


**Environmental Performance Assessment Scheme**  
**June 2025**

<p><b>1.</b> <b>How far do you agree or disagree with the three proposed environmental performance ratings of good, below expectations and unacceptable?</b></p> <ul style="list-style-type: none"> <li>• <b>Strongly Agree</b></li> <li>• <b>Agree</b></li> <li>• <b>Neither Agree Not Disagree</b></li> <li>• <b>Disagree</b></li> <li>• <b>Strongly Disagree</b></li> </ul>
<p><b>Disagree</b></p> <p>Scottish Water has reservations about the three proposed environmental performance ratings. The focus is on non-compliance, which introduces a negative bias to the scheme, and there are aspects which do not align with the principle of reporting performance 'fairly'. Potential comparison with the previous Compliance Assessment Scheme (CAS) also needs to be proactively managed. Details of these concerns are set out below under the principles that SEPA has used to develop the Environmental Performance Assessment Scheme (EPAS).</p> <p><b><u>Fairness:</u></b></p> <p>The consultation notes that "<i>compliance with legal environmental responsibilities is the minimum that businesses should be seeking to achieve</i>". The proposed performance ratings do not reflect this ambition. There is no recognition of operators who go 'beyond compliance'.</p> <p>There is also no distinction between an operator who is consistently compliant with their authorisation and another who can resolve non-compliances quickly (within 30 days); both would be graded as 'Good' The EPAS ratings should recognise operator good practice in keeping sites compliant, not just reflect how quickly sites can be returned to compliance. The ratings should reward operators who can demonstrate going 'beyond compliance'.</p> <p>The consultation states that SEPA will "<i>prioritise compliance verification according to the severity of environmental harm a regulated activity could cause and an operator's compliance history</i>". With harm and compliance forming two of the three parts that determine the performance rating, this approach could introduce a negative bias i.e. it is more likely that a site with compliance issues and/or higher environmental risk will be assessed.</p> <p>Regulatory resources are less likely to be directed to better performing sites and, instead of perhaps being rated as 'Good', these sites may only be recorded as 'No Known Issues', which is the default published rating if SEPA has not carried out Compliance Verification activity. This rating gives no indication of operator performance, positive or negative - for Scottish Water, an operator with thousands of authorisations, there is concern that Compliance Verification activities will be negatively focussed on sites with higher risk of non-compliance or harm, leading to published ratings that are not reflective of our performance position across all assets.</p> <p>Two other observations are:</p> <ul style="list-style-type: none"> <li>• The proposal to attribute a Performance Rating to an operator when an environmental event occurs and there is no associated authorisation. An example for Scottish Water could be a water main burst that causes a Category 1 or 2 event.</li> </ul>

We would receive a negative Performance Rating for such an incident and, whilst we do not disagree with this proposal, we do note there is no opportunity to recognise the converse situation where we operate and manage our water network without incident. This approach is focused solely on poor performance and does not allow good performance to be acknowledged.

- The proposal does not account for the number of non-compliances and/or major non-compliances that might be identified in a Compliance Verification Report. A site with one major non-compliance would initially receive the same Performance Rating as a site with multiple major non-compliances. This does not appear to be a fair comparator of performance.

Consistency:

When the Environmental Performance Assessment Scheme (EPAS) is launched, it is crucial to clearly communicate that it differs from the obsolete Compliance Assessment Scheme (CAS) and the associated results that are still available on SEPA's website. EPAS evaluates performance considering compliance, duration of non-compliance, and environmental impact, whereas CAS only measured compliance.

CAS had six ratings, three 'satisfactory' and three 'unsatisfactory'. EPAS proposes three ratings: one satisfactory and two unsatisfactory. Without proper explanation, this change risks misinterpretation, making the position 'seem' worse despite no actual change in performance or environmental risk. This could harm the reputation of operators and Scotland, even though the environmental status remains unchanged.

	<b>Do you have any concerns with what we propose to categorise as 'Major non-compliant'?</b>
2.	<ul style="list-style-type: none"><li>• Yes, I have some concerns</li><li>• No, I have no concerns</li><li>• I need more information</li></ul>

Yes, I have some concerns.

Scottish Water is concerned that many of the major non-compliance definitions set out in the Annex 3 tables are new or different from the draft definitions that SEPA notes have been in use since April 2023. The draft 2023 definitions were developed following previous consultations and stakeholder engagement in 2015 and 2017. We are not aware of any stakeholder engagement related to the development of the definitions listed in Annex 3.

These differences are outlined below and we would welcome clarification on the following points to ensure better understanding across Scottish Water and SEPA so that major non-compliances are appropriate and consistently identified.

General

All the Annex 3 tables stipulate a major non-compliance occurs when a water standard is breached. The tables also note that SEPA will determine if this has occurred when there is evidence of a Water Framework Directive (WFD) classification downgrade. As WFD classification is reviewed on an annual basis, it is not clear how this will align with the more dynamic EPAS process. Further guidance will also be needed on how SEPA intends to confirm that a downgrade has been caused by a specific activity. We would welcome further discussion with SEPA on the appropriateness of the use of WFD classification points in terms of linkages to specific discharges and therefore EPAS, and how this might contribute or interact with the River Basin Management Planning (RBMP) process.

In some Annex 3 tables, there are details of when a compliance failure would be considered a non-compliance rather than a major non-compliance. It would be useful if, prior to publication of the major non-compliances, guidance on criteria for non-compliances was made available e.g. the number of missing days of flow data for DWF assessment and engineering activities.

Clear guidance is required to ensure that 'double-counting' major non-compliances is avoided. We understand that an environmental event (Category 1 or 2) would be classed as a major non-compliance and that there could be an associated major non-compliance with an authorisation condition. However, we believe care needs to be taken to avoid reporting a major non-compliance against multiple conditions. Some aspects of the annexes take this into account already e.g. dry weather flow data returns. We would welcome further discussion on this point to understand how the major non-compliances will be applied consistently.

#### Annex 3.2 – Water Resources:

Annex 3.2 shows that a major non-compliance will be recorded when there are multiple exceedances (25+) of the numeric abstraction limit within a 12-month period. In relation to recording this under EPAS, it is assumed that the start date would be the date of the 25<sup>th</sup> exceedance. It is not clear how we would demonstrate return to compliance within 30 days when the licence specifies an assessment period of 12 months. After 30 days, there could still be 25 exceedances, unless at least one of those occurred one year prior to the end of the 30-day period (i.e. one 'drops off' the rolling tally of exceedances) or unless another exceedance occurs. The time taken to return to compliance is a function of the period over which the non-compliance is assessed i.e. a year. It is independent of operator action to address the non-compliance and will mean a site could be classed as 'Unacceptable', even if no more exceedances occur in the remaining months of the 12-month period. We do not believe performance would be fairly reflected if that rating is published with no explanation that the major non-compliance definition relates to a 12-month period and the site cannot be returned to compliance within 30 days. Actions may have been taken to resolve the non-compliance, but these may not be 'visible' until exceedances have 'rolled-off' the 12-month period.

We would also highlight that we have a statutory duty to supply drinking water and, to meet demand, there will be occasions when abstraction limits are breached. These are usually infrequent occurrences, typically caused by burst incidents or public events in small zones. Sometimes this might lead to a major non-compliance (e.g. a single exceedance of a limit by +20%). This is a different position to commercial sectors where the activity can be stopped and it may, therefore, be inappropriate to compare these exceedances with those of other operators. Currently, such an exceedance would lead to a major non-compliance, and the associated rating of 'Below Expectations' or 'Unacceptable' may unfairly reflect our performance due to our legal obligations. When we can demonstrate an abstraction exceedance has occurred whilst providing a statutory service to meet customer demand, we would welcome an exception from it being classed as a major non-compliance. Another situation where we consider it may not be appropriate to categorise an over-abstraction as a non-compliance, or a major non-compliance, is when the asset is an impounding reservoir (i.e. an artificial water body). Occasional exceedances of the licensed numerical limit will have minimal impact on reservoir area and have no environmental impact. Additionally, an abstraction exceedance could occur when the reservoir is spilling (due to time of year and/or weather conditions). This would have no impact on the reservoir maximum level or the surrounding environment. We accept that in some circumstances (e.g. extensive periods of unresolved leakage or increasing demand on a WTW due to growth), an over-abstraction may need to be recorded as a non-compliance and when this

occurs, a statement should be included in the published performance data about our statutory duty to supply wholesome drinking water e.g. Scottish Water was non-compliant with this licence condition while providing a statutory service to meet customer demand. We would welcome further discussions with SEPA on the compliance assessment of over-abstractions in general.

We note that the definitions for multiple exceedances of the abstraction limits could benefit from being re-written to ensure better clarity e.g. “*25 or more abstractions that exceed the daily/combined limit, but not by more than 20%, in a 12-month period*”.

### Annex 3.3 – Engineering

Scottish Water would welcome clarification on how SEPA will assess emergency works that are required during periods of fish spawning / juvenile emergence. It was also noted during one of the online consultation sessions that SEPA intends to inspect all ‘significant engineering activities’. We would welcome confirmation on the definition of ‘significant’ in this context.

### Annex 3.5 Waste Water Treatment Works (public & private)

#### *Major Impact of the Authorised Activity (Table 1)*

For annual numerical limits, we would welcome inclusion of an exception in Column 2 of Table 1 (Annex 3.5), similar to the one listed for two tier numerical limits e.g. “*a breach of the annual mean UWWTD limits for phosphorus or nitrogen where compliance is achieved by meeting the minimum percentage reduction of influent load*”. We note this is referred to in Column 3, but for consistency we would like to see the exception clearly listed in Column 2. This assessment applies to a calendar year and it is not clear how this timeline aligns with the EPAS principle of assessing compliance over a rolling 12-month period. It is also not clear how we would show that compliance has been recovered for that calendar year or how this would be reflected in the performance rating.

#### *Scope of Site (Table 2)*

Annex 3.5 contains seven major non-compliances related to WwTW scope. There are no WwTW-related major non-compliances listed under Scope of Site in the current (2023) definitions.

For Dry Weather Flow (DWF) limits, the supporting guidance to inform SEPA’s assessment of a non-compliance is CAS-G-004. Additionally, we have been following some informal guidance relating to storm storage as instructed by SEPA (refer to draft revision of CAS-G-004, December 2020). The EPAS proposals do not align with some of this existing guidance. For example, some of the agreed timescales for reporting DWF exceedances and assessing flow to full treatment and storage are different from the proposed timelines for resolving non-compliances under EPAS. It is not clear how this type of non-compliance and associated actions will be managed in practice once the new scheme is launched. We would strongly request further discussions with SEPA prior to the major non-compliance definitions being published and put into use.

For overflow settings, we note that the ‘absence of rainfall’ is now defined as five days without significant rainfall in the catchment. As far we are aware, there is currently no standardised approach in Scotland for determining if a discharge has occurred in dry weather. There needs to be consistency between future policy and EPAS. So, we ask that any reference to ‘absence of rainfall’ or ‘dry days’ in the major non-compliance definitions is amended to align with agreed criteria.

We note that operation of an emergency overflow will be classed as a major non-compliance unless it is due to a power failure, rising main failure or blockage of the downstream sewer. We would note that some licences allow emergency discharges in other circumstances and would not expect these events to be recorded as a major non-compliance e.g. Daldowie WwTW (mechanical pump failure or blockage of NTF feed PS), Kirkcaldy WwTW (mechanical failure of the screw lift pumps), Meadowhead WwTW (mechanical failure or issues within the STW that prevent flows being passed forward).

We note that SEPA is to assess functional storm storage capacity during site inspections and a major non-compliance will be recorded when grit levels reduce this to less than 75% of the authorised requirement. Given the difficulty in accessing and measuring this during a site inspection, we suggest it might be beneficial for SEPA to work with us to develop an accurate and consistent assessment process.

#### *Understanding of Authorised Activities (Table 3)*

A major non-compliance will be recorded if a data return, of adequate quality, is not made within 30 days of the required submission date, which is a significant tightening from the 2023 definition of three months. It is not clear if this new deadline will apply to amendments to a data return that has been submitted by the required deadline.

There appears to be some provision under the 'Requirement to Submit Records, Reports or Data' to avoid double counting of data return non-compliances. Where the return contains a figure that may be incorrect, this will be recorded as a major non-compliance under the maintenance or measuring equipment condition. Also, a notification of malfunction of measuring or monitoring equipment will be assessed under notification of incidents. We note that CAS-G-004 sets out different scenarios to avoid double counting and would suggest that Annex 3.5 is amended to align with current policy in this area. The Annex, and any supporting EPAS guidance, should specifically mention avoidance of double counting across all conditions.

The proposed major non-compliances for shortfalls in sample results from Operator Self-Monitoring (OSM) activities can only be assessed at the end of a calendar year. Further guidance is required from SEPA on the evidence that would be required to demonstrate resolution of these major non-compliances. It is not possible to 'catch-up' on the shortfalls in the following calendar year.

#### *Overall Management of Authorised Activities (Table 4)*

It is noted that SEPA's assessment of multiple non-compliance breaches will be subject to additional governance checks to ensure national consistency in decision-making. Scottish Water is fully supportive of this approach and would welcome further information on how these additional governance checks will affect the EPAS timelines. We would also ask that details of the decision-making process are shared with us when the Compliance Verification Report is issued to ensure transparency, one of the Better Regulation principles.

We note the proposal to categorise "*infrequent or frequent breakdown of any plant which leads to, or may lead to, a significant breach of numeric limits*" as a major non-compliance. This must be verified by SEPA investigative monitoring data. It is not clear how SEPA will determine whether a breakdown could cause an exceedance as this would require process knowledge of wastewater treatment works performance. Further clarity is required on the definition of 'a significant breach'. Where a breach is recorded, and it meets the criteria set

out in Table 1, it is not clear if a major non-compliance would also be raised for this (i.e. double counting).

A major non-compliance is proposed when an inlet flow meter breaks down for more than 108 days in 12 months. We note that instead of referring to 'breakdowns' it might be more accurate to refer to 'inaccurate data / poor data quality', or similar, because it is more common for flow meters to produce unreliable data whilst remaining operational. Consideration should be given to the timing of when data is not available; data that is obtained from a flow meter that has been broken for 108 consecutive days and is then fixed might be more accurate than data obtained from a meter that has 107 sporadic missing days throughout a year; the first would be recorded as major non-compliant and the second would not. Where there is a requirement to report Dry Weather Flow (DWF), it is not clear if a second major non-compliance will also be raised for having more than 180 days of missing data (i.e. double counting). At some sites, we use the effluent flow monitor to determine DWF and it is not clear if a similar major non-compliance would be recorded if this was returning unreliable data for an extended period.

Another major non-compliance related to monitoring equipment is for breakdowns of event recorders and flow meters exceeding 30 days in 12 months. This is a new definition and it is not clear why there is a different threshold compared to the one stipulated for inlet flow monitors (108 days vs 30 days).

There is a proposal for a major non-compliance to be raised when final effluent autosamplers are not operating to the authorisation conditions and the example provided is '*not operating at correct temperature*'. We would suggest that a threshold should be considered for temperature deviations to distinguish between a non-compliance and a major non-compliance e.g. deviations up to and including x°C will be assessed as a non-compliance and any greater deviations will be major non-compliances. We would also note that although the temperature requirements for autosamplers were recently amended in WAT-SG-13, authorisations have not yet been updated to reflect this change. There is an outstanding action for SEPA to confirm if each authorisation needs to be varied or if the change can be covered by a position statement (similar to the one issued to allow us to vary the start/stop times of the 24hour cycle). Until a decision is made, and whilst authorisations do not align with the recently updated policy, we do not believe it would be appropriate for SEPA to raise a major non-compliance if the temperature of an autosampler does not meet the condition in the authorisation.

### Annex 3.6 – Sewer Network Licences

The 2023 definitions of major non-compliance do not contain many references to conditions in sewer network licences (SNLs). By comparison, Annex 3.6 is detailed with new major non-compliance definitions listed under Scope of Site and Understanding of Authorised Activities. Additionally, the description of a major non-compliance and/or the details of how it will be assessed by SEPA are different from current interpretations.

#### *Scope of Site (Table 2)*

Annex 3.6 contains ten major non-compliances related to SNL scope. There are no SNL-related major non-compliances listed under Scope of Site in the 2023 definitions.

Seven of these non-compliances are only classed as major if a discharge is to a high or moderate amenity receiving water. In some instances, the amenity value of a receiving water is very clear e.g. designated areas, such as Bathing & Shellfish Waters, are high amenity. However, it might be less obvious for other receiving waters e.g. areas where immersion in water regularly occurs or where there is a formal park/picnic site. In these

examples, it is not clear how 'regularly' is assessed or what defines 'formal'. To ensure there is no ambiguity about identifying a non-compliance as a major non-compliance, we would ask that all high and moderate amenity receiving waters should be clearly identified by SEPA and we would encourage publication of this list, including confirmation of the process for keeping the list up-to-date. This would also enable us to prioritise assets which discharge to these locations in our systems.

Some of the scope-related major non-compliances are not reliant on the amenity value of the receiving water.

- A major non-compliance can occur if the asset register does not contain enough data to populate more than 75% of the relevant SNL table. We note that SNL Conditions 3.1 and 3.2, which SEPA will use to assess this major non-compliance, only require the asset register to include information to populate Columns 1 to 4 of Tables 5 and 6 (i.e. Plant Number, Asset Name, Asset NGR and Discharge NGR). This should be added to Table 2 of Annex 3.6 to ensure clarity of scope and we would ask that the major non-compliance definition is amended to refer to 'at least 75%' instead of 'more than 75%'. With the asset register only needing to contain information to populate four columns, there is no difference between 'more than 75%' and 100%. We would also note that some SNLs are still unverified and may include assets that are no longer operational. It would not be fair to record missing data major non-compliances against SNLs that have still to be reviewed. SEPA guidance should include a definition for 'register'. It is possible that asset information could be stored in different locations within our systems and collating it into a format suitable for submission as evidence (effectively creating a 'register of a register') is not efficient use of resources.
- Another major non-compliance in Table 2 of Annex 3.6 refers to 'Provision of online storage' as the authorisation condition. It is not clear if this includes offline storage i.e. storage facilities that are located adjacent to the sewer line. We consider online storage to be storage that is provided within the sewer network and/or within pumping station wet wells. Where a separate tank has been built, this is referred to as offline storage. The definition also sets out some new limits for functional storage (>90-100% - compliant, 75-90% - non-compliant and <75% - major non-compliance). It is not clear how these have been derived. It is also not clear how this would be accurately assessed when storage is part of the upstream sewer system.

We note that a major non-compliance will be recorded when an environmentally critical asset does not have a Maintenance Schedule Task and/or an Incident Response Procedure (and it discharges to high or moderate amenity waters). It is likely that we refer to Incident Response Procedures by a different name in Scottish Water (e.g. contingency plans) and we need further discussion with SEPA to establish if our existing procedures meet the criteria. We would welcome inclusion of the expected purpose of an Incident Response Procedure in SEPA guidance and confirmation that generic documents would be acceptable.

#### *Understanding of Authorised Activities*

Annex 3.6 states that a failure to report incidents that have "*caused or could cause an adverse impact on the environment, human health and wellbeing*" is a major non-compliance. This is different from the 2023 definition which only refers to incidents with the potential to cause Category 1 or 2 events. We would also note that the SNL condition 2.4.2 only refers to "*adverse impact on the water environment*". There is no reference to human health or wellbeing and so it is not clear how failure to report impacts on these receptors could be classed as a SNL non-compliance.

Annex 3.6 also states that failure to submit a data return within 30 days of the required submission date is a major non-compliance. In the current (2023) definitions, the return must be made within three months before it is classed a major non-compliance. It is not clear why there has been such a significant reduction in the timeframe.

A new major non-compliance related to provision of flow monitoring and event recording equipment has been added. This is not in the 2023 definitions of major non-compliance.

#### *Overall Management of Authorised Activities*

Annex 3.6 provides more detail than the 2023 definitions on how multiple non-compliances can lead to a major non-compliance. Four or more Category 3 events within 365 days which have been caused by a breach of the same condition will count as a major non-compliance. This description differs slightly from Section 8.2 of the main consultation document which states that '*more than four Category 3 events with the same cause in twelve months will result in a major non-compliance*'. There is a subtle difference between 'same condition' and 'same cause'. For example, a CSO spill could occur in dry weather (breach of condition), but it could be due to blockage or growth in catchment (cause). Clarification is needed on the definition of a repeat event.

It is also not clear if multiple breaches of the same condition, or with the same cause, can occur at any asset in a network before a major non-compliance is raised or if they have to occur at the same asset. If it is the former, we would ask if this approach is proportionate - large networks are more likely to have multiple environmental events than smaller networks.

We understand that assessment of multiple breaches will be reviewed by a SEPA internal governance group before deciding if a major non-compliance should be recorded. It is not clear how this process will be incorporated into the proposed EPAS timelines. In particular, we would like to understand how it could potentially impact the time available after a non-compliance has been identified to return to compliance (i.e. 30 days).

#### *Wider Legal Environmental Requirements and Financial Non-Compliance*

It is proposed that a major non-compliance will be recorded when a regulated activity is carried out without an authorisation. Examples are provided and these include '*discharge to the water environment from a dual manhole*'. We would like further discussion with SEPA to understand the scope of this proposed major non-compliance. It is assumed that it is limited to sewage discharges, rather than surface water discharges, which are flows that can legitimately be passed forward. We also note that not every dual manhole has a direct discharge point to the environment; the outfall may be at a downstream point in the network. Evidence of a sewage discharge at the outfall may not be caused by a spill in a dual manhole. It could be due to a cross-connection elsewhere in the network.

#### Annex 3.8 – Waste

In Table 4 (Overall Management of Authorised Activities), we note that reference is made to 'working plans'. We understand that this will no longer be used once authorisations are issued under Environmental Authorisations (Scotland) Regulations (EASR). Clarification is requested prior to the major non-compliance criteria being published.

#### Reservoirs

The consultation notes that a future phase of EPAS will include reservoir activities and that the associated major non-compliance criteria will be published at least three months before implementation. We would welcome confirmation that SEPA will consult on the major non-compliance criteria prior to publication.

Scottish Water's reservoir compliance is currently based on the Reservoirs (Scotland) Act 2011 legislation and whether Measures in the Interest of Safety (MIOS) have been completed by the required dates. Further clarity is required on the link between MIOS compliance to EPAS, as there is not necessarily an environmental impact from delayed completion.

3.	<p><b>How important do you think it is to include the length of time taken to resolve compliance issues within the environmental performance assessment?</b></p> <ul style="list-style-type: none"><li>• <b>Very Important</b></li><li>• <b>Quite Important</b></li><li>• <b>Neither Important nor Unimportant</b></li><li>• <b>Not Very Important</b></li><li>• <b>Not Important At All</b></li><li>• <b>Don't Know</b></li></ul>
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Quite important.

Scottish Water agrees that the inclusion of 'duration of non-compliance' in the environmental performance assessment could incentivise operators to take action to improve compliance in a timely manner. However, focusing only on the time taken to return to compliance may not be fully reflective of operator performance. Other factors need to be taken into consideration and details of these are provided below.

#### Applicability of Standard Timelines

Scottish Water's view is that it is difficult to specify a single duration for resolution of all compliance issues that fairly reflects operator performance. The current proposal only measures the speed of response; it does not consider:

- operator effort, which is a significant part of performance,
- the complexity of the activity associated with the non-compliance, which can affect successful resolution,
- licence conditions and/or definitions of major non-compliance, which might preclude resolution of non-compliance within the specified timelines,
- whether the non-compliance has little, or no, impact on the environment
- SEPA response times, or
- Unforeseen circumstances.

#### *Operator Effort*

For some non-compliances, it may not be possible for operators to identify the cause of, and then resolve, non-compliances within 30 days, even if a proactive approach is taken. The current proposal means that an operator who cannot resolve a non-compliance in 30 days, despite making every effort to do so, will receive the same performance rating as an operator who makes no effort to return to compliance within the same timeframe. This approach does not seem to provide a fair assessment of operator performance, particularly where the impact of each operators' non-compliances on the environment is similar.

#### *Activity Complexity*

Where a non-compliance is associated with a complex activity, it may not be possible to return to compliance within 30 days, particularly if there are elements that are outside the control of an operator. For example, a WwTW is reliant on bacteriological activity to treat wastewater. A period of severe cold weather can inhibit, or even destroy, the bacteria and although there are provisions to exclude sample exceedances when the temperatures are very low, it may take some time for the treatment process to fully recover even when temperatures start to rise. This can mean subsequent samples taken during slightly warmer weather are still adversely affected. In this scenario, the complex nature of the biological recovery process (e.g. regrowth of nitrifying bacteria) is beyond operator control and it, therefore, does not seem fair to downgrade the performance rating if the 30-day limit is not achieved. Performance should be based on what an operator is able to influence.

In some cases, although it may be possible to demonstrate return to compliance within 30 days, the cause of the non-compliance might not be identified within that timeframe. For example, the pass forward flow at an overflow may not be achieved during a spill event. Data from a subsequent storm event (within 30 days) may show that the pass forward flow is being met (i.e. the site has returned to compliance). However, investigations to identify the reason for the non-compliance during the original storm event may still be underway. Another example is sewage fungus/microbiological growth in receiving waters. It may not be possible to address the cause of this non-compliance within 30 days because it could be due to inappropriate licence conditions or non-compliance with another licence condition. Investment needed to resolve the issue may be identified through River Basin Management Planning (RBMP), or other route, but not prioritised, which could lead to a Performance Rating of 'Unacceptable' for years. This was discussed at the SEPA/SW Compliance Review Group and an action taken to capture in EPAS. If the intention is to downgrade an operator's performance rating on the basis that the cause of a non-compliance has not been satisfactorily addressed within 30 days, then we do not believe that is fair in all scenarios. When evidence shows a site has returned to compliance and the operator is able to show that proactive steps are being taken to understand the reasons for the non-compliance occurring then this should be sufficient to meet the 'Good' performance rating.

#### *Licence Conditions / MNC Definitions*

For some non-conformances, the specified timeframes of either 30 or 180 days do not align with timelines in existing licence conditions or the proposed definitions of major non-compliance. In these cases, it is not clear how operators would demonstrate a non-compliance has been resolved.

- For example, to show return to compliance with an annual (calendar year) mean limit would require another year of data (unless SEPA confirms an alternative set of evidence, that can account for seasonal variations, is acceptable).
- Similarly, some licence conditions allow compliance to be assessed on a rolling 12-month basis e.g. lower tier breaches of discharge quality standards at wastewater treatment works. Also, the definitions of some major non-compliances specify a 12-month assessment period e.g. exceedances of abstraction limits. It is currently not clear how return to compliance could be demonstrated within the specified timelines for these types of non-compliance.
- Another example is a discharge quality standard exceedance in a regulatory sample. Under Operator Self-Monitoring (OSM), some sites are only required to be sampled four times a year. If return to compliance can only be demonstrated by a regulatory sample, it will not be possible to evidence this for approximately three months after the breach. This might also be the case for sites that have to be

sampled 12 times per year, depending on when the next sample is planned in the Survey Schedule.

Where return to compliance cannot be influenced by operator actions, it does not seem fair to downgrade a performance rating if the 30 or 180 day deadlines are breached.

#### *Environmental Impact*

The consultation suggests that the aim of linking duration of non-compliance to the performance rating is to reduce environmental risk: “*the longer time in non-compliance places the environment at greater risk*”. This is not true for all non-compliances (e.g. late submission of a data return and late payment of subsistence fees). Where a non-compliance has little or no risk to the environment, it is not clear why an operator’s performance should be downgraded to the same level as an operator whose non-compliance has had a greater environmental impact (although not enough to cause a major non-compliance).

#### *SEPA Response*

Another factor that may affect ‘duration of non-compliance’ is the time it takes SEPA to make decisions. An example of this is Dry Weather Flow (DWF) exceedances at Helensburgh WwTW and Daldersie WwTW. Following three consecutive years of DWF exceedances, studies were carried out for both sites which indicated that there is no environmental impact associated with the higher flows. The next step is to agree a licence variation and this decision has been awaited from SEPA since 2021. Another example would be environmental event investigations, particularly where third parties are involved in Category 1 or 2 events. We are currently awaiting the outcome of SEPA’s investigation into an event where Scottish Water has identified that the root cause was a third party. It is not clear how this decision-making process will fit into the EPAS context. We do not believe it would be fair to report our performance as ‘Below Expectations’ or ‘Unacceptable’ when we have been unable to resolve a non-compliance, or major non-compliance, due to timescales in receiving feedback.

#### *Unforeseen Circumstances*

There may be unforeseen circumstances, beyond operator control, that could affect the duration of non-compliance. For example, the Ukraine conflict has had an impact on third party supply chains and COVID lockdown restrictions could have impeded non-compliance resolutions. EPAS needs to include consideration of extraordinary circumstances (natural and caused by human behaviour). It does not seem fair to downgrade an operator’s performance rating when delays have been caused by third-parties.

#### SEPA Policy

Scottish Water notes that existing SEPA policy (WAT-RM-40) sets out a Rolling Licence Compliance approach over 12 months which is applied to all qualifying samples, including upper tier WwTW limits. This methodology does not align with the proposals set out under EPAS. For example, a WwTW upper tier fail would currently remain on the compliance record for a year, regardless of how quickly the site returned to compliance. Under EPAS, this would be recorded as a major non-compliance and, if it was resolved within 30 days, the performance rating would be ‘Below Expectations’ for 90 days and then change to ‘No Known Issues’ (provided no further non-compliances were outstanding or identified). It is currently not clear if SEPA intends to retain the Rolling Annual Compliance approach as set out in WAT-RM-40. Using the above example, this would mean that the performance rating could be ‘No Known Issues’, but the WwTW could be classed as a ‘failing works’ for 12 months due to the failure being kept on the compliance record. We would welcome

confirmation that the WAT-RM-40 guidance will be updated prior to implementation of EPAS to better align with the new scheme.

Another SEPA policy that requires consideration is WAT-SG-42. This sets out the process for excluding sample results from the compliance record. It allows Scottish Water two weeks from the date a sample is authorised to notify SEPA of an intention to submit an exclusion request. Thereafter, we have another two weeks to submit the exclusion request and SEPA then has four weeks to decide to grant or reject the request (i.e. eight weeks in total plus time for analysis and dissemination of results, which seems incompatible with the proposal to publish a performance rating after 35 days). If a request is rejected, there is an escalation process which could extend the timeline even further. During the period when SEPA is reviewing an escalation request, could we expect a rating status similar to the 'Suspended – pending appeal outcome' to be published.

### Clarity of Timelines

Now that duration of non-compliance is a significant factor in determining operator performance, it is critical there is absolute clarity on when each timeline starts and ends and when published performance ratings will be updated. Integral to this is the need to specify timelines for SEPA; currently, the EPAS proposal only sets out timelines for operators to meet. For example, it is not clear how long SEPA will take to review evidence of return to compliance, agree a Compliance Recovery Plan or confirm an event category. Importantly, it is not clear what rating will be published whilst this information is being assessed. It would not be fair for a site to be rated as 'Unacceptable' if a major non-compliance has been resolved, but SEPA has not reviewed and approved the evidence. Nor would it be fair for a site to be listed as a Priority Site if a Compliance Recovery Plan has been submitted within the required 90 days, but it has not been agreed by SEPA. Whilst information is being reviewed by SEPA, a rating status of 'Evidence Under Review', or similar, should be used. This would align with the better regulation principles of transparency and accountability.

It is essential that the criteria for identifying the start date of the non-compliance is clear, consistent and fair. This is particularly important as there is a very limited timeframe (30 days) to identify the cause of a non-compliance and evidence return to compliance before the performance rating is affected.

The consultation document states that '*a reasonable time to resolve compliance issues is 30 days from when the issue was identified*'. It is not clear what is meant by '*when the issue was identified*'.

For annual data returns, the date '*the issue was identified*' could be during collection of the data, not the date that the actual non-compliance occurred.

For site inspections, the consultation states that where practical, SEPA will verbally inform an operator of any compliance issues before leaving site and will aim to provide a written Compliance Verification Report (CVR) within seven days. This approach could lead to inconsistencies. For example, the verbal update may not contain all the relevant information and it may not be fully heard, understood or passed to the most appropriate person for action. For consistency, it would be preferable for the start date for all non-compliances identified via a site visit to be the date of issue of the CVR. This written documentation will provide a suitable audit trail for tracking duration of non-compliance.

Guidance on the start date for duration of non-compliance must be consistent and cover scenarios where non-compliances are identified by SEPA, operators and third parties.

Scottish Water would welcome the opportunity to work with SEPA in developing any guidance so that it covers all relevant scenarios.

4.	<p><b>In your view, how many days should an operator have to resolve an issue categorised as 'Non-compliant' and still retain a 'Good' performance rating?</b></p> <ul style="list-style-type: none"> <li>• No time at all – operators should not retain a good performance rating if they are non-compliant</li> <li>• Less than 30 days</li> <li>• 30 days is about right</li> <li>• More than 30 days</li> <li>• Don't know</li> </ul>
	<p>Don't know.</p> <p>Scottish Water does not believe it is appropriate for us to specify how many days operators should have to resolve a non-compliance and still retain a 'Good' performance rating.</p> <p>As mentioned in the response to Qu.3, our view is that it is very difficult to specify a single duration for resolution of all non-compliances that fairly reflects operator performance. In some cases, we strongly believe it is not appropriate to set a time limit of 30 days to resolve a non-compliance before the performance rating is downgraded from 'Good' to 'Below Expectations'.</p>
5.	<p><b>How many days should an operator have to resolve an issue categorised as 'Non-compliant' before their environmental performance is rated as 'Unacceptable'?</b></p> <ul style="list-style-type: none"> <li>• Less than 180 days</li> <li>• 180 days is about right</li> <li>• More than 180 days</li> <li>• Don't know</li> </ul>
	<p>Don't know</p> <p>Scottish Water does not believe it is appropriate for us to specify how many days operators should have to resolve a non-compliance before their performance rating is rated as 'Unacceptable'.</p> <p>As noted in the response to Qu. 3, our view is that it is very difficult to specify a single duration for resolution of all non-compliances that fairly reflects operator performance.</p>
6.	<p><b>How many days should an operator have to resolve an issue categorised as 'Major non-compliant' before their environmental performance is rated as 'Unacceptable'?</b></p> <ul style="list-style-type: none"> <li>• Less than 30 days</li> <li>• 30 days is about right</li> <li>• More than 30 days</li> <li>• Don't know</li> </ul>
	<p>Don't know</p> <p>Scottish Water does not believe it is appropriate for us to specify how many days operators should have to resolve a major non-compliance before their performance rating is rated as 'Unacceptable'.</p> <p>As noted in the response to Qu.3, our view is that it is difficult to specify a single duration for resolution of all non-compliances that fairly reflects operator performance.</p>

Where demonstrating return to compliance within 30 days is not within the operator's control (i.e. major non-compliances that relate to 12-month periods e.g. multiple exceedances of abstraction limit, exceedance of annual mean discharge quality standard), it is not a fair reflection of performance to downgrade the rating.

7.	<b>Do you understand what a Category 1 or 2 environmental event is?</b> <ul style="list-style-type: none"><li>• Yes, I fully understand</li><li>• Mostly, but further information would be beneficial</li><li>• No, I do not understand</li></ul>
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Mostly, but further information would be beneficial.

Scottish Water would welcome clarification on several points related to the environmental event categorisation tables in Annex 4. SEPA indicated during the online consultation sessions that the new framework for categorising events will be implemented by the end of the summer and it is, therefore, important that any concerns are addressed promptly.

The scope of the proposed environmental events (i.e. including air, land etc.) is wider than the scope of the event categories currently used by Scottish Water and SEPA to classify our Environmental Pollution Incidents (EPIs). Additionally, each category includes impacts that are not currently used and it is not clear how this new framework will align with existing processes for reporting EPIs, including reporting to the Water Industry Commission Scotland (WICS). We have significant concerns about plans to implement this new approach by the end of the summer and request that discussions are held between Scottish Water and SEPA to fully understand the potential impact of applying a new event categorisation framework.

It is clear that if an event causes environmental harm, as listed in the tables, then it will be categorised appropriately. However, the assessment of whether an event 'is likely to have caused' harm is subjective. Scottish Water expects SEPA guidance on how this assessment will be carried out to be clear, with examples across all categories and types of impact. In addition, the justification for deciding an event category must be included in the associated Compliance Verification Report.

There are occasions where an environmental event could be caused by activities carried out as part of our statutory duties. We would like further discussion with SEPA to understand how these would be covered under EPAS. Examples include:

- We have a statutory duty to check valve operation at our impounding reservoirs. This can result in "death of aquatic life" e.g. due to lack of/low flows, but without any associated pollution impact and has not previously been classed as an EPI.
- We have a statutory duty to inform SEPA of any issues with the operation of our assets that have the potential to impact on the water environment. If this happens to be at an asset close to a Bathing Water during the bathing season, this can lead to cancellation, prevention or disruption of a public event before sample results become available. Once sample results are available, this can show there has been little or no environmental impact and we currently have an informal agreement with SEPA to avoid the event being classed as a Category 1 or 2 based solely on amenity impact.

It is not clear from Annex 4 if listed impacts are applicable to all authorised activities. The consultation states that SEPA has only included environmental events that are '*caused by activities where we are the relevant regulatory authority*'. However, odour is listed as an impact under all categories. For example, a Category 1 event will be recorded where odour is '*persistent, widespread and at an intensity, offensiveness and extent that it leads to a change in behaviour of exposed persons*'. It is our understanding that unless there are

odour conditions in an authorisation, offensive odour is classed as statutory nuisance and dealt with by Local Authorities. Further clarity is required on the applicability of each proposed environmental event to different authorised activities.

Annex 4 also lists examples of events that could be recorded as Category 1 or 2. A possible Category 2 event is described as '*a combined sewer overflow discharging in dry weather six times in eight months*'. We agree that if a CSO discharge causes an impact as described in the event tables, then it should be categorised accordingly. However, if the assessment is based on likelihood of an impact occurring, then further discussion is required with SEPA to determine definitions of 'dry weather' and a threshold frequency that might trigger consideration of likelihood of impact. The consultation does state that '*scale of an event*' may be such that it is likely environmental harm will have been caused. However, '*scale*' in relation to CSO discharges is more than application of an arbitrary frequency (e.g. six times in eight months); receiving water capacity also needs to be considered.

It is not clear how some of the impacts listed in the Annex 4 table will be measured. For example, a Category 1 event is one which causes '*avoidable total or partial loss of soil health over an area exceeding 1 hectare and with impacts lasting for more than 5 years*'. It is not clear how the impact will be assessed at the time the event occurs or once five years have passed. It is also not clear if the event categorisation will be retrospectively amended if no impact is found after 5 years. Similarly, it is not clear how impacts on human health will be measured.

Our experience of the current process for Environmental Pollution Incidents (EPIs) is that it can take a significant amount of time to collate the necessary evidence to support final confirmation of an event category. We anticipate that this will not change under EPAS and it is not clear how this will affect the publication of Performance Ratings. Where ratings need to be amended retrospectively to reflect updated event categories, the digital system needs to clearly identify that the previously published rating was incorrect.

8.	<p><b>How far do you agree or disagree that causing a Category 1 or 2 environmental event should always be considered 'Unacceptable' environmental performance?</b></p> <ul style="list-style-type: none"><li>• Strongly agree</li><li>• Agree</li><li>• Agree, except for in exceptional circumstances</li><li>• Neither agree nor disagree</li><li>• Disagree</li><li>• Strongly disagree</li></ul>
Disagree	<p>Scottish Water disagrees that a Category 1 or 2 event should always be considered 'Unacceptable'. We do not believe our Performance Rating should be downgraded when these events have occurred as a result of us providing statutory services or have been caused by third parties. There will also be situations where these events are responded to quickly and fully resolved within hours rather than days. This should be reflected in the Performance Rating.</p>
9.	<p><b>How well do you understand how we are proposing to assess environmental performance?</b></p> <ul style="list-style-type: none"><li>• Very well</li><li>• Quite well</li><li>• Not well</li><li>• Not at all</li></ul>

Quite well.

The proposed principles of EPAS are understandable. It is more difficult to understand how some aspects will be applied in practice, particularly when timelines associated with SEPA's activities have not been included. We would welcome the opportunity to work with SEPA to identify these and establish how EPAS would be applied.

10.	<p><b>How far do you agree or disagree that real time relevancy is important to enable everyone to take decisions based on an operators' environmental performance rating?</b></p> <ul style="list-style-type: none"><li>• Strongly agree</li><li>• Agree</li><li>• Neither agree nor disagree</li><li>• Disagree</li><li>• Strongly disagree</li><li>• Don't know</li></ul>
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Don't know.

It is not clear what decisions would be dependent on an operator's performance rating or who would be making those choices. It is, therefore, difficult to determine the importance of real time relevancy for that purpose.

11.	<p><b>How far do you agree or disagree that the duration of 90 days is an appropriate timescale for an environmental performance rating to enable real time relevancy?</b></p> <ul style="list-style-type: none"><li>• Strongly agree</li><li>• Agree</li><li>• Neither agree nor disagree</li><li>• Disagree</li><li>• Strongly disagree</li><li>• Don't know</li></ul>
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Agree.

90 days seems a reasonable length of time for a Performance Rating to be published.

It is not clear if the published rating would be affected if another non-compliance was identified during that 90-day period.

12.	<p><b>How fair is a 365-day lookback period for assessing repeat compliance issues?</b></p> <ul style="list-style-type: none"><li>• Very fair</li><li>• Fair</li><li>• Neither fair nor unfair</li><li>• Unfair</li><li>• Very unfair</li><li>• Don't know</li></ul>
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Fair.

A 365-day lookback period for assessing repeat compliance issues seems reasonable.

It would be helpful to clarify how compliance will be assessed in a leap year. The consultation does refer several times to a 12-month period and this may be a more sensible approach to use that would accommodate the additional day every four years.

13.	<p><b>How fair do you think the proposed Environmental Performance Assessment Scheme is?</b></p> <ul style="list-style-type: none"> <li>• <b>Very fair</b></li> <li>• <b>Fair</b></li> <li>• <b>Neither fair nor unfair</b></li> <li>• <b>Unfair</b></li> <li>• <b>Very unfair</b></li> <li>• <b>Don't know</b></li> </ul>
	<p>Unfair.</p> <p>Scottish Water has highlighted several areas where we believe the proposed scheme might not fairly reflect operator performance.</p>
14.	<p><b>How far do you agree or disagree that publishing a priority sites list would drive improvements in performance?</b></p> <ul style="list-style-type: none"> <li>• <b>Strongly agree</b></li> <li>• <b>Agree</b></li> <li>• <b>Neither agree nor disagree</b></li> <li>• <b>Disagree</b></li> <li>• <b>Strongly disagree</b></li> <li>• <b>Don't know</b></li> </ul>
	<p>Don't know.</p> <p>It is difficult to predict the impact of publishing a 'Priority Sites' list. This will depend on the interest that third parties will have in the list and on the level of reputational risk an operator is willing to accept.</p> <p>As the decision to identify a site as a 'Priority Site' is wholly dependent on having a Compliance Recovery Plan (CRP) in place, it is important that the process for submitting and agreeing a CRP is clear, efficient and not subject to delays. Due to the potential reputational impact of being on the 'Priority List' it must only include operators that have truly failed to submit an acceptable CRP. It cannot include operators who have submitted a CRP and are waiting on SEPA approval or operators who have appealed a decision to reject a CRP.</p> <p>Another point to note is that a Category 1 or 2 event may have been caused by a third party and it may not be within an operator's control to resolve via a CRP. It would not be fair for a site to be listed as a 'Priority Site' in such cases.</p>
15.	<p><b>How long should an operator have to establish a compliance recovery plan before a site rated as unacceptable is listed as a 'Priority site'?</b></p> <ul style="list-style-type: none"> <li>• <b>No additional time – operators should immediately appear on a priorities sites list if they are rated as 'Unacceptable'</b></li> <li>• <b>Less than 90 days</b></li> <li>• <b>90 days is about right</b></li> <li>• <b>More than 90 days</b></li> <li>• <b>Don't know</b></li> </ul>
	<p>Don't know.</p> <p>Scottish Water does not believe it is appropriate for us to specify how many days operators should have to establish a Compliance Recovery Plan (CRP) before a site is listed as a</p>

'Priority Site'. We do have some concerns about the proposal to have 90 days (from when a site is rated as 'Unacceptable') to agree a CRP with SEPA and these are detailed below.

It is not clear if the 90 day period includes the time that SEPA will need to review and agree the CRP. It is also not clear if additional time will be allowed for amendments following a SEPA review. It is essential that the time an operator is allowed to submit a CRP is defined separately from the time that SEPA is allowed to review and agree it.

Based on the information in the consultation, Scottish Water believes the deadline for agreeing a CRP varies depending on the type of non-compliance. See details below.

#### *Non-compliance – Not resolved within 180 days*

Day 1 – non-compliance identified.

Not resolved within 30 days.

Day 35 – a rating of 'Below Expectations' is published.

This is published for 90 days (35 + 90 = 125 days).

The non-compliance is still not resolved after 125 days and so the 'Below Expectations' rating is extended.

After 180 days (35 + 180 = 215 days), the non-compliance is still not resolved. SW is assuming that the rating then changes to 'Unacceptable' and it is assumed that the 90 day period to submit a CRP starts at this point.

Start date = 215 days from identification of NC (approx. seven months)

End date = 305 days from identification of NC (215 + 90 days) (approx. ten months)

#### *Major Non-Compliance (including repeat MNC & Category 1 & 2 events)*

Day 1 – major non-compliance identified.

Not resolved within 30 days.

Day 35 – a rating of 'Unacceptable' is published and 90 day period to agree a CRP begins.

Start date = 35 days from identification of MNC (approx. one month)

End date = 125 days from identification of MNC (35 + 90 days) (approx. four months)

An operator with a non-compliance might know well in advance that it will not be resolved within 180days. This means they know the rating will change to 'Unacceptable', triggering the need to agree a CRP. They, therefore, have significantly longer to prepare the CRP than an operator with a major non-compliance (up to ten months versus up to four months). This approach seems inconsistent and could be considered unfair.

It is not clear how the CRP process will integrate with the regulatory framework that governs the development of Scottish Water's investment programme for each regulatory period, particularly in relation to the timelines for developing a CRP and having it approved.

16.	<p><b>How far do you agree or disagree our proposed appeals process is fair?</b></p> <ul style="list-style-type: none"><li>• <b>Strongly agree</b></li><li>• <b>Agree</b></li><li>• <b>Neither agree nor disagree</b></li><li>• <b>Disagree</b></li><li>• <b>Strongly disagree</b></li><li>• <b>Don't know</b></li></ul>
	Disagree.

Scottish Water believes there are opportunities to improve the proposed appeals process to make it fairer for operators so that all decisions made by SEPA under EPAS can be appealed.

The proposal is for only two decision scenarios to be appealed: compliance category and rejection of a Compliance Recovery Plan. Scottish Water would welcome additional options to appeal an environmental harm category and to appeal a decision by SEPA to reject evidence that demonstrates return to compliance.

Given that the appeal status will be publicly available, it is important that clear timelines for each step in the appeals process are set out in guidance to ensure that a 'pending appeal' status has a known finite duration. This would provide a consistent and fair approach for all operators. For example, SEPA's timelines for making decisions under each step must be set out as well as deadlines for operators to raise an appeal to the next step. It is assumed that only the first step (Frontline Resolution) needs to be raised by an operator within the initial 28-day period.

It is also important for guidance to clearly set out how the appeal period aligns with the timeline for agreeing a CRP and to explain what happens to the published performance rating when an appeal reaches resolution, particularly when it has not been successful.

17.	<p><b>What would you like to be able to do on an online platform to interact with us?</b></p> <ul style="list-style-type: none"><li>• Able to receive notifications when performance ratings change</li><li>• Able to view past performance ratings</li><li>• Able to download current performance ratings</li><li>• Able to upload compliance information</li><li>• Able to submit appeals</li><li>• Able to download compliance information</li><li>• Able to view sites by sector</li><li>• Able to view sites by location</li><li>• Able to view sites by authorisation type</li><li>• Able to view sites by operator</li></ul>
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Scottish Water would like to online platform to do all of the above. More detail is provided below.

Scottish Water would welcome the opportunity to be involved in the development and testing of the proposed online platform to understand its scope and the potential impacts of the digital interfaces on our existing systems. We can also offer insights from our experience of interacting with SEPA's systems during transfer of Operator Self-Monitoring data.

Our primary requirement for the online platform is security. Our data must not be visible to other operators and some data may even need to have restricted access within SEPA (e.g. abstraction information). Any personal data that is included with our submitted information (e.g. email addresses) must not be shared publicly. We would also want to restrict access to key people in our business to ensure that only approved information is uploaded. We would welcome further discussion on the scope of information that would be made public (e.g. raw data) and the proposed retention times for uploaded data.

Another key requirement is that the platform is only launched for operator use when it has full functionality across the whole EPAS process. We recognise that the platform may need to be developed in phases. However, as it has a public-facing element that reports operator performance, and the aim is to automate as much as possible, it is critical that every aspect

of the system is fully tested and trialled prior to launch to ensure performance reporting is accurate and not subject to technical delays or misreporting.

In addition to seeing the real-time compliance position and performance rating for each authorisation, we would like the online platform to provide a real-time overview of operator performance. A true indication of operator performance needs to consider all authorised activities and as we have thousands of authorisations, the best way to easily report overall performance is by providing a summary report at operator level. It would be helpful if operators could run performance reports from the system and/or export information. To ensure transparency, the system should enable operators to access a full audit trail of all interactions with SEPA for each authorisation.

We recognise that SEPA will require data to be submitted in a consistent format and would note that a balanced approach is needed to ensure the new system is as flexible as possible to accommodate operators' existing systems. If any new reporting formats are required, these must be shared with operators well in advance of the new system being launched to ensure sufficient time for changes to be embedded in operators' systems. We will need the system to be the single point of contact for submission of all information e.g. data required by the authorisation, evidence of return compliance etc.

The platform needs to be able to accommodate uploads of large amounts of information, in different formats, from operators at the same time, particularly when annual returns are due. It also needs to be able to accept uploads 24hrs a day, seven days a week and be very user friendly. Where submission of information is delayed due to technical issues with SEPA's system, we would not expect non-compliances to be raised against operators for late submission.

Under Operator Self-Monitoring, we already have immediate access to WwTW regulatory sample results which is important. It ensures exceedances are investigated quickly and maximises the swift resolution of non-compliances. We do not currently have access to results of samples taken by SEPA (e.g. WTW point source discharge sampling, WwTW bacteriological sampling) and we often do not receive notification of these results for several weeks / months, even when exceedances have occurred. With the introduction of duration of non-compliance under EPAS, it will be essential for us to be notified of SEPA sampling results immediately and have access to them via the new online platform.

We would like the new platform to issue Compliance Verification Reports and inform operators of relevant key dates e.g. Day 1 (when a non-compliance is identified), Day 28 (when the appeal window closes), Day 35 (when the performance rating will be published). Other key dates would include the date a Compliance Recovery Plan (CRP) is due and the date a SEPA decision is due e.g. on an appeal and in relation to a CRP and/or evidence of return to compliance. It would also be helpful to include an alert / notification system when any of these dates are approaching. If the new platform can provide this type of information, it means our resource requirements for tracking each assessed authorisation will not be as onerous.

The new platform must be dynamic and incorporate a change management process. It needs to be able to accommodate amendments to data returns and, if it is integrated with a database of licence conditions, ensure that licence variations are updated in a timely manner.

In the longer term, we would welcome the ability to upload SPRI data via the new platform.

18.	<p><b>Do you think the overall impact of EPAS for Scotland's environment will be:</b></p> <ul style="list-style-type: none"> <li>• Extremely positive</li> <li>• Mostly Positive</li> <li>• Minimal or neutral impact</li> <li>• Mostly negative</li> <li>• Extremely negative</li> <li>• Don't know</li> </ul>
	Minimal or neutral impact
	<p>There is currently not enough evidence in the consultation to assess the potential impact of implementing EPAS. With the new focus on duration of non-compliance, there should be a reduction in the number of longer-term non-compliances, but this might not directly result in positive impacts on the environment. It's possible that most of the quickly resolved non-compliances could have minimal environmental impact anyway.</p>
19.	<p><b>What impact do you think EPAS will have on your business or organisation?</b></p> <ul style="list-style-type: none"> <li>• Extremely positive</li> <li>• Mostly Positive</li> <li>• Minimal or neutral impact</li> <li>• Mostly negative</li> <li>• Extremely negative</li> <li>• Don't know</li> <li>• This question does not apply to me</li> <li>• How could EPAS be improved to better support your operations?</li> </ul>
	Mostly negative.
	<p>EPAS will have a significant resource impact on Scottish Water. The proposed approach is significantly different to the previous compliance assessment scheme and our existing processes. It will require a major change in our procedures to adequately manage the administrative and operational impacts of assessing and reporting to new timescales.</p>
	<p>The introduction of 'time' as a factor in assessing performance will require additional resources to actively manage the whole process from initial receipt of a Compliance Verification Report through to final closure of non-compliances. This will include assigning actions, tracking appeals, identifying needs for Compliance Recovery Plans, managing the interface with SEPA's digital platform and tracking overall performance.</p>
	<p>In addition, EPAS will assess whole licence compliance and cover a broader range of regimes than are currently routinely monitored in Scottish Water. It is, therefore, likely that a new cross-functional team will be needed to administer EPAS.</p>
	<p>We have noted elsewhere in this response a concern about negative bias, given our large number of authorisations. At this stage, it is unclear what impact EPAS will have on our published performance ratings and whether this will be truly reflective of our activities.</p>
20.	<p><b>How important do you think it is that EPAS should recognise voluntary actions that go beyond compliance?</b></p> <ul style="list-style-type: none"> <li>• Very important</li> <li>• Important</li> <li>• Neither important nor unimportant</li> <li>• Unimportant</li> <li>• Very unimportant</li> <li>• Not appropriate</li> <li>• Don't know</li> </ul>

## Important

Scottish Water believes EPAS should recognise voluntary actions that go beyond compliance. SEPA acknowledges in its approach to regulation that simply securing compliance will not be enough to tackle systematic environmental issues and help operators transition to net zero. EPAS, therefore, presents an important opportunity to help deliver this ambition to do more.

In addition to the scheme recognising activities that go beyond compliance, it also needs to recognise good operator performance. As noted in the responses to previous questions, we do not believe EPAS, in its current format, does this fully. There is a negative bias, with the scheme focused on sites with the poorest compliance history or highest risk to the environment, ignoring sites that are performing well. It also does not distinguish between an operator who is consistently compliant and one that can resolve non-compliances quickly (both would be rated as 'Good') and there is no mechanism to recognise operators who voluntarily go 'beyond compliance'. It is important that EPAS factors all these aspects into the assessment process to ensure it is fair, consistent and proportionate and fully reflects operator all-round performance.

### **21. What factors should we consider if we were to introduce a performance rating that acknowledges these proactive efforts?**

SEPA could consider factors related to operators' actions to transition to net zero. These could include, for example, renewable energy, improving biodiversity, nature-based solutions and resource recovery.

### **22. Do you have any other important suggestions, opportunities or concerns around EPAS that you would like to highlight?**

Scottish Water has several points that we would like to highlight about the EPAS proposals and these are detailed below.

#### *Impact Assessment*

The absence of a regulatory impact assessment under the new scheme is a major concern for Scottish Water. EPAS will mean greater scrutiny of all aspects of authorisations across all regimes and it introduces duration of non-compliance as a key factor in assessing performance. Many of these new measures have not been represented in compliance reviews to date which means that the impact on our reported performance is unknown. We recommend a 12 month period (minimum) of 'shadow reporting' to test how the scheme operates. This would allow operators to see how EPAS would apply to their activities and understand the potential impact on their reported performance. 'Shadow reporting' and a 'lessons learned' review process would also help SEPA to identify any improvements that may be required prior to formal implementation.

#### *Longer term non-compliance*

An extensive regulatory framework governs the development of Scottish Water's investment programme for each regulatory period. SEPA is a core stakeholder in agreeing the outputs which must be delivered under this process. As a result, Scottish Water does not independently prioritise significant enhancement funding to address legacy non-compliance / environmental needs. There are cases where non-compliance may be recorded for several years for issues that because of the scale of investment required, and by agreement with SEPA and Scottish Government, will be addressed in future investment periods. Whilst we recognise that non-compliance may still need to be recorded, we feel it is not in the interest of Scottish Water, or SEPA, for long term non-compliance to be penalised where it has not been collectively prioritised through the regulatory process governing Scottish Water's investment programme. We seek further discussions with

SEPA to understand how non-compliance linked to enhancement is managed under EPAS so that there are no inappropriate consequences from collective decisions to not prioritise the necessary investment.

#### *Supporting Guidance*

The practical application of many aspects of the EPAS proposals are unclear from the consultation documents. Scottish Water believes the successful delivery and implementation of the scheme is wholly dependent on developing robust supporting guidance. This must cover all aspects of the scheme in sufficient detail to ensure operators can clearly understand how it will be applied. The guidance should also contain scenarios to illustrate a range of simple and complex examples across all regulated regimes. We would welcome the opportunity to work with SEPA to identify areas where guidance is required and to provide water industry-related scenarios.

#### *Regulator Accountability*

In line with SEPA's ambition to be open and transparent and put as much information about EPAS as possible into the public domain, we expect this to extend to setting targets for SEPA actions (e.g. confirming acceptance/rejection of return to compliance evidence, Compliance Recovery Plans and appeals) and publishing progress with these on the new digital platform.

#### *Legacy Authorisations*

Scottish Water operates thousands of authorisations, many of which date back decades and were bulk transferred through a neutral translation process from older regimes into the Controlled Activities Regulations (CAR). Many have still to be transferred to the CAR format or new templates for authorisations issued under the Environmental Authorisations (Scotland) Regulations (EASR). Further, there are licences that have been transferred into the CAR format but are still to be verified (e.g. some sewer network licences). This process has been delayed by Covid, SEPA resource availability and the Cyberattack. This means that licence conditions may no longer be appropriate and we do not believe it is fair for our performance to be assessed against out-of-date requirements.

#### *Exclusions*

The consultation sets out three specific circumstances where sample results may be excluded from a compliance assessment. The first is when SEPA has made errors or mistakes. We would argue that in this scenario, the results should be cancelled, rather than excluded. The second situation refers to the exclusion criteria set out in WAT-RM-40. Although this guidance is applicable to all point source discharges, the focus of the section on exclusions is on 'unusual situations' at wastewater treatment works and it is not clear that these criteria could be applied to other discharges e.g. water treatment works discharges and surface water outfalls. When WAT-RM-40 is updated to remove references to obsolete legislation (e.g. Controlled Activities Regulations), we would ask that SEPA also reviews the exclusion criteria to include other discharges. The third circumstance is when an operator can demonstrate that an exclusion is allowed under the authorisation and examples of extreme weather conditions or situations beyond their control (e.g. vandalism) are provided. We would suggest that even when an authorisation does not include a condition related to sample exclusions, SEPA should still allow these to be requested when something beyond an operator's control has affected the performance of their asset. There may also be an opportunity to review authorisation conditions when new templates are developed that align with the integrated authorisation framework under the Environmental Authorisation (Scotland) Regulations. We would also note that through Compliance Review Group (CRG), SEPA has committed to reviewing the mechanisms by which a breach may be excluded from EPAS through use of a Construction and Compliance Risk Assessment (CCRA). Guidance should reflect any consideration of this.

*SEPA Policy*

We note discrepancies between existing SEPA policy and the proposed approach set out under EPAS. We would welcome further information from SEPA on how policies will be updated, including timescales.

*Priority Sites*

It is not clear how the proposal for identifying 'Priority Sites' will apply to Sewer Network Licences (SNLs). The licences authorise discharges from multiple assets within a sewerage network and it does not seem appropriate to apply a 'Priority Site' tag to a whole licence if non-compliances apply at asset level.

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