



**The Scottish Environment Protection Agency  
(SEPA) and Sustainable Development**  
**Statutory Guidance to SEPA made under  
Section 31 of the Environment Act 1995**

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*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs*  
Bruntland Commission definition of sustainable development

*Sustainable development is about holistic thinking and promoting integration rather than about making trade-offs. It will not be achieved simply by weighing competing demands in the balance. It is not a matter of economic development versus environment but of development based on proper management of environmental resources and consideration of full lifecycle impacts and costs. We are committed to development but it must be development which both protects our environment and enhances our quality of life.*  
Meeting the Needs<sup>1</sup> (paragraph 14)

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## 1. Introduction

- 1.1 This document provides guidance to the Scottish Environment Protection Agency (SEPA) on the contribution it should make towards attaining the objective of achieving sustainable development by performance of its functions as the environmental regulator, whilst having regard to its responsibilities and resources. In so doing, it also highlights the role SEPA plays in social and environmental justice. SEPA must adhere to this guidance; specific actions are presented at the end of each section, as appropriate, and collated in chapter 5. It should be noted that as with sustainable development policy more generally, the guidance seeks to integrate environmental, economic and social justice policy objectives.
- 1.2 This guidance is issued by Scottish Ministers under Section 31 of the Environment Act 1995 and replaces the previous guidance “*the Scottish Environment Protection Act and Sustainable Development*” issued by the Scottish Office in November 1996.

## 2. The Policy Framework for Sustainable Development

This chapter outlines the policy framework under which this guidance is issued. It makes reference to Scottish Executive policies, strategies and documents, which may be updated from time to time. As far as practical, this guidance should be assumed to refer to the most recent version of such policies without the need for this document to be revised or re-issued. Where revisions to Scottish Executive policies are significant these will be highlighted in SEPA’s reporting of progress.

### 2.1 Purpose of the guidance

- 2.1.1 This guidance defines actions that SEPA should take to ensure sustainable development is embedded fully into its day-to-day activities and performance management systems. SEPA will need to update operational guidance or adopt new procedures in a number of areas.

#### Actions

1. SEPA must have regard to this guidance in the performance of its functions and produce a plan within 18 months of this guidance being issued outlining how it will deliver the guidance requirements and undertake periodic reviews of progress against the plan.
2. SEPA must ensure that this guidance is fully reflected in its policies and procedures by reviewing existing procedures for compatibility with this guidance within 18 months of its issue, and develop a means by which new policies and procedures can incorporate relevant elements of this guidance.

## **2.2 Scottish Executive Policy on Sustainable Development**

- 2.2.1 The Scottish Executive defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.
- 2.2.2 The Executive is committed to sustainable development; its policy on sustainable development is set out in Meeting the Needs<sup>i</sup>. The Executive’s aim is to combine economic progress with social and environmental justice, and its vision for sustainable development is that we should:
- i. Have regard for others who do not have access to the same level of resources, and the wealth generated;
  - ii. Minimise the impact of our actions on future generations by radically reducing our use of resources and by minimising environmental impacts;
  - iii. Live within the capacity of the planet to sustain our activities and to replenish resources that we use.
- 2.2.3 The Executive has set priorities for action regarding resource use, energy and travel, and has defined 24 indicators<sup>ii</sup> to allow progress in achieving sustainable development in Scotland to be measured. These indicators will continue to be developed and refined (chapter 4 of this guidance contains further information on this).
- 2.2.4 Although the Executive takes a leading role in developing top level policy for sustainable development in Scotland, it cannot achieve it on its own. Other organisations such as SEPA have an important role to play, working alongside and in partnership with each other.

## **2.3 Overview of SEPA’s role**

- 2.3.1 SEPA’s main role in contributing to the achievement of sustainable development is to protect or enhance the environment in a way which takes account of economic and social considerations. This role is an integral part of the Agency’s normal business. It follows that, in the allocation of its resources, sustainable development should not be seen as a separate and additional undertaking.
- 2.3.2 SEPA’s main contribution to achieving sustainable development will be to deliver the objectives and outcomes described in the Executive’s Policy Priorities<sup>iii</sup> paper and SEPA’s Corporate Plan<sup>iv</sup> in a way which takes account of economic and social considerations but with a focus on its particular expertise in environmental matters.
- 2.3.3 SEPA’s statutory functions cover a wide environmental remit, but SEPA’s main task is to regulate activities that may cause pollution of the air, land or water. This includes: consenting of discharges to water and emissions to air; licensing the keeping, movement and disposal of waste; licensing the disposal and discharge of radioactive wastes; and control of major accident hazards. SEPA also plays an important role in non-regulatory areas such as the provision of environmental information, flood warning, research, and providing advice and guidance on good environmental practice.

- 2.3.4 Although SEPA can directly influence several aspects of sustainable development through these functions, for the most part, to achieve sustainable development, SEPA has to work in partnership with other organisations which themselves have expertise in aspects of sustainable development, and engage with communities. SEPA should collaborate with such organisations to avoid duplication or confusion of roles.
- 2.3.5 In particular, SEPA has a significant role in providing advice to the Executive on environment protection issues, principally taking a long term view. The Executive is keen to draw on this expertise in developing Scottish Executive policy on sustainable development, based on a collaborative approach within the framework set by Meeting the Needs.

Actions

3. SEPA should support the priorities for action as defined in Meeting the Needs through performance of its statutory functions.

## 2.4 Other statutory drivers

- 2.4.1 Aside from the drivers presented in section 2.3, there are a number of other important statutory drivers to which SEPA must have regard. These include:
- i. Section 32 of the Environment Act 1995 that requires Ministers and SEPA to have regard to social and economic needs in formulating proposals relating to any statutory functions of SEPA. This implies that sustainable development considerations must be addressed in SEPA's normal business;
  - ii. Protecting and conserving the cultural heritage, also identified within Section 32 of the Environment Act 1995 as an important objective of environmental protection. This requires Ministers and SEPA to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest in considering proposals relating to SEPA's functions;
  - iii. The European Commission's 6th Environmental Action Programme and European Union Directives; these are firmly underpinned by sustainable development principles. Domestic legislation and SEPA's advice to the Executive is likely to be influenced by these developments in the medium and longer term;
  - iv. The Memorandum to Accountable Officers of other Public Bodies includes a requirement to pursue Best Value. Within the guidance on delivering Best Value, public bodies are required to take action to support sustainable development;
  - v. The Nature Conservation (Scotland) Act 2004 places a duty on all public bodies, including SEPA, requiring them, in exercising their functions, to further the conservation of biodiversity, as far as is consistent with the exercise of the functions. This duty must be implemented while having regard to the Scottish Biodiversity Strategy.
- 2.4.2 Similarly, there are a number of Scottish Executive policies, notably in areas such as agriculture, transport and natural heritage, that are designed to support progress towards sustainable development and in which SEPA has an interest. These more detailed policies, many of which have been developed with input from SEPA, also provide important context in relation to specific aspects of sustainable development.

### 3. Mainstreaming Sustainable Development into SEPA's business

For the sake of clarity this chapter is sub-divided into three sections: protecting and improving the environment; economic development; and social and environmental justice. However, this does not imply that these aspects of sustainable development can be seen in isolation, or any single aspect is more or less important than the others. Indeed, it is the Executive's view that sustainable development requires holistic long-term thinking and integration rather than making trade-offs. All elements of sustainable development should be seen to apply to all aspects of SEPA's business.

#### 3.1 Protecting and improving the environment

3.1.1 Protection and improvement of the environment is SEPA's central role. As detailed in sections 2.3 and 2.4, the requirements placed on SEPA are defined in legislation, SEPA's Management Statement, and the Executive's Policy Priorities document.

3.1.2 SEPA's statutory functions relating to protecting the environment are summarised in paragraph 1.6 of the Management Statement<sup>v</sup>. These range from regulation and policy advice, to monitoring, research and provision of information. Actions 1 and 2 in this document already imply that SEPA should carry out its functions in a way that supports sustainable development by embedding sustainable development principles into operational procedures. Two key concepts, "carrying capacity" and the "precautionary principle", may be useful in ensuring that SEPA meets these responsibilities.

**Carrying capacity**<sup>1</sup> provides an important link between environmental protection and sustainable development. It defines the ability of the environment to absorb emissions of substances without creating long term adverse effects. Pressures that result in the carrying capacity of an environmental system being exceeded are unlikely to be sustainable, especially if this continues long-term.

**The precautionary principle**<sup>2</sup> indicates that where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent degradation. More generally, where the consequences of delaying action to avoid or remedy harm are very costly (economically, socially or environmentally), then it may be justifiable to take action based on a level of proof which is less than full scientific certainty. This may be the case where, for example, carrying capacity is at risk of being exceeded. Application of the principle through statutory controls must be done reasonably, and within the framework established by legislation. Such controls must be proportionate to the level of protection required and targeted to the risk. They should also be based on a process that is transparent and accountable to stakeholders.

3.1.3 Conserving and enhancing biodiversity is also an important objective of environmental protection that supports sustainable development. Section 34 of the Environment Act 1995

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<sup>1</sup> Carrying capacity can be defined as "a quantitative assessment of one or more pollutants below which significant harmful effects on sensitive elements of the environment do not occur". It must be understood as a dynamic concept, subject to modification as scientific understanding changes.

<sup>2</sup> The precautionary principle was adopted by the UN Conference on the Environment and Development in 1992. The first sentence repeats the EEA definition. The Sustainable Development Commission definition is more or less identical.

gives SEPA a duty to promote the conservation of flora and fauna which are dependent on an aquatic environment. Section 32 also requires Ministers and SEPA to have regard to the desirability of conserving and enhancing natural heritage in considering proposals related to SEPA's functions. The Nature Conservation (Scotland) Act 2004 has a new duty for public bodies to further the conservation of biodiversity when implementing their duties and exercising their powers; also see para. 2.4.

- 3.1.4 Environmental Assessment (SEA) Regulations came into effect in July 2004 and together with a forthcoming SEA Bill, both have the central objective of protecting and enhancing the environment. SEA requires early assessment of the likely significant environmental effects of the implementation of certain plans and programmes, and provides SEPA with a dual role to play. SEPA is responsible for ensuring its own plans and programmes are subjected to SEA where relevant. It also has a central role as a statutory consultation authority, responsible for screening other plans and programmes to identify those where SEA would be appropriate and to advise on the scope of any environmental report.

#### Actions

4. SEPA should develop a policy on the use of carrying capacity evaluations to direct regulatory actions and update this, as appropriate, as knowledge of carrying capacity constraints evolves.
5. SEPA should define how it will apply the precautionary principle to support sustainable development.
6. SEPA should apply the principles of "good regulation", as defined by the UK Interdepartmental Liaison Group on Risk Assessment (ILGRA)<sup>vi</sup>.<sup>3</sup>
7. SEPA should continue to contribute to the Scottish Biodiversity Strategy<sup>vii</sup> and the UK Biodiversity Action Plan and ensure that its regulatory action considers impacts on biodiversity and minimises those impacts wherever possible.

## **3.2 Economic development**

- 3.2.1 The Executive has identified economic growth as the top priority for Scotland. It believes a successful economy is essential for future prosperity, and a pre-requisite for building first class public services, social justice and a "Scotland of opportunity". The Executive's Framework for Economic Development in Scotland (FEDS)<sup>viii</sup> commits the Executive to raising the quality of life for the Scottish people through increasing the economic opportunities for all on a socially and environmentally sustainable basis. This means that our economic outcomes must be achieved whilst not requiring more than our fair share of the world's resources and without giving rise to unacceptable discharges of pollutants. This guidance ensures that SEPA's work will not unnecessarily constrain economic development, and that the organisation is directed in a way that ensures actions taken today do not limit quality of life in the future.

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<sup>3</sup> and further developments of these principles.

- 3.2.2 Section 39 of the Environment Act 1995 already requires SEPA to exercise its powers in a way that has regard to the costs and benefits of its actions, but without affecting SEPA's obligation to discharge its statutory duties. The intention of this legislative provision is to make certain economic costs are considered alongside environmental benefits in SEPA's conduct of its business at a local, national or global scale, as appropriate to the power under consideration.
- 3.2.3 SEPA's Management Statement sets a key objective for the organisation to work with all sectors of society to deliver environmental requirements and goals without imposing excessive costs (in relation to benefits gained) on regulated organisations and society as a whole (paragraph 2.2.1(b)). The Statement also requires SEPA to implement environmental regulations in ways that do not impose unnecessary burdens on those it regulates (paragraph 1.6.9).
- 3.2.4 SEPA will enforce high environmental standards whilst having regard to economic considerations. This will be achieved through the application of statutory requirements such as: BATNEEC (Best Available Techniques Not Entailing Excessive Cost) principle in Integrated Pollution Control and Local Air Pollution Control; BAT (Best Available Techniques) in Pollution Prevention and Control; BPEO (Best Practicable Environmental Option); and BPM (Best Practicable Means) principles in waste and radioactive waste regulation. Economic assessment is also central to River Basin Management Planning under the Water Environment and Water Services (Scotland) Act 2003.
- 3.2.5 SEPA's internal guidance on the assessment of Costs and Benefits should define a practical way that cost-benefit analysis can incorporate the benefits of preserving environmental quality, inter-generational equity, biodiversity, natural heritage, cultural heritage and natural resources, in qualitative as well as quantitative terms. Cost benefit analysis should also assess the impact on quality of life and social justice where possible and should take account of both the short and long term. Monetary valuation is not necessary, and may not be possible in every case.

#### Actions

8. SEPA will encourage businesses to fully exploit the synergies between environmental improvement and reducing business costs, thereby enhancing both competitiveness and the environment. This should include voluntary action in excess of regulatory requirements where cost-effective. SEPA's work should complement rather than duplicate the work of others in this area.
9. SEPA should work with the Scottish Executive to ensure that its actions do not unnecessarily constrain economic development and do not impose a greater than necessary burden on those it regulates.
10. SEPA should, in consultation with the Executive, update and make available its internal guidance on the assessment of Costs and Benefits to ensure that its actions are based on rigorous analysis of costs and benefits, as detailed above in para. 3.2.5.

11. SEPA must work with the Executive to ensure costs and benefits are fully recognised in developing legislation and key environmental strategies including assessment of the costs of inaction.
12. SEPA must contribute to the Executive’s regulatory impact assessments (RIAs).
13. SEPA should fully recover the costs of its regulatory activities in line with Section 42(3) of the Environment Act 1995.

### **3.3 Social and environmental justice**

- 3.3.1 Meeting the Needs addresses the social justice dimension of sustainable development in terms of “having regard for others” particularly those who have poor access to resources and to wealth generated by economic development. The aspect of social justice to which environmental protection most closely relates may be thought of as “environmental justice”. Meeting the Needs refers explicitly to environmental justice.
- 3.3.2 Environmental justice demands that no social group, particularly a group already disadvantaged in other socio-economic respects, should suffer a disproportionate burden of poor environmental conditions. It is also concerned with ensuring that communities have access to the information and mechanisms necessary to allow them to participate in decisions that affect their local environment. For public authorities such as SEPA, this means using statutory powers to ensure the quality of life of communities is not degraded and where possible is instead enhanced, and thereby improving people’s quality of life.
- 3.3.3 People are central to sustainable development and local communities are important stakeholders in sustainable development.
- 3.3.4 As mentioned in section 3.2, analysis of costs and benefits should go beyond factors that are easily measurable, such as emissions and goods and services that are traded in markets. The analysis should also incorporate estimates, or at least descriptions, of factors that are more difficult to measure, such as environmental services, non-market goods, impacts on health and quality of life, and distributional impacts.
- 3.3.5 It is particularly important that SEPA assesses and understands the impacts of emissions on health, and takes action to minimise such impacts within the framework established by legislation. It is also important that this type of impact assessment encompasses issues that have a significant effect on well-being such as odour and noise, where these are subject to regulation.
- 3.3.6 It is worth highlighting here that SEPA’s involvement in development planning is particularly crucial in helping planning authorities to protect communities from inappropriate development and degradation of their local environment. SEPA should continue to assess planning matters and to have a role where decisions under the land use planning system and environmental regulation regimes may be better integrated, with the benefits that a more understandable system may bring, and the issues that this may raise.

### Actions

14. SEPA will use its statutory powers to support the aims of environmental justice, in particular to prevent environmental burdens falling disproportionately on particular (vulnerable) communities or sectors of society.
15. SEPA will seek to encourage and inform public participation in decisions affecting their environment and sustainable development.
16. SEPA will encourage engagement between industry (and other institutions) and their local communities on environmental and sustainable development issues.
17. SEPA will assess and understand the impacts of emissions on health, and take action to minimise such impacts within the framework established by legislation. This should encompass issues that have a significant effect on well-being such as odour and noise, where these are subject to regulation.
18. SEPA will maintain strong links with planning authorities to ensure that land use planning and environmental protection controls work coherently together.
19. SEPA will continue to assess, with the Scottish Executive, areas where the land use planning and environmental regulation regimes may be better integrated.
20. SEPA will update its procedures for contributing to the community planning and development planning processes to ensure that it makes appropriate and timely contributions where its expertise has the greatest influence.
21. SEPA will provide advice to planning authorities to avoid development in areas where flooding risks make this unsustainable.

## **4. Measuring Progress**

- 4.1 Meeting the Needs defines a set of 24 indicators that allow progress to be measured in the key areas for action. The Scottish Executive also published Indicators of Sustainable Development for Scotland in February 2003 and 2004, which provides further information on these indicators, which the Executive is committed to updating and refining. SEPA's policy priorities from the Executive encompass targets for environmental protection and aspects of sustainable development. These are reflected through SEPA's corporate business planning processes and are mainly based on the outcomes identified by SEPA as its own priorities. SEPA already sets its corporate targets in terms that measure environmental quality outcomes and some wider measures of sustainable development. SEPA should continue to develop this approach to allow it to measure its contribution to sustainable development across the full scope of its activities in qualitative and quantitative terms.
- 4.2 Even where SEPA does not control all of the levers required to deliver a specific sustainable development target or indicator, it should use its powers to contribute to the achievement of targets in partnership with other bodies. For example, SEPA should seek alignment between

its indicators/targets and Scottish Executive sustainable development indicators/targets. This will encompass environmental justice targets where relevant.

- 4.3 SEPA can also contribute to a number of indicators through sustainable management of its own business. Progress on this should be measured and reported on.

#### Actions

22. SEPA should continue to develop its suite of outcomes to allow it to measure its contribution to sustainable development across the full scope of its activities in qualitative and quantitative terms.
23. SEPA should use its powers to contribute to the achievement of the Scottish Executive's sustainable development targets in partnership with other bodies.
24. SEPA should organise its own affairs in ways that contribute to sustainable development. In particular, it should seek to demonstrate best practice in the priority areas of resource use, energy and travel, and report on its progress in doing so.

## **5. Summary of Actions**

1. SEPA must have regard to this guidance in the performance of its functions and produce a plan within 18 months of this guidance being issued outlining how it will deliver the guidance requirements and undertake periodic reviews of progress against the plan.

In addition SEPA will:

2. Ensure that this guidance is fully reflected in its policies and procedures by reviewing existing procedures for compatibility with this guidance within 18 months of its issue, and develop a means by which new policies and procedures can incorporate relevant elements of this guidance.
3. Support the priorities for action as defined in Meeting the Needs through performance of its statutory functions.
4. Develop a policy on the use of carrying capacity evaluations to direct regulatory actions and update this, as appropriate, as knowledge of carrying capacity constraints evolves.
5. Define how it will apply the precautionary principle to support sustainable development.
6. Apply the principles of "good regulation" as defined by the UK Inter-departmental Liaison Group on Risk Assessment (ILGRA).
7. Continue to contribute to the Scottish Biodiversity Strategy<sup>viii</sup> and the UK Biodiversity Action Plan and ensure that its regulatory action considers impacts on biodiversity and minimises those impacts wherever possible.
8. Encourage businesses to fully exploit the synergies between environmental improvement and reducing business costs.
9. Work with the Scottish Executive to ensure that its actions do not unnecessarily constrain economic development and do not impose a greater than necessary burden on those it regulates.

10. Update, in consultation with the Executive, and make available, its internal guidance on the assessment of Costs and Benefits to ensure that its actions are based on rigorous analysis of costs and benefits.
11. Work with the Scottish Executive to ensure costs and benefits are fully recognised in developing legislation and key environmental strategies including the assessment of the costs of inaction.
12. Contribute to Scottish Executive Regulatory Impact Assessments (RIAs).
13. Fully recover the costs of its regulatory activities in line with Section 42(3) of the Environment Act 1995.
14. Use its statutory powers to support the aims of environmental justice, in particular to prevent environmental burdens falling disproportionately on particular (vulnerable) communities or sectors of society.
15. Seek to encourage and inform public participation in decisions affecting their environment and sustainable development.
16. Encourage engagement between industry (and other institutions) and their local communities on environmental and sustainable development issues.
17. Assess and understand the impacts of emissions on health, and take action to minimise such impacts within the framework established by legislation. This should encompass issues that have a significant effect on well-being such as odour and noise, where these are subject to regulation.
18. Maintain strong links with planning authorities to ensure that land use planning and environmental protection controls work coherently together.
19. Continue to assess, with the Scottish Executive, areas where the land use planning and environmental regulation regimes may be better integrated.
20. Update its procedures for contributing to the community planning and development planning processes to ensure that it makes appropriate and timely contributions where its expertise has the greatest influence.
21. Provide advice to planning authorities to avoid development in areas where flooding risks make this unsustainable.
22. Continue to develop its suite of outcomes to allow it to measure its contribution to sustainable development across the full scope of its activities in qualitative and quantitative terms.
23. Use its powers to contribute to the achievement of the Scottish Executive's sustainable development targets in partnership with other bodies.
24. Organise its own affairs in ways that contribute to sustainable development. In particular, it should seek to demonstrate best practice in the priority areas of resource use, energy and travel, and report on its progress in doing so.

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<sup>i</sup> Meeting the Needs .... Priorities Actions and Targets for Sustainable Development in Scotland  
<http://www.scotland.gov.uk/library5/rural/mtnsd-00.asp>

<sup>ii</sup> Indicators of sustainable development in Scotland <http://www.scotland.gov.uk/library5/environment/sdin-00.asp>

<sup>iii</sup> Scottish Executive Policy Priorities for SEPA, Issue 4, October 2004  
<http://sh45inta/library5/environment/ppsepa-00.asp?mode=view>

<sup>iv</sup> SEPA Corporate Plan <http://www.sepa.org.uk/publications/corporateplan/index.htm>

<sup>v</sup> SEPA Management Statement <http://www.scotland.gov.uk/government/publicbodies/guidance/sepams.pdf>

<sup>vi</sup> ILGRA Guidance <http://www.hse.gov.uk/aboutus/meetings/ilgra/pppa.htm>

<sup>vii</sup> Scottish biodiversity webpages <http://www.scotland.gov.uk/about/ERAD/CANH/CF/00015021/SBS.aspx>

<sup>viii</sup> Framework for Economic Development in Scotland: <http://www.scotland.gov.uk/library5/government/fedsm-00.asp>



Small changes in the way we perform everyday tasks can have huge impacts on Scotland's environment.

Walking short distances rather than using the car, or being careful not to overfill the kettle are just two positive steps we can all take.

This butterfly represents the beauty and fragility of Scotland's environment. The motif will be utilised extensively by the Scottish Executive and its partners in their efforts to persuade people they can do a little to change a lot.

This document is also available on the Scottish Executive website: [www.scotland.gov.uk](http://www.scotland.gov.uk)  
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