

# Regulation Report 2018

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<http://contactscotland-bsl.org/>

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## Executive Summary

- SEPA's Regulatory Strategy 'One Planet Prosperity' is clear – every Scottish business will comply with the law and SEPA will work to ensure as many as possible go even further.
- Scottish business environmental compliance was over 90% for the fourth year in a row in the 2018 figures published by the Scottish Environment Protection Agency (SEPA).
- 90.5% of Scottish regulated business sites were assessed as compliant (Excellent', 'Good' or 'Broadly Compliant') in 2018. 76.2% of Scottish regulated sites (almost 4,000 sites) rated as excellent.
- SEPA commissioned the establishment of a new 'Enforcement Function' to fast-track and strategically tackle serious non-compliance and illegality

## One Planet Prosperity and the Phase 2 EPA

Under our One Planet Prosperity strategy, we have set ourselves the major challenge of turning SEPA into what we believe will be one of the first 'Phase 2' environment protection agencies (EPAs) in the world. Our future is as an EPA that is even more effective at ensuring regulated businesses reach full compliance with environmental obligations and helps as many as possible voluntarily go beyond the compliance standards.

We will continue to develop significantly smarter ways of reducing industrial and other forms of traditional pollution. But the challenges of the 21st century mean that we must also increasingly help Scotland tackle the global challenges of climate change, plastics, insect population collapse and more.

Scotland has a high level of environmental compliance. This report covers the action that SEPA took in 2018 to drive further improvements in our environmental performance and address the environmental challenges that we all face.

## Compliance Assessment Scheme (CAS)

SEPA issues authorisations to regulate activities that pose a risk to the environment and human health and wellbeing. We then monitor how an operator complies with the conditions in their authorisation. Our monitoring focuses upon higher-risk activities, we determine those higher risk activities by factors including the nature of the activity, potential environmental or community impact and past poor operator performance.

SEPA's [Compliance Assessment Scheme](#) (CAS) rates an operator's environmental performance against their authorisation conditions. We publish these results because we believe that it is important for everyone to understand the performance of operators whose businesses can have an effect on the environment. Members of the public will be interested in operators in their communities, and industry wants to know how they, and potential contractors, are performing.

Scottish business environmental compliance was over 90% for the fourth year in a row in the latest figures published by the Scottish Environment Protection Agency (SEPA).

90.5% of Scottish regulated business sites were assessed as compliant ('Excellent', 'Good' or 'Broadly Compliant') in 2018. 76.2% of Scottish regulated sites (almost 4,000 sites) rated as excellent.

Compliance Band	Number of authorisations assessed 2018	2018 %
Excellent	3,905	Compliant 90.5
Good	686	
Broadly Compliant	43	
At Risk	156	Not compliant 9.5
Poor	282	
Very Poor	51	
<b>Overall</b>	<b>5,123</b>	<b>100</b>

During 2018, SEPA continued to prioritise work to focus on the poorest performers, and those with persistent poor performance over the last two or more years. As a result we:

- improved the classification of 21 of the 40 authorisations that had been assessed as Very Poor at the end of 2017, a reduction of 52.5%;
- returned 67 of the 182 authorisations to a satisfactory classification, which had been unsatisfactory for two or more years consecutively. This was a reduction of 36.8%.

## Environmental Events

SEPA has a pollution hotline (0800 80 70 60) which is available 24/7. We want the public to notify us if they see something that is affecting the environment. This may be a pollution incident killing fish in a river or smells coming from a landfill site.

In 2018, we recorded 2,395 major, significant and minor events which were reported to us by the public, operators or identified by SEPA. About 18% of these events were associated with activities that we had authorised, the rest were associated with accidents, structural failures or mismanagement.

	Associated with SEPA authorisation	No authorisation associated	Total
Major incidents	4	20	24
Significant incidents	42	53	95
Minor incidents	379	1,897	2,276
Total	425	1,970	2,395

## Enforcement

SEPA's Regulatory Strategy One Planet Prosperity makes it clear that compliance is non-negotiable. We take action;

- when an operator does not comply with their authorisation conditions;
- against those who have failed to obtain the necessary authorisation(s) from us;
- against those who have carried out illegal activities for which an authorisation would not be available.

The intent behind enforcement action we take is to:

- stop or reduce the risk of harm arising from the non-compliance;
- secure compliance and change behaviour to prevent re-occurrence;
- Deter others from carrying out similar non-compliant / illegal activities.

The factors we take into account when making decisions on what enforcement action we will take are: intent; foreseeability; impact; financial implications; deterrent effect; previous history.

The level of enforcement action taken to address non-compliance will range from providing advice and guidance, imposing monetary penalties, varying authorisations, through to referring a case to the Crown Office and Procurator Fiscal Service Scotland (COPFS).

Our approach to enforcement is underpinned by the five principles of Better Regulation: being proportionality, accountability, transparency, consistency and targeting, plus a sixth principle of taking a timely approach.

Advice and guidance may be offered in combination with any other action we take at every stage to achieve the desired outcome(s). Further information on enforcement decision making is available in SEPA's Enforcement Policy and Enforcement Guidance which can be found on our [website](#).

Enforcement action taken in 2018:

- 137 SEPA initiated authorisation variations \*
- 111 final warning letters were issued
- 65 enforcement/work notices were served
- Eight fixed monetary penalties totalling £4,800.00 were issued
- 14 civil penalties under the Emissions Trading System totalling £289,558.81
- One enforcement undertaking was accepted
- One report submitted to the Crown Office and Procurator Fiscal Service (COPFS)

\* SEPA initiated variations are issued for a variety of reasons to support compliance, including for enforcement purposes.

In 2018, there were the following outcomes from reports submitted to COPFS in previous years:

- Nine convictions, resulting in a total of: £145,900 in fines, 500 hours in Community Payback Orders and £67,599 in Confiscation Orders.
- One report resulted in a non-court disposal (i.e. a Direct Measure such as Fiscal Fine or Fiscal Warning)
- Eight reports resulted in the PF deciding not to raise proceedings.
- Four cases resulted in proceedings which had been raised being discontinued.

Further information on enforcement action taken is available in the Appendices.



## **Enforcement Relating to Tackling Climate Change**

During 2018, we imposed 14 civil penalties, amounting to a total of £289,558.81. These were all imposed under the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

The EU Emissions Trading System (EU ETS) aims to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. The system operates through the allocation, trading and auctioning of greenhouse gas emission allowances throughout the EU. One allowance represents one tonne of carbon dioxide equivalent.

An overall limit, or 'cap', is set on the total amount of emissions allowed from the installations covered by the system. Emission allowances are then distributed to the installations and aircraft operators in the system.

The operators are then free to trade in allowances. Trading does not affect the environmental outcome as the number of allowances matches the level of the cap. The rationale behind emissions trading is that it enables emission reductions to take place where the cost of the reduction is lowest, lessening the overall cost of tackling climate change.

### **ETS Opt Out Scheme**

An operator of an installation participating in the small emitters and hospital opt-out scheme (an excluded installation) is required not to exceed an annual emissions target.

If an operator of an excluded installation exceeds its emissions target they are liable to a civil penalty, which is calculated in accordance with the formula in the Regulations. This penalty reflects the cost that the operator would have incurred if it participated in the full EU ETS. It is therefore an 'equivalent measure', as required by the Directive. It does not contain any further punitive element.

A full list of the penalties imposed is available in the Appendices

## **SEPA's New Enforcement Function**

In 2018, we took the decision and initial steps to create a dedicated Enforcement Function,

Scotland is a community, and it will take all public bodies and organisations working for and with the people of Scotland to tackle illegal activity. Our Enforcement Function will use information and intelligence to allow us to identify the highest risk issues and sites and prioritise where to deploy our resources to have the biggest impact.

We will work with all relevant public bodies and organisations involved in prioritised sectors, to develop a package of tools and measures to help drive increased compliance and behaviour change and embark on a programme of disruption and prevention that aims to permanently stop the illegal activity. The aim is to change the mechanisms and behaviours that allowed non-compliant operations, and cut off any potential routes back in.

## **Working Beyond Compliance: Sustainable Growth Agreements**

Sustainable Growth Agreements (SGAs) are voluntary formal agreements between SEPA and an organisation (or organisations) that focus on practical action to deliver environmentally positive outcomes.

SGAs enable us to help organisations collaborate with experts, innovators and stakeholders to improve their environmental performance while continuing to facilitate commercial and social success. In the context of a rapidly warming climate, SGAs provide urgently needed business frameworks that facilitate more sustainable ways of working within our planet's resources.

In 2018 SEPA signed SGAs with:

- Scottish Water – June 2018;
- Entrepreneurial Scotland – July 2018;
- Stirling Council – August 2018;
- Scottish Land Commission – September 2018.

More information on all our SGAs can be found on our website at [sepa.org.uk/one-planet-prosperity/sustainable-growth-agreements](https://sepa.org.uk/one-planet-prosperity/sustainable-growth-agreements)

## Appendices

### ETS Penalties

1.	ETS Opt out scheme target breach 2017	£1,905.36
2.	ETS Opt out scheme target breach 2017	£6,402.57
3.	ETS Opt out scheme target breach 2017	£6,710.79
4.	ETS Opt out scheme target breach 2017	£22,658.84
5.	ETS Opt out scheme target breach 2017	£8,513.41
6.	ETS Opt out scheme target breach 2017	£10,871.76
7.	ETS Opt out scheme target breach 2017	£588.42
8.	ETS Opt out scheme target breach 2017	£38,835.72
9.	ETS Opt out scheme target breach 2017	£27,781.83
10.	ETS Opt out scheme target breach 2017	£31,970.82
11.	ETS Opt out scheme target breach 2017	£2,932.76
12.	Operating without a permit 1 January 2013 to 01 August 2017	£55,106.53
13.	Failure to surrender sufficient allowances to cover annual reportable emissions by 30 April 2013, 30 April 2014 and 30 April 2015	£40,056.00
14.	Failure to surrender sufficient allowances to cover annual reportable emissions by 30 April 2015	£35,224

## Compliance and Regulatory / Enforcement Action at a Glance

The numbers under SEPA's Compliance Assessment Scheme relate only to sites with a SEPA authorisation where we have carried out routine compliance monitoring.

Figures under regulatory / enforcement action taken also include:

- all other lower risk authorisations where SEPA does not carry out routine monitoring, including those subject to general binding rules;
- unauthorised and illegal activity;
- pollution incidents that are not related to a SEPA authorised activity.

For example, an illegal waste site would be classed under waste management, but this would not be reflected in the Compliance Assessment Scheme figures because that site does not have a licence.

	Compliance Assessment Scheme			Regulatory / Enforcement action taken						Other outcomes from reports submitted to COPFS
	Compliant authorisations	Non-compliant authorisations	% of authorisations compliant	SEPA initiated authorisation variations	Statutory notices	Fixed monetary penalties	Final warning letters	Enforcement undertakings	Criminal convictions	
<b>TOTAL</b>	<b>4634</b>	<b>489</b>	<b>90.5</b>	<b>115</b>	<b>66</b>	<b>8</b>	<b>110</b>	<b>1</b>	<b>9</b>	
<b>Construction and development</b>										
Major projects and infrastructure	18	7	72.0		16		1			
<b>Energy</b>										
Non-renewable energy	52	4	92.9	14			4			
Renewable energy (hydropower)	249	34	88	7	1		3			1
<b>Food and drink</b>										
Aquaculture	318	54	85.5	8						
Food and drink manufacturing and processing	86	10	89.6	1	1		1			
Whisky, distilling & brewing	168	8	95.4	1			1			

<b>Land management</b>										
Agriculture	727	45	94.2	17	4	2	36		3	
Estates and grounds management	48	6	88.9				1			
Forestry and timber	37	5	88.1		1		1			1
Other: land management							1			
<b>Manufacturing, Other Industry and Services</b>										
Chemicals	37	2	94.9				1			
Coating	72	7	91.1							
Medical, scientific and other services	173	13	93.0	2	1	2				
Metals	23	2	92.0	2						
Minerals	281	23	92.4	4			5			
Other: manufacturing or industry	18	2	90.0	2			3	1		
<b>Radioactive substances</b>										
Non-nuclear	133	1	99.3	2						
<b>Waste management</b>										
Incineration and co-incineration	22	4	84.6		3					
Landfill	153	26	85.5	5	3	3	8			1
Storage and treatment of waste	739	74	90.9	7	22		16		5	3

Other: waste management					8		8			6
<b>Water and Waste Water</b>										
Public	1,014	106	90.5	24	1		3		1	
Private	217	49	81.6	16			1			1
Other: water and waste water							1			
<b>Other</b>										
All others	49	7	87.5	1	5		12			
Private Individual	N/A	N/A	N/A	2		1	3			



