

GUIDANCE ON WHO CAN HOLD AN AUTHORISATION: 'IN CONTROL AND 'FIT AND PROPER PERSON TESTS



SEPA's Guidance under the Environmental Authorisations (Scotland) Regulations 2018

CONTENTS

| | |
|--|-----|
| Purpose | 3 |
| Background..... | 3 |
| Who can be an authorised “person”?..... | 4 |
| Who should be the authorised person? | 4 |
| In Control | 5 |
| Who is the person in control? | 5 |
| What if more than one person is in control?..... | 6 |
| Fit and Proper Person..... | 7 |
| Why is there a fit and proper person test? | 7 |
| Who does the fit and proper person test apply to?..... | 8 |
| When is the fit and proper person test applied? | 8 |
| How will SEPA decide if I am fit and proper? | 8 |
| Compliance history | 100 |
| Criminal convictions | 11 |
| Technical competence | 122 |
| Financial provision | 133 |
| Other criteria relating to such other matters as SEPA thinks fit | 14 |
| Appeal | 15 |
| Glossary..... | 16 |
| Annex 1: Types of legal person and the information they need to provide..... | 18 |
| Examples of types of legal person..... | 20 |
| Annex 2: Examples to help you determine who is in control..... | 21 |
| Annex 3: Relevant associates | 23 |

Purpose

This guidance is for any person who applies for, or holds, a permit or registration under the [Environmental Authorisations Regulations \(Scotland\) 2018](#). It explains how SEPA will decide whether you are 'in control' of the regulated activity and whether you are a 'fit and proper person' (FPP) to hold or continue to hold an environmental authorisation.

It describes:

- being 'in control' or 'having control' of a regulated activity;
- the purpose of the fit and proper person test and the outcomes we seek to achieve through its use;
- the framework for fit and proper person assessments and the criteria and types of evidence we normally take into account in our decision making.

This guidance provides the overarching framework for decision making on 'control' and 'fit and proper person'. Detailed guidance on specific areas such as how financial provision should be calculated for landfills will be provided separately.

This guidance supports our [Regulatory Strategy](#) and has been developed in accordance with the principles outlined in the [Scottish Regulators Code of Practice](#).

Background

Before granting your application for a registration or permit, SEPA must be satisfied that you:

- a) are the person who will have control over the regulated activity;
- b) are a fit and proper person to be in control of the regulated activity.

Similarly a notification must be made by the person who is, or will be, in control of the activity.

The test of being 'in control' is the same for all authorisations. It is crucial that the correct person is named on the authorisation.

The 'fit and proper person' test will be carried out differently for different activities, reflecting the individual risks. The general purpose is consistent across all regulated activities but how we apply the assessment criteria will be activity specific. Where we have information to suggest that a particular applicant may need a more detailed assessment we may also apply the criteria differently. This reflects the fact that the fit and proper person test considers not only the potential risk of the activity to the environment but also the potential risk to the environment posed by the particular applicant and their attitude to compliance.

This guidance should be read alongside the authorisation guide, where available, which describe how the fit and proper person test is normally applied to each specific regulated activity.

Who can be an authorised 'person'?

There are different categories of 'person' that can apply for a permit or registration, or who can notify an activity in the notification tier, or to whom a permit or registration can be transferred. These are:

- an individual (or 'natural person'), including sole traders;
- a public limited company;
- a private limited company;
- a body created by statute (e.g. local authorities, NHS Trusts, Food Standards Scotland);
- a Scottish partnership or limited liability partnership;
- cooperative and community benefit societies;
- Scottish charitable incorporated organisations and community interest companies;
- unincorporated bodies (e.g. trusts formed by their trustees, community bodies or associations of people formed by their members).

More information on the types of person who can hold an authorisation and the information you should include in your application is provided in **Annex 1**.

Who should be the authorised person?

An authorised person is responsible for overall compliance with authorisation conditions and for preventing environmental harm from a regulated activity. They are also responsible for the conduct of anyone carrying on all, or parts, of the regulated activity on their behalf and must ensure that they, and their employees and contractors, comply with the conditions of the authorisation.

Where we find non-compliance with an authorisation, or where harm is caused as a result of the activity, we may take enforcement action against those who were directly responsible for the non-compliance or harm and, if this is not the authorised person, may take action against the authorised person as well as or instead of the person directly responsible. Our [enforcement guidance](#) provides more information on the circumstances in which we might take enforcement action.

To fulfil their responsibilities the authorised person must have control of the regulated activity. This means they must have the authority and ability to ensure the authorisation conditions are complied with. Before granting or transferring an authorisation we will check that the right person has applied for it. If the applicant is not the person in control we must refuse the application.

In control

Who is the person in control?

We consider a person to have control where they:

- have day-to-day control of how the regulated activity is carried on, including the manner and rate of operation;
- can make sure that the authorisation is complied with;
- can make investment and financial decisions that affect how the regulated activity is carried out and the environmental performance of the regulated activity;
- can make sure everyone involved in carrying on the regulated activity is competent;
- can make sure that in an emergency situation suitable control measures are taken.

If contractors work at your site, you can still be the sole authorised person if you have sufficient control of the activities carried out by your contractors.

If you are a subsidiary company of a holding company then it is possible that neither company will have sufficient control over the carrying out of the regulated activity to be the sole authorised person. See section *What if more than one person is in control?* on **page 6**.

You must demonstrate in your application that you are the person in control. Some examples to help you decide who is in control and should be the person to make the application are included in **Annex 2**.

In considering who is truly in control we may investigate whether any other person or persons is actually in a position to exercise control over the applicant or the regulated activity.

Example

For example, where a person has had their authorisation revoked because of non-compliance and an application is received from their relative to carry out the same or a similar regulated activity, we will consider whether the applicant is truly the person in control due to their relationship with the previous authorised person.

If circumstances change and you no longer have control of the activity you must transfer the authorisation to the person that does have control or surrender it. If you no longer have control of the regulated activity and fail to transfer it to the person that does have control, or surrender the authorisation, we may revoke it.

What if more than one person is in control?

Sometimes there is shared, or joint, control of a regulated activity. For example, a holding company may make investment or financial decisions while an operating company has day-to-day control of how the regulated activity is carried on. Where appropriate and in specific circumstances, we will grant or transfer a permit or registration naming two or more persons as the authorised person. These persons would then be jointly and severally responsible for securing compliance, and jointly and severally held to account for any breaches of authorisation conditions. In these circumstances all the persons who share control of the activity must be named in the application and must demonstrate that, together, they have control of the activity.

Where more than one authorised person will carry on regulated activities on different parts of what would otherwise be one regulated site they can apply together for a single authorisation. The application must be clear about which part of the overall activity each person controls and identify how the different authorised persons will liaise to ensure compliance. There should be no ambiguity over which person has responsibility for which part of the regulated site. Alternatively each person may apply for an authorisation for the part of the regulated site that they control. You should contact SEPA before you apply for advice on the best approach in your individual circumstances.

If circumstances change and the authorised person no longer has sole control of the activity, they should apply for a transfer to have any person that now shares control added to the authorisation. Similarly, if several persons are authorised but one or more of them no longer have control, they should apply for a transfer to have them removed from the authorisation. If the authorised person or persons no longer has sufficient control of the regulated activity we may revoke the authorisation.

Fit and proper person

Why is there a fit and proper person test?

When determining an application to grant, vary or transfer a permit or registration we must decide whether the applicant is suitable to hold the authorisation.

The main aim of the fit and proper person test is to ensure environmental protection. We must not grant or transfer a permit or registration unless we are satisfied the person will carry out the regulated activity in accordance with the conditions and effectively manage any environmental liabilities when the activity ceases. Once a permit or registration is granted, the authorised person must maintain their fit and proper person status. To ensure this, we will assess the applicant or authorised person against a range of criteria in a manner proportionate to the nature of the regulated activity. Where we have information to suggest that an individual applicant may need a more detailed assessment we may apply the criteria in different ways.

Our statutory purpose requires us, except where it would be inconsistent with protecting or improving the environment, to contribute to improving the health and well-being of people in Scotland and achieving sustainable economic growth. We also expect that applying the fit and proper person test will help us to achieve wider societal and economic outcomes such as supporting community well-being and a level playing field for legitimate business, while ensuring environmental protection.

For example, the fit and proper person test will help disrupt and deter serious organised crime groups, in accordance with [Scotland's Serious Organised Crime Strategy](#). Involvement in serious organised crime demonstrates a disregard for the law and we believe people who show such disregard should generally not be authorised as this is likely to put the environment and SEPA staff at unnecessary risk. Evidence also suggests that criminal involvement in the waste industry has a distorting influence on legitimate operations, which operate at a relatively higher cost basis, and deters investment in a more circular economy.

In implementing the fit and proper person test, the fit and proper outcomes we expect to support may include:

The environment and human health are protected and authorised persons ensure compliance with the conditions of the authorisation

Communities are not adversely affected by regulated activities

A level playing field for businesses

Sites are not abandoned at the expense of landowners, communities or the public purse.

Our staff are protected from violence and aggression

Who does the fit and proper person test apply to?

The persons assessed as part of the fit and proper person test include:

- the authorised person (i.e. the person applying for or holding the permit or registration). The fit and proper person test applies to the person in control of the activity who is or is proposed to be named on the permit or registration.
- any other ‘relevant associate’ who may be in a position to exert control over the carrying on of the regulated activity such as an employee of the applicant/authorised person or a director of the company which is the applicant or authorised person”. A full list of ‘relevant associates’ is included in **Annex 3**.

For example, where the applicant or authorised person is a company, SEPA may consider the history of the company directors when making decisions. It is therefore possible that a company could ultimately be considered not to be a fit and proper person if a director was not themselves fit and proper.

When is the fit and proper person test applied?

We will assess if an applicant is fit and proper before granting an authorisation or transfer. In addition, we may review whether the authorised person is still fit and proper at any time. Where we find an authorised person is no longer fit and proper we may set additional conditions, take enforcement action or revoke the authorisation.

How will SEPA decide if I am fit and proper?

There are several criteria we take into account when deciding if a person is fit and proper. The criteria allow for a range of information to be taken into account and are described more fully below.

These criteria are:

- Compliance history;
- Criminal convictions;
- Technical competence;
- Financial provision;
- Other relevant criteria.

The criteria overlap and we will not consider them in isolation from each other or in a ‘tick-box’ fashion. We will use the criteria to build an overall picture of the person alongside the fit and proper outcomes we want to achieve, to make an informed and reasoned judgement about whether the applicant or authorised person is fit and proper.

We will consider the criteria in a flexible way to ensure our application of the fit and proper person test is proportionate to:

- the risk of the activity to the environment and human health while it is being carried on;
- the risk to the environment and human health if the activity is not appropriately managed after it has ceased;
- the vulnerability of the activity to misuse (e.g. its likelihood of being used for criminal purposes such as waste crime).

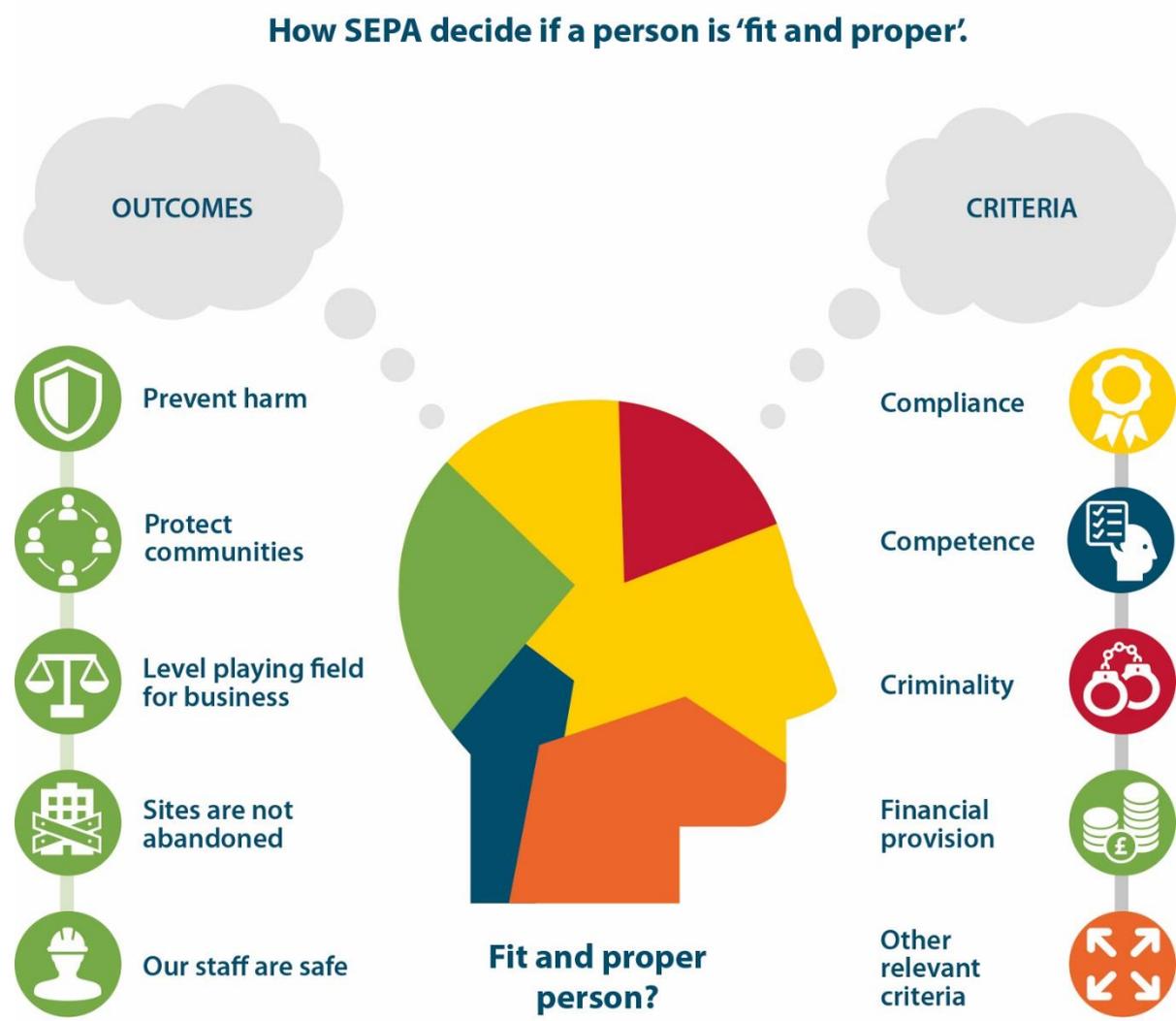
Example

For a small number of activities at risk of misuse, such as the management of waste tyres, we will take a wider range of information into account when deciding whether to grant or transfer a permit or registration to a person.

In some circumstances, it is not proportionate to undertake a pro-active fit and proper person assessment. For example, activities that are not technically complex and where the consequence to the environment of a failure to comply are less significant, such as the operation of a domestic septic tank. The specific lower risk activities where this applies will be set out in the authorisation guide.

Where an activity is to be carried out by a public body in pursuit of their statutory functions, we will not take their compliance history or convictions into account in deciding whether to grant or transfer an authorisation. To do otherwise would undermine the fulfilment of those statutory duties. We will, however, still require any necessary technical qualifications or financial provision to be in place. Examples include the operation of sewage treatment works by Scottish Water or the collection of household waste by local authorities. Where public bodies carry out regulated activities that they have no statutory duty to provide, they will be subject to the same assessment as anyone else carrying out that activity.

Figure 1 - Fit and proper decision making



Compliance history

SEPA must not grant or transfer a permit or registration unless we are satisfied the activity will be carried out in accordance with the conditions. Previous environmental performance is an important indicator of future compliance and we will take it into account. This includes convictions for environmental offences held by the applicant or other relevant associate as described in the following section.

For new applications, the assessment of compliance history may include any current and past regulated activities undertaken by the applicant or other relevant associate.

The circumstances of poor compliance or enforcement action are crucial to informing decisions that allow us to make proper assessments. Compliance history will be used to assess the attitude of the authorised person to their responsibilities. Circumstances that

demonstrate a disregard for the environment, communities or environmental regulation will be taken more seriously. These include, for example,

- persistent poor compliance;
- failure to comply with enforcement notices;
- obstruction of SEPA staff carrying out their duties;
- making false or misleading statements;
- violence and aggression towards SEPA staff.

In considering compliance history we may use information from our compliance assessment scheme as well as environmental enforcement action such as enforcement notices, suspension notices, revocation notices, final warning letters, environmental convictions, fixed monetary penalty notices and variable monetary penalty notices.

When considering compliance history, SEPA will have regard to the size and complexity of an operator or authorised person's activities, as well as the effectiveness and adequacy of the operator or authorised person's responses to past poor performance.

Criminal convictions

If you or a relevant associate have a criminal record, it does not necessarily mean you will not get a permit or registration. However, we will take convictions into account when making our decision.

The circumstances of the conviction and what it tells us about the person in the context of our fit and proper outcomes is important. We will take into account:

- the nature and significance of the offences;
- the actual sentence or disposal given for the convictions;
- how recent the convictions were;
- any mitigating circumstances.

For most activities SEPA will only take convictions for environmental offences into account and we will ask applicants to declare these as part of their application. We will check any information you provide against our own records.

However, for those activities that are vulnerable to misuse, other convictions may be significant when considering an overall picture of the applicant. For these activities, SEPA may require a basic disclosure certificate for the applicant or any relevant associate (if they are an individual). A basic disclosure certificate is available through Disclosure Scotland and provides a criminal history check of unspent convictions only. Where this additional requirement always applies, it will be stated clearly in the authorisation guide and the application form. However, where we have information to suggest that an individual applicant or relevant associate may need a more detailed assessment we may request a basic disclosure certificate after the application has been submitted.

Assessment of convictions for non-environmental offences will be carried out on a case by case basis, having regard to those convictions we consider relevant to the nature of the activity and to our fit and proper outcomes. Some examples of the non-environmental offences that we are likely to consider relevant are:

- offences that appear on Schedule 4 of the Proceeds of Crime Act 2002 are considered 'lifestyle' offences and may indicate a history of using crime for profit making;
- dishonesty (fraud and theft);
- violence/abusive behaviour (particularly if towards public officials).

Convictions for these types of offences may indicate a high risk that the applicant would not comply with the conditions of the permit or registration, or would abandon environmental liabilities for others to remediate. They may also indicate that the activity is at risk of being used as a front for another illegal activity.

Convictions for violent offences may indicate that SEPA staff could be put at risk of harm. If we consider that our staff will be unable to safely assess compliance, the environment is also put at risk and we would be unlikely to be satisfied that the person would comply with the conditions.

Access to criminal records is restricted under the Rehabilitation of Offenders Act 1974 and SEPA will generally not take 'spent' convictions of individuals into account when applying the fit and proper person test.

If you have criminal charges outstanding in a SEPA reported case we may defer our decision until the courts have determined the outcome of the charges.

Technical competence

This section focusses on those activities for which specific formal technical qualifications are required. Where formal technical qualifications are required, this will be highlighted in the authorisation guide.

The development of industry led competence schemes is strongly encouraged. All schemes should be based predominantly on accredited qualifications, based on vocational qualifications where these exist, and agreed with SEPA.

Technical competence for operators of radioactive substances activities is based on the 'radiation protection expert' provisions of the Basic Safety Standards Directive (2013/59/Euratom). In the UK, the radiation protection expert for radioactive waste management and environmental radiation protection is known as the Radioactive Waste Adviser.

For relevant waste management activities a Certificate of Technical Competence (CoTC) remains an appropriate means of demonstrating technical competence.

Corporate competence assessments may be considered. For example, this might be appropriate where an operator of multiple sites uses a bank of employees each with appropriate qualifications without naming a specific technically competent individual for each site. Training programmes relative to the level of complexity of authorised activities assessed under a corporate assessment would be necessary to support the application taking account of the size of the organisation and the nature of the regulated activities.

Some authorised persons may in certain circumstances use qualified consultants as their technically competent person. For example, a qualified Radioactive Waste Adviser may be a consultant because this is a highly specialised area and advice on management of radioactive waste can be adequately provided on a consultancy basis. For all other activities, this practice will only be appropriate in exceptional circumstances.

Bespoke interviews for individual operators at the lower end of the authorisation and risk scale for waste activities may be available as a proportionate way of demonstrating suitability and competence.

Financial provision

Persons carrying on regulated activities must be financially capable of complying with the requirements of their permit or registration. This includes any closure, restoration or aftercare obligations imposed by the authorisation either when it is first granted or during its lifetime.

For certain activities, it will always be necessary for specific financial provision to be provided to address environmental responsibilities or liabilities. Those activities are:

- landfill;
- discharge of effluent from mining activities;
- keeping and use of high activity sealed radioactive sources (HASS).

In addition, SEPA may require financial provision for other higher risk or vulnerable activities, in particular, where we consider the financial viability of the applicant or activity to be questionable or business failure would result in environmental harm or the public paying the cost of a site clearance or other remediation.

SEPA will examine financial solvency in cases where we have reason to doubt the financial viability of the activity or those in control of the activity.

There are various ways of demonstrating or making financial provision but in every case it must be:

Secure

- The financial provision must be secure for the duration of the authorised person's obligations (including in the event of an insolvency) so that funds are available to discharge the authorised persons obligations.

Sufficient

- The financial provision must be sufficient to meet all of the authorised person's obligations and must be adequate to cover the cost of closure and environmental liability risks.

Available when required

- The funds must be available when required to discharge the authorised person's obligations at the relevant time.

The level of financial provision must take account of the obligations of the permit or registration and must include ongoing costs throughout the 'aftercare' phases estimated from a full life-cycle financial prediction. It must be secured on a sound economic and legal basis, and will be assessed and agreed on a case by case basis. If you need to provide financial provision for your activity, we will provide specific advice to you as part of pre-application discussions if you contact us before applying, or after you have applied.

Ongoing maintenance of financial provision must be provided for the duration of the authorisation. During the lifetime of the authorisation financial provision may need to be adjusted to take account of any relevant economic changes or changes to the activity or to reflect any increasing, new or ongoing liabilities.

Details on calculating the level of secure funds required for the specified waste management activities will be provided in separate guidance.

Other criteria relating to such other matters as SEPA thinks fit

We will use all the information we have available to us to assist in making appropriate and consistent fit and proper decisions in line with our statutory purpose and published guidance. For example, there may be occasions when there is information available to us that does not fit into the criteria outlined above but which indicates that the applicant or authorised person is not a fit and proper person, or we may have information about them that indicates a more rigorous assessment is required.

Example

An applicant with a history of dissolving and forming companies with the sole purpose of avoiding liabilities, particularly environmental liabilities, may not be considered appropriate to hold an environmental authorisation.

Where SEPA has been informed of enforcement action being taken by another regulator, such as the Health and Safety Executive, against an applicant we may consider the circumstances and what this tells us about the attitude of the applicant to compliance with legislation.

Appeal

If we refuse your application for an authorisation or transfer, or take enforcement action on the basis that you are not in control of the regulated activity or that you are not a fit and proper person, then we will notify you of the reasons for our decision and you will have an opportunity to appeal against it.

Glossary of terms

| | |
|--|---|
| Appeal | The opportunity provided for the applicant or authorised person to dispute certain actions or decisions made by SEPA, by appealing to the Scottish Ministers. |
| Application | A submission made to SEPA, for example to seek the granting of a new permit, surrender of a permit, variation of the conditions of a permit or transfer of a permit. |
| Authorise | In relation to regulated activities, means authorise carrying on of the activities in accordance with a permit, registration, subject to notification or subject to compliance with general binding rules. |
| Authorised person | A person to whom a permit or a registration has been granted or transferred or the person in control of carrying on an activity that is subject to general binding rules or which has been notified. |
| Basic Disclosure Certificate | A basic disclosure certificate is available through Disclosure Scotland and provides a criminal history check of unspent convictions only. |
| Compliance Assessment Scheme (CAS) | Our record of compliance against the conditions of an authorisation. Assessment of compliance with conditions is carried out through site visits and inspections, investigation of environmental events, sampling of discharges to the environment and assessment of data submitted by the operator. The results of the assessment are published annually by SEPA on our website. |
| Final Warning Letters | A final warning letter is a written warning about a particular non-compliance. It provides a reasonable opportunity for the responsible person to address that non-compliance and take preventative steps to stop the non-compliance from continuing or recurring. |
| Financial provision | Specific financial security to address environmental obligations or liabilities. |
| Fixed Monetary Penalty notices (FMPs) | A fixed monetary penalty (FMP) is a financial penalty that we may impose for a specified offence. There are three levels of penalty that are prescribed in legislation: £300, £600 and £1,000. Therefore, the amount of the FMP is set in law. FMPs are not available for all offences. The offences, for which we can impose a FMP, and the amount of the FMP, are set out in legislation. |

| | |
|---|--|
| General Binding Rules (GBR) | A set of mandatory rules that cover specific low risk activities. Activities complying with the rules do not require an application to be made to SEPA. |
| Regulated activity | Any activity to which the Environmental Authorisations (Scotland) Regulations 2018 applies. |
| Permit | Permits are the highest tier of authorisation. They are intended for higher risk, or non-standard, activities that require a more rigorous assessment. |
| Registration | Registrations are intended, in general, for lower risk activities where a simple assessment or on-line screening is sufficient before the activity can commence and for some higher risk activities where just a simple quick assessment is sufficient. The authorisation will be in the form of standard conditions. |
| Regulatory strategy | One Planet Prosperity: Our Regulatory Strategy is a document detailing SEPA's vision for regulation. |
| Revocation notices | A revocation notice requires the authorised person to permanently stop an activity. |
| SEPA's statutory purpose | <p>SEPA's statutory purpose under the Regulatory Reform (Scotland) Act is:</p> <p>(1) SEPA is to carry out the functions conferred on it by or under this Act or any other enactment for the purpose of protecting and improving the environment (including managing natural resources in a sustainable way).</p> <p>(2) In carrying out its functions for that purpose SEPA must, except to the extent that it would be inconsistent with subsection (1) to do so, contribute to—</p> <p>(a) improving the health and well-being of people in Scotland, and</p> <p>(b) achieving sustainable economic growth.</p> |
| Suspension notices | A suspension notice requires the authorised person to stop an activity from taking place until steps are taken to address non-compliance. Once the steps are taken the activity can resume. |
| Variable Monetary Penalty Notices (VMPs) | Variable Monetary Penalties (VMPs) are a discretionary financial penalty we can impose (of up to £40,000). VMPs are not available for all offences. The offences, for which we can impose a VMP, are set out in legislation. |

Annex 1

Types of legal person and the information they need to provide

Only a legal person can apply for or hold an authorisation.

A legal person can be natural i.e. a human being or artificial e.g. a company or a partnership

The following table covers:

- different types of legal person;
- what information they may need to provide with an application enable us to be satisfied that they are a legal person.

| Legal person | Information we need |
|---|---|
| Individual | <p>Full name and address.</p> <p>Home address or principal business address as appropriate.</p> |
| Individuals with joint responsibility for the regulated activity – this might include an unincorporated association such as a common grazings committee | <p>Full names and addresses for all individuals.</p> <p>Home address or principal business address as appropriate.</p> |
| Partnerships (also known as Firms) | <p>Full name of the Partnership and address of principal place of business.</p> <p>A copy of the Deed of Partnership or (if no deed exists) other evidence that the partnership exists e.g. confirmation from your accountants or bankers that a partnership exists.</p> <p>Full names and home addresses for all partners.</p> <p>Any trading name of the partnership.</p> |
| Limited Partnership | <p>Registered name and address (as registered at Companies House).</p> <p>Full names and addresses of each partner and confirmation of their status (i.e. general or limited).</p> |
| Limited liability partnership (LLP) | <p>LLP name.</p> <p>Registered office and company registration number as on Companies House website.</p> |

| Legal person | Information we need |
|---|---|
| <p>Registered companies</p> <ul style="list-style-type: none"> • Limited liability companies (including companies limited by guarantee) • Private limited companies (Limited) • Public limited companies (PLC) • Unlimited companies | <p>Company name.</p> <p>Registered office and company registration number as shown on Companies House website.</p> <p>Names and addresses of current directors and company secretary.</p> |
| <p>Statutory corporations and public bodies/ bodies corporate</p> | <p>Name and address of public body/corporation.</p> <p>Details of how incorporated – e.g. statute or Royal Charter.</p> |
| <p>Incorporated associations</p> <p>Includes some trusts and charities. The body must be incorporated to be a legal person. If the body is not a recognised legal person, it must nominate individual(s) to hold the permit in their name</p> | <p>Name and address of the incorporated association.</p> <p>Incorporated association registration number</p> <p>or</p> <p>full names and addresses for all individual(s).</p> |
| <p>Unincorporated associations</p> <p>Includes some clubs and committees and may include common grazings committees. Some substantial associations are legal persons. For example, a golf club which owns the land and has its own constitution and bank account.</p> <p>If the applicant is not a recognised legal person, it must nominate individual(s) to hold the permit in their name</p> | <p>Name and address of the unincorporated association</p> <p>or</p> <p>full names and addresses for all individual(s).</p> |

| Legal person | Information we need |
|--|--|
| <p>Schools, universities and other educational establishments.</p> <p>For local authority schools the applicant would be the relevant local authority.</p> <p>For independent schools the legal person may be a trust, the governors or governing body, or a private proprietor.</p> | <p>Name and address of the educational establishment</p> <p>or</p> <p>refer to appropriate legal person above.</p> |

Examples of types of legal person

| | |
|--|--|
| Statutory corporations and Public bodies / Bodies corporate | <p>Councils</p> <p>NHS Boards</p> <p>Scottish Fire and Rescue Service</p> <p>Network Rail</p> <p>Nuclear Decommissioning Authority</p> <p>Scottish Natural Heritage</p> <p>Ports and Harbour Authorities e.g. Cromarty Firth Port Authority</p> <p>The National Trust for Scotland</p> |
| Government departments | <p>Ministry of Defence – the legal person is Secretary of State for Defence</p> <p>Defra – the legal person is the Secretary of State for the Environment, Food and Rural Affairs.</p> <p>Department of Health</p> |
| Unincorporated associations | <p>Golf clubs</p> <p>Grazings committees</p> |

Annex 2: Examples to help you determine who is in control

| | |
|---|---|
| <p>Installation with chemical plant and boiler plant</p> | <p>In this example, a chemical plant is controlled by one company and its boiler plant by an energy company. The chemical company would be the authorised person for the chemical plant and will require a permit to operate it. Whether the chemical company or the energy company should be the authorised person for the boiler plant depends on which company has control of that plant.</p> <p>Where the energy company employs all of the staff in the boiler plant and is responsible for the operation and maintenance of the boiler plant and for its closure in an emergency, and where the chemical company merely pays the energy company to produce energy, then only the energy company could be the authorised person for the boiler plant. In these circumstances the two companies may apply for separate authorisations or apply jointly for a single authorisation.</p> <p>If the chemical company makes investment decisions in relation to the boiler plant but the energy company makes decisions on day-to-day operations the companies should apply jointly for an authorisation.</p> |
| <p>Local authority civic amenity site</p> | <p>Where a local authority provides a facility for householders for the receipt of their waste, they may contract out the running of the facility.</p> <p>The local authority will be the authorised person if the nature of the contract gives it sufficient control of the operations.</p> |
| <p>Water and sewerage undertakers</p> | <p>The water and sewerage undertakers would normally be the authorised person provided they retain control of the operation and can demonstrate this to us.</p> <p>Water and sewerage undertakers may contract out the routine operation and maintenance of a group of sewage or water treatment works to a contractor.</p> <p>If responsibility for the water or sewage works passes to the contractor without the water and sewerage undertaker retaining sufficient supervision and control, then the contractor should be the authorised person and should hold the authorisation.</p> |

| | |
|---|--|
| Small scale domestic sewage discharges | <p>These discharges are from package treatment plants (often called septic tanks) that are not on the public sewer system. There could be more than one home connected to the package treatment plant, and therefore more than one person in control of this activity (discharge of treated sewage). For Registrations at these sites we will require the address of each home connected into the treatment system; we will not require the full name of each individual resident.</p> |
| Discharge of trade effluent to surface waters or groundwater | <p>The company owning the site or operating the business would be the authorised person who has the necessary level of control, but it could be a holding company or subcontractor under some circumstances.</p> |
| Discharge to ground of used sheep dip, biocides or dilute pesticides | <p>Typically, the authorised person could be a farmer, land manager or an agricultural contractor according to who truly has control.</p> |
| Nuclear licensed sites | <p>For decommissioning sites, the site licensee company (SLC) would normally be the authorised person, we may include other persons if appropriate.</p> <p>Where a person on a nuclear licensed site carries on a radioactive substances activity but is not the licensee, and the activity is not under the day-to-day control of the licensee, then that person requires an authorisation.</p> |
| River engineering | <p>A landowner or developer may want to construct a permanent structure near or over the river and use a contractor to carry out the operations. If they will retain direct control over the operations on site once the contractor is appointed, they would be the authorised person. If the contractor has full control of the activity they should apply for the permit and be the authorised person. However, if the landowner or developer retains financial control of the regulated activity, or retains control and supervision of the work carried out under a tender or works contract they should apply jointly with the contractor for an authorisation.</p> |

Annex 3: Relevant associates

The following persons are relevant persons who we may take into account in assessing whether an applicant or authorised person is fit and proper:

- a) anybody corporate of which the person whose status as a fit and proper person is being considered is or has been a director, manager, secretary or other similar officer;
- b) any partnership (other than a limited liability partnership) of which the person whose status as a fit and proper person is being considered is, or has been, a partner;
- c) any limited liability partnership of which the person whose status as a fit and proper person is being considered is, or has been, a member;
- d) if the person whose status as a fit and proper person is being considered is a partnership (other than a limited liability partnership), a partner or former partner;
- e) if the person whose status as a fit and proper person is being considered is a limited liability partnership, a member or former member;
- f) if the person whose status as a fit and proper person is being considered is a body corporate—
- g) a current or former director, manager, secretary or other similar officer;
- h) any other body corporate of which a director, manager, secretary or other similar officer of the person is or has been a director, manager, secretary or other similar officer;
- i) any person who is a member of that body corporate;
- j) if the person whose status as a fit and proper person is being considered is an unincorporated association, any officer of the association;
- k) an employee of—
- l) the person whose status as a fit and proper person is being determined;
- m) a partnership (other than a limited liability partnership) of which the person is or has been a partner;
- n) a limited liability partnership of which the person whose status as a fit and proper person is being determined is or has been a member;
- o) a body corporate of which the person is or was a director, manager, secretary or other officer;
- p) such other persons, or classes of person, as SEPA thinks fit.