

# **IMPLEMENTING POLLUTION CONTROL POLICY IN SCOTLAND: PRESENT TRENDS, FUTURE PROSPECTS**

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## **INTRODUCTION**

In April 1996 the administrative landscape of environmental regulation in Scotland was transformed by the creation of a single Scottish Environment Protection Agency (SEPA), consisting of a central headquarters and three regional divisions (North, East and West), to replace the fragmented institutional arrangements that previously existed. Before the creation of SEPA, the implementation of pollution control policy had traditionally been the preserve of a number of different organisations which administered protection of the environmental media of air, water and land on an individual and mutually exclusive basis. Despite this institutional demarcation, these organisations shared a broadly common approach to regulatory enforcement which was founded on informality, pragmatism, a close working relationship between regulators and dischargers and minimal use of prosecution as a tool of enforcement (Vogel 1986).

This article draws on research conducted, before reorganisation, within one of Scotland's seven mainland River Purification Boards, to assess the organisation's implementation of its water pollution control policy. Factors which influenced the River Purification Board in its approach to regulatory

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enforcement are analysed and the future direction of pollution control policy within SEPA is discussed. The article illustrates that the characteristics of pragmatism and flexibility which have long featured in the pollution control policy process are gradually being discarded, and argues that pollution control policy is set to become increasingly formalised within the new agency.

### **INSTITUTIONAL STRUCTURE PRIOR TO REORGANISATION**

Along with River Purification Boards, a number of other organisations were responsible for environmental regulation in Scotland before SEPA was established. These were: Her Majesty's Industrial Pollution Inspectorate for Scotland (HMIPI); District and Islands local authorities; and the Hazardous Waste Inspectorate. HMIPI's key responsibilities included pollution control services with regard to industrial emissions, air pollution control, radioactive waste management and the control of radioactive substances (Scottish Development Department 1990). Through the activities of their Environmental Health Departments, District and Islands Councils undertook the functions of preparing waste disposal plans, licensing of sites and plant for disposal of controlled waste and registration of carriers of controlled waste. The Hazardous Waste Inspectorate, although more of an advisory than a regulatory body, examined the management of hazardous waste, advised waste disposal authorities regarding their execution of their duties under part one of the Control of Pollution Act 1974, and made 'recommendations with the object of ensuring that standards of operation, site licensing and enforcement are both adequate to protect health and the environment, and also equitable and consistent across the country' (Scottish Office Environment Department 1991, p.5).

Responsibility for protecting the environmental quality of inland watercourses and controlled coastal waters lay with the mainland River Purification Boards (Clyde, Forth, Highland, North East, Solway, Tay, and Tweed), which together made up the largest organisational element of the fragmented administrative system. Regulatory control in this context was also the responsibility of the three Islands Councils of Shetland, Orkney and the Western Isles, which acted as River Purification Authorities. As Non-Departmental Public Bodies, or 'Quangos', River Purification Boards came under the sponsorship of the Scottish Office Environment Department. Their main statutory responsibility consisted of promoting the cleanliness of rivers, other inland waters and tidal waters, and the conservation of water resources.

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This function was supplemented by specific statutory duties including: monitoring pollution in controlled waters, ensuring that specified water quality objectives were achieved, consenting to discharges of trade and sewage effluent, and maintaining registers of consents for public inspection. To enable them to undertake their statutory responsibilities, River Purification Boards were armed with a variety of powers derived mainly, but not exclusively, from the Control of Pollution Act 1974, as amended by Schedule 23 of the Water Act 1989. These included: power to take samples of water or effluent, power to undertake surveys and to gauge and keep records of flow or volume of bodies of water and rainfall, power to obtain information necessary to carry out their duties, power to control abstractions for irrigation purposes, and power to operate flood warning schemes (The Scottish Office 1992, p.22).

#### **IMPLEMENTING POLLUTION CONTROL POLICY WITHIN THE RIVER PURIFICATION BOARD SYSTEM**

Regulatory agencies responsible for enforcing legislation can adopt one of two broad approaches. On the one hand they can pursue a confrontational approach to enforcement. In these circumstances, agencies implement enforcement strategies whereby sanctions are applied to those who contravene the legislation in order to exert punishment for the violation of rules and the causing of harm. In its most extreme form, a confrontational approach to enforcement involves invoking sanctions against any technical infringement of regulations. It presupposes intent on the part of offenders to contravene regulations, and attaches moral blame to offenders for such contraventions. Alternatively, regulatory agencies may adopt an approach to enforcement based upon achieving consensus between themselves and dischargers, aspects of whose behaviour they are responsible for regulating. Within this context, enforcement involves securing the co-operation of target groups in order to uphold legislation and 'seeks to prevent a harm rather than punish an evil. Its conception of enforcement centres upon the attainment of the broad aims of legislation rather than on sanctioning its breach' (Hawkins 1984, p.4).

Within the confines of the River Purification Board system, enforcement of environmental legislation and the implementation of pollution control policy were inextricably, if not altogether clearly, linked. River Purification Boards derived their legitimacy largely from statute. The Control of Pollution Act, as amended by the Water Act 1989, which provided River Purification Boards

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with their main statutory powers regarding pollution control, details the principal offences in relation to water pollution in Scotland. Under Section 31(1) of the Control of Pollution Act, it is an offence for any person to cause or knowingly permit any poisonous, noxious or polluting matter to enter any controlled waters. Under Section 32(1), it is an offence if any person causes or knowingly permits any trade or sewage effluent or any other matter to be discharged to any controlled waters unless the discharges were made with the consent of the appropriate regulatory agency. Upon conviction of either of these offences, dischargers can face punitive sanctions in the form of a fine of up to £20,000.

However, in spite of its significance in providing River Purification Boards with specific powers to undertake their pollution control function, the position occupied by statute in relation to the implementation of water pollution control policy was essentially a withdrawn one. The absence of uniform national emission standards, enshrined in legislation, dictated that responsibility for devising emission standards was delegated by Government to River Purification Boards themselves. This was done via the setting of Environmental Quality Standards which specified what particular River Purification Boards judged to be the maximum acceptable concentrations of substances in controlled waters in order to protect these waters for designated uses such as public supply and abstraction for industry. Such standards were, in turn, designed to meet specific Environmental Quality Objectives set by each River Purification Board for water-courses which came within its jurisdiction.

The main mechanism by which River Purification Boards ensured that their Environmental Quality Objectives were met was through use of a *consent* system. This mechanism involved emitters being granted licences to discharge effluent in accordance with consent conditions stipulated by the local River Purification Board. Securing Environmental Quality Objectives also involved accounting for discharges of pollution which occurred outwith the *consent* system. Therefore, a second mechanism of the implementation process was that of *incident management*. These pollutions tended to be 'one-off', isolated incidents as opposed to pollutions which continued over a period of time. The third element of the process of regulatory oversight through which the River Purification Boards implemented their pollution control policy was that of *pollution prevention*. This involved River Purification Boards attempting to educate dischargers as to what constituted good practice in relation to pollution prevention. To this end, River Purification Boards published and distributed 'codes of good practice' in

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relation to a variety of activities with a potential to pollute, such as, for example, agricultural activity.

In seeking to implement the locally determined Environmental Quality Standards which underpinned their strategies for pollution control, River Purification Boards traditionally eschewed a policy based upon confrontation with dischargers in favour of a consensus-orientated approach. In practice, this involved limiting the role played by the formal legal process in ensuring that members of the discharging community remained within boundaries set by the regulatory agencies. Tools such as enforcement samples, which could be used as evidence in preparing cases for prosecution, and the submission of reports to Procurator Fiscals to initiate prosecutions, therefore tended to be used sparingly. At first sight this 'enforcement gap' (in terms of applying the formal mechanisms of the legal process) might seem to represent something of an anomaly given that River Purification Boards operated within a legislative framework based on the principle of strict liability (Ball and Bell 1994, p.103) which freed them of the obligation to provide proof of dischargers negligence in relation to pollution offences. However, personnel within the case-study River Purification Board highlighted a number of factors which help to explain why they adopted a mainly co-operative approach to enforcement.

In the first instance, there was a wide-spread view among representatives of this River Purification Board that one of the organisation's main functions was that of educating dischargers as to how to prevent pollution occurring in the first place rather than retrospectively bringing sanctions to bear on dischargers who committed offences. The River Purification Board's General Manager illustrated the point when he outlined his organisation's approach to pollution control:

First of all, our job is pollution prevention and, as I see it anyway, enforcement is a tool. When I say enforcement, I mean prosecution. ... When people talk about enforcement they generally think about taking people to court. We've always seen that as a last resort and in some cases almost as an admission of failure because it means that pollution has occurred. ... I don't think that most [River Purification Boards] see themselves as particularly arms of the law in the sense that, if we catch any infringement of the law, we're out there to make sure that the person reaches court. I think it's fair to say that there are many, many technical infringements of the law each year that we choose not to report to the

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Procurator Fiscal.  
(Interview, 12 June 1994)

The view that the River Purification Board's pollution control function revolved around the education of dischargers so as to prevent pollution was also shared by Pollution Control Inspectors. As one Inspector said:

The key is to get on with people, for a grumpy farmer on December the 24th to understand why you're there. This relates obviously to any discharger, and for him to say 'Fair enough, this lad's got a good case, I'll do it'. Because if you prosecute somebody and they don't understand why, they'll [offend] again. *So the art is to convert people to the ways of pollution control.*

(My emphasis, Interview, 7 October 1994)

As previously noted, the provisions contained within the Control of Pollution Act provide a clear explanation as to what constitutes a pollution offence and the powers of sanction available to regulatory agencies. Nevertheless, within the realm of water pollution control in Scotland, enforcement of the legislation traditionally exhibited a degree of in-built flexibility. Within the context of the case-study River Purification Board, the exercise of this flexibility in enforcement was inter-twined with the agency's apportioning, or with-holding, of moral blame to dischargers in relation to consent violations or in the case of 'one-off' pollution incidents. Examples of clearly identifiable gross negligence on the part of a discharger would lead the River Purification Board to adopt a more confrontational approach to enforcement. In such circumstances, the agency was more likely to resort to the paraphernalia of the formal legal process. However, in the absence of such clear-cut circumstances, the apportioning of blame for a violation depended largely upon the actions of the discharger in the aftermath of a pollution offence. In this respect, the River Purification Board's perception of a discharger's attempts to instigate appropriate remedial action, along with the latter's attitude towards the offence, had a significant bearing on whether the formal legal process was pursued. As the General Manager explained:

If [dischargers] inform us immediately and we get experts out there and dealing with incidents then very often it's possible to minimise the effects on the river and that's our prime concern. We can advise them who to contact, how to sort the problem out and it diminishes the environmental impact. Therefore we take that very much into account when we're looking at a case afterwards. If someone tries to hide it and cover it up

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and the damage to the receiving water is greater, then we're not at all sympathetic.

(Interview, 12 June 1994)

A further factor which influenced the organisation's preference for a co-operative approach to enforcement was a widespread conviction among River Purification Board staff that confrontation with dischargers did not yield improved results, either in terms of consent compliance or in deterring pollution incidents. One Pollution Control Inspector articulated the view of many of her colleagues, stating:

If you can get a company to co-operate with you and do all the clean-up that's required you're perhaps defeating the purpose if you're prosecuting them, because another company could say, 'They spent £20,000, they cleaned up their oil, the River Board still took them to court. If we're going to get taken to court why should we bother cleaning it up?'

(Interview, 19 October 1994)

In an equally pragmatic vein, the River Purification Board was also reluctant to bring the law to the fore in its interactions with dischargers as the organisation perceived it to be a tool of only limited effective application. In part, this perception was a reflection of the fact that the legislation had historically offered little by way of sanction which River Purification Boards could use. Until comparatively recently, the maximum fine was £2000, although penalties in the region of £200 were rather more common. The maximum fine was increased to £20,000 following the passing of the Environmental Protection Act 1990. However, average fines tended to be substantially lower. As a result, and in common with its fellow River Purification Boards, the organisation studied here tended where possible to avoid using the legislation as a method of sanction because to do so ran the risk of exposing its weaknesses in this respect. Such exposure could, in turn, result in a serious undermining of the River Purification Board's authority in its dealings with dischargers.

The case-study River Purification Board was also dissuaded from putting forward cases for prosecution because its personnel perceived there to be a lack of expertise in environmental issues, on the part of both the Procurator Fiscals responsible for presenting the case for the prosecution, and also on the part of Sheriffs who sit in judgement of such cases. Consequently, the organisation was occasionally compelled to rely on the potentially high-risk strategy of bluff. To this end, its Pollution Control Inspectors would

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embroider their conversations and correspondence with dischargers with phrases such as 'could be fined up to £20,000', or 'may recommend referral to the Procurator Fiscal'. In reality, the River Purification Board was acutely aware that the former was highly unlikely and that the latter would usually only occur when negotiations between regulator and discharger had irretrievably broken down, or if pollution incidents were of an exceptionally serious nature, involving, for example, the death of fish in an affected river.

Against the backdrop of a legislative system in which it placed little faith, coupled with a scepticism regarding the effectiveness of sanctions as an enforcement strategy per se, River Purification Boards' implementation of pollution control policy can in retrospect be viewed to have been an exercise in the art of the possible. In seeking to achieve the broad aims of the legislation, River Purification Boards pursued a pollution control strategy based on performance - that is, 'getting something done' (Barrett and Fudge 1981) - which took the form of maintaining and, where possible, improving water quality. Within this strategy, the components of flexibility, pragmatism and informality traditionally dominated the implementation process. Nevertheless, there is evidence to suggest that these components were gradually being eroded as River Purification Board personnel prepared to take their places within the new, unified, administrative structure.

### **THE EMERGENCE OF SEPA**

In 1990, the Government published a white paper on the environment entitled **This Common Inheritance: Britain's Environmental Strategy**. The white paper was designed to display the 'green' credentials of Margaret Thatcher's administration following her efforts to claim the environmental agenda as her party's own in the late 1980s (McCormick 1991). During the summer of 1990, at a time when new environmental regulatory agencies had recently been created in England and Wales, further regulatory reorganisation to unify separate agencies did not feature on that agenda, as the white paper made clear:

The Government has concluded that the case for such an amalgamation is insufficient to outweigh the disadvantages of further administrative upheaval at just the time when the new organisations are getting into their stride. It does not therefore propose to alter the present functions of the existing regulatory bodies for the time being (DoE 1990, p.232).

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By July 1991 however, John Major, newly installed as Prime Minister, had announced the Government's intention to transform the institutional arrangements for regulating pollution, both in Scotland and in England and Wales. A number of factors had conspired to bring about the Government's U-turn on administrative reform. In the first instance, there was a gathering consensus among the political parties, industry and environmental pressure groups that a more integrated approach to environmental protection was required. Secondly, the new system of Integrated Pollution Control, heralded as the most important feature of the Environment Protection Bill (DoE 1990, p.139), had contributed to the drive for a more unified approach. Integrated Pollution Control had been advocated by the Government as an innovative template for its European neighbours to copy. Having adopted such a system of pollution control the next logical step was to instil the unified administrative arrangements required to implement it effectively. Thirdly, John Major, keen to project his Government as innovative and forward-looking, was searching for a 'big idea'. Against a background of wide-scale agreement regarding the need for greater institutional integration in environmental policy, environmental protection agencies offered an attractive and comparatively uncontentious way of building on the Government's efforts to make the environmental agenda its own.

Publication in January 1992 of a consultation paper entitled **Improving Scotland's Environment: The Way Forward** (The Scottish Office 1992) added substance to the Government's initial proposals within the Scottish context. In the paper, the Government outlined the case for a single Scottish Environment Protection Agency encompassing the staff, functions and responsibilities of the River Purification Boards/Authorities, Her Majesty's Industrial Pollution Inspectorate for Scotland, the Hazardous Waste Inspectorate, and the District and Islands Councils with regard to waste regulation and specific air pollution controls. The consultation document envisaged SEPA adopting a strategic and proactive approach to the curbing and prevention of pollution from whatever source. Government also viewed the proposed agency as offering an antidote for problems inherent in a fragmented administrative structure by providing a single point of contact for industry to avoid confusion on the latter's part, as well as eliminating difficulties caused by overlap or potential conflict between different regulatory agencies.

The proposals contained within **Improving Scotland's Environment: The Way Forward** were greeted with mixed responses. While many interested parties supported the concept of an integrated approach to environmental

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protection, a number of concerns were voiced in relation to the role which the new agency would adopt in practice. Predominant among these was a concern that one of the traditional corner-stones of environmental protection in Scotland, namely its local dimension in terms of shaping both policy and accountability, would be diminished within the new national structure. This view was expressed by River Purification Boards, which pointed to the clean bill of health which the Scottish Office had given the River Purification Board structure as recently as 1990 with the publication of its **First Policy Review Of The River Purification Boards**. Such concern was also shared by the Convention of Scottish Local Authorities, which perceived SEPA to be the latest instalment of a continuing Government agenda to remove local authority powers (COSLA 1992, p.1).

Another concern revolved around the approach which SEPA would take in implementing pollution control policy. In its response to the Government's consultation document, the Confederation of British Industry Scotland, while welcoming the 'one-door' approach which SEPA would provide for industry, stressed that 'important informal contacts must continue as an integral part of the good working relationships which currently exist between regulators and operators' (CBI Scotland 1992, p.3). Among environmental groups there was scepticism as to how environmental and economic considerations would be balanced within the new agency (Macleod and McCulloch 1994).

There was also concern expressed by a variety of environmental Non-Governmental Organisations regarding the extent to which SEPA would be able to provide completely integrated environmental protection. The Royal Society for the Protection of Birds, in its response to the consultation paper, argued that the Government's proposals did not take sufficient account of Scotland's conservation needs, stating, 'In practice the proposals will mean a pollution control agency rather than a truly integrated environmental protection agency' (RSPB 1992, p.1).

As a result of a period of inter-departmental dispute within Whitehall, caused by disagreement between the Department of the Environment and the Ministry of Agriculture, Fisheries and Food as to the division of the English and Welsh Environment Protection Agency's functions (**The Economist** 14 September 1991), the proposals for reform on both sides of the border were shelved by the Government for eighteen months. However, following the introduction of a unified Environmental Agencies Bill, announced in the Queen's speech in November 1994, the proposals for reform were revived, and SEPA was finally established in April 1996.

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It is, as yet, too soon after the establishment of SEPA to examine the validity of some of the criticisms which were aimed at the Government's original proposals. However, a number of observations can be made at this juncture. The creation of SEPA Regional Boards containing representatives of a wide variety of interested parties ranging from industry to conservation (closely modelled on the River Purification Boards Board Member structure) suggests that local considerations continue to be of importance in administering environmental protection within the new structure. The extent to which this remains the case will partly be determined by the relationship between the Regional Boards and SEPA's central administrative structure, encompassing Head Office and the agency's main Board.

SEPA is currently in the process of developing a cost-benefit analysis approach to balancing environmental and economic considerations in the pursuit of its objectives. Once the approach is fully operational, it will have a crucial impact in shaping the conditions of consents to discharge which the agency awards. According to Alasdair Paton, SEPA's Chief Executive, 'Cost-benefit considerations will be built into every aspect of our work. Industry can be confident that a consent is not only environmentally-friendly, but that it is properly costed and balanced' (**Scottish Water** Spring 1996). Both industry and environmental organisations await the full introduction of cost-benefit analysis with more than a little interest.

Environmental Non-Governmental Organisations which expressed anxiety regarding SEPA's exact remit may argue that their concerns were well founded. In England and Wales, the Environment Agency is legally required by statute to protect and enhance the environment. In contrast, SEPA's statutory role in this respect requires only that the agency account for the desirability of enhancing the natural heritage of Scotland.

### **FORMALISING THE POLICY PROCESS**

SEPA is envisaged by the Government as delivering 'well managed integrated environmental protection as a contribution to the Government's goal of sustainable development' (SEPA, Draft Management Statement 1994, p.3). The approach which SEPA adopts in implementing regulatory policy will become clearer once it has emerged from the period of jostling for position which seems certain to ensue among the parties amalgamated by the Government's administrative reorganisation. A key issue relates to whether, in its efforts to integrate policy implementation, the new agency will usher in

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a more formalised approach to pollution control than that evident in the regulatory system it replaced.

In this respect, major policy developments in the River Purification Board system may herald the shape of implementation styles to come. Much to the chagrin of more experienced pollution control inspectors, the Scottish Office introduced a policy initiative entitled Scottish Levels of Service during the 1980s (Scottish Development Department 1990). These are essentially performance indicators, and their introduction was motivated by a desire on the part of the Scottish Office to develop quantifiable measures of River Purification Boards' execution of a variety of objectives. Examples of Scottish Levels of Service included the length of rivers in any one of the four categories which River Purification Boards used to classify the environmental quality of particular waterways. Other objectives related to issues such as the time taken to process consent applications to discharge effluent.

The introduction of Scottish Levels of Service was a significant development in terms of providing the Scottish Office with measures of accountability within a traditionally devolved implementation setting. However, a potentially more profound initiative, in terms of determining the future development of policy within SEPA, was the adoption of a Common Enforcement Policy by all seven of Scotland's River Purification Boards in the period leading up to their demise. This innovation represented a marked departure from the traditionally individualised approach to enforcement, based upon local environmental and economic conditions, which River Purification Boards had previously tended to pursue. Since 1993, instead of each River Purification Board using its own discretion in deciding if and when to use formal tools of regulation, all River Purification Boards followed a common procedure in determining circumstances under which enforcement samples were to be taken. This, in turn, had important repercussions for the nature of the regulator-discharger relationship. As a Senior Pollution Control Inspector within the case-study River Purification Board observed:

I think [the Common Enforcement Policy] formalised [the process]. The main thing that has happened is that before, when it came to getting improved consent compliance, there was often too close a relationship with the discharger in that bits of advice here and there had been given. ...There was a change of emphasis where we stood back more and said, 'Look, we're not going to say what we think the problem here is. You get

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it sorted out and we'll give you a time limit'.  
(Interview, 22 September 1994)

Reflecting on the increasingly formalised approach which the Common Enforcement Policy introduced, one Pollution Control Inspector commented:

In the past, if a discharge was continually outwith consent when we took our routine samples, if it was only a minor infringement, we'd just ignore it. ... Now, this enforcement policy is in black and white and there's no room for manoeuvre really. If it's a 100% failure, it's an immediate resample with all the involved costs of that, which are not cheap.  
(Interview, 11 October 1994)

Among the objectives which the Government outlined in presenting the case for administrative change (Scottish Office 1992) were two identified by Szanton (1981) as common justifications for reorganisation. These were the objectives of improving programme effectiveness and enhancing policy integration. Each of these objectives suggest that the trend towards formalisation in the implementation of pollution control policy, evident in the River Purification Board system, is likely to continue within the new agency. In particular, there is a need to establish co-ordinating procedures which will enable staff who have come to SEPA, with contrasting areas of expertise and from differing organisational cultures, to work together effectively in order to achieve the new organisation's policy objectives. This is particularly important in relation to the implementation of the system of Integrated Pollution Control which involves the granting of licences to discharge which account for the environmental impact upon water, air and land. A more 'top-down' (Sabatier 1986) approach to policy, incorporating increased proceduralisation and guidance for lower level staff, would enable SEPA to achieve uniformity of approach while also serving as a device to co-ordinate and harmonise activity within the new, multi-skilled agency.

The impact of European Union environmental legislation on national environmental policy is also playing an increasingly significant role in reducing the flexibility, informality and discretion, which have historically characterised the regulatory process. Buller et al (1993) have argued that:

The tradition of voluntary regulation and of negotiation, which has prevailed throughout the long history of British environmental policy ... is giving way to a more formal regulation whose origin is clearly that of

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the European Community.  
(p.191)

Examples of this trend were to be found within the River Purification Board system in relation to the implementation of both the Nitrates Directive and the Urban Waste Water Treatment Directive. The broad parameters of domestic environmental legislation enabled River Purification Boards to exercise considerable discretion, and by extension, independence, in policy implementation. In contrast, European Union legislation is generally much more specific regarding the provisions contained within its instruments. The Nitrates Directive, for example, contains classifications by which to determine whether or not a waterway should be classified as polluted in relation to the concentration of nitrates to be found within it. Consequently, rather than devising their own locally based standards, River Purification Boards had to evaluate whether waters were polluted by nitrates by using the criteria contained within the European Union legislation and then advise the Secretary of State for Scotland as to whether, under the terms of the directive, particular waters should be classified as vulnerable zones. The Urban Waste Water Treatment Directive also removed an element of the discretion employed by River Purification Boards in implementing policy which was directed towards accounting for local circumstances. Before the introduction of the Directive, River Purification Boards were able to set targets for any improvement work required to up-grade sewage treatment facilities through negotiation with the Regional local authorities which were responsible for maintaining these facilities. Such an approach enabled the River Purification Boards to exercise some flexibility in extending time-tables for improvement if they felt local circumstances warranted such action. However, the Urban Waste Water Treatment Directive removed these agencies' discretion in this respect by stipulating that a prescribed time-table must be followed for the provision of treatment facilities for domestic sewage effluent and particular industrial wastes.

### **CONCLUSION**

Pollution control policy in Scotland is currently in something of a state of flux. In the short term, it is unlikely that the emergence of SEPA will lead to a markedly more confrontational approach to pollution control than was the case with the various regulatory bodies which preceded it. As much was confirmed by Alasdair Paton in a press interview published at the time when the agency was coming into operation. Echoing the broad philosophy which

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had for over a century unified a succession of disparate regulatory agencies in Scotland, SEPA's Chief Executive stated:

The way to the future is through education about how to protect the environment. Regulation is only one aspect of protecting the environment. If we are making a prosecution then there has been a pollution incident, the damage has been done and, in a real sense, we have already failed.

(**The Scotsman** 26 March 1996)

The prospects of greater reliance on the formal sanctions of legislation are further limited by the fact that no new powers have been added to statute. Therefore, as SEPA must operate with the same legislation which many of its predecessor bodies viewed as an ineffective enforcement tool, it seems unlikely that the formal legal process will play a significantly greater role in the implementation of pollution control policy in the foreseeable future.

In the period leading up to the dismantling of the River Purification Board structure, the system of regulating water pollution had begun to move, almost imperceptibly, from a philosophy based on pragmatic flexibility to a more proceduralised approach to administrative control. The trend towards increasing formalisation in the policy implementation process seems certain to continue in the new agency for two reasons. Internally, SEPA needs to coordinate effectively the integrated approach to pollution control which the new agency is designed to implement. One potential strategy for SEPA's senior management team to consider in relation to this objective is that of building on the Common Enforcement Policy initiative devised by the River Purification Boards. A similar initiative, involving the introduction of procedures and guidelines, would enable senior management to structure the policy process from the 'top-down' and ensure uniformity of approach in implementing pollution control policy throughout Scotland. Externally, the influence of European Union legislation in shaping the domestic regulatory policy process is likely to continue to grow as the drive for European integration steadily reduces the discretionary element which traditionally enabled regulators in Scotland to account for local circumstances in implementing policy. This, in turn, is likely to further reduce the flexibility and informality which characterised the regulatory process in the past.

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