

# Response to SEPA's consultation on Proposed Environmental Regulation (Scotland) Charging Scheme 2018

10 November 2017

## About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 90 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 26 million homes and every business in Britain. Over 619,000 people in every corner of the country rely on the sector for their jobs with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry adds £83bn to the British economy, equivalent to 5% of GDP, and pays over £6bn in tax annually to HMT.

## Response to Consultation Questions

### 1. What are your views on the scale and escalation of the Compliance Factor?

Energy UK fully supports the introduction of a Compliance Factor, and that such a factor should work to ensure that genuinely poorer performing operators have an increased overall charge. This would represent a fair and transparent approach as it would ensure that such operators' charges reflect the additional costs that SEPA incur when regulating such sites.

However, Energy UK's support for the above is based upon the premise that SEPA would undertake a fair and proportionate approach to assessing compliance across operators. With the simultaneous publication of SEPA's Revised Compliance Assessment Scheme (CAS) 2018 consultation paper, Energy UK has significant concerns that this may not be the case which, in turn, brings the credibility of the application of a Compliance Factor into question.

Accordingly, Energy UK considers it would not be appropriate to link charges to an operator's compliance until the CAS can be clearly shown to be fair and proportionate.

Energy UK's response to SEPA's Revised Compliance Assessment Scheme 2018 consultation sets out, in detail, concerns regarding the proportionality of the proposed

approach and therefore we do not repeat them here. Energy UK is also aware that SEPA is consulting on the detail of how to calculate and apply the Compliance Factor, not the principle of a factor per se.

It is difficult to comment constructively on the detail of the calculation of the Compliance Factor when Energy UK considers that it might be based on a fundamentally flawed CAS. In particular, while currently operators assessed as compliant subsidise those in non-compliance, a move to the new CAS as proposed could result in operators with larger, more complex permits subsidising those with simpler permits, regardless of overall environmental performance.

However, following responses to the consultation, should SEPA modify the CAS to make it more proportionate and reflective of operators' actual compliance with their environmental obligations, Energy UK would support the proposed scale and escalation of the Compliance Factor as set out in the consultation paper.

## **2. Do you have any suggested changes to the way the Compliance Factor is calculated?**

Energy UK would like to draw SEPA's attention to the Environment Agency's (EA) proposals for adjustment factors under its Strategic Review of Charges for 2018. In discussions ahead of formal consultation, the EA has proposed that charges for the worst performers are subject to an adjustment factor of 3. This represents a stronger deterrent to poor performance than SEPA's proposed highest factor of 2.2. Whilst the way in which the factor is calculated is different from that proposed by SEPA, the aim is the same; that is, to deter poor performance. For the sake of consistency in the strength of deterrence across the border, Energy UK would suggest that SEPA raises its highest factor to 3.

It is also important to highlight that the EA has informally proposed a charging adjustment factor of 0.95 for the highest performers. We recommend that SEPA also adopts this adjustment factor to incentivise high performance

Another matter for consideration is whether it would be appropriate to apply different compliance factors (or multipliers) to different regimes so as to reflect their inherent differences. That is, certain regimes are more likely to generate public complaints (e.g. regarding noise, smell, smoke etc.) than others. Complaints from the public are important drivers for the amount of time expended by SEPA staff resolving non-compliances which, in turn, drives a large element of SEPA's costs.

For example, Energy UK considers that a direct comparison of a problematic landfill site with a non-compliant hydropower site would demonstrate the vastly different levels of public complaints generated and therefore, in turn, regulatory time and intervention required. Accordingly, the potential impact on the public of different regimes should be recognised through the application of a regime-specific compliance factor.

Energy UK does not consider that the introduction of a regime-specific compliance factor would add an extra layer of complexity to the charging scheme. Rather, a simple calculation of the relative difference in the number of public complaints relating to each regime could be used to determine appropriate compliance factors for each regime. Such an approach would be more reflective of SEPA's true costs and work to further remove cross-subsidy across regimes and operators.

### **3. What do you think of the rules for hydropower schemes between 0.1 and 2MW?**

Since the introduction of the original Controlled Activities Regulations (CAR) charging scheme in 2006 a significant number of new, small hydropower schemes have been constructed, in large part due to the incentives provided by the Feed-in-Tariff. In response, SEPA has had to direct significant resources to ensure that such small schemes comply with their permit conditions. This represents a clear and ongoing cross-subsidy which was not envisioned at the outset.

Energy UK therefore supports SEPA's stated intention to remove the exemption for smaller scale hydro schemes and introduce charges from 2018/19 on a phased basis. Such a move is clearly in line with the principles of the new charging scheme i.e. the removal of a clear cross-subsidy resulting in a fairer, proportionate charging scheme for all SEPA charge-payers.

Indeed, Energy UK considers that the continuation of such a cross-subsidy would be unsupported, particularly given the growth in that area over the last ten years or so. The new charging scheme is based on a number of key regulatory principles which must hold true for all, leading to an overall balanced and credible charging scheme. Accordingly, Energy UK supports the removal of the exemption for 0.1 to 2MW hydro schemes in 2018/19, as long as subsistence charges for sub-2MW schemes are proportionate, based on a sensible methodology and are applied in a fair and consistent manner across all hydropower schemes

Energy UK also strongly supports SEPA's intention to phase in the introduction of such charges over a three-year period with the full charges not applying until 2020/21. However, it would not support a delay to the introduction of these charges. SEPA's intention to progressively remove the exemptions for small hydro schemes was set out clearly in its 2015 consultation paper, with confirmation of this change given in the analysis of the consultation responses (although the scale of fees for the small hydro sector was not made clear at that time). Indeed, it should be recognised that there has already effectively been a two-year delay to the implementation of these charges since the introduction of the new charging scheme in 2016. Energy UK, therefore, can find no justification for a 'special case' to be made and indeed such a delay would undermine the overall approach being taken by SEPA in the charging scheme.

### **4. Should we continue with the exemption from charges for small hydropower schemes that generate less than 0.1MW after 2020/21?**

No, Energy UK considers that SEPA should remove the exemption from charges for micro hydropower schemes (less than 0.1MW) after 2020/21. For the same reasons as set out in response to Question 3, Energy UK is of the view that this cross-subsidy should be removed sooner rather than later. Future charges should, however, be proportionate to the regulatory effort expended by SEPA.

**5. Do you agree with the scale of the proposed charges for non-active permits, if not why not?**

The consultation paper provides no definition of 'non-operational' or 'non-active'. If a plant is built but not operational, Energy UK would consider the proposed scale of the charges to be reasonable. However, where no plant has been constructed, Energy UK would not consider the application of a charge of 20% of the Activity Charge to be reasonable or indeed justifiable. The Application Charge will have covered SEPA's costs in granting an authorisation and SEPA is unlikely to incur further costs until work starts on site. Energy UK therefore considers it to be inappropriate to charge 20% of the future Activity Charge at this stage; such a charge should only become applicable when construction commences.

Energy UK understands that charges would generally not be applied in the pre-construction phase. However, SEPA may review this after around 5 years to determine whether charges should be applied or not if no construction works have commenced. Any such review would be driven by the costs that SEPA would be likely to incur. We would welcome confirmation of this understanding.

**6. Does the scale of the charges for 'not routinely monitored activities' have any adverse or beneficial consequences?**

We have no comments to make.

**7. Do you have any changes that you would like to see in the methodology proposed for calculating Environmental charges for abstractions?**

Energy UK has significant concerns over the approach to charging for indirect costs, in particular the calculation used to determine the Environmental Component. Firstly, it is unclear what indirect costs are being recovered and from which elements of the charge they are being recovered. Similarly, we highlight that it is not reasonable to expect hydropower schemes to part-fund areas on which they have no/very little impact.

The consultation paper outlines SEPA's intention to move from using a fully permitted abstraction volume figure in the charging scheme to a 40%/60% blend of permitted and actual abstraction volumes and finally moving to being based entirely upon actual volume after 2020/21. Energy UK considers this to represent a fair and pragmatic approach.

In preparation for moving to charges being based entirely upon actual volumes, SEPA will only use abstraction returns in 2020/21 that are “based upon records from flow meters or from approved alternatives”. Energy UK is aware that many smaller hydropower schemes provide SEPA with flow information under approved arrangements for metering which rely on agreed formulae to effectively back-calculate flows from the amount of energy produced, size of pipes, etc. Energy UK would therefore welcome confirmation from SEPA, either in guidance or in the analysis of the consultation responses document, that this methodology adopted by the hydro sector would fall into the category of “approved alternative”.

**8. What adverse or beneficial consequences do you consider will result from the application of the new methodology?**

Some operators still take issue with the use of a “Measurement of length affected” element in the calculation of the abstraction Environmental Charge. However, if SEPA is adamant that such a measure should be used in future, then Energy UK supports the proposed move from the ‘cliff edge’ series of steps approach in the current scheme to the smoothed-out line that is capped at an upper limit for measurement of length of river affected. This will allow charges to increase more consistently as the length affected increases up to a defined upper limit beyond which ecology will have recovered.

**9. Do you have any changes that you would like to see in the methodology proposed for calculating waste management charges?**

We have no comments to make.

**10. What adverse or beneficial consequences do you consider will result from the application of the new methodology?**

We have no comments to make.

**11. What are your views on the options proposed for BATC reviews and which is your preferred option?**

Under Option 2, SEPA proposes to levy a charge of 70% of the total of the Activity Application Charges where a BATC review requires a permit variation and/or involves an assessment relating to a derogation. Energy UK considers that the majority of BATC reviews will require some form of permit variation and therefore a 70% charge as proposed would be applied to the majority of BATC reviews. Energy UK also considers a 70% charge per permit excessive relative to the costs SEPA would be likely to incur. Accordingly, Energy UK’s preferred option would be Option 1 (i.e. all BATC reviews should be charged as Standard Variations at 30% of the total of the activity application charge).

**12. What are your views on the proposed changes for para 47 exemptions below 20 tonnes?**

We have no comments to make.

**13. What are the benefits / disadvantages of: a) making it a condition of all permits under the scheme that charges shall be paid; b) charging interest on the late payment of charges?**

Energy UK considers that the benefits/disadvantages are balanced and therefore, this proposed approach would appear reasonable in principle.

**14. Do you agree with the principle of SEPA returning and / or charging for the time spent on poor quality applications?**

Yes, this would appear reasonable in principle, subject to the information that SEPA requires to be included in applications being clearly set out in guidance.

We agree that in instances where negligence on behalf of the applicant has led to a poor-quality application, it is appropriate to charge the applicant for the use of extra time and resources. However, in instances where SEPA is required to seek further clarification with the applicant due to a lack of understanding of a detailed technical process, we do not consider that the applicant should be charged, provided that they respond positively to SEPA's requests for clarification.

**15. We would welcome responses on the further development of the Charging Scheme over the period to 2020/21.**

Energy UK notes that the changes introduced by the proposed 2018 scheme will be phased-in over the remaining three years of the scheme. It would be helpful to operators, particularly during the three years of phasing, if SEPA could issue early notification to operators (e.g. in September) of the amount that will be invoiced in the following April. This would enable more timely and efficient payment of invoices by operators.

In addition, the paper states that SEPA is considering incorporating the Reservoir Act Charging Scheme into the Environmental Regulation (Scotland) Charging Scheme from 2020/21 to create a single charge for impoundments. Energy UK would not object to this in principle as it should deliver efficiency savings to SEPA which in turn, should be reflected in a reduced combined fee.

**16. Do you have any further comments on the Charging Scheme?**

We have no further comments to make.

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