

**Environmental Authorisations (Scotland)  
Regulations 2018: Proposed Changes to Guidance on  
Public Participation and Fit & Proper Person Test**

**March 2025**

1.	<p><b>Do you agree with the proposed approach on pre-application? Yes or No. If you answered 'No', please explain why.</b></p>
	<p>No</p> <p>Scottish Water is broadly supportive of the proposed approach for pre-application engagement. Our experience of liaising with communities affected by our construction projects has shown the benefits that can be offered by early engagement. We also already carry out some pre-application engagement in relation to our water resource activities, engaging with statutory stakeholders and other parties with specific interest in this area. Details of any studies, comments or additional information needed by them are included in the associated CAR<sup>1</sup> application.</p> <p>However, until SEPA confirms which permit applications and variations will require pre-application engagement under EASR<sup>2</sup>, it is not possible for us to fully assess the proposals to understand how they might apply to our activities and if they are practical in all scenarios. We expect the criteria for deciding on the need for pre-application engagement to be fully transparent and proportionate to the scope of the application or variation.</p> <p>The consultation states that pre-application engagement may be required for an activity that “<i>due to its nature or location may have a particular local or national public interest</i>”. It also states that “<i>the aim of any pre-application engagement is to explore local environmental knowledge and understand any potential issues or community concerns</i>”. We would appreciate further guidance on the expectations for local engagement for an activity that is carried out at more than one location across Scotland and could be of national interest. Currently, the proposals appear to focus on providing pre-application information for a single site. Further guidance is therefore required on the scope of engagement for activities that occur at multiple locations e.g. waste to land applications.</p> <p>With particular reference to public engagement for waste to land authorisations, it should be noted that the land owner/occupier may not want to publicise this activity within their local community. Guidance is, therefore, needed on how applicants can navigate this situation and still meet SEPA’s expectations for engagement.</p> <p>The Public Participation Statement (PPS) currently sets out the scope of SEPA’s consultation activities, providing clear information on what is covered and, importantly, what is not covered e.g. seeking views on <i>how</i> an activity proceeds, not if it should go ahead. Similar clarity is required for the pre-application consultation stage. The PPS is guidance for both prospective applicants and the public. It needs to provide enough information to ensure that applicants provide a meaningful consultation. At the same time, it needs to provide the public with a realistic expectation of how they can get involved and what outcomes they can anticipate. Public expectations must be managed to ensure there is a clear</p>

understanding of the type of information that can, and cannot, be made available to them and which decisions can, and cannot, be influenced under the scope of the consultation process. This is particularly important for activities that will generate strong community views to minimise the risk of communities becoming disappointed with the process and creating, or reinforcing, negative feelings toward the proposed activity.

A clear definition of the consultation scope applies to all activities, but is particularly relevant for our water resource activities, which already have various restrictions applied e.g. a no publish/share policy for copies of abstraction licences, data returns and compliance assessments. The PPS currently states that when SEPA consults, applications will be published on SEPA's website, subject to national security directions. We would welcome a similar caveat to be included in the pre-application guidance. We have previous experience of applications which have been advertised under CAR Regulation 13, where significant parts of the application have been redacted for national security reasons. Public comments on redacted information have been negative.

It is our understanding that EASR will come into effect towards the end of 2025, with an opportunity for some permit applications to be submitted in the summer. This will ensure there is a smooth transition for operators that are currently authorised under regulations that will be revoked by the introduction of EASR. It is not known if these activities will need pre-application engagement and, if they do, whether there will be sufficient time prior to the summer to fulfil this requirement. There is therefore an urgent need for SEPA to confirm to these operators if early community engagement is necessary and to confirm the criteria that must be met.

The amended PPS could be improved to provide more detail on the value of pre-application engagement for the applicants. For example, details of how the application process has benefitted from early consultation could be included, based on SEPA's experience.

The proposed text to be added to the current PPS includes reference to '*development*'. This term might not be appropriate for every application or variation, and we would suggest that '*activity*' might be more appropriate.

<sup>1</sup> The Water Environment (Controlled Activities) (Scotland) Regulations

<sup>2</sup> Environmental Authorisations (Scotland) Regulations

<b>2.</b>	<b>Do you have additional suggestions for the prospective applicant in terms of the public consultation process outlined in the additional annex? Yes or No. If you answered 'Yes', please provide your suggestions.</b>
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Yes

Please also refer to response to Question 1.

To ensure a consistent approach is taken by all applicants, consideration should be given to setting a minimum duration for the pre-application engagement process, similar to SEPA's consultation period of 28 days. This will help set clear boundaries for public expectation and enable applicants to plan effectively.

It would be helpful if the guidance included case studies of successful pre-application engagement, similar to the format adopted in the National Standards for Community Engagement. These could showcase the approach applicants have taken to:

- identify the best time in their programme for early community liaison,
- identify relevant stakeholders
- decide how to engage with them and what information to seek from them

They could also provide examples of how community feedback influenced proposals and where concerns could not be addressed in full. Again, this would help inform the public on what they can reasonably expect from the engagement process. It would also provide a benchmark to prospective applicants, providing real examples of how early awareness of local environmental concerns can be considered in the development of proposals and how it can benefit the application process.

We realise it may take some time to develop a folio of case studies. So, in the meantime, it would be helpful for the revised PPS to include suggestions based on SEPA’s experience of consulting on applications and existing examples from the aquaculture sector’s pre-application activities.

**3. Do you think we should have minimum criteria that we expect the potential applicant to demonstrate to meet the requirement for pre-application engagement?**

**Yes or No.**  
**If you answered ‘Yes’, what do think the minimum criteria should be.**

Yes

If minimum criteria are set, they should be based on the seven good practice standards set out in the National Standards for Community Engagement: inclusion, support, planning, working together, methods, communication and impact. Details of SEPA’s requirements to meet these standards should be set out in the PPS.

SEPA should also consider if any minimum criteria should vary depending on the scope of the activity and/or of the application or variation.

From our experience of public engagement, it is not always possible to satisfactorily address all the concerns raised by a community. It is, therefore, important that the criteria for *‘meeting the requirement for pre-application engagement’* is not solely focused on whether that engagement is viewed by the community as ‘acceptable’. Prospective applicants may have completely fulfilled the requirement for pre-application consultation but been unable to consider all issues that have been highlighted by relevant stakeholders. For this type of situation, the PPS needs to clearly explain what supporting documentation SEPA expects as part of an application and also set out the approach that will be followed to assess the submission.

We would expect further consultation on any proposed minimum criteria before the revised PPS is published.

SEPA should consider a transition period after publication of the revised PPS to recognise that preparations may already be underway for some applications/variations and that there may be limited opportunities for meaningful

public engagement between now and the planned application date, particularly if this is close to the effective date of the revised EASR. This may mean that applicants are unable to meet some minimum criteria in full.

**4. Do you have any additional suggestions for engaging with the local community?  
Yes or No.  
If you answered 'Yes', please provide your suggestions.**

Yes

Refer to response to Question 2 which suggests use of case studies to showcase successful local community engagement. Post consultation feedback from the public could be used to inform future guidance on what constitutes 'good' and 'poor' engagement.

**5. Is the new text understandable?  
Yes or No.  
If you answered 'No', please explain why.**

No

The proposed new text includes a link to a page on [www.gov.scot](http://www.gov.scot) that provides advice and guidance on the process for considering third party representations. It clearly states on this page that the Scottish Government expects SEPA to 'publicise these procedures to ensure all third parties are aware of these opportunities'. Therefore, there seems to be a requirement for the PPS to provide more than a link to the Government's website.

It is not clear why reference to 21 days is being removed from the PPS when the linked guidance on the Government's website still refers to this timeline. Also, the current text indicates that the third party needs to take action to initiate the call-in procedure whilst the proposed text implies that Ministers will start the process. It is, therefore, not clear what will trigger the process under the amended PPS.

**6. Do you agree with the proposal for SEPA to ask applicants if they, or their relevant associates, have any convictions for relevant offences ('relevant convictions'), which includes both environmental and non-environmental offences, as part of their application?  
Yes or No.  
If you answered 'No', please explain why.**

No

Scottish Water supports the proposal to include both environmental and non-environmental offences in applications.

We would, however, welcome inclusion of some additional information to improve clarity of the guidance on who can hold an authorisation:

- Confirmation of whether details of convictions are to be included in any published applications e.g. pre and post application consultations by the applicant and/or SEPA.
- Advice on how applicants declare relevant convictions and what will prompt this requirement. The current guidance suggests applicants submit a basic disclosure certificate, explains where this can be obtained and what information it provides.

End of document