Nature as appropriate</p> <p>For all applications any other persons the Scottish Ministers note.</p>	<p>Opportunity to comment:</p> <p>Those notified under paras 9 & 11 have 28 days within which to make representations to SEPA (Sched 4 para 12)</p> <p>Anyone else has 28 days from the date of advertisement of the application to make representation (Sched 4 para 12)</p> <p>All have 28 days from the advertisement of the draft determination under paras 5 & 15 (Sched 4 para 12)</p> <p>What SEPA must take into account when making decisions (Sched 4 para 13)– the above representations plus</p> <p>COMA safety reports and determinations under Arts 5,6 & 7 of Council Directive 85/337/EEC</p> <p>Time limits on decision making</p> <p>Sched 4 para 15</p> <p>SEPA’s decision must be made and notified to the applicant within 4 months of the application being received unless otherwise agreed with the applicant. (Certain time periods can be discounted from this see para 15 (2) Sched 4) These time periods apply to both determinations generally and draft determinations for new installations</p> <p>Advertising decision</p> <p>Draft determinations to be advertised on SEPA web page para 15 B sched 4 and content of adverts specified in para 15C includes notification of right of anyone to make written or electronic representations to SEPA within 28 days from date of advertisement also must explain the decision making process and where the final decision will be registered/advertised</p> <p>Actual decision making</p> <p>Done by SEPA following paper representations.</p> <p>SEPA has power to grant permit with or without conditions as specified in the regulation 9.</p> <p>If it proposes to grant a permit with conditions it must notify the owner, tenant or occupier of land to which it is likely</p>	<p>Who may appeal</p> <p>Limited to applicants who may appeal conditions or refusal of permits – r 22</p> <p>Appeal is to</p> <p>Scottish Ministers</p> <p>Start of process</p> <p>Written notice to Scottish Ministers together with required information Sched 8 paras 1 & 2 within 6 months of initial decision copied to SEPA</p> <p>Notification of others Sched 8 para 3</p> <p>Within 14 days of receipt of copy SEPA to notify the bodies listed in Sched 4 para 9,. Any person who made representations earlier in the process & anyone with a particular interest (restricted group)</p> <p>Content of notice specified</p> <p>Scottish Ministers to be advised of who notice sent to within 14 days of notice being given</p> <p>Proceedings</p> <p>May be by way of hearing (immediately below) or dealt with in writing (below)</p> <p>Hearings Sched 8 para 4</p> <p>the Scottish Ministers <i>may</i> afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them (the “appointed person”) and they shall do so in any case where a request is duly made by the appellant or SEPA to be so heard</p> <p>Hearings may be public or private</p> <p>Where a hearing is to be held SEPA and applicant to have 28 days notice of when and where it will be held</p> <p>Notification of public hearings</p>

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		<p>rights will have to be granted to enable them to carry out works required to meet the permit conditions. Schedule 4 para 11.</p> <p>A permit shall not be granted if SEPA considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit or will not ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit. r. 7 (3) of PPCR</p> <p>How final decision is recorded/advertised</p> <p>In the appropriate register and advertised on SEPA's web (deduced from Sched 4 para 15)</p> <p>Power of Scottish Ministers (Sched 4 para 14) May require any particular application or type of application to be referred to them for decision. If so SEPA to inform applicant</p> <p>SEPA and applicant can appear before & be heard by the person appointed by the Scottish Ministers – this can be at discretion of Ministers but is mandatory where the applicant requests it. Request to be heard must be made within 21 days of the applicant being informed that the application has been referred to the Scottish Ministers.</p> <p>Proceedings for hearings in Schedule 8 paras 4-10 as modified by Schedule 4 para 14 (5).</p> <p>Scottish Ministers also to notify other countries likely to be affected by any decision. Sched 4 para 17 of draft determinations and they have 35 days to comment under para 18</p> <p>Type of participation – limited right to comment and make submissions but not actual participation in decision making. Decision making is left to SEPA on the basis of the information it has in front of it. While it has to take account of that information that obligation is not the same as an obligation to actually involve the public in decision making through eg open meetings.</p>	<p>If hearings wholly or partly public then where it relates to Part A installations or mobile plant Scottish Ministers to publish a copy of the notice mentioned in sub-paragraph (3) in a newspaper circulating in the locality in which the installation or mobile plant is to operate and serve a copy of that notice on any of the people notified earlier in the proceedings.</p> <p>Who is entitled to be heard at a hearing:</p> <p>SEPA, Appellant and Any person who had to be notified of the appeal as described above.</p> <p>(Very restricted group)</p> <p>Decisions to be reported to Scottish Ministers in writing or electronically as agreed.</p> <p>Written proceedings (Sched 8 para 5)</p> <p>SEPA to submit written representations to Ministers within 28 days of receipt of notification (copied to appellant) Appellant has 17 days to respond (copied to SEPA) Appellant and SEPA to have at least 14 days to respond to representations from the notified third parties Time limits can be extended by Scottish Ministers and require further representations to be exchanged between parties.</p> <p>Notification of decision para 6</p> <p>To be given to appellant, SEPA and any of the persons notified under para 3</p>
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<p>SED installations (conducted by Solvent Emission (Scotland) Regulations 2004)</p>	<p>An application for installations made to SEPA r. 7 of PPCR; r 3 (6) of SER</p> <p>Notifying the public</p> <p>As above</p> <p>Notifying particular bodies</p> <p>As above</p>	<p>Apply procedures above</p> <p>Also note</p> <p>SEPA has power to grant permit with or without conditions as specified in the regulation 9 and 9C (giving effect to Solvent Emissions Directive) NB note in addition to normal conditions conditions to be included for the purpose of preventing or reducing emissions of volatile organic compounds into air, soil and water as well as preventing the inclusion of solvents, or reducing the amount of solvents contained, in any products.</p>	<p>As above⁸</p>
<p>Waste Incineration Installation</p>	<p>An application for installations made to SEPA r. 7 of PPCR</p> <p>Notifying the public</p> <p>As above</p> <p>Notifying particular bodies</p> <p>As above</p>	<p>Apply the procedure above but permit can only be granted if planning permission has been granted where that is required and operator is deemed to be fit and proper (reg7)</p> <p>See also Waste Management Licensing procedures</p>	<p>Apply the procedure above</p>
<p>Landfill Sites</p>	<p>An application for installations made to SEPA r. 7 of PPCR</p> <p>Notifying the public</p> <p>As above</p> <p>Notifying particular bodies</p> <p>As above</p>	<p>Apply the procedure above, except Paragraph 5(b) of Part 1 of Schedule 4 and paragraph 4(8)(b) of Part 2 of Schedule 7 to the 2000 Regulations (requirements to advertise in the Edinburgh Gazette), shall not apply to landfills falling within paragraph (b) of Part A of Section 5.2 of Part 1 of Schedule 1 to those Regulations. r. 8 (3) of the Landfill (Scotland) Regulations 2003</p> <p>but permit can only be granted if planning permission has been granted where that is required and operator is deemed to be fit and proper (reg7)</p> <p>See also Waste Management Licensing procedures</p>	<p>Apply the procedure demonstrates above</p>
<p>Variation of permits</p>	<p>Start of process</p> <p>SEPA may at any time vary the conditions of a permit and shall do so if it appears to it at that time, whether as a result of a review under regulation 11, a notification under regulation 12 or otherwise, that regulations 8, 9 or 9C or regulation 10 of the 2003 Regulations require conditions to be included which are different from the</p>	<p>Advertisement</p> <p>Draft determination to be advertised where there is a substantial variation to be made to the operation of the installation</p> <p>Draft determinations to be advertised on web and wherever else deemed appropriate by SEPA. Content of advert specified includes how public can participate Sched 7 para</p>	

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	<p>subsisting conditions. r. 13 (1) of PPCR</p>	<p>7</p> <p>Where application likely to impact on another State information is to be sent to them via Scottish Executive for bilateral negotiation Sched 7 para 10</p> <p>Account to be taken of representations from States notified under para 10</p> <p>Time limits on decision making</p> <p>If no representations made or notice received that bilateral consultations have ended 7 days from end of period for representations Sched 7 para 6A</p> <p>Where representations are made 21 days from end of period for representations Sched 7 para 6A</p> <p>Notification of decision</p> <p>13 (5) SEPA to serve a "variation notice" on operator specifying the variations of the conditions of the permit and the date or dates on which the variations are to take effect Where it decides not to allow the variation SEPA shall also serve notice on the applicant (r13 (7))</p>	
<p>Variation of permits</p>	<p>Start of process</p> <p>Operator may apply for variation of conditions r. 13 (2)-(9) of PPCR</p> <p>Application to be made in writing or agreed electronic form and to contain info set out in Schedule 7 para 1 and must be accompanied by fee</p>	<p>Notification of public and statutory consultees</p> <p>Application to be advertised in local paper and for Part A installations in Edinburgh Gazette content of advert prescribed (Sched. 7 para 4(9))</p> <p>Notice to owners of land likely to be affected by a condition imposed by variation order – ie right has to be granted in relation to their land Sched 7 para 5</p> <p>Procedure for decisions</p> <p>Public and statutory consultees can make written representations within 28 days of advert Sched 7 para 4 (12) or date draft determination advertised SEPA to take account of representations Sched 7 para 4 (11)</p> <p>Draft determinations to be advertised on web and wherever else deemed appropriate by SEPA. Content of advert specified includes how public can participate Sched 7 para 7</p>	<p>Who may appeal</p> <p>Limited to those on whom a variation notice is served – r. 22</p> <p>Apply the procedure demonstrates above</p>

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		<p>Where application likely to impact on another State information is to be sent to them via Scottish Executive for bilateral negotiation Sched 7 para 10</p> <p>Account to be taken of representations from States notified under para 10</p> <p>Time limits on decision making</p> <p>4 months where consultation process applies and 3 months where it does not unless longer period agreed with operator</p> <p>Time when representations can be made is discounted from this time</p> <p>Failure to meet time limits is deemed rejection Schedule 7 para 7</p> <p>Notification of decision. SEPA to serve notice of decision to refuse variation or to serve "variation notice" specifying the variations of the conditions of the permit and the date or dates on which the variations are to take effect r. 13 PPC</p> <p>Scottish Ministers may decide to determine variation Sched 7 para 6</p>	
Variation of Landfill permit	As above	<p>As Above plus</p> <p>Reg 13 (4) Where an application is duly made under paragraph (2), SEPA shall determine, in accordance with regulations 8, 9 or 9C or regulation 10 of the Landfill Regs 2003, whether to vary the conditions of the permit.</p> <p>See also Waste Management Licensing procedures</p>	
Transfer of permits	<p>Operator and the proposed transferee to jointly make an application to SEPA to effect the transfer of all or part of operations. r. 14 of PPCR</p> <p>Application to be made in prescribed form and accompanied by permit and fee and if appropriate information to help consider whether transferee is fit and proper person.</p> <p>Where partial transfer have to identify parts to be transferred in application r. 14 of PPCR</p>	<p>Obligation to effect transfer</p> <p>(4) Subject to paragraph (5), SEPA shall effect the transfer unless it considers that the proposed transferee will not be the person who will have control over the operation of the installation or mobile plant covered by the transfer after the transfer or will not ensure compliance with the conditions of the transferred permit.</p> <p>(5) If application relates to a waste management activity, SEPA shall only effect the transfer if it is satisfied that the proposed transferee is a fit and proper person to carry out that activity.</p> <p>Notification</p> <p>(6)-(a) in the case of a partial transfer-(i) issuing a new permit to the proposed transferee which applies to the</p>	<p>Who may appeal</p> <p>Limited to applicant or those aggrieved by conditions attached to transfer – r 22</p> <p>Apply the procedure demonstrates above</p>

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		<p>transferred unit and, where the transfer applies to the operation of an installation or Part A mobile plant, the identified part of the site covered by the transfer and includes the conditions required by paragraph (7); and (ii) returning the original permit to the operator endorsed to record the transfer and varied to show the installation or installations or mobile plant and, where the transfer applies to the operation of an installation or Part A mobile plant, the site covered by the permit after the transfer and the conditions applying after the transfer required by paragraph (7); and (b) in the case of a transfer of the whole permit, causing the permit to be endorsed with the name and other particulars of the proposed transferee as the operator of the installation or mobile plant concerned, and the transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and, in the case of a partial transfer, the new permit.</p> <p>Matters to be taken into account (7) In the case of a partial transfer effected under this regulation, the conditions included in the new permit and original permit after the transfer shall be the same as the conditions included in the original permit immediately before the transfer in so far as they are relevant to any installation, site and mobile plant covered by the new permit or the original permit, as the case may be, but subject to such variations as, in the opinion of SEPA, are necessary to take account of the transfer.</p> <p>Time limits on decision making (8) two months beginning from the date on which SEPA receives an application or such longer period as agreed with the applicants in writing (or in electronic form), Failure to do so, if the operator notifies SEPA in writing (or in electronic form) that they treat the failure as such, be deemed to be a refusal of the application r. 14 (2)-(8) of PPCR</p>	
<p>Application to surrender a permit for a Part A installation or Part A mobile plant</p>	<p>operator may apply for full or partial surrender or permit r. 15 (2) of PPCR</p> <p>application must be accompanied by fee and contain prescribed information</p>	<p>Obligation to accept surrender</p> <p>(4) If SEPA is satisfied that such steps (if any) as are appropriate to avoid any pollution risk resulting from the operation and to return the site to a satisfactory state have been taken, it shall accept the surrender and give the operator notice of its determination and the permit shall cease to have effect or, in the case of partial surrender, shall cease to have effect to the extent surrendered, on the date specified in the notice of determination.</p>	<p>Who may appeal</p> <p>Limited to applicant or those aggrieved by conditions attached to surrender – r 22</p> <p>Apply the procedure demonstrates above</p>

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		<p>(Only pollution arising from the permitted activities is taken into account in making this determination.)</p> <p>Partial surrender new conditions (5) If, in the case of a partial surrender, SEPA is of the opinion that it is necessary to vary the conditions included in the permit to take account of the surrender, it shall specify the necessary variations in the notice of determination given under paragraph (4) and the variations specified in the notice shall take effect on the date specified in the notice.</p> <p>Obligation to refuse surrender (6) If SEPA is not satisfied as mentioned in paragraph (4), it shall give to the operator a notice of its determination stating that the application has been refused.</p> <p>Time limits on decision making</p> <p>3 months from the date on which the application is received or such longer period as agreed with the operator in writing (or in electronic form). (8) Failure to meet deadlines is, if the operator notifies SEPA in writing (or in electronic form acceptable to it) that the operator treats the failure as such, deemed to be a refusal of the application.</p> <p>Extension to time limit –</p> <p>Where SEPA serves notice to the applicant, requiring further information within a specified period that time can be deducted from the three month period.</p> <p>r. 15 (3)-(13) of PPCR</p>	
<p>Notification of surrender of a permit for a Part B installation or Part B mobile plant</p>	<p>operator may, notify SEPA of a whole or partial surrender of the permit; r. 16 (2) of PPCR</p> <p>Notification to contain prescribed information r. 16 (3)</p>	<p>Date takes effect</p> <p>(4) Subject to paragraph (5), the permit shall cease to have effect on the date specified in the notification or, in the case of partial surrender, shall cease to have effect on that date to the extent surrendered.</p> <p>Partial surrender variation of conditions (5) If SEPA is of the opinion that it is necessary to vary the conditions of the permit to take account of the surrender, it shall—(a) notify the operator of its opinion; and (b) serve a variation notice under regulation 13 on the operator specifying the variations of the conditions necessitated by the surrender, and the permit shall cease to have effect to the extent surrendered on the date on which the variations specified in the variation notice take effect if that date is after</p>	<p>Apply the procedure demonstrates above</p>

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		<p>the date specified in the notification of the surrender. r. 16 (3)-(6) of PPCR</p>	
<p>Revocation of permits</p>	<p>SEPA may at any time revoke a permit (in whole or in part) by serving a notice ("a revocation notice") on the operator. r. 17 (1) of PPCR</p> <p>SEPA may serve a notice under this regulation in relation to a permit where—(a) the permit authorises the carrying out of a specified waste management activity and it appears to SEPA that the operator of the installation or mobile plant concerned has ceased to be a fit and proper person to carry out that activity by reason of that operator having been convicted of a relevant offence within the meaning of regulation 4(5)(a) or by reason of the management of that activity having ceased to be in the hands of a technically competent person; (b) the holder of the permit has ceased to be the operator of the installation or plant covered by the permit. R. 17</p> <p>Where SEPA has served a revocation notice it may, before the date on which the revocation takes effect, withdraw the notice. R. 17</p>	<p>Nature of revocation and conditions</p> <p>(2) (3) A revocation may be complete or partial.</p> <p>(4) A revocation notice shall specify—(a) in the case of a partial revocation the extent to which the permit is being revoked; and (b) in all cases, the date on which the revocation shall take effect, which shall be at least 28 days after the date on which the notice is served.</p> <p>(5) If SEPA considers that it is appropriate to require the operator to take steps, once that installation or mobile plant is no longer in operation, to—(a) avoid any pollution risk resulting from the operation of the installation or mobile plant on the site or, in the case of a partial revocation, that part of the site used for the operation of that installation or mobile plant; or (b) return the site, or part of the site, to a satisfactory state, the revocation notice shall also specify that this is the case and, in so far as those steps are not already required to be taken by the conditions of the permit, the steps to be taken.</p> <p>Regulation 15(11) shall apply for the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant.</p> <p>Date revocation becomes effective</p> <p>(6) Subject to paragraph (7) and to regulation 22(9), a permit shall cease to have effect or, in the case of a partial revocation, shall cease to have effect to the extent specified in the revocation notice, from the date specified in the notice.</p> <p>(7) Where paragraph (5) applies, the permit shall cease to have effect to authorise the operation of the Part A installation or Part A mobile plant from the date specified in the revocation notice but shall continue to have effect in so far as the permit requires steps to be taken once it is no longer in operation until SEPA issues a certificate of completion stating that it is satisfied that all such steps have been taken.</p> <p>Partial revocation conditions</p> <p>(8) Where a permit continues to have effect as mentioned in paragraph (7), any steps specified in a revocation notice pursuant to paragraph (5) shall be treated as conditions of the permit and regulations 13, 19, and 30 shall apply in relation to such steps, and to any other conditions in the permit which require steps to be taken once the installation or mobile plant is no longer in operation, until SEPA issues a certificate of completion.</p> <p>(9)</p>	<p>Who may appeal</p> <p>Limited to person on whom revocation notice served – r 22</p> <p>Apply the procedure demonstrates above</p>

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		r. 17 (2)-(10) of PPCR	
Suspension notices	<p>If SEPA is of the opinion that the operation of an installation or mobile plant, or the operation of it in a particular manner, involves a risk of serious pollution, it shall, unless it intends to arrange for steps to be taken under regulation 21(1) in relation to the risk, serve "a suspension notice" on the operator of the installation or mobile plant.</p> <p>r. 20 (1) of PPCR</p> <p>can include operator no longer being fit and proper</p>	<p>Content of suspension notice specified includes notice of the risk and steps to be taken to remove it and the period within which they must be taken. Must also state that the permit shall, until the notice is withdrawn, cease to have effect to authorize the operation of the installation or mobile plant or the carrying out of specified activities in the installation or by means of the mobile plant; and (d) where the permit is to continue to have effect to authorise the carrying out of activities, state any steps, in addition to those already required to be taken by the conditions of the permit, that are to be taken in carrying out those activities.</p> <p>Date of suspension (5) as stated in the notice.</p> <p>Withdrawal of notice (6) SEPA may withdraw a suspension notice at any time and shall withdraw a notice when it is satisfied that—(a) in the case of a notice served under paragraph (1), the steps required by the notice to remove the imminent risk of pollution have been taken; (b) in the case of a notice served under paragraph (3), the management of the specified waste management activities is in the hands of a technically competent person. r. 20 (2)-(6) of PPCR</p>	<p>Who may appeal</p> <p>Limited to person on whom suspension notice served – r 22</p> <p>Apply the procedure demonstrates above</p>
Proposed change in the operation of an installation	<p>Subject to paragraph (4) and (5), where an operator of an installation or mobile plant which is permitted under these Regulations proposes to make a change in the operation of that installation or mobile plant, the operator shall, at least 14 days before making the change, notify SEPA. r. 12 (1) of PPCR</p>	<p>(2) A notification under paragraph (1) shall be in writing (or in electronic form acceptable to SEPA) and shall contain a description of the proposed change in the operation of the installation.</p> <p>(3) SEPA shall, by notice served on the operator, acknowledge receipt of any notification received under paragraph (1).</p> <p>(4) Paragraph (1) shall not apply where—(a) the operator applies under regulation 13(2) for the variation of the conditions of the permit before making the proposed change; and (b) that application contains a description of the change.</p> <p>(5) Notwithstanding any notification under paragraph (1), the operator shall not make the proposed change during any period beginning with the date on which notice is served by SEPA under regulation 26(2) and ending on the date on which the applicant furnishes the information specified in the notice. r. 12 (2)-(5) of PPCR</p>	<p>None subject to appeal</p>
Enforcement notices	<p>If SEPA is of the opinion that the operator of an installation or mobile plant has contravened, is contravening or is likely to</p>	<p>(2) An enforcement notice shall—(a) state SEPA's opinion, as mentioned in paragraph (1); (b) specify the matters constituting the contravention or the matters making it likely</p>	<p>Who may appeal</p> <p>Limited to person on whom enforcement notice served – r</p>

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	<p>contravene any condition of a permit, it may serve on that operator a notice (an "enforcement notice"). r. 19 (1) of PPCR</p>	<p>that the contravention will arise, as the case may be; (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and (d) specify the period within which those steps must be taken. (3) The steps that may be specified in an enforcement notice as steps that must be taken to remedy the contravention of any condition of a permit may include both steps that must be taken to make the operation of the installation or mobile plant comply with the conditions of the permit and steps that must be taken to remedy the effects of any pollution caused by the contravention. (4) SEPA may withdraw an enforcement notice at any time. r. 19 (2)-(4) of PPCR</p>	<p>22</p>
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Table Four: Waste Management Licensing

Name of exercises related to waste management licensing	Initial application	Determination of the license or application	Appeals on decisions
<p>Application for a waste management licence or for the surrender or transfer of a waste management licence r. 2 of the Waste Management Licensing Regulations 1994 (WMLR)</p>	<p>An application to the waste regulation authority for a waste management licence or surrender or transfer of licence shall be made in writing. r. 2 (1) (2) and (5) of WMLR</p> <p>Notifying the public</p> <p>Entry in register r.10 WMLR</p>	<p>Follow the authorization procedure in PPC 2000, r. 10 (4) of WMLR</p> <p>Obligation to consult</p> <p>With the appropriate planning authority and the Health and Safety Executive; and (b) consider any representations about the proposal which the authority or the Executive makes to it during the allowed period. S. 36 (4) of EPA</p> <p>Where any part of the land to be used is within an SSSI any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect must— (a) refer the proposal to Scottish Natural Heritage and (b) consider any representations about the proposal which SNH makes to it during the allowed period; S. 36 (7) of EPA</p> <p>Opportunity to comment:</p> <p>Those notified under paras 9 & 11 have 28 days within which to make representations to SEPA (Sched 4 para 12 of PPC regulations) Anyone else has 28 days from the date of advertisement of the application to make representation (Sched 4 para 12 of PPC regulations) All have 28 days from the advertisement of the draft determination under paras 5 & 15 (Sched 4 para 12 of PPC regulations)</p> <p>What SEPA must take into account when making decisions (Sched 4 para 13 of PPC regulations)– the above representations plus</p> <p>COMA safety reports and determinations under Arts 5,6 & 7 of Council Directive 85/337/EEC</p> <p>The need for planning permission s. 36 EPA</p> <p>Time limits on decision making</p> <p>Sched 4 para 15 of PPC regulations and s.36 (9) EPA SEPA's decision must be made and notified to the applicant within 4 months of the application being received unless</p>	<p>Who may appeal Limited to applicants from decisions with respect to waste management licences or from determinations that information is not commercially confidential</p> <p>Appeal is to Secretary of State</p> <p>Start of process Written representation together with the information required r. 6 (2) of WMLR</p> <p>Applications must be made within 6 months of the decision being made s 43 EPA and r. 7 WMLR</p> <p>Hearings</p> <p>Written or if a party to the appeal so requests, or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private). S. 43 (2) of EPA</p> <p>Notification of determination The Secretary of State or other person determining an appeal shall notify the appellant in writing of his decision and of his reasons.</p> <p>Notifying to other bodies The Secretary of State or other person determining an appeal shall, at the same time as notifying the appellant of his decision, send the waste regulation authority a copy of any document sent to the appellant under this regulation</p> <p>Time limits on process</p> <p>Regulations may specify time limits – none appear to have been specified.</p>

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		<p>otherwise agreed with the applicant. (Certain time periods can be discounted from this see para 15 (2) Sched 4 of PPC regulations) These time periods apply to both determinations generally and draft determinations for new installations</p> <p>Failure to meet deadline = rejection</p> <p>Advertising decision</p> <p>Draft determinations to be advertised on SEPA web page para 15 B sched 4 of PPC regulations and content of adverts specified in para 15C of PPC regulations includes notification of right of anyone to make written or electronic representations to SEPA within 28 days from date of advertisement also must explain the decision making process and where the final decision will be registered/advertised</p> <p>Actual decision making</p> <p>Done by SEPA following paper representations.</p> <p>SEPA has power to grant permit with or without conditions as specified in the regulation 9 of PPC regulations.</p> <p>If it proposes to grant a permit with conditions it must notify the owner, tenant or occupier of land to which it is likely rights will have to be granted to enable them to carry out works required to meet the permit conditions. Schedule 4 para 11 of PPC regulations.</p> <p>A permit shall not be granted if SEPA considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit or will not ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit. r. 7 (3) of PPCR</p> <p>Where a proposed waste management licence may lead to a discharge into groundwater of particular prescribed substances SEPA must ensure that the proposed activities are subjected to prior investigation. r. 15 (1) of WMLR</p> <p>How final decision is recorded/advertised</p> <p>In the appropriate register and advertised on SEPA's web</p>	
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		<p>(deduced from Sched 4 para 15 of PPC regulations) ; see also r. 10 of WMLR regarding particulars to be entered in public registers</p> <p>Power of Scottish Ministers (Sched 4 para 14 of PPC regulations) May require any particular application or type of application to be referred to them for decision. If so SEPA to inform applicant</p> <p>SEPA and applicant can appear before & be heard by the person appointed by the Scottish Ministers – this can be at discretion of Ministers but is mandatory where the applicant requests it. Request to be heard must be made within 21 days of the applicant being informed that the application has been referred to the Scottish Ministers.</p> <p>Proceedings for hearings in Schedule 8 paras 4-10 of PPC regulations as modified by Schedule 4 para 14 (5) of PPC regulations.</p> <p>Scottish Ministers also to notify other countries likely to be affected by any decision. Sched 4 para 17 of PPC regulations of draft determinations and they have 35 days to comment under Schedd 4 para 18 of PPC regulations</p>	
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<p>Registration in connection with exempt activities</p>	<p>An establishment or undertaking which intends to carry out an exempt activity to which this paragraph applies shall provide to SEPA a written notice given on a form provided for the purpose by SEPA ("the notice") together with, (i) a plan and the documents specified in Part 1 of Schedule 3A r. 18 (4C)(b) of WMLR</p>	<p>Proceedings The appropriate registration authority shall enter the relevant particulars in the register in relation to an establishment or undertaking if it receives notice of them in writing or otherwise becomes aware of those particulars. r. 18 (4) of WMLR</p> <p>Time limits SEPA shall within the period of 21 days from the date on which it received the notice, either– (i) entered the relevant particulars in the register in relation to the establishment or undertaking which submitted the notice, or (ii) served on it a notice of refusal stating that registration is refused and giving reasons for that decision, those particulars shall be deemed to be entered in the register at the end of that 21 day period. r. 18 (4C) (c) of WMLR</p> <p>Decision making No provision</p>	<p>None</p>
<p>Variation of waste management licences</p>	<p>Variation may be at SEPA's behest where it decides to modify the conditions of the licence it decides is desirable and is unlikely to require unreasonable expense on the part of the holder; or on the application of the licence holder. S. 37 (1) of EPA</p>	<p>Notification Any modification of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect. S. 37 (4) of EPA</p> <p>Time limits on the decision making Two months from receipt of application or longer if agreed with applicant S. 37 (6) of EPA</p> <p>Notification of application Obligation to notify every person appearing—(a) who is the owner, lessee or occupier of any land and it is likely that, as a consequence of the licence being modified rights will have</p>	<p>Who may appeal Limited to license holders</p> <p>Appeal is to Secretary of State</p> <p>Start of process Written representation together with the information required r. 6 (2) of WMLR</p> <p>Applications must be made within 6 months of the decision being made s 43 EPA and r. 7 WMLR</p> <p>Hearings Written or if a party to the appeal so requests, or the Secretary of State so decides, the appeal shall be in the</p>

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		<p>to be granted by virtue of section 35(4) above to the holder of the licence over or to that land. S. 37A (3) (4) of EPA</p> <p>Duty to take account of representations SEPA must consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (3) above before making the variation. S. 37A (7) of EPA</p> <p>Obtaining information SEPA may, by notice in writing, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in a form and within such period as is specified in the notice. S. 71 (2) (b) of EPA</p>	<p>form of a hearing (which may, if the person hearing the appeal so decides, be held in public or to any extent in private). S. 43 (2) of EPA</p> <p>Notification of determination The Secretary of State or other person determining an appeal shall notify the appellant in writing of his decision and of his reasons.</p> <p>Notifying to other bodies Copy of any document sent to the appellant under this regulation also to be sent to SEPA</p> <p>Time limits on process Regulations may specify time limits – none appear to have been specified.</p>
Revocation of waste management licences	Where it appears to the authority that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person. S. 38 (2) of EPA	<p>Decision Licence may be revoked in whole or in part. S. 38 of EPA</p> <p>Notification by notice served on the holder of the licence stating the time at which the revocation is to take effect. S. 38 (12) of EPA</p> <p>Obtaining information A waste regulation authority, may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in such form and within such period following service of the notice, or at such time, as is so specified. S. 71 (2) (b) of EPA</p>	As above
Suspension of waste management licenses	If SEPA deems that the holder of the licence has ceased to be a fit and proper person or (b) that serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the licensed activities or the happening or threatened happening of an event affecting those activities; and (c) that the continuing to carry on those activities, or part of them, will continue the harm or threatened harm, it may suspend the licence in whole or in part. S. 38 (6) of EPA	<p>Decision becomes effective by notification notice served on the holder of the licence stating the time at which suspension takes effect and the period at the end of which, or the event on the occurrence of which, the suspension is to cease. S. 38 (12) of EPA</p>	As above

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<p>Surrender of waste management licences</p>	<p>A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender. S. 39 (1) of EPA</p> <p>Application in writing S. 39 (3) of EPA</p>	<p>Before determination SEPA to inspect the land to which the licence relates, and may require the holder of the licence to furnish to it further information or further evidence. S. 39 (4) of EPA</p> <p>Determination of the application If the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5), the authority shall, subject to subsection (7) accept the surrender of the licence; but otherwise the authority shall refuse to accept it. S. 39 (6) of EPA</p> <p>Obligation to consult If SEPA proposes to accept the surrender of a site licence it must, before it does so,—(a) refer the proposal to the appropriate planning authority; and (b) consider any representations about the proposal which the Authority makes to it during the allowed period. S. 39 (7) of EPA</p> <p>Notifying the determination Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of completion") stating that it is satisfied as mentioned in subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect. S. 39 (9) of EPA</p> <p>Time limits on decision making Three months from the date on which the application is received or longer if agreed with the applicant in writing. Failure to meet time limits deemed to be rejection S. 39 (10) of EPA</p>	<p>As above</p>
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Transfer of waste management licences	<p>Application by holder and transferee S. 40 (2) of EPA</p> <p>Form of application An application for the transfer of a licence shall be made on a form provided by the authority for the purpose, accompanied by such information as the authority may reasonably require, the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995 and the licence. S. 40 (3) of EPA</p>	<p>Determination If, on such an application, the authority is satisfied that the proposed transferee is a fit and proper person the authority shall effect a transfer of the licence to the proposed transferee. S. 40 (4) of EPA</p> <p>Time limits on decision making Two months from the date on which the application is received or longer if agreed with the applicants in writing, Failure to meet time limits deemed to be rejection. S. 40 (6) of EPA</p>	As above
	Initial matters	Information provided	How provided
Public registers	SEPA under obligation to maintain a register containing prescribed particulars. S. 64 (1) of EPA	(a) current or recently current licences ("licences") granted by the authority; (b) current or recently current applications to the authority for licences; (c) applications made to the authority under section 37 above for the modification of licences; (d) notices issued by the authority under section 37 above effecting the modification of licences; (e) notices issued by the authority under section 38 above effecting the revocation or suspension of licences or imposing requirements on the holders of licences; (f) appeals under section 43 above relating to decisions of the authority; (g) certificates of completion issued by the authority under section 39(9) above; (h) notices issued by the authority imposing requirements on the holders of licences under section 42(5) above; (i) convictions of the holders of licences granted by the authority for any offence under this Part (whether in relation to a licence so granted or not); (j) the occasions on which the authority has discharged any function under section 42 or 61 above; (k) directions given to the authority under any provision of this Part by the Secretary of State; (m) such matters relating to the treatment, keeping or disposal of waste in the area of the authority or any pollution of the environment caused thereby as may be prescribed; and any other document or information required to be kept in the register under any provision of this Act. S. 64 (1) of EPA	Each waste regulation authority and waste collection authority (a) shall secure that any register maintained under this section is open to inspection [...] by members of the public free of charge at all reasonable hours and (b) shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register. S. 64 (6) of EPA Registers under this section may be kept in any form. S. 64 (7) of EPA

Providing information

Each appropriate registration authority shall secure that any register maintained by it under this regulation is open to inspection by members of the public free of charge at all reasonable hours and shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register. Registers under this regulation may be kept in any form. **r. 18 (8) (9) of WMLR; Schedule 5, para. 2 of WMLR**

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Table Five: Producer Responsibility Obligations

Name of exercises related to producer responsibility obligations (Packaging Waste)	Initial application	Determination of the license or application	Appeals on decisions
<p>Application for producer registration</p>	<p>A producer shall be registered with an appropriate Agency in respect of a relevant year, or any part of that year, during which he is not a member of a registered scheme. R. 5 of Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (PROR)</p> <p>Form of application In writing, contain the initial information set out in Part I of Schedule 4 and fit the conditions in R. 6 (4) (c) of PROR</p>	<p>What SEPA must take into account when making decisions Obligation to grant registration if information requirements satisfied. 6 (5) of PROR</p> <p>Time limits on decision making Where an application for producer registration is granted, or refused SEPA shall, within 28 days of it being granted confirm to the producer. R. 6 (6) and r.10 of PROR</p> <p>Notifying to applicants In writing</p> <p>Cancellation of registration of producers SEPA may cancel the registration of a producer where it appears to that the producer is in breach of any of the conditions; or the producer knowingly supplied false information in connection with his application for registration, or with compliance with any condition specified in regulation 7. R. 11 (1) of PROR Before cancellation of a registration under paragraphs (1) or (2) above, SEPA shall serve on the producer concerned written notice of-(a) its decision to cancel;(b) the reasons for the decision; [...] (c) the date when cancellation will take effect, not being earlier than (i) in the case of cancellation under paragraph (1) above, 28 days from the date of the notice, and (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice[; and][(d) the right of appeal under Part IV of these Regulations.] R. 11 (3) of PROR</p>	<p>Who may appeal Limited to operator of a scheme or producer who may appeal refusal to grant an application for registration or decision to cancel registration. R. 18 (1) (2) of PROR</p> <p>Appeals is to Scottish Ministers/Secretary of State R. 18, R. 19 of PROR and Schedule 5, para. 1</p> <p>Start of process Notice in writing given or sent to the Secretary of State containing information Schedule 5 para. 1 (2)</p> <p>Procedure of appeals S of S may appoint someone to hear the appeal. R. 19 (1) of PROR If the appellant so requests, or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing. R. 19 (2) of PROR</p> <p>Report of Hearing Where under regulation 19(2) the appeal is by way of a hearing, the person hearing the appeal shall, unless he has been appointed to determine an appeal under regulation 19(1)(a), make a written report to the Secretary of State which shall include his conclusions and recommendations or his reasons for not making any recommendations. Schedule 5, para. 3 of PROR If the Secretary of State determines an appeal after a hearing under regulation 19(2) he shall provide the appellant with a copy of any report made to him under paragraph 3 above. . Schedule 5, para. 4 (2) of PROR</p> <p>Determination of appeals The Secretary of State or other person determining an appeal shall notify the appellant in writing of his decision and of his reasons and copy any document sent to the appellant under this paragraph to SEPA. Schedule 5, para. 4 (1) (3) of PROR</p>

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<p>Application for registration of a scheme</p>	<p>An application for registration of a scheme in relation to a year shall be made by the operator of the scheme, on or before 7th April in the year, to SEPA. R. 12 (1) of PROR</p> <p>Form of application Shall be made in writing; contain the initial information set out in Part III of Schedule 4 and conditions in R. 12 (3) (c) of PROR</p>	<p>Precondition of granting Secretary of State must approve scheme before it is registered and applicant must provide proof of this to SEPA R. 12 (4) of PROR</p> <p>Time limits on decision making Where an application for registration of a scheme is granted SEPA shall, within 28 days of it being granted confirm to the operator of the scheme in writing that the scheme is registered with it. R. 12 (6) of PROR</p> <p>Refusal to register a scheme Any decision of SEPA to refuse to register a scheme shall be notified, within 28 days of the decision, to the operator of the scheme in writing together with the reasons for the decision; a statement as to the right of appeal; and a statement as to the offence specified in regulation 34(1)(a). R. 16 of PROR</p> <p>Cancellation of registration of a scheme (1) Subject to the right of appeal SEPA may cancel the registration with it of a scheme where-(a) [...] (b) it appears to SEPA that-(i) any of the conditions referred to in regulation 13 has been broken, or (ii) the operator knowingly supplied false information in connection with the application for registration, or with compliance with the conditions referred to in regulation 13. (2) SEPA shall cancel the registration of a scheme if the Secretary of State withdraws his approval of the scheme.</p> <p>Notification of operator of cancellation (3) Before the cancellation of a registration SEPA shall serve on the operator of the scheme written notice of-(a) its decision under paragraph (1) or (2) above to cancel the registration; (b) the reasons for the decision; (c) where the decision is made under paragraph (1) above, the right of appeal under Part IV of these Regulations; and (d) the date when cancellation will take effect, not being earlier than-(i) in the case of cancellation under paragraph (1) above, the expiration of the time limit for an appeal against the notice provided for in paragraph 2 of Schedule 5, or (ii) in the case of cancellation under paragraph (2) above, 5 days from the date of the notice. R. 17 of PROR</p>	<p>As the procedure above</p>
<p>Application for accreditation</p>	<p>An application for accreditation shall be made to SEPA in the case of a person wishing to be accredited as a reprocessor or as an exporter. R. 21B of PROR</p>	<p>Notifying the decisions SEPA shall notify him in writing of its decision. R. 21B (3) of PROR Where the decision notified is a decision to refuse accreditation, the notification shall include reasons for that</p>	<p>As the procedure above</p>

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		<p>decision. R. 21B (4) of PROR</p> <p>Suspension and cancellation of accreditation</p> <p>(1) SEPA may suspend or cancel the accreditation of a reprocessor or exporter where it appears to it that—(a) the person who is accredited has failed to comply with any of the conditions specified in or under Schedule 2A; or (b) the person who is accredited has knowingly supplied false information in his application for accreditation made under regulation 21B or in connection with compliance with any of the conditions specified in or under Schedule 2A.</p> <p>(2) Before suspending or cancelling an accreditation under paragraph (1), SEPA shall serve on the reprocessor or exporter concerned written notice of—(a) its decision to cancel or suspend (as the case may be) the accreditation;(b) the reasons for the decision;(c) the right of appeal under Part IV of these Regulations; (d) the date when the cancellation or suspension will take effect, not being earlier than 28 days from the date of the notice; and (e) in the case of a notification of suspension, the period of the suspension or any steps which are required to be taken in order to bring the suspension to an end.</p> <p>(3) The accreditation of a reprocessor or exporter shall be deemed to be cancelled—(a) on the date on which either of the following occurs—(i) the person who is accredited ceases to be the holder of a relevant authorisation; or(ii) the person who is accredited ceases to be a reprocessor or exporter; or (b) in a case where the person who is accredited requests that his accreditation should be cancelled, with effect from the date for cancellation specified by that person.</p> <p>(4) For the purposes of paragraph (3) “relevant authorisation” means—(a) a permit granted under regulation 10 of the Pollution Prevention and Control (England and Wales) Regulations 2000 ;(b) a waste management licence granted under section 36 of the 1990 Act ; or (c) an exemption registered under regulation 18 of the Waste Management Licensing Regulations 1994. R. 21D of PROR</p>	
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Public register	SEPA shall maintain and make available in accordance with this regulation a register relating to the producers and schemes registered with it; and the reproprocessors and exporters accredited by it in accordance with Part IVA, and containing the relevant information prescribed in Schedule 7. R. 26 (1) of PROR	<p>Opportunity to access information SEPA shall- (a) secure that the register is open for inspection at its principal office by members of the public free of charge at all reasonable hours; and (b) permit members of the public to obtain copies of entries in the register on payment of reasonable charges. R. 26 (2) of PROR</p> <p>Form of information The register may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information contained in it. R. 26 (2) of PROR</p>	None subject to appeals
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Table Six: Control of Major Accidents and Hazards Regulations 1999

Name of exercises related to Control of Major Accident Hazards	Initial matters	Information provided	How provided
Notifications to the competent authority	<p>Within a reasonable period of time prior to the start of construction of an establishment or to the start of the operation of an establishment the operator of the establishment shall send to the competent authority a notification containing the information specified in Schedule 3. R. 6 (1) (2) of the Control of Major Accident Hazards Regulations 1999 (CMAHR)</p> <p>Events for notification (a) any significant increase in the quantity of dangerous substances notified—(i) under this regulation, or(ii) in the report referred to in paragraph (3);(b) there being any significant change in—(i) the nature or physical form of the dangerous substances so notified,(ii) the processes employing them, or(iii) any other information notified to the competent authority under this regulation in respect of the establishment;(ba) modification of the establishment or an installation which could have significant repercussions with respect to the prevention of major accidents; (c) regulation 7 ceasing to apply to the establishment by virtue of a change in the quantity of dangerous substances present there; or(d) permanent closure of an installation in the establishment. R. 6 (4) of CMAHR</p>	<p>Information contained 1. the name and address of the operator; 2. the address of the establishment concerned; 3.the name or position of the person in charge of the establishment; 4.information sufficient to identify the dangerous substances or category of dangerous substances present; 5. the quantity and physical form of the dangerous substances present including, in relation to petroleum products listed in Part 2 of Schedule 1, the quantity falling within each of classes (a) to (c); 6.a description of the activity or proposed activity of the installation concerned; 7.details of the elements of the immediate environment liable to cause a major accident or to aggravate the consequences thereof. Schedule 3 of CMAHR</p>	<p>Time limitation The operator of the establishment shall send to the competent authority a notification containing the information specified in Schedule 3 within 3 months after the establishment becomes subject to this regulation. R. 6 (3A) of CMAHR</p>
Safety report	<p>Within a reasonable period of time prior to the start of construction of an establishment, the operator of the establishment shall, send to the competent authority a report containing information which is sufficient for the purpose specified in paragraph 3(a) of Part 1 of Schedule 4 and comprising at least such of the information specified in Part 2 of that Schedule as is relevant for that purpose. R. 7 (1) of CMAHR</p> <p>Events for submitting report The report referred to in paragraph (7) shall,</p>	<p>1. Information on the management system and on the organisation of the establishment with a view to major accident prevention. This information shall contain the elements set out in Schedule 2. 2. Presentation of the environment of the establishment: (a) description of the site and its environment including the geographical location, meteorological, geological, hydrographic conditions and, if necessary, its history; (b) identification of installations and other activities of the establishment which could present a major accident hazard; (c) description of areas where a major accident may occur. 3. Description of installation: (a) a description of the main</p>	<p>No specified, but An operator shall provide to the competent authority such further information as it may reasonably request in writing following its examination of the safety report, and the information shall be so provided within such period as the competent authority specifies in the request. R. 7 (13) of CMAHR</p>

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	<p>be sent—(a) in the case of an establishment in respect of which a CIMAH report has been sent to the Executive— (i) within such period after the coming into force of these Regulations that a report would have been required to have been sent to the Executive pursuant to regulation 8(2) of the 1984 Regulations if those Regulations had remained in force; or (ii) by 3 February 2001, whichever is earlier, except that where the period referred to in head (i) above expires before the date specified in paragraph (9) the report may be sent at any time before that date;(b) in any other case by 3 February 2002. R. 7 (8) of CMAHR</p>	<p>activities and products of the parts of the establishment which are important from the point of view of safety, sources of major accident risks and conditions under which such a major accident could happen, together with a description of proposed preventive measures; (b) description of processes, in particular the operating methods; (c) description of dangerous substances: (i) inventory of dangerous substances including—the identification of dangerous substances: chemical name, the number allocated to the substance by the Chemicals Abstract Service, name according to International Union of Pure and Applied Chemistry nomenclature; — the maximum quantity of dangerous substances present; (ii) physical, chemical, toxicological characteristics and indication of the hazards, both immediate and delayed for people and the environment; (iii) physical and chemical behaviour under normal conditions of use or under foreseeable accidental conditions.</p> <p>4. Identification and accidental risks analysis and prevention methods:(a) detailed description of the possible major accident scenarios and their probability or the conditions under which they occur including a summary of the events which may play a role in triggering each of these scenarios, the causes being internal or external to the installation; (b) assessment of the extent and severity of the consequences of identified major accidents including maps, images or, as appropriate, equivalent descriptions, showing areas which are liable to be affected by such accidents arising from the establishment; (c) description of technical parameters and equipment used for the safety of installations.</p> <p>5. Measures of protection and intervention to limit the consequences of an accident: (a) description of the equipment installed in the plant to limit the consequences of major accidents; (b) organisation of alert and intervention; (c) description of mobilisable resources, internal or external; (d) summary of elements described in sub-paragraphs (a), (b) and (c) necessary for drawing up the on-site emergency plan.</p> <p>6.The names of the relevant organisations involved in the drawing up of the report. Schedule 4 Part 2 of CMAHR</p>	
<p>On-site emergency plan</p>	<p>Every operator of an establishment shall prepare an emergency plan (in these Regulations referred to as an "on-site emergency plan") which shall be adequate for securing the objectives specified in Part 1 of Schedule 5 and shall contain the information specified in Part 2 of that Schedule. R. 9 (1) of CMAHR</p>	<p>1.names or positions of persons authorised to set emergency procedures in motion and the person in charge of and co-ordinating the on-site mitigatory action;</p> <p>2.name or position of the person with responsibility for liaison with the local authority responsible for preparing the off-site emergency plan;</p> <p>3.for foreseeable conditions or events which could be significant in bringing about a major accident, a description</p>	<p>Consultation</p> <p>The operator shall consult— (a) persons working in the establishment; (b) the Agency;(c) the emergency services; and (d) the health authority for the area where the establishment is situated; on the preparation of the on-site emergency plan.</p> <p>The operator shall consult the local authority in whose area the establishment is situated on the preparation of an</p>

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	<p>Events for submitting plan The on-site emergency plan shall be prepared—(a) in the case of an existing establishment where the industrial activity carried on there was, immediately before the coming into force of these Regulations, subject to the requirements of regulation 10 of the 1984 Regulations, by 3 February 2001; (b) in the case of any other existing establishment, by 3 February 2002; (c) in the case of an establishment which has not started to operate, before it starts to operate; (d) in any other case, without delay but at all events within 1 year after the establishment becomes subject to this regulation. R. 9 (2) of CMAHR</p>	<p>of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available; 4.arrangements for limiting the risks to persons on site including how warnings are to be given and the actions persons are expected to take on receipt of a warning; 5.arrangements for providing early warning of the incident to the local authority responsible for setting the off-site emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available; 6.arrangements for training staff in the duties they will be expected to perform, and where necessary co-ordinating this with the emergency services; 7.arrangements for providing assistance with off-site mitigatory action. Schedule 5 Part 2 of CMAHR</p>	<p>on-site emergency plan, except this shall not apply where the local authority has been exempted from the requirement to prepare an off-site emergency plan in respect of the establishment pursuant to regulation 10(7). R. 9 (3) (4) of CMAHR</p>
<p>Off-site emergency plan</p>	<p>The local authority, in whose area there is an establishment, shall prepare an emergency plan (in these Regulations referred to as an "off-site emergency plan") in respect of that establishment, and such a plan shall be adequate for securing the objectives specified in Part 1 of Schedule 5 and shall contain the information specified in Part 3 of that Schedule. R. 10 (1) of CMAHR</p> <p>Events for submitting the plan The off-site emergency plan shall be prepared no later than 6 months (or such longer period, not exceeding 9 months, as the competent authority may agree in writing) after—(a) the receipt by the local authority of a notice from the competent authority informing the local authority of the need to prepare an off-site emergency plan in respect of the establishment; (b) the time an on-site emergency plan is required to be prepared for the establishment pursuant to regulation 9; or (c) the receipt by the local authority of the information referred to in paragraphs (3) and (5); whichever is later. R. 10 (2) of CMAHR</p>	<p>1.names or positions of persons authorised to set emergency procedures in motion and of persons authorised to take charge of and co-ordinate off-site action; 2.arrangements for receiving early warning of incidents, and alert and call-out procedures; 3.arrangements for co-ordinating resources necessary to implement the off-site emergency plan; 4.arrangements for providing assistance with on-site mitigatory action; 5.arrangements for off-site mitigatory action; 6.arrangements for providing the public with specific information relating to the accident and the behaviour which it should adopt; 7.arrangements for the provision of information to the emergency services of other Member States in the event of a major accident with possible transboundary consequences. Schedule 5 Part 3 of CMAHR</p>	<p>Consultation The local authority shall consult the operator, the competent authority, the Agency, the emergency services, each health authority for the area in the vicinity of the establishment and such members of the public as it considers appropriate on the preparation of the off-site emergency plan. R. 10 (6) of CMAHR</p>
<p>Provision of information to the public</p>	<p>The operator of an establishment shall—(a) ensure that—(i) every person who is likely to be in an area referred to in paragraph (2);</p>	<p>1. name of operator and address of the establishment; 2. identification, by position held, of the person giving the information;</p>	<p>Consultation In preparing the information required to be supplied in accordance with paragraph (1), the operator shall consult</p>

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	<p>and (ii) every school, hospital or other establishment serving the public which is situated in such area, is supplied regularly and in the most appropriate form, without their having to request it, with information on safety measures at the establishment and on the requisite behaviour in the event of a major accident at the establishment; and (b) make that information permanently available to the public. R. 14 (1) of CMAHR</p>	<p>3. confirmation that the establishment is subject to these regulations and that the notification referred to in regulation 6 or the safety report has been submitted to the competent authority;</p> <p>4. an explanation in simple terms of the activity or activities undertaken at the establishment;</p> <p>5. the common names or, in the case of dangerous substances covered by Part 3 of Schedule 1, the generic names or the general danger classification of the substances and preparations involved at the establishment which could give rise to a major accident, with an indication of their principal dangerous characteristics;</p> <p>6. general information relating to the nature of the major accident hazards, including their potential effects on the population and the environment;</p> <p>7. adequate information on how the population concerned will be warned and kept informed in the event of a major accident;</p> <p>8. adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident;</p> <p>9. confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects;</p> <p>10. a reference to the off-site emergency plan for the establishment. This should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident;</p> <p>11. details of where further relevant information can be obtained, unless making that information available would be contrary to the interests of national security or personal confidentiality or would prejudice to an unreasonable degree the commercial interests of any person. Schedule 6 of CMAHR</p>	<p>the local authority in whose area the establishment is situated and such other persons who appear to him to be appropriate, but the operator shall remain responsible for the accuracy, completeness and form of the information so supplied. R. 14 (4) of CMAHR</p>
<p>Provision of information by competent authority</p>	<p>The competent authority shall notify the European Commission as soon as practicable of any major accident meeting the criteria specified in Part 1 of Schedule 7. R. 21 (1) of CMAHR</p>	<p>1. Any accident covered in sub-paragraph (a) or having at least one of the consequences described in paragraphs (b), (c), (d) and (e) must be notified to the Commission—(a) substances involved: any fire or explosion or accidental discharge of a dangerous substance involving a quantity of at least 5 per cent of the qualifying quantity laid down in column 3 of Parts 2 or 3 of Schedule 1; (b) injury to persons and damage to property: an accident directly involving a dangerous substance and giving rise to one of the following events:— (i) a death, (ii) six persons injured within the establishment and kept in hospital for at least 24 hours, (iii) one person outside the establishment kept in hospital for at</p>	<p>When available It shall be the duty of the competent authority—(a) to secure that the register is available, at all reasonable times, for inspection by the public free of charge; and (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges. Schedule 8, para. 4 of CMAHR</p> <p>Form in which register maintained Not prescribed The register may be kept in any form. Schedule 8, para. 5 of CMAHR</p>

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		<p>least 24 hours, (iv) dwellings outside the establishment damaged and unusable as a result of the accident, (v) the evacuation or confinement of persons for more than two hours (person × hours): the value is at least 500, (vi) the interruption of drinking water, electricity, gas or telephone services for more than two hours (person × hours): the value is at least 1,000; (c) immediate damage to the environment: (i) permanent or long-term damage to terrestrial habitats:— — 0.5 ha or more of a habitat of environmental or conservation importance protected by legislation, — 10 or more hectares of more widespread habitat, including agricultural land; (ii) significant or long-term damage to freshwater and marine habitats: — 10 km or more of river or canal, — 1 ha or more of a lake or pond, — 2 ha or more of delta, — 2 ha or more of a coastline or open sea; (iii) significant damage to an aquifer or underground water: — 1 ha or more; (d) damage to property: (i) damage to property in the establishment of at least ECU 2 million, (ii) damage to property outside the establishment of at least ECU 0.5 million; (e) cross-border damage: any accident directly involving a dangerous substance giving rise to effects outside the territory of the Member State concerned;</p> <p>2. Accidents or 'near misses' which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences and which do not meet the quantitative criteria above should be notified to the Commission. Part 1 of Schedule 7 of CMAHR</p>	<p>Publication of existence of register Nothing specified</p>
Name of exercises related to Control of Major Accident Hazards	Initial application	Determination of the license or application	Appeals on decisions
Provision of information to competent authority	<p>Every operator of an establishment shall, when requested to do so by the competent authority provide sufficient information to the authority to demonstrate that he has taken all measures necessary to comply with these Regulations, and the information shall be so provided within such period as the competent authority specifies in the request.</p> <p>R. 15 (1) of CMAHR</p>	<p>Opportunity to comment The operator shall when requested to do so by the competent authority, provide the authority with any information necessary to enable the authority—(a) fully to assess the possibility of a major accident and to determine the scope of possible increased probability or aggravation of a major accident; (b) to take substances into account which, due to their physical form, particular conditions or location, may require additional consideration; or (c) to perform its functions of obtaining or collecting information under regulation 19(4); and the information shall be so provided within such period as the competent authority specifies in the request. R. 15 (2) of CMAHR</p> <p>Other submission of information</p>	<p>None subject to appeals</p>

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		<p>Where a major accident has occurred at an establishment the operator shall forthwith inform the competent authority of that accident. R. 15 (3) of CMAHR</p> <p>Other things to be taken into account Nothing specified</p> <p>Who decides The competent authority</p> <p>Process Nothing specified</p> <p>Time limits on decision making Within such period as the competent authority specifies in the request. R. 15 (2) of CMAHR</p>	
Provision of information to other establishments	The competent authority shall, using the information received from operators in notifications sent pursuant to regulation 6 and in safety reports, designate groups of establishments where the likelihood or consequences of a major accident may be increased because of the location and proximity of establishments in the group and the dangerous substances present there. R. 16 (1) of CMAHR	<p>Opportunity to comment The operator of any establishment in a group designated pursuant to paragraph (1) shall—(a) pass appropriate information about the establishment to other establishments in the group to enable them to take account of the nature and extent of the overall hazard of a major accident in their major accident prevention policy documents, safety reports and on-site emergency plans; and (b) co-operate with those other establishments to enable them to carry out any obligations they have under regulations 10(3), (5), and 14(1).</p> <p>Other submission of information Nothing specified</p> <p>Other things to be taken into account Nothing specified</p> <p>Who decides The competent authority</p> <p>Process Nothing specified</p> <p>Time limits on decision making Nothing specified</p>	None subject to appeals
Functions of competent authority in relation to the safety report	The competent authority shall within a reasonable period of time of receiving a safety report communicate the conclusions of its examination of the report to the operator of the establishment concerned. R. 17 (1) (a) of CMAHR	<p>Opportunity to comment The competent authority shall communicate the conclusions of its examination of the report to the operator of the establishment concerned; or prohibit the operation or bringing into operation of the establishment or installation concerned or any part thereof in accordance with regulation</p>	None subject to appeals

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		<p>18. R. 17 (1) of CMAHR</p> <p>Other submission and information Nothing specified</p> <p>Other things to be taken into account Nothing specified</p> <p>Who decides The competent authority</p> <p>Process Nothing specified</p> <p>Time limits on decision making Nothing specified, within a reasonable period of time. R. 17 (1) (2) of CMAHR</p>	
Prohibition of use	<p>The competent authority shall prohibit the operation or bringing into operation of any establishment or installation or any part thereof where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient. R. 18 (1) (a) of CMAHR</p>	<p>Opportunity to comment Nothing specified</p> <p>Other submission and information A notice served pursuant to paragraph (3) may specify measures which, if taken, would cause the competent authority to withdraw the notice. R. 18 (4) of CMAHR</p> <p>Other things to be taken into account Nothing specified</p> <p>Who decides The competent authority</p> <p>Process The competent authority may prohibit the operation or bringing into operation of any establishment or installation or any part thereof if the operator has failed to submit any notification, safety report or other information required by or under these Regulations within the time so required. R. 18 (2) of CMAHR Where the competent authority proposes to prohibit an operation or the bringing into operation of an establishment or installation or any part thereof pursuant to this regulation, it shall serve on the operator a notice giving reasons for the prohibition and specifying the date when it is to take effect, and any such notice may be withdrawn in writing by the competent authority. R. 18 (3) of CMAHR</p> <p>Time limits on decision making Nothing specified</p>	<p>Section 24 of the 1974 Act (appeal against improvement or prohibition notice) and, in England and Wales, regulation 8(4)(b) of, and Schedule 4 to, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 1993 and, in Scotland, regulation 8(4)(b) of, and Schedule 4 to the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993 shall apply in relation to a notice served under this regulation as they apply in relation to a prohibition notice served under section 22 of that Act. R. 18 (6) of CMAHR</p>

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<p>Inspections and investigations</p>	<p>The competent authority shall organise an adequate system of inspections of establishments or other measures of control appropriate to the type of establishment concerned. R. 19 (1) of CMAHR</p>	<p>Opportunity to comment -Nothing specified</p> <p>Other submission and information R. 18 (4) of CMAHR</p> <p>Other things to be taken into account A system of inspection referred to in paragraph (1) shall meet the following conditions—(a) there shall be a programme of inspections for all establishments;(b) unless such a programme is based upon a systematic appraisal of major accident hazards of the particular establishment concerned, the programme shall, in the case of establishments to which regulations 7 to 14 apply, entail at least one on-site inspection made on behalf of the competent authority every 12 months; (c) following each inspection, a report shall be prepared by the competent authority; and (d) where necessary, matters shall be pursued with the operator within a reasonable period following the inspection. R. 19 (3) of CMAHR</p> <p>Who decides The competent authority</p> <p>Process Where the competent authority or the Executive has been informed of a major accident at an establishment the competent authority shall—(a) obtain from the operator of the establishment—(i) information as respects the circumstances of the accident, the dangerous substances involved, the data available for assessing the effects of the accident on persons and the environment, the emergency measures taken and the steps envisaged to alleviate the medium and long-term effects of the accident and to prevent any recurrence of it, and (ii) such other information in the operator’s possession as will enable the competent authority to notify the European Commission pursuant to regulation 21(1); (b) ensure that any urgent, medium and long-term measures which may prove necessary are taken; (c) make a full analysis of the technical, organisational and managerial aspects of the major accident and collect, by inspection, investigation or other appropriate means, the information necessary for that purpose; (d) take appropriate action to ensure that the operator takes any necessary remedial measures; and (e) make recommendations on future preventive measures. R. 19 (4) of CMAHR</p> <p>Time limits on decision making Nothing specified</p>	<p>None subject to appeals</p>
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Table Seven: Radioactive Substances

Name of exercises related to radioactive substance	Initial application	Determination of the license or application	Appeals on decisions
<p>Registration relating to use of radioactive material and mobile radioactive apparatus</p>	<p>Application to agency containing specified information and with fee</p> <p>s. 7 of Radioactive Substance Act (RSA)</p> <p>Notification of consultees</p> <p>Notification to local authority</p> <p>No provision to notify public</p>	<p>Decision making</p> <p>SEPA can register unconditionally or with conditions or refuse the application Subject to the HASS (Scotland) Directions 2005 SoS may make directions re decisions</p> <p>S. 7 of RSA</p> <p>SEPA can also cancel and vary registrations at any time S. 12 of RSA</p> <p>No provision for involvement of others in decision making</p> <p>Notification of registration</p> <p>SEPA to send certificate to applicant and copy to any relevant local authorities.</p>	<p>Appeal possible where application refused or conditions placed on it but not in relation to any direction made by S of S</p> <p>By whom – Person who made application s. 26</p> <p>Notification of Appeal</p> <p>An appeal shall, if and to the extent required by regulations under subsection (7) of this section, be advertised in such manner as may be prescribed. S. 27 (2) of RSA RS Appeals Regs r. 4 – SoS to notify all those consulted at first stage to be notified of appeal</p> <p>RSA reg 6 (1) SoS to publish notice of public hearings in at least one newspaper circulating in the locality in which the activity which is the subject-matter of the appeal is or would be carried on; and (2) to notify all those consulted in the appeal</p> <p>Form of decision making</p> <p>Either party may request a hearing (which may be wholly or partially private) otherwise in writing (S. 27 (3) of RSA S. 27 (3) of RSA and r. 4 (1), r. 6 (1) of Radioactive substances</p> <p>Where the appellant informs the Secretary of State that he wishes the appeal to be disposed of on the basis of written representations, the chief inspector may submit written representations to the Secretary of State not later than 28 days after receiving a copy of the appellant's statements. R. 5 of Radioactive substances (Appeal) Regulations 1990</p> <p>Who makes decision The Secretary of State S. 27 (4) of RSA</p> <p>How decision is notified. notify the appellant in writing of his determination of the appeal and of his reasons for it and, if a hearing is held, shall at the same time provide him with a copy of the</p>

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			<p>report of the person who conducted the hearing and copy those documents to the chief inspector and to any authority which he was required to notify of the appeal under regulation 4(3) above. R. 7 (1) (2) of Radioactive Substances (Appeal) Regulations 1990</p>
<p>Authorisation of disposal of radioactive waste</p>	<p>Who applies</p> <p>Person wanting to dispose of radioactive waste on or from their premises. S. 13 (1) of RSA</p> <p>Notification of application</p> <p>Notification by SEPA on receipt of an application to Local authority in whose territory radioactive waste to be disposed subject to directions under section 25, - to send a copy of the application to each local authority in whose area, radioactive waste is to be disposed of or accumulated. RSA s.16 (6)</p>	<p>Decision making</p> <p>Obligation to consult statutory consultees</p> <p>SEPA to consult the Food Standards Agency and the Health and Safety Executive before deciding whether to grant an authorisation and on conditions or limitations to be placed on authorisation S. 16 (4A) of RSA</p> <p>, and (b) shall consult the Food Standards Agency concerning the terms of the authorisation, S. 16 (4A) of RSA for copy of proposed authorisation to be sent to aid consultation</p> <p>Before granting an authorization under section 13(1) in respect of the disposal of radioactive waste on or from premises situated on a nuclear site, SEPA to consult with such local authorities, relevant water bodies or other public or local authorities as appear to that Agency to be proper to be consulted by that Agency. S. 16 (5) of RSA</p> <p>If, in considering an application for an authorisation under section 13, it appears to SEPA that the disposal of radioactive waste is likely to involve the need for special precautions to be taken by a local authority, relevant water body or other public or local authority, the appropriate Agency shall consult with that public or local authority before granting the authorisation. S. 18 (1) of RSA</p> <p>Decision also subject to conditions under “The HASS (Scotland) Directions 2005” para. 6</p> <p>Decision making process</p> <p>Not specified likely in writing by SEPA on its own taking account of written representations.</p> <p>Time limits</p> <p>Four months beginning with the day on which the application was received. S. 47 (1) of RSA. If not determined within prescribed time limits then deemed to be refused. S. 16 (7)</p>	<p>Apply the same procedure above</p> <p>Where the appropriate Agency—(a) refuses an application for an authorisation under section 13 or 14, (aa) refuses an application under section 16A or 17 for the transfer (in whole or in part) or variation of such an authorisation, (b) attaches any limitations or conditions to such a registration or to such an authorisation, or (c) varies such a registration or such an authorisation, otherwise than by revoking a limitation or condition subject to which it has effect, or (d) cancels such a registration or revokes such an authorisation, the person directly concerned may, subject to subsection (3), appeal to the Secretary of State. S. 26 (1) of RSA</p>

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		<p>of RSA</p> <p>Notification of decision Certificate to applicant and copy to each local authority in whose territory waste to be disposed of or which has been consulted with RSA s 16(9)*</p>	
<p>Authorisation of accumulation of radioactive waste</p>	<p>Who applies</p> <p>Person wanting to accumulate any radioactive waste (with a view to its subsequent disposal) on any premises which are used for the purposes of an undertaking carried on by him, S. 14 (1) of RSA</p> <p>Exceptions for those dealing with certain radioactive waste from clocks and watches.</p> <p>Notification of application</p> <p>No provision</p>	<p>Advertising decision making process</p> <p>Not specified</p> <p>Decision making</p> <p>Not specified likely in writing by SEPA on its own taking account of written representations.</p> <p>No mention of consultation or participation</p> <p>Decision subject to any conditions introduced by under the HASS (Scotland) Directions 2005</p> <p>Notification of decision Certificate to applicant and copy to each local authority in whose territory waste to be accumulated of or which has been consulted with RSA s 16(9)*</p>	<p>Follow procedures above</p> <p>Where the appropriate Agency—(a) refuses refuses an application for an authorisation under section 13 or 14, (aa) (b) attaches any limitations or conditions to such a registration or to such an authorisation, or the person directly concerned may, subject to subsection (3), appeal to the Secretary of State. S. 26 (1) of RSA</p>
<p>Transfer Of authorizations to dispose of waste 5</p>	<p>Application by</p> <p>Transferee and transferor</p> <p>Notification</p> <p>SEPA to send a copy of the application to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the application relates. RSA S 16A except where conditions are not likely to change as a result of the transfer</p>	<p>Decision making</p> <p>Obligation to consult</p> <p>Before granting the SEPA must (subject to subsection (6)) consult everyone whom it would have been required to consult under section 16(4A) and (5) if—(a) the transferee had applied for the grant of the authorisation that he would hold were the application to be granted; and (b) in the case of a partial transfer, the transferor had applied for the grant (in place of his existing authorisation) of the authorisation he would hold in those circumstances. S. 16 A (5) of RSA</p> <p>Restrictions on decision making</p> <p>SEPA may grant the application if, and only if, it is satisfied— (a) that the transferee has or will have operational control over the disposals to which the transferred authorisation will relate; (b) that he is able and willing to ensure compliance with the</p>	<p>Where the appropriate Agency—(a) refuses under section 16A or 17 for the transfer (in whole or in part) the person directly concerned may, subject to subsection (3), appeal to the Secretary of State. S. 26 (1) of RSA</p>

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		<p>limitations and conditions of the authorisation that he will hold if the application is granted; and (c) that no other grounds exist on which it would be reasonable to refuse to grant the application.</p> <p>Decision must include any conditions passed following the HASS (Scotland) Directions 200</p> <p>Time limits on decision making Not mentioned</p> <p>Notification of decision</p> <p>Certificate to transferee and if partial transfer to transferee and transferor, copies to relevant local authorities as above RSA s.16A*</p>	
Revocation and variation	<p>RSA s.17(1) The appropriate Agency may at any time revoke an authorisation granted under section 13 or 14.</p> <p>Start of proceedings – decision by SEPA or application for variation by holder of authorisation</p>	<p>Decision making</p> <p>Not specified</p> <p>Decision must include any conditions passed following the HASS (Scotland) Directions 200</p> <p>Notification</p> <p>To holder of authorisation and to any relevant local authorities as above.*</p> <p>No provisions for consultation</p>	<p>Follow procedures above</p> <p>Where the appropriate Agency—(a) refuses an application under section 16A or 17 for the variation of such an authorisation, , or (c) varies such a registration or such an authorisation, otherwise than by revoking a limitation or condition subject to which it has effect, or (d) cancels such a registration or revokes such an authorisation, the person directly concerned may, subject to subsection (3), appeal to the Secretary of State. S. 26 (1) of RSA</p>
Enforcement notices RSA s. 21	<p>Proceedings start where SEPA thinks there is a breach</p>	<p>Notice served on holder of authorisation and copied to relevant local authorities.*</p> <p>No provision for consultation or participation</p>	<p>Follow procedures above</p> <p>A person on whom a notice under section 21 or 22 is served may, subject to subsections (3) and (4), appeal against the notice to the Secretary of State. S. 26 (2) of RSA</p>
Prohibition notices RSA s. 22	<p>Proceedings start where SEPA thinks there is a significant risk of harm to the environment</p>	<p>Decision making not specified</p> <p>Notice may impose conditions for continued operation of authorised activity or suspend it.</p> <p>Notice to be served on holder of authorisation and copied to relevant local authorities*</p> <p>No provision for consultation or participation</p>	<p>Follow procedures above</p> <p>A person on whom a notice under section 21 or 22 is served may, subject to subsections (3) and (4), appeal against the notice to the Secretary of State. S. 26 (2) of RSA</p>
Variation of registration regarding high-activity source r.	<p>A person who wishes to vary the registration. r. 3 (1) (3) of HASS</p>	<p>Decision making</p>	<p>Follow procedure above</p> <p>Where the appropriate Agency refuses an application for</p>

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<p>3 of HASS Regulations 2005</p>	<p>Regulations 2005; para. 3 (1) of the HASS (Scotland) Directions 2005 or The appropriate Agency or the chief inspector may notify a person that such person is not required to make an application; or if it, or he, is satisfied that in its, or his, opinion exceptional circumstances apply to that person, that such person may make an application within a period shorter than that provided. r. 3 (2) of HASS Regulations 2005</p>	<p>SEPA can register unconditionally or with conditions or refuse the application</p> <p>Decision must include any conditions passed following the HASS (Scotland) Directions 200</p> <p>SoS may make directions re decisions S. 7 of RSA</p> <p>SEPA can also cancel and vary registrations at any time S. 12 of RSA</p> <p>No provision for involvement of others in decision making</p> <p>Notification of registration</p> <p>SEPA to send certificate to applicant and copy to any relevant local authorities.</p>	<p>registration under section 7 or 10 the person directly concerned may, appeal to the Secretary of State. S. 26 (1) of RSA</p>
<p>Variation of authorization regarding high-activity source r. 4 of HASS Regulations 2005</p>	<p>A person who wishes to vary the authorisation. r. 4 (1) (3) of HASS Regulations 2005; para. 4 (1) of the HASS (Scotland) Directions 2005 or The appropriate Agency or the chief inspector may notify a person that such person is not required to make an application; or if it, or he, is satisfied that in its, or his, opinion exceptional circumstances apply to that person, that such person may make an application within a period shorter than that provided. r. 4 (2) of HASS Regulations 2005</p>	<p>Decision making</p> <p>Obligation to consult statutory consultees</p> <p>SEPA to consult the Food Standards Agency and the Health and Safety Executive S. 16 (4A) of RSA copy of proposed authorisation to be sent to aid consultation</p> <p>and to consult with such local authorities, relevant water bodies or other public or local authorities as appear to that Agency to be proper to be consulted by that Agency. S. 16 (5) of RSA</p> <p>and if it appears to SEPA that the disposal of radioactive waste is likely to involve the need for special precautions to be taken by a local authority, relevant water body or other public or local authority, SEPA shall consult with that public or local authority before granting the authorisation. S. 18 (1) of RSA</p> <p>Decision must include any conditions passed following the HASS (Scotland) Directions 200</p> <p>Decision making process</p> <p>Not specified likely in writing by SEPA on its own taking account of written representations.</p>	<p>Follow procedure above Where the appropriate Agency refuses an application an authorisation under section 13 or 14 the person directly concerned may, appeal to the Secretary of State. S. 26 (1) of RSA</p>

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		<p>Time limits</p> <p>Four months beginning with the day on which the application was received. S. 47 (1) of RSA If not determined within prescribed time limits then deemed to be refused. S. 16 (7) of RSA</p> <p>Notification of decision</p> <p>Certificate to applicant and copy to each local authority in whose territory waste to be disposed of or which has been consulted with RSA s 16(9)*</p>	
Site security r. 6 of HASS Regulations 2005	<p>Proceeding start in the opinion of the appropriate Agency or the chief inspector, are of a similar level of potential hazard to high-activity sources. para. 5 (1) of the HASS (Scotland) Directions 2005</p>	<p>Decision making the appropriate Agency or chief inspector, in considering if the measures taken, or to be taken, by the applicant or person granted the registration or authorisation ensure the adequate security of any premises, shall where it, or he, considers it appropriate— (a) inspect those premises; and (b) consult with the police and such other persons as it, or he, considers appropriate concerning the measures. r. 3 (3) of HASS Regulations 2005</p>	None subject to appeal

*NB Exception to notification procedures – if S of State has directed SEPA that on grounds of national security, it is necessary that knowledge of certain specified or describer information as may be specified or described should be restricted then the authorisation certificates and applications are not to be copied to the local authorities as described above.

42.— Application of Act to Crown.

(1) Subject to the following provisions of this section, the provisions of this Act shall bind the Crown.

(2) Subsection (1) does not apply in relation to premises—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility

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Table Eight: Environmental Protection Act

Name of exercises related to Environmental Protection	Initial application	Determination of the license or application	Appeals on decisions
<p>Authorisations: general provisions</p>	<p>An application for an authorisation shall be made to the enforcing authority. s. 6 (2) of the Environment Protection Act 1990 (EPA)</p> <p>Notification of application An application to the enforcing authority for an authorisation must also, unless regulations made by the Secretary of State exempt applications of that class, be advertised in such manner as may be prescribed in regulations so made. Schedule 1, para. 1 (2) of EPA</p> <p>Form of application In writing r. 2 (1) of the Environmental Protection (Applications, Appeals and Registers) Regulations 1991</p>	<p>Taking account opinions and consultation Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in determining the application. Schedule 1, para. 2 (3) of EPA</p> <p>Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in determining the application. Schedule 1, para. 2 (5) of EPA</p> <p>Form of notification of providing information By notice in writing to the applicant, require him to furnish such further information specified in the notice, within the period so specified. Schedule 1, para. 1 (3) of EPA</p> <p>Transmitted of the application The enforcing authority shall inform the applicant of the fact that his application is being transmitted to the Secretary of State. Schedule 1, para. 3 (2)</p> <p>Time limits on decision making Except in a case where an application has been referred to the Secretary of State, the enforcing authority shall determine an application for an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant. Schedule 1, para. 5 (1)</p>	<p>Who may appeal Limited to applicants who may appeal as respects authorisations and against variation, enforcement and prohibition notices</p> <p>Appeals is to Secretary of State</p> <p>Start of the process An appeal under this section shall, if and to the extent required by regulations under subsection (10) below, be advertised in such manner as may be prescribed by regulations under that subsection. s. 15 (4) of EPA</p> <p>Reference need to be made (a) a statement of the grounds of appeal; (b) a copy of any relevant application; (c) a copy of any relevant authorisation; (d) a copy of any relevant correspondence between the appellant and the enforcing authority; (e) a copy of any decision or notice which is the subject-matter of the appeal; (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations. r. 9 (2) of the Environmental Protection (Applications, Appeals and Registers) Regulations 1991</p> <p>Proceedings Secretary of State to decide whether a hearing or inquiry to be held. If a hearing it may be held wholly or partially in private. s. 15 (5) of EPA</p> <p>Possible decisions Quash or affirm the notice affirmation may be in its original form or with such modifications as Secretary of State thinks fit. s. 15 (7) of EPA</p> <p>Time limits on decision making (a) 6 months from the date of the decision or date of deemed refusal in the of an application for an authorisation under section 6 of the 1990 Act, or where a person is aggrieved by the conditions attached to his authorisation</p>

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			<p>or where a person has been refused a variation of an authorisation on an application under section 11 of the 1990 Act,</p> <p>(c) in the case of an appeal in respect of a decision of an enforcing authority to revoke an authorisation, before the date on which the revocation of the authorisation takes effect;</p> <p>(d) two months from the date of the notice which is the subject-matter of the appeal in the case of an appeal by a person on whom a variation notice, an enforcement notice or a prohibition notice is served,;</p> <p>(e) 21 days from the date of the notice of determination in respect of a decision of an enforcing authority that information is not commercially confidential. r. 10 (1) of the Environmental Protection (Applications, Appeals and Registers) Regulations 1991</p> <p>Notification of determination The Secretary of State shall notify the appellant in writing of his determination of the appeal and shall provide him with a copy of any report. r. 14 (1) of the Environmental Protection (Applications, Appeals and Registers) Regulations 1991</p>
Transfer of authorisations	<p>An authorisation for the carrying on of any prescribed process may be transferred by the holder to a person who proposes to carry on the process in the holder's place. s. 9 (1) of EPA</p> <p>NB the act does not refer to an application for transfer being necessary</p>	<p>Who shall notify to the enforcing authority The person to whom it is transferred</p> <p>Form of notification Writing within twenty-one days beginning with the date of the transfer s. 9 (2) of EPA</p>	As above
Variation of authorisations by enforcing authority	Commenced by enforcing authority s. 10 (2) of EPA	<p><i>Variations by the enforcing authority</i></p> <p>Notification of proposed variation The enforcing authority shall give notice of the action to be taken by the holder of the authorisation to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification; and the holder shall advertise the action in the manner prescribed in regulations made by the Secretary of State. Schedule 1, para. 6 (2)</p> <p>Consultation and taking into opinions Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in taking its decision. Schedule 1, para. 6 (4)</p> <p>Any representations made by any other persons within the period allowed shall also be considered by the enforcing authority in taking its decision. Schedule 1, para. 6 (6)</p>	As above

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<p>Variation of conditions etc: applications by holders of authorisations</p>	<p>A person carrying on a prescribed process under an authorisation who wishes to make a relevant change in the process may notify the enforcing authority in the prescribed form of that fact, and request the enforcing authority to make a determination, in relation to the proposed change . S. 11 (1) of EPA</p>	<p>Notification to prescribed consultee The enforcing authority shall give notice of any such application for a variation of an authorisation, enclosing a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification; and the holder of the authorisation shall advertise the application in the manner prescribed in regulations made by the Secretary of State. Schedule 1, para. 7 (2)</p> <p>Consultation and taking into opinions Any representations made by the persons so consulted within the period allowed shall be considered by the enforcing authority in determining the application. Schedule 1, para. 7 (4) Any representation made by any other persons within the period allowed shall also be considered by the enforcing authority in determining the application. Schedule 1, para. 7 (6)</p> <p>Time limits on decision making Four months from date application received except where an application for the variation of an authorisation has been referred to the Secretary of State, or unless a longer period agreed with the applicant. Schedule 1, para. 10 (1)</p>	<p style="text-align: center;">As above</p>
<p>Revocation of authorisation</p>	<p>The enforcing authority may at any time revoke an authorisation by notice in writing to the person holding the authorisation. S. 12 (1) of EPA</p>	<p>Obligation Enforcing authority may revoke an authorisation where it has reason to believe that a prescribed process for which the authorisation is in force has not been carried on or not for a period of twelve months.</p> <p>Time limitation The revocation of an authorisation under this section shall have effect from the date specified in the notice; and the period between the date on which the notice is served and the date so specified shall not be less than twenty-eight days. 12 (3) of EPA</p> <p>Others The enforcing authority may, before the date on which the revocation of an authorisation takes effect, withdraw the notice or vary the date specified in it. S. 12 (4) of EPA</p>	<p style="text-align: center;">As above</p>
<p>Enforcement notices</p>	<p>If the enforcing authority is of the opinion that the person carrying on a prescribed process under an authorisation is contravening any condition of the authorisation, or is likely to contravene any such condition, the authority may serve on</p>	<p>The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw the notice. S. 13 (4) of EPA</p>	<p style="text-align: center;">As above</p>

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	him a notice ("an enforcement notice"). S. 13 (1) of EPA		
Prohibition notices	If the enforcing authority is of the opinion, as respects the carrying on of a prescribed process under an authorisation, that the continuing to carry it on, or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the environment the authority shall serve a notice (a "prohibition notice") on the person carrying on the process. 14 (1) of EPA	The enforcing authority shall, as respects any prohibition notice it has issued to any person, by notice in writing served on that person, withdraw the notice when it is satisfied that the steps required by the notice have been taken. S.14 (5) of EPA	As above
<p>Providing information It shall be the duty of each enforcing authority—(a) to secure that the registers maintained by them under this section are available, at all reasonable times, for inspection by the public free of charge; and (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question. S.20 (7) of EPA</p> <p>Exclusions apply to information which would compromise national security s. 21 and Information which is commercially confidential s. 22</p>			
Waste management licences	Application for license to be made under these sections. S. 36 of EPA See also Waste Management Licensing Regulations 1994 (separate table) and PPC Regulations (Separate table)	<p>Statutory consultees Before issuing license must (a) refer the proposal to the appropriate planning authority and the Health and Safety Executive; and (b) consider any representations about the proposal which the authority or the Executive makes to it during the allowed period. S. 36 (4) of EPA Where any part of the land to be used is within a site of special scientific interest or any area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6)—(a) refer the proposal to SNH; and (b) consider any representations about the proposal which SNH makes to it during the allowed period S. 36 (7) of EPA</p> <p>Time limits on decision making Four months from the date of receipt of application or such longer period agreed with the applicant in writing. Failure to meet time limit is a deemed rejection of the application. S. 36 (9) of EPA</p> <p>Consultation before granting licence Before the waste regulation authority issues the licence it must, subject to subsection (7) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (2) above. S. 36A (6) of EPA</p>	<p>Who may appeal Limited to applicants who may appeal conditions, modification, suspension, revocation, surrender, transfer of permits</p> <p>Appeal is to Secretary of State</p> <p>Hearing process Secretary of State may decide or a party may requests that the appeal be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held or held to any extent in private). S. 43 (2) of EPA</p> <p>Time limits on decision Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—(a) as to the period within which and the manner in which appeals are to be brought; and (b) as to the manner in which appeals are to be considered. S. 43 (8) of EPA</p>
Variation of waste management license	A waste regulation authority may,—(a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of	<p>Notification Any modification of a licence under this section shall be effected by notice served on the holder of the licence and</p>	As above

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	<p>the authority, is desirable and is unlikely to require unreasonable expense on the part of the holder; and (b) on the application of the licence holder accompanied by the charge prescribed for the purpose by a charging scheme modify the conditions of his licence to the extent requested in the application. S. 37 (1) of EPA</p>	<p>the notice shall state the time at which the modification is to take effect. S. 37 (4) of EPA</p> <p>Time limits on the decision making Two months from the date of receipt of application, or within such longer period as the authority and the applicant agree in writing. Failure to meet time limits is deemed rejection of application. S. 37 (6) of EPA</p> <p>Notification of “stakeholders” Before modifying the licence, the waste regulation authority shall serve on every person appearing to the authority if—(a) he is the owner, lessee or occupier of any land; and (b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence. S. 37A (3) (4) of EPA</p> <p>Consultation before certain variations Before the waste regulation authority issues the licence it must, subject to subsection (8) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (3) above. S. 37A (7) of EPA</p>	
Revocation of waste management licences	<p>If holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person licence may be revoked. S. 38 (2) of EPA</p>	<p>Licence may be revoked in whole or in part S. 38 of EPA Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this section shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease. S. 38 (12) of EPA</p> <p>Obtaining information A waste regulation authority, may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in such form and within such period following service of the notice, or at such time, as is so specified. S. 71 (2) (b) of EPA</p>	As above
Suspension of waste management licences	<p>If the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by</p>	<p>Conditions on licence holder Where a licence is suspended the authority, in suspending it or at any time while it is suspended, may require the holder</p>	As above

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	<p>the licence having ceased to be in the hands of a technically competent person; or (b) if serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and (c) if the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to human health; SEPA may suspend the licence wholly or in part S. 38 (6) of EPA</p>	<p>of the licence to take such measures to deal with or avert the pollution or harm as the authority considers necessary. S. 38 (9) of EPA</p> <p>Notification Suspension and requirements imposed during the suspension shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease. S. 38 (12) of EPA</p> <p>Obtaining information A waste regulation authority, may, by notice in writing served on him, require any person to furnish such information specified in the notice as the Secretary of State or the authority, as the case may be, reasonably considers he or it needs, in such form and within such period following service of the notice, or at such time, as is so specified. S. 71 (2) (b) of EPA</p>	
<p>Surrender of waste management licences</p>	<p>A licence may be surrendered by its holder to the authority which granted it but, in the case of a site licence, only if the authority accepts the surrender. S. 39 (1) of EPA</p> <p>Form An application to the authority on a form provided by the authority for the purpose, giving such information and accompanied by such evidence as the authority reasonably requires and accompanied by the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995. S. 39 (3) of EPA</p>	<p>Before determination An authority which receives an application for the surrender of a site licence—(a) shall inspect the land to which the licence relates, and (b) may require the holder of the licence to furnish to it further information or further evidence. S. 39 (4) of EPA</p> <p>Determination of the application If the authority is satisfied that the condition of the land is unlikely to cause the pollution or harm mentioned in subsection (5) above, the authority shall, subject to subsection (7) below, accept the surrender of the licence; but otherwise the authority shall refuse to accept it. S. 39 (6) of EPA</p> <p>Statutory consultees Where the authority proposes to accept the surrender of a site licence, the authority must, before it does so,—(a) refer the proposal to the appropriate planning authority; and (b) consider any representations about the proposal which the Authority makes to it during the allowed period. S. 39 (7) of EPA</p> <p>Notifying the determination Where the surrender of a licence is accepted under this section the authority shall issue to the applicant, with the notice of its determination, a certificate (a "certificate of completion") stating that it is satisfied as mentioned in</p>	<p style="text-align: center;">As above</p>

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		<p>subsection (6) above and, on the issue of that certificate, the licence shall cease to have effect. S. 39 (9) of EPA</p> <p>Time limits on decision making Three months from the date on which the application is received, or such longer period agreed with the applicant in writing. Failure to meet time limit is deemed rejection of application. S. 39 (10) of EPA</p>	
Transfer of waste management licences	<p>Holder and transferee jointly apply for transfer. S. 40 (2) of EPA</p> <p>Form of application An application for the transfer of a licence shall be made on a form provided by the authority for the purpose, accompanied by such information as the authority may reasonably require, the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995 and the licence. S. 40 (3) of EPA</p>	<p>Determination If, on such an application, the authority is satisfied that the proposed transferee is a fit and proper person the authority shall effect a transfer of the licence to the proposed transferee. S. 40 (4) of EPA</p> <p>Time limits on decision making Two months from the date on which the application is received, or within such longer period as agreed with the applicants in writing. Failure to meet time limits is deemed rejection of application. S. 40 (6) of EPA</p>	As above
<p>Providing information Each waste regulation authority and waste collection authority (a) shall secure that any register maintained under this section is open to inspection by members of the public free of charge at all reasonable hours and (b) shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register. S. 64 (6) of EPA</p> <p>Exclusions apply to information which would compromise national security s. 65 and Information which is commercially confidential s. 66</p>			
Restrictions and prohibitions on serving remediation notices.	<p>A remediation notice may require an appropriate person to do things by way of remediation, notwithstanding that he is not entitled to do those things. S. 78G (1) of EPA</p>	<p>Consultation Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult every person who appears to the authority—(a) to be the owner or occupier of any of the relevant land or waters, and (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights, concerning the rights which that person may be so required to grant. S. 78G (3) of EPA Before serving a remediation notice, the enforcing authority shall reasonably endeavour to consult—(a) the person on whom the notice is to be served, (b) the owner of any land to which the notice relates, (c) any person who appears to that</p>	<p>Who may appeal A person on whom a remediation notice is served</p> <p>Appeal is to (a) if it was served by a local authority, to a magistrates' court or, in Scotland, to the sheriff by way of summary application; or (b) if it was served by the appropriate Agency, to the Secretary of State S. 78L (1) of EPA</p> <p>Determination of appeal On any appeal under subsection (1) above the appellate authority—(a) shall quash the notice, if it is satisfied that</p>

Annex Two: Statutory Obligations for Public Involvement

		<p>authority to be in occupation of the whole or any part of the land, and (d) any person of such other description as may be prescribed, concerning what is to be done by way of remediation. S. 78H (1) of EPA</p>	<p>there is a material defect in the notice; but (b) subject to that, may confirm the remediation notice, with or without modification, or quash it. S. 78L (2) of EPA Where an appellate authority confirms a remediation notice, with or without modification, it may extend the period specified in the notice for doing what the notice requires to be done. S. 78L (3) of EPA</p>
<p>Providing information It shall be the duty of each enforcing authority— (a) to secure that the registers maintained by it under this section are available, at all reasonable times, for inspection by the public free of charge; and (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges; and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question. S. 78R (8) of EPA Exclusions apply to information which would compromise national security s.78S or which is commercially confidential s.78T</p>			

Annex Three: Pictorial Tables

Table One: Pictorial Table for Water Environment Regulations

Name of the Activities	Urban Waste Water Treatment (Scotland) Regulations 1994	Water Environment and Water Services (Scotland) Act 2003	Water Environment (Register of Protected Areas) (Scotland) Regulation 2004	Water Environment (Control Activities) Scotland Regulations 2005
Water Use Licence				
Consultation				■
Participation				▲
Advertise				▲
Hearing				■
Public Register of information				▼ △
Report				■
Written Representation				▼
Procedure for water use licence variation				
Consultation				■
Participation				▲
Advertise				▲
Hearing				■
Public Register of information				▼ △
Report				■
Written Representation				▼
Transfer of water licence authorisation				
Consultation				■
Participation				■
Advertise				■
Hearing				■
Public Register of information				▼ △
Report				■
Written Representation				▼ △
Surrender of water use licence				
Consultation				■
Participation				▲
Advertise				■
Hearing				■
Public Register of information				▼ △
Report				■
Written Representation				▼ △
Suspension and revocation of water use licence				
Consultation				■
Participation				■
Advertise				■
Hearing				■
Public Register of information				▼ △
Report				■
Written Representation				■
Enforcement notices				
Consultation				▼
Participation				■
Advertise				■
Hearing				■
Public Register of information				▼ △
Report				■
Written Representation				■

Annex Three: Pictorial Tables

Appeals to the Scottish Ministers				
Consultation				■
Participation				▼
Advertise				▲
Hearing				▲
Public Register of information				▼ △
Report				▲
Written Representation				▲
Discharges of treated urban waste water				
Consultation	■			
Participation	■			
Advertise	■			
Hearing	■			
Public Register of information	■			
Report	■			
Written Representation	?			
Discharges of certain industrial waste water into receiving waters				
Consultation	▼ △			
Participation	▲			
Advertise	■			
Hearing	■			
Public Register of information	■			
Report	■			
Written Representation	?			
Maintenance of and publication of register				
Consultation			■	
Participation			■	
Advertise			■	
Hearing			■	
Public Register of information			▲	
Report			▼	
Written Representation			?	

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■ **No information**

? **At SEPA's discretion**

Annex Three: Pictorial Tables

Table Two: Pollution Prevention and Control Obligations

(NB this table covers the PPC (Scotland) Regs 2000 and the PPC (Public Participation etc) (Scotland) Regs 2005 to indicate where changes have been introduced by the 2005 regs to the 2000 procedures. It also incorporates the provisions of the Environmental Protection Act 1990 and Landfill (Scotland) Regulations 2003 as appropriate)

Name of the Activities	Environmental Protection Act 1990	Landfill (Scotland) Regulations 2003	Pollution Prevention and Control (Scotland) Regulations 2000 prior to amendment by the PPC (Public Participation Etc) (Scotland) Regulations 2005	PPC as amended by the Pollution Prevention and Control (Public Participation ect.) (Scotland) Regulations 2005
Permits for Industrial operations covered by PPC Regulations				
Consultation	▼ △		▼ △	▼ △
Participation	▼ △		▼ △	▼ △
Advertise	▼ △		▼ △	▼ △
Hearing	■		?	?
Public Register of information	▼ △		▼ △	▼ △
Report	■		■	■
Written Representation	▼ △		▼ △	▼ △
Permits for SED installations				
Consultation	▼ △		▼ △	▼ △
Participation	▲		▼ △	▼ △
Advertise	▼ △		▼ △	▼ △
Hearing	■		?	?
Public Register of information	▼ △		▼ △	▼ △
Report	■		■	■
Written Representation	▼ △		▼ △	▼ △
Permits for Waste Incineration Installation				
Consultation	▼ △		▼ △	▼ △
Participation	▲		▼ △	▼ △
Advertise	▼ △		▼ △	▼ △
Hearing	■		?	?
Public Register of information	▼ △		▼ △	▼ △
Report	■		■	■
Written Representation	▼ △		▼ △	▼ △
Permits for Landfill Sites				
Consultation	▼ △	■		▼ △
Participation	▲	▼ △		▼ △
Advertise	▼ △	▼ △		▼ △
Hearing	■	?		?
Public Register of information	▼ △	?		?
Report	■	■		■
Written Representation	▼ △	▼ △		▼ △
Variation of permits				

Annex Three: Pictorial Tables

Consultation	▼		▼ △	▼ △
Participation	▲		▼ △	▼ △
Advertise	▼		■	▼ △
Hearing	■		■	■
Public Register of information	▼		▼ △	▼ △
Report	■		■	▼
Written Representation	?		?	?
Variation of Landfill permit				
Consultation	▼	■	▼ △	▼ △
Participation	▲	■	▼ △	▼ △
Advertise	▼	■	■	▼
Hearing	■	■	■	■
Public Register of information	▼	▼ △	▼ △	▼ △
Report	■	■	■	■
Written Representation	?	?	?	?
Transfer of permits				
Consultation	■		■	■
Participation	■		■	■
Advertise	■		■	■
Hearing	■		■	■
Public Register of information	▼		▲	▲
Report	■		■	■
Written Representation	▼		?	?
Application to surrender a permit for a Part A installation or Part A mobile plant				
Consultation			■	■
Participation			■	▲
Advertise			■	▼ △
Hearing			■	■
Public Register of information			▲	▼ △
Report			■	■
Written Representation			?	▼ △
Notification of surrender of a permit for a Part B installation or Part B mobile plant				
Consultation			■	■
Participation			■	■
Advertise			■	■
Hearing			■	■
Public Register of information			▲	▲
Report			■	■
Written Representation			?	?
Revocation of permits				
Consultation	■		■	■
Participation	■		■	■
Advertise	■		■	■
Hearing	■		■	■
Public Register of information	▼		▲	▲
Report	■		■	■
Written Representation	▼		?	?
Suspension notices				
Consultation			■	■
Participation			■	■
Advertise			■	■

Annex Three: Pictorial Tables

Hearing			■	■
Public Register of information			▲	▲
Report			■	■
Written Representation			?	?
Proposed change in the operation of an installation				
Consultation			■	■
Participation			■	■
Advertise			■	■
Hearing			■	■
Public Register of information			▲	▲
Report			■	■
Written Representation			?	?
Enforcement notices				
Consultation	■		■	■
Participation	■		■	■
Advertise	■		■	■
Hearing	■		■	■
Public Register of information	▼ △		▲	▲
Report	■		■	■
Written Representation	■		?	?
Appeals				
Consultation			■	■
Participation			▼ △	▼ △
Advertise			▼ △	▼ △
Hearing			▼ △	▼ △
Public Register of information			▼ △	▼ △
Report			■	■
Written Representation			▼ △	▼ △

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■ No information

Table Three: Waste Management and Producer Responsibility Obligations

Name of the Activities	Environment Protection Act 1990	Waste Management Licensing Regulations 1994	Producer Responsibility Obligations (Packaging Waste) Regulations 1997	Control of Major Accident Hazards Regulations 1999
Waste management licences				
Consultation	▼ △	▼ △		
Participation	▲	■		

Annex Three: Pictorial Tables

Advertise	■	▼ △		
Hearing	■	▼ △		
Public Register of information	▼ △	▼ △		
Report	■	■		
Written Representation	?	?		
Variation of waste management license				
Consultation	▼ △	▼ △		
Participation	▲	■		
Advertise	■	■		
Hearing	■	■		
Public Register of information	▼ △	▼ △		
Report	■	■		
Written Representation	▼ △	▼ △		
Revocation of waste management licences				
Consultation	■	■		
Participation	■	■		
Advertise	■	■		
Hearing	■	■		
Public Register of information	▼ △	▼ △		
Report	■	■		
Written Representation	▼ △	▼ △		
Suspension of waste management licences				
Consultation	■	■		
Participation	■	■		
Advertise	■	■		
Hearing	■	■		
Public Register of information	▼ △	▼ △		
Report	■	■		
Written Representation	▼ △	▼ △		
Surrender of waste management licences				
Consultation	▼ △	▼ △		
Participation	■	■		
Advertise	■	■		
Hearing	■	■		
Public Register of information	▼ △	▼ △		
Report	■	■		
Written Representation	▼ △	▼ △		
Transfer of waste management licences				
Consultation	■	■		
Participation	■	■		
Advertise	■	■		
Hearing	■	■		
Public Register of information	▼ △	▼ △		
Report	■	■		
Written Representation	▼ △	▼ △		
Appeals against authorization				
Consultation	■			
Participation	■			

Annex Three: Pictorial Tables

Advertise	▼ △			
Hearing	?			
Public Register of information	■			
Report	■			
Written Representation	▼			
Appeals against waste management licence				
Consultation	■			
Participation	■			
Advertise	■			
Hearing	?			
Public Register of information	■			
Report	■			
Written Representation	?			
Appeals against restrictions and prohibitions on serving remediation notices				
Consultation	■			
Participation	■			
Advertise	■			
Hearing	■			
Public Register of information	■			
Report	■			
Written Representation	■			
Exercise of functions affecting SSSIs				
Consultation				
Participation				
Advertise				
Hearing				
Public Register of information				
Report				
Written Representation				
Registration in connection with exempt activities				
Consultation		■		
Participation		■		
Advertise		■		
Hearing		■		
Public Register of information		?		
Report		■		
Written Representation		▼		
Application for producer registration				
Consultation			■	
Participation			■	
Advertise			■	
Hearing			■	
Public Register of information			▼ △	
Report			■	
Written Representation			▼	
Application for registration of a scheme				
Consultation			■	

Annex Three: Pictorial Tables

Participation			■	
Advertise			■	
Hearing			■	
Public Register of information			▼ △	
Report			■	
Written Representation			▼	
Application for accreditation				
Consultation			■	
Participation			■	
Advertise			■	
Hearing			■	
Public Register of information			▼ △	
Report			■	
Written Representation			▼	
Provision of information to competent authority				
Consultation				■
Participation				▲
Advertise				■
Hearing				■
Public Register of information				■
Report				■
Written Representation				?
Provision of information to other establishments				
Consultation				■
Participation				▲
Advertise				■
Hearing				■
Public Register of information				■
Report				■
Written Representation				?
Functions of competent authority in relation to the safety report				
Consultation				■
Participation				▲
Advertise				■
Hearing				■
Public Register of information				■
Report				■
Written Representation				?
Prohibition of use				
Consultation				■
Participation				■
Advertise				■
Hearing				■
Public Register of information				■
Report				■
Written Representation				▼

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Annex Three: Pictorial Tables

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? **At SEPA's discretion**

Annex Three: Pictorial Tables

Table Four: Radioactive Substances Obligations

Name of the Activities	Radioactive Substances (Appeals) Regulations 1990	Radioactive Substances Act 1993	The High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005
Registration of users of radioactive material			
Consultation		■	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		▼ △	
Report		?	
Written Representation		?	
Registration of mobile radioactive apparatus			
Consultation		■	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		▼ △	
Report		?	
Written Representation		?	
Cancellation and variation of registration			
Consultation		■	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		■	
Report		?	
Written Representation		?	
Disposal of radioactive waste			
Consultation		▼ △	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		■	
Report		▼ △	
Written Representation		?	
Transfer of authorisations			
Consultation		▼ △	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		■	
Report		▼ △	
Written Representation		?	
Revocation and variation of authorisations			
Consultation		▼ △	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		■	
Report		▼ △	
Written Representation		?	
Enforcement notices			
Consultation		■	

Annex Three: Pictorial Tables

Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		■	
Report		■	
Written Representation		?	
Prohibition notices			
Consultation		■	
Participation		■	
Advertise		■	
Hearing		■	
Public Register of information		■	
Report		■	
Written Representation		?	
Registrations, authorisations and notices: appeals from decisions of appropriate Agency			
Consultation	■		
Participation	■		
Advertise	▼ △		
Hearing	▲		
Public Register of information	■		
Report	▼ △		
Written Representation	▼ △		
Variation of registration regarding high-activity source			
Consultation			■
Participation			■
Advertise			■
Hearing			■
Public Register of information			■
Report			?
Written Representation			?
Variation of authorization regarding high-activity source			
Consultation			▼ △
Participation			■
Advertise			■
Hearing			■
Public Register of information			■
Report			▼ △
Written Representation			?
Site security			
Consultation			▼ △
Participation			■
Advertise			■
Hearing			■
Public Register of information			■
Report			▼ △
Written Representation			?

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Annex Four: Interview Guide and Sample Description

A small team from the Macaulay Institute and University of Dundee have been asked to provide some initial guidance to SEPA on public consultation and participation in regulatory decision-making as part of their work on Effective Regulation. The purpose of the research is to:

- review the relevant legislation and regulatory regimes for obligations and the purposes of public involvement
- identify good practice for public consultation and participation processes in regulatory decision-making
- identify where legislation restricts or allows SEPA to follow this good practice
- recommend ways of delivering good practice in meeting its regulatory requirements for public involvement.

As part of that research, we are interviewing a small sample of SEPA and other agency staff about their experiences of public consultation and participation in regulatory regimes.

The questions are listed below. First we would like to remind you that we are bound by a code of research ethics which means that:

- Participation is voluntary so you can stop at any time, choose not to answer a question or make comments off the record
- We keep the individual transcript data confidential so it will only be seen by research team. Individuals will not be identified in our report
- We will comply with the Data Protection Act and the data will only be used for this project and associated papers
- We like to tape the interviews to ensure we accurately record your answers in your own words but if you are not comfortable with this, let us know. The tapes are only heard by the researcher making the written transcript.

We are interested in your opinions and why you hold them, so there are no ‘right’ answers. Please answer as fully as you would like. The interview should take about three quarters of an hour but will depend on how much you would like to say!

Q1. To help us with our interpretation of the answers, please tell us a bit about yourself. What is your job title? Your position in the organisation? Can you give us a brief summary of what you do?

Q2. What would you outline as the important characteristics for effective regulation?

Q3. Public consultation and public participation are terms that mean many things to many people. How would you define them? What do you mean by the term public?

Q4. Before we get more specific, we are interested in your perception of the SEPA’s overall track record in public participation and consultation processes.

- a) Using a scale of 1 – 5 (where 1 is not at all interested and 5 is extremely interested to the point of changing their behaviour) – how interested are SEPA staff in the results of public participation and consultation processes?

Annex Four: Interview Guide and Sample Description

- b) Using a scale of 1 – 5 (where 1 is very poor and 5 is excellent) – how effective do you think SEPA staff are at running public participation and consultation processes?
- c) Using a scale of 1 – 5 (where 1 is unimportant and 5 is absolutely central) – how important is public participation and consultation processes to SEPA’s overall remit?

Q5. We’ve been asked to look at public consultation and public participation in the particular regimes listed in Annex One (over page). Which of these regimes (if any) are you able to talk about?

Q6. So to clarify, from now on, we will be focussing on the regimes you mentioned in Q6 – where there are several, we’ll focus on a particular one that you feel is most appropriate. In what ways has there been public consultation and public participation in these/this regime(s)?

Q7. What factors have contributed to the success of public consultation and public participation in these regimes?

Q8. What factors have hindered the success of public consultation and public participation in these regimes?

Q9. Having discussed what you do in *practice*, we are interested in your understanding of your *statutory duties* regarding public participation and public consultation for this/these regimes? Can you tell us what they are?

Q10. Can you give an example from your own work, or others’ work, of what you might call good practice for public consultation and public participation?

Q11. Can you give an example of what not to do?

Q12. To your knowledge, has SEPA ever asked people how they might like to be consulted?

Q13. Do you have any further comments that may help us make useful recommendations to the effective regulation group? Do you have any further questions about the research?

Annex One: Specified Scottish Regulatory Regimes

- Water Environment and Water Services (Scotland) Act 2003
- Controlled Activities (Scotland) Regulations 2005
- Pollution Prevention and Control (Scotland) Regulations 2000
- Landfill (Scotland) Regulations 2003
- Radioactive Substances Act 1993
- Control of Major Accident Hazards Regulations 1999
- Environmental Protection Act 1990:
 - Part I: Integrated Pollution Control and Air Pollution Control
 - Part II: Waste on Land:
 - Waste Management Licensing
 - Part IIa: Contaminated Land
 - Contaminated Land (Scotland) Regulations 2000
- Nature Conservation (Scotland) Act 2004

Annex Four: Interview Guide and Sample Description

- Environment Act 1995:
 - Part IV: Air Quality
 - Part V: National Waste Strategy
- Environmental Assessment (Scotland) Act 2005
- Environmental Impact Assessment (Scotland) Regulations 1999

Are there any other regimes that you would like to discuss in relation to our work?

Table of Interview Respondents:

ID	Position	Agency
1	Communications	SEPA
2	Operations (Area Manager)	SEPA
3	Operations (Area Manager)	Environment Agency
4	Registry	SEPA
5	Operations (National Waste Strategy)	SEPA
6	Communications	SEPA
7	Operations (Inspection)	Health & Safety Executive
8	Communications	UKAEA
9	Operations (Area Manager)	Environment Agency
10	Operations (Process Industry Regulation)	Environment Agency
11	Communications	Scottish Water
12	Business and Community Relations	Scottish Water
13	Strategic Policy (Water)	SEPA
14	Operations (Process Industry Regulation)	SEPA

Environment Agency Decision to Allow a Trial of Recycled Liquid Fuel at Lafarge Cement Works Westbury Wiltshire

Summary Document

NB This is a summary document only.

The Agency's Decision

The Agency has decided to allow a carefully controlled six-month trial after consideration of all the issues raised by the extensive public consultation and detailed technical scrutiny of the proposal. The Pollution Prevention and Control (PPC) permit for the works has been varied to allow the trial to take place.

Stringent conditions have been imposed, including extensive additional monitoring, to enable a comparison to be made between the baseline case, with the existing fuels of coal, petroleum coke and used tyres and partial substitution with recycled liquid fuel (RLF).

At the end of the trial, RLF use will stop and Lafarge will have to make another, separate application to the Environment Agency, if the company wishes to use RLF on a permanent basis. The assessment of the data from the trial would form the basis of this separate application.

Background

Lafarge Cement UK applied to the Environment Agency on 18 June 2003, for permission to carry out a trial of the use of RLF as a partial substitute for existing fuels at its works in Westbury, Wiltshire. RLF is derived from waste liquid solvents, which are by-products mainly from the chemical industry.

The company wants to trial the use of RLF as a substitute fuel for up to 40% of existing fuels, to prove the effectiveness and environmental acceptability of this fuel.

What were the steps in the consultation?

Lafarge conducted a six-week pre-application consultation in which the draft application was widely circulated and comments received were taken into account before the final submission to the Agency. In addition, Lafarge Cement held a number of open days where over 250 people attended.

Annex Five: Good practice summary decision document

The application from Lafarge Cement was placed on the public registers and advertised by Lafarge in the London Gazette and the Wiltshire Times.

During a consultation that went considerably beyond the statutory requirements, the Agency produced a consultation guide, containing information on the background to the application, the key issues and outlining the various ways in which people could make their views known to the Agency. The Agency also organised a widely-advertised public meeting in Westbury, which attracted over 100 people. A series of public surgeries followed, which 91 people attended.

Before reaching a decision, the Agency also took advice from experts on health (West Wiltshire Primary Care Trust and the Health Protection Agency), local air quality (West Wiltshire District Council, Kennet District Council and North Wiltshire District Council), food safety (the Food Standards Agency), environment (English Nature) and health and safety (the Health and Safety Executive and Wiltshire County Council's emergency planning department).

The deadline for determination was extended several times, finally to 11 June 2004, to allow all the statutory consultees time to respond fully and for the Agency to consider all the issues and complete the necessary technical work.

What issues were raised and how have they been dealt with?

Impact on human health and the environment

This key issue has been very carefully considered and the responses from West Wiltshire Primary Care Trust, the Food Standards Agency and English Nature have supported and confirmed the Agency's view that there should be no significant impact on human health or the environment as a result of the trial.

Air Quality Standards and Objectives set by the Government to protect human health and the environment are not being exceeded around the works at present and no significant change is expected with the use of RLF. The trial will of course test this. In fact, the Agency's experience of the use of this type of fuel in cement kilns around the country is that the environmental impact is *reduced* when this fuel is used.

During the trial, which will be closely monitored, the Agency will remain in close contact with West Wiltshire Primary Care Trust and should there be any unexpected evidence that human health might be affected, we will not hesitate to require Lafarge to stop the trial.

Monitoring

Extensive *additional* monitoring will be required for the trial. This is *extra* to the comprehensive monitoring already required by the existing permit.

- The most important additional monitoring is of the emissions from the main chimney. This will include continuous monitoring of volatile organic compounds

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and hydrogen chloride and extensive testing for a wide range of other chemicals. The aim is to compare emissions with and without the use of RLF.

- Ambient air monitoring – this is looking at ground level concentrations of chemicals. The permit already requires this type of monitoring – and this is taking place at 16 locations around the works. For the trial additional continuous monitoring has been specified for at least four locations. Lafarge is required to produce a strategy for this additional monitoring and implement it over a 12 month period to include the whole of the trial. This monitoring will provide additional reassurance to the public. No addition of RLF will be allowed before this monitoring is up and running.
- Other environmental monitoring – soil surveys are used to pick up longer term accumulations of chemicals such as metals and dioxins. One such survey was carried out in 1998. To provide additional reassurance to the public, for the trial this survey will need to be repeated at the end of the trial.

NB Further information on the extra monitoring required for this trial and the monitoring required for the existing permit can be found in a separate paper produced by the Agency. Details of how to get this are on page 7.

Particulates

Particulate matter emitted from the kilns is very largely removed by highly efficient electrostatic precipitators. The contribution to the overall particulate loading in the environment is known to be very small and there is no reason to suggest that there will be any significant increase in particulate emissions as a result of this trial. There is therefore no need to use other methods to further reduce the particulate emissions. However, particulate monitoring will be extensive during the trial both from the chimney and in the surrounding environment.

Dioxins

Dioxin emissions are at extremely low levels and the emission limit set in the existing permit is already at the stringent limit set by European legislation to protect human health. There is no reason to suggest that there will be any significant increase in dioxin emissions as a result of this trial and there is no need for any additional controls or other methods to reduce these emissions further.

As indicated above, an additional soil survey will be carried out to provide additional reassurance. This will be a repeat of the last survey carried out in 1998, which showed levels of metals and dioxins to be at very low levels, typical of a rural environment.

Safety Issues

The application has been scrutinised by the Health and Safety Executive and Wiltshire County Council's emergency planning department and they are content that the trial can progress safely.

Appropriate risk assessments have been carried out with respect to the storage and use of RLF on site. RLF will be stored in a purpose built bunded tank. Delivery by tanker

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will include back venting of any vapours to the storage tank. Venting of the tank itself will be through a carbon filter to ensure volatile organic compounds do not enter the atmosphere.

Transport of RLF to site will be by road tanker. Transport issues are outside the Agency's responsibility. This is a planning issue but the Agency is not aware of any objections or restrictions made by the planning authority.

Management of the trial

The Agency has set strict pre-operational conditions to ensure that the management structure for the team conducting the trial and operating and training procedures are approved before the trial starts.

During the trial, kiln operating conditions must be stable and within appropriate ranges to ensure proper comparison between the different stages of the trial.

The Agency will expect emission limits to be complied with as a matter of course. However, if any other monitoring of the process shows unexpected variations, which are potentially environmentally significant (such as a change in noise levels or appearance in the plume from the chimney), RLF addition will be stopped until the Agency has thoroughly assessed the results and confirmed in writing whether the trial may continue.

Dispersion modelling assessment

Dispersion modelling is a useful tool to predict the impact of emissions. The assessment provided by Lafarge shows that the impact of the present emissions from the works on the surrounding environment is not significant. The Agency has audited this work to prove its authenticity and has carried out additional modelling work, which shows that the impact further afield (for example in Devizes) is negligible. When the trial is complete, Lafarge is required to carry out further dispersion modelling to demonstrate the impact on the environment with and without RLF.

Agency scrutiny of the trial

The Agency will conduct frequent unannounced inspections in addition to routine visits during the trial. Lafarge is required to produce a weekly report, which will provide details of the forthcoming week's programme for the trial and a summary of the previous week's monitoring results. This will also be posted on Lafarge's website. We will scrutinise the results and ensure that the report is available to the public on a regular basis. We will also conduct our own independent check monitoring throughout the trial, to provide reassurance that the monitoring is being done properly.

We are not expecting problems to arise, but if the monitoring results do give us cause for concern, we will not hesitate in stopping the addition of RLF

How we have taken your views into account

- We have responded to concerns about safety by consulting Wiltshire County Council's emergency planning department and the Health and Safety Executive to ensure proper scrutiny was given to the proposals for the trial.
- To reassure you about the use of this fuel and to provide information in an easily accessible form, we looked carefully at the use of this type of fuel at other cement works and have written a summary note of our findings. This work confirmed that the use of RLF does not cause any significant environmental impact and generally results in a reduction in emissions to the environment. NB The Agency has produced an explanatory note on this subject – details of how to get a copy may be found on page 7.
- Additional monitoring has been specified for the trial – soil sampling for dioxins and metals and additional continuous ambient air monitoring at a minimum of 4 locations to provide extra reassurance.
- We have audited the dispersion modelling study to make sure it was accurate and conducted our own studies to look further afield from the works (for example Devizes) and to explore the use of meteorological data from RAF Lyneham rather than Yeovilton. This has confirmed that the dispersion modelling submitted is satisfactory and that it is in fact more precautionary to use the Yeovilton data (as used in the Lafarge study) since this predicts the greater impact. Further afield, the impact of emissions from the works has been shown to be negligible. NB The Agency has produced two notes on this subject: a general guide to dispersion modelling and the audit of Lafarge's dispersion modelling report. Details of how to get these may be found on page 7.
- To respond to concerns that the application was not accessible on the internet, we put it on the Agency's web site, enabling comments to be emailed directly to the Agency.

What conditions will be imposed?

Strict conditions have been imposed to ensure that the trial is carried out effectively and the impact on the environment is minimised.

Pre-trial conditions

These are conditions that must be met before the trial is allowed to begin. They will include those to ensure that the storage and delivery systems for RLF are satisfactory, the necessary operating procedures and management structure are in place and that a detailed plan for each stage of the trial has been approved by the Agency.

Trial conditions

- Emission limits have been set for hydrogen chloride, hydrogen fluoride and a wide range of metals in accordance with the Hazardous Waste Incineration Directive. These have not been set before in the permit.
- There will be extensive additional monitoring of the emissions from the main chimney during the trial.

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- The composition of RLF delivered to site must comply with a strict specification. Monitoring conditions have been set so that compliance may be demonstrated. In addition, the Agency will conduct independent tests to verify the specification.
- Soil survey to be carried out at the conclusion of the trial (as indicated previously).
- Additional ambient air monitoring over and above the existing permit requirement will be carried out over a 12 month period, including the whole trial.

What will happen at the end of the trial?

At the end of the trial Lafarge must stop using RLF as permission to use it will cease. Lafarge is then required to submit a detailed report on the trial to the Agency.

If Lafarge decides it wants to use RLF on a permanent basis, a further application to the Agency is required. This would be a separate determination, and permission to conduct this trial does not mean that permission for permanent use will automatically follow.

Where can further information be obtained?

There are a number of ways you can view the full decision document and variation to the permit:

- public registers at the following locations

Environment Agency
North Wessex Area Office
East Quay
Bridgwater
TA6 4YS

West Wiltshire District Council
Council Offices
Bradley Road
Trowbridge
BA14 0RD

Tel. 01278 484551

Tel. 01225 776655

- Westbury town library.
- Agency's web site: www.environment-agency.gov.uk

The Agency can also send you a copy of the decision document. Please contact the Agency's Bridgwater office: Tel. 01278 484551, email zia.smith@environment-agency.gov.uk, or write to Environment Agency, Rivers House, East Quay, Bridgwater TA6 4YS.

The Agency has also produced a number of other documents to help in the understanding of the issues raised in this consultation:

- Pollution inventory explanatory note
- Lafarge monitoring – explanatory note
- Agency's audit of the dispersion modelling assessment
- Guide to dispersion modelling

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- Agency review of substitute liquid fuel in cement kilns

These are all available through the Agency's Bridgwater office (as above) and on the Agency's web site. Click on south west region.

How can the public be involved?

This trial will run for six months. During this time regular monitoring, inspection and reporting will take place, but you can still be involved by reporting any unusual occurrences to the Environment Agency on **0800 807060**. Information will be updated on both the public registers and the Agency's website. Click on south west region.

Glossary of Legal Terms

Advertise – publicise generally in a set form and in set locations such as newspapers or on site

Appeal – request decision be reconsidered by a third party; process of considering initial decision again

Communicate the conclusions – tell others the decision (sometimes including reasons for the decision)

Consult – seek the opinions of

Inform – give information

Notify – tell what decision has been made, what applications received or what decision proposed

Oral hearing – court/tribunal type proceedings where arguments are presented

Participate – be actively involved in a process

Private hearing - court/tribunal type proceedings where arguments are presented in private i.e. only the parties may be present

Provision of Information – The giving of information on a decision, application or proposal

Public Hearing - court/tribunal type proceedings where arguments are presented in public. Open to anyone to listen though not to participate

Public Participation –give members of the public the opportunity to express their concerns and enable public authorities to take due account of such concerns [from Aarhus Convention]

Public Register of Information - record of decisions, applications or similar information available to the public for inspection

Publicise – make known to the public, perhaps through newspaper advertisement, perhaps by posting a notice

Register of Information – record of decisions, applications or similar information (generally same as Public Register of Information)

Register - record of decisions, applications or similar information (generally same as Public Register of Information)

Report – advise of decision (sometimes including reasons for the decision)

Representations –arguments, comments, opinions

Serve notice – deliver a written communication

Take Account of – consider and have regard to as appropriate

The Public - means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups (from Aarhus Convention)

Written Representations - written Comments expressing a view