

Consultation Response

Environmental Performance
Assessment Scheme (EPAS) –
A fair way to report
performance

June 2025

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental law sub-committee welcomes the opportunity to consider and respond to the SEPA consultation: *Environmental Performance Assessment Scheme (EPAS) - a fair way to report performance*.¹ The sub-committee has the following comments to put forward for consideration.

Questions

Section 5: What is the environmental performance rating?

Question 1. How far do you agree or disagree with the three proposed environmental performance ratings of good, below expectations and unacceptable?

We would highlight the potential negative connotations of the terms 'good, below expectations and unacceptable', including the overall weighting of this system towards negative gradings and the absence of both a 'satisfactory' grading and a grade recognising firms which go 'above and beyond' in terms of compliance.

We would suggest that consideration should be given to using less emotive language for the ratings, such as 'A' 'B' and 'C' alongside more grades, to include operators who meet expectations or exceed the standard of compliance set by SEPA. This may be helpful in encouraging the active engagement of regulated parties with the scheme.

¹ [Environmental Performance Assessment Scheme \(EPAS\) - a fair way to report performance - Scottish Environment Protection Agency - Citizen Space](#)

Section 6: Compliance

Question 2: Do you have any concerns with what we propose to categorise as 'Major non-compliant'?

We would highlight with concern a number of factors.

We would question whether or not it is appropriate for the non-payment of annual charges to be a factor in the environmental impact or performance of a site. We would suggest that this should be dealt with as a financial consideration.

We would also highlight that under the proposed scheme there exists the scope for subjectiveness on the part of SEPA officers. This raises the risk of inconsistency in how SEPA officers apply the scheme. We would suggest that consideration be given to how to ensure that a consistent approach is taken.

We would further suggest that the potential to cause harm should not be considered on an equal footing to actual harm in the assessment of major non-compliance.

Section 7: Time taken to resolve compliance issues

Question 3: How important do you think it is to include the length of time taken to resolve compliance issues within the environmental performance assessment?

We have no comments.

Question 4: In your view, how many days should an operator have to resolve an issue categorised as 'Non-compliant' and still retain a 'Good' performance rating?

We have no comments.

Question 5: How many days should an operator have to resolve an issue categorised as 'Non-compliant' before their environmental performance is rated as 'Unacceptable'?

We have no comments.

Question 6: How many days should an operator have to resolve an issue categorised as 'Major non-compliant' before their environmental performance is rated as 'Unacceptable'?

We have no comments.

Section 8: Environmental harm caused

Question 7: Do you understand what a Category 1 or 2 environmental event is?

We have no comments.

Question 8: How far do you agree or disagree that causing a Category 1 or 2 environmental event should always be considered 'Unacceptable' environmental performance?

We would highlight with concern the unintended consequences of this proposal. Within Annex 4, a category 1 event could include a fire (which might not in itself arise from any negligent behaviour by the operator) which leads to evacuation or closure of public spaces or transport routes, or leads to the cancellation, prevention or disruption of a major public event.

These latter effects are (a) outwith the control of the operator, (b) are often adopted on a precautionary basis and (c) may entail no actual substantive or persisting environmental harm.

Under the proposal, it is conceivable that a Category 1 event could lead to an automatic 'Unacceptable' performance rating being awarded even in circumstances where the operator is not at fault, any disruption was outwith the operator's control (and is not attributable to any action or inaction of the operator) and where no practical harm is actually caused.

We would highlight with concern the disproportionate nature of this approach and suggest that SEPA consider adopting an approach where the seriousness and circumstances of an environmental event (including its Category) will be taken into account in determining the overall performance rating, in place of a blanket automatic approach as currently proposed.

Furthermore, we would appreciate clarity from SEPA on how they intend to deal with 'force majeure' incidents that are outwith operators' control in general under these proposals.

Section 9: Applying the Environmental Performance Assessment Scheme (EPAS)

Question 9: How well do you understand how we are proposing to assess environmental performance?

We have no comments.

Question 10: How far do you agree or disagree that real time relevancy is important to enable everyone to take decisions based on an operators' environmental performance rating?

We have no comments.

Question 11: How far do you agree or disagree that the duration of 90 days is an appropriate timescale for an environmental performance rating to enable real time relevancy?

We have no comments.

Question 12: How fair is a 365-day lookback period for assessing repeat compliance issues?

We have no comments.

Question 13: How fair do you think the proposed Environmental Performance Assessment Scheme is?

We have no specific comments regarding the fairness of the scheme and refer to our answer to question 2 regarding the need for consistency in application of the scheme's provisions.

Section 10: Priority site status and compliance recovery plans

Question 14: How far do you agree or disagree that publishing a priority sites list would drive improvements in performance?

We would welcome further clarity on what the implications of a priority site designation would be under these proposals.

Question 15: How long should an operator have to establish a compliance recovery plan before a site rated as unacceptable is listed as a 'Priority site'?

We have no comments.

Section 11: Appeals

Question 16. How far do you agree or disagree our proposed appeals process is fair?

We have several concerns regarding the proposed appeals process.

We would question why an operator is not afforded the opportunity to challenge an EPAS rating by itself.

We would further suggest that consideration should be given towards removing the limitation on what can be appealed in terms of either the compliance categories or the recovery plan, particularly given that we remain unclear as to the consequences of publication as a priority site.

We would also welcome clarity on the timescale of the appeals process, as it is currently unclear what timeframe an operator is required to work to in order to initiate the appeals process.

We would also welcome further clarity on how the formal appeal stage (step 3) differs from the previous management review process (step 3). We would highlight that review by a SEPA official (even if they have not been directly involved) cannot be deemed as an independent review and would further highlight that this differs significantly with how other environmental appeals are dealt with. We consider that it is necessary for there to be a properly independent review process available to ensure impartiality and suggest consideration should be given to creating such a process.

Section 12: How we will communicate relevant information

Question 17. What would you like to be able to do on an online platform to interact with us?

We have no comments.

Section 13: Next steps to launch EPAS

Question 18: Do you think the overall impact of EPAS for Scotland's environment will be:

- Extremely positive
- Mostly Positive
- Minimal or neutral impact
- Don't know
- Mostly negative
- Extremely negative

We have no comments.

Question 19: What impact do you think EPAS will have on your business or organisation?

We have no comments.

Question 20: How important do you think it is that EPAS should recognise voluntary actions that go beyond compliance?

We have no comments.

Question 21: What factors should we consider if we were to introduce a performance rating that acknowledges these proactive efforts?

We have no comments

Question 22: Do you have any other important suggestions, opportunities or concerns around EPAS that you would like to highlight?

We have no comments.



For further information, please contact:

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