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Environmental authorisations and the 'fit and proper person' test

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## Environmental Authorisations: public participation and the “fit and proper person” test

As part of the moves toward a common framework for environmental authorisations, SEPA is consulting on revising its guidance on two matters affected by this change: public participation and the “fit and proper person” test.<sup>1</sup> The consultation closes on 30 March.

As the culmination of a process authorised under the Regulatory Reform (Scotland) Act 2014, a new set of Environmental Authorisation Regulations is expected to bring all of the main areas of environmental regulation, including water, waste and industrial processes, into a single integrated authorisation framework; this currently applies only to radioactive substances. The proposed move will entail a change in the public participation arrangements in some areas and the wider application of the fit and proper person test to determine who can hold an authorisation.

On participation, it is proposed that some applications which from their nature or location are of national or local public interest should be subject to pre-application public engagement. No set criteria are proposed, but it is said that further details will be provided indicating when this will be expected. The draft guidance sets out why this process is valuable and what is involved in ensuring that any engagement is meaningful. Also proposed is the removal of the right which operates in some areas for those making representations to require that applications are called in for ministerial decision. Instead it will be for Ministers to decide which cases to call in.

Under the new framework, the fit and proper person test will apply more widely (at present it is largely confined to waste matters) and SEPA is proposing to change its existing guidance on this to explain more fully what will be taken into account. In particular, it will clarify that any criminal conviction, not just those for environmental offences, may be considered relevant, with specific attention paid to offences involving dishonesty or violence and the “criminal lifestyle” offences listed in Schedule 4 to the Proceeds of Crime Act 2002. A conviction is not an automatic bar to holding an authorisation and SEPA will consider the circumstances of the conviction and what it indicates about a person.

This consultation is part of a long process to establish a single integrated framework for all of the main areas of activity regulated by SEPA. The substantial set of draft regulations to implement this change was initially laid before Parliament in November but in order to allow more time for scrutiny was withdrawn, with a view to reintroduction early in 2025. The regulations will be covered more fully in a future issue.

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<sup>1</sup> [Proposed Changes to the Environmental Regulation \(Scotland\) Guidance on Public Participation and Fit and Proper Person Test - Scottish Environment Protection Agency - Citizen Space](#)