

Our Ref: DG/LAD/  
ORG13-A2112  
Your Ref:

Consultation on Planning Enforcement Regulations  
Directorate of the Built Environment  
The Scottish Government  
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Edinburgh  
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Email: [planningenforcement@scotland.gsi.gov.uk](mailto:planningenforcement@scotland.gsi.gov.uk)

18/02/2008

FAO: Tim Barraclough

Dear Tim

## **CONSULTATION ON PLANNING ENFORCEMENT REGULATIONS 2007**

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to comment on the above consultation document.

Enforcement does indeed have a fundamental role in the operation of an effective planning system and in some instances there can be a close correlation between unauthorised development and environmental harm. We strongly support the new and extended powers in the Planning etc (Scotland) Act 2006 to strengthen the current regime. We welcome the drafting of secondary legislation to provide fuller detail in relation to these powers. Good delivery will no doubt require appropriate resources within planning authorities.

SEPA is aware that many planning and environmental breaches come to light through observation of the general public who report potential breaches to the relevant authority. It is likely that this position will continue, even with the proposed changes to the planning enforcement regime. SEPA supports an approach that encourages and facilitates public participation in notifying possible planning breaches.

We agree that the introduction of Fixed Penalty Notices (FPN) should have a significant deterrent effect, particularly for minor breaches. We also agree that these notices will be more practical and cost effective for planning authorities compared with preparing a prosecution. It is right and just that they should impose higher penalties the longer the developer leaves the breach uncorrected.

However, we recommend that there should be fewer transitional steps to reach the maximum FPN fine in relation to a breach of enforcement notice, to bring matters to a speedier conclusion. We also wonder whether there may be a case for the fixed penalty to be proportionate to the hierarchy of development, so that breaches relating to major developments attract a higher penalty than local developments.

Notification of initiation of development<sup>1</sup>, and of completion of development are welcome measures of the Act, and we are keen to explore with the Directorate ways in which planning authorities and SEPA might use these to best effect to promote joint working relative to planning and environmental regulation.

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<sup>1</sup> We note that the acronym for Notification of Initiation of Development (NID) is the same as for the Notice of Intention to Develop procedure which was recently abandoned. We appreciate that the Notification of Initiation of Development wording stems from the Act, but wonder whether there may be scope for confusion here.

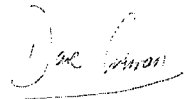
More generally, there may be other opportunities for planning enforcement officers and SEPA staff to work together better on cases where there are breaches of both planning control and SEPA licensing/permitting regimes. As you are probably aware, SEPA and the then Scottish Executive undertook a consultation exercise in 2007 to find out how the current regulations governing waste management could be improved. There may be specific opportunities for better joint working on the enforcement of waste developments.

In relation to the requirement to display a site notice for certain classes of development, we would prefer to see closer alignment with the proposed development management regulations consultation so that site notices are required for *all* national, major and EIA developments, and any development significantly contrary to the development plan that is subsequently approved.

We have also suggested tightening up of draft Regulation 4 of Annex B so that the site notice is displayed in a prominent place *on-site*. It would seem that Section 27C of the Act does not specify that the notice must be displayed on-site.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Lesley Duncan, Principal Policy Officer (Planning), SEPA Corporate Office, at the address shown below.

Yours sincerely



**Dave Gorman**  
**Head of Environmental Strategy**

**Enc**

## Annex 1

**Q1. Do you support the proposal that penalties should be increased for continuing breaches and if not, why not?**

Yes, this approach is consistent with Scottish Ministers' desire to see a scale of fines for Fixed Penalty Notices with persistent offences attracting a higher fine.

**Q2. Do you have any views on the proposed amounts for the fixed penalty, in particular the proposed initial amounts?**

We wonder whether the proposed amounts for the fixed penalty should in some way be proportionate to the development type (i.e. in the proposed hierarchy of development). Perhaps there may be a case for a Fixed Penalty Notice in respect of a breach of Enforcement Notice (EN) or a breach of condition notice (BCN) to attract a higher initial fixed penalty where it relates to a *major* development, and a lesser initial fixed penalty for a *local* development.

**Q3. Do you have any views on the proposed increase in the amount of each subsequent fixed penalty, in particular with regard to the number of FPNs that would be required to reach the maximum and whether the fixed penalty should increase by a larger amount for each subsequent offence?**

Based on the current proposals set out in paragraphs 18 and 19 of the consultation, it would take 9 FPNs before reaching the maximum fine for a breach of EN; and 5 FPNs before reaching the maximum for a breach of condition notice (BCN). Fewer transitional steps, for a breach of EN FPN would seem reasonable to encourage speedier resolution.

**Q4. Do you have any views on the proposed level of information requested in the NID or any suggestions for other information, for example declaring that any suspensive conditions had been met, might be useful?**

Confirmation that any suspensive conditions had been met would indeed be useful.

In addition, it would be extremely helpful if any supporting guidance accompanying the finalised regulations could encourage the developer to also send SEPA a copy of the Notice of Initiation of Development in certain cases. Such cases might include where the development granted planning permission relates to:

- a site regulated by SEPA;
- EIA development where SEPA has commented on the planning application; and
- other cases where SEPA has been involved in pre-application discussions.

This additional measure could support joint working in managing the interface between planning and environmental regulation. We would be happy to discuss this matter in more detail with the Directorate if that would be helpful.

A similar process for communicating notices of completion of development to SEPA would also be beneficial.

**Q5. Are you content with the proposed time limits for recording relevant enforcement action?**

Yes

**Q6. Bearing in mind that the purpose of the notice is to make people aware of the development and direct them to the appropriate contacts for further information, are you content with the level of information to be included?**

Yes

**Q7. Are you content with the proposed categories of development for which notices would be required to be displayed, and if not, why not?**

No. We would prefer to see closer alignment between the prescribed classes of development identified in draft Regulation 4(1) as requiring a site notice to be displayed, and the types of development set out in the draft development management regulations as requiring statutory pre-application consultation between the developer and the local community i.e. all:

- National developments;
- Major developments;
- EIA development; and
- Developments significantly contrary to the development plan.

**Q8. Do you consider this sufficient, or would you like to suggest other criteria for the siting, display, size, etc, of these notices.**

We note that Section 27C of the Act is not at all prescriptive about where the notice should be displayed, and contrary to what it suggested in paragraph 24 of the consultation, Section 27C does not seem to require a notice to be displayed "*on site*". Draft Regulation 4(3)(a) requires the notice to be "*displayed in a prominent place*", but it does not specify that the prominent place must be at the site where the development is actually taking place.

**Q9. Are you content with the proposed draft Regulations and if not, why not?**

Yes, the draft regulations set out in Annex C reasonable and just<sup>1</sup>.

**Q10. Are there any other situations where you believe use of a Temporary Stop Notice should not be permitted?**

No.

**Q11. Do you wish to comment generally on the draft Regulations, RIA, EqIA, or other issues in respect of this consultation?**

We have highlighted some additional points in the covering letter which accompanies Annex 1.

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<sup>1</sup>these establish that a temporary stop notice may not be served on a caravan occupied by a person as their main residence purely for the purpose of removing them from site, unless it's a danger to the occupants or the public in general, or would be unacceptable for some other compelling reason