

DRAFT ENFORCEMENT REGULATIONS

RESPONSE OF THE SCOTTISH ENVIRONMENTAL SERVICES ASSOCIATION (SESA)

The Scottish Environmental Services Association ("SESA") is the sectoral trade association representing Scotland's managers of waste and secondary resources. SESA's Members seek to align economic and environmental sustainability through delivering compliance with relevant waste and environmental legislation.

An effective planning system is a crucial driver for Scotland to develop a resource efficient economy. To process and treat waste in different ways, major investment is required by our industry. To make that investment our industry requires a clear and precise planning system.

Planning enforcement should be fair and proportionate and whilst there may be a case for this to be delivered more promptly, this must not be at the expense of a developer's right to appeal.

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

No comment.

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

No comment.

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?

No comment.

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?

Whilst SESA is satisfied, in principle, with the requirement to provide a planning authority with a Notice of Initiation of Development (NID) we see no merit in the requirement to include details of enforcement action against a developer. A planning authority should already have this information readily available as this would form a consideration in the determination of planning consent.

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

No comment.

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?

No comment.

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 comment.

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

No comment.

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

SESA is concerned by the proposal to allow planning authorities to issue Temporary Stop Notices. The RIA has not taken into account the financial implications of such action as this would prevent the carrying out of an activity on site for a period of 28 days with no recourse for appeal.

The Scottish Government's proposals further restrict the defence of a developer upon serving of notice. There is clearly greater scope for a developer to be unaware of a Notice if it is served on a site, rather than upon an individual. We therefore disagree that a defence (i.e. an individual was not aware of such Notice) should be harder to prove and request urgent clarification from the Scottish Government on details of this defence.

We also seek clarification from the Scottish Government on whether Temporary Stop Notices constitute enforcement action for the purpose of regulation 3(c) i.e. a requirement to provide such information in a Notice of Initiation of Development. Given that Temporary Stop Notices have no recourse for appeal we suggest this should not form part of a developer's enforcement history.

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

No further comment.

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

Yes, please refer to our comments to question 9 regarding the un-quantified costs associated with Temporary Stop Notices.