

Consultation on the draft Statutory Guidance on the General Purpose of the Scottish Environment Protection Agency and its contribution towards Sustainable Development

Analysis of Responses

December 2014

Introduction

On 5 May 2014 the Scottish Government published a consultation on their proposals for draft Statutory Guidance on the General Purpose of the Scottish Environment Protection Agency (SEPA) and its contribution towards sustainable development.

The objective of this consultation was to consult on the draft Statutory Guidance to be issued by the Scottish Government to SEPA with regard to delivery of their General Purpose. The aim was to invite views on the draft Statutory Guidance.

The General Purpose of SEPA was introduced under section 51 of the Regulatory Reform (Scotland) Act 2014 and inserted as section 20A to the Environment Act 1995. It formalises what is already current practice; that SEPA's primary purpose is to protect and improve the environment (including managing natural resources in a sustainable way). SEPA must also contribute to improving the health and well-being of people in Scotland and the achievement of sustainable economic growth, except where it would be inconsistent with its primary purpose. Under section 31 of the 1995 Act, SEPA also has a duty to make a contribution towards attaining the objective of achieving sustainable development.

Under section 31(2) of the 1995 Act, the Scottish Government must issue Statutory Guidance to SEPA with respect to SEPA's contribution towards attaining the objective of achieving sustainable development. Under section 31(2A), the Scottish Government may issue Statutory Guidance to SEPA with respect to their duties under section 20A.

The draft Guidance, which was produced in consultation with SEPA, makes clear to SEPA Scottish Ministers' intent regarding their support and encouragement for SEPA's plans to become a better environmental regulator.

What did the consultation cover?

The consultation ran for a period of 12 weeks from 5 May to 28 July 2014. The key proposals upon which views were sought relate to the following areas:

- The presentation of the draft Guidance in terms of use and comprehension.
- The approach the draft Guidance takes in seeking to align SEPA's General Purpose with the National Performance Framework, and whether it reflects the wider ambitions of the Scottish Government's public service reform agenda
- The proposed Ministerial Expectations for SEPA

Overall Response

A total of 24 responses were received, as listed at **Annex A**. These came from businesses, local authorities, organisations, professional and trade body associations and individuals.

Where respondents have given permission for their response to be made public, these have been placed in the Scottish Government Library and on the [Scottish Government website](#). We have checked all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library. You can make arrangements to view responses by contacting the SG Library on 0131 244 4556, or by sending an email to SGLibrary@scotland.gsi.gov.uk. Responses can be copied and sent to you but a charge may be made for this service.

Overall findings

The consultation asked four questions about the proposals. An in-depth analysis has been undertaken of the 24 responses and the summary findings for each question are contained in this document.

The overall response to the consultation indicated support for the draft Statutory Guidance and the outlined proposals regarding its approach and presentation.

The main points raised were in relation to the wording of the sections on SEPA's primary purpose to protect and improve the environment, where stakeholders felt the wording could be improved to enhance clarity. Revisions were also suggested to the outlined Ministerial Expectations.

The Scottish Government welcomes all stakeholder views and will consider all proposed revisions made in producing the final version

Several respondents made points about the Scottish Government's definition of sustainable development and sustainable economic growth, or queried the National Performance Framework. While such views were noted, they were outwith the scope of this consultation, and were not included in this analysis.

Next Steps

We would like to thank all of the stakeholders who responded to the consultation and attended the various stakeholder sessions. The results of the consultation will help with finalising the draft Statutory Guidance on the General Purpose of SEPA and its contribution towards sustainable development.

Once finalised and in accordance with the procedure for issuing guidance to SEPA under section 31 of the 1995 Act, a draft of the proposed guidance will be laid before the Scottish Parliament for a period of 40 days. Subject to successful completion of the Parliamentary process, the guidance will be published in a manner as considered appropriate by the Scottish Ministers.

Assessment of Responses

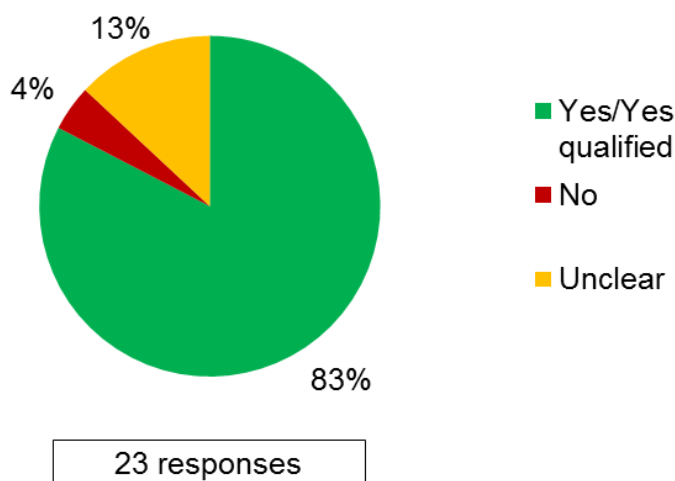
Responses were classified based on whether the 'yes' or 'no' box to the question was ticked. The responses we received were categorised as shown below.

Response Category	Definition
Y	Yes box ticked with either no comment or else support expressed.
Yq	Yes box ticked and qualified Or Neither box ticked but comments indicate agreement
N	No
Unclear	Neither box ticked Or Both boxes ticked but comments unclear
No response	No response

Comments were extracted to allow the identification of common views, key issues and insights. A summary has been provided below for each question, including a chart showing the response categories (i.e. support or otherwise), some text on the reasons for support, any caveats, concerns or reasons against a proposal and questions and requests for more information. The 'Yes' and 'Yes qualified' responses were amalgamated to give an overview of the overall level of support, or otherwise, for each question. The pie charts shown against each question exclude the 'No response' but, for transparency, pie charts which include the proportion of 'No response' are shown in **Annex B**.

Question 1 – Do you agree with the approach the Scottish Government has taken in seeking to align SEPA’s General Purpose with the National Performance Framework?

Question 1- Percentage Total of those who offered a response



There was majority agreement with the approach the Scottish Government has taken in seeking to align SEPA’s General Purpose with the National Performance Framework (NPF).

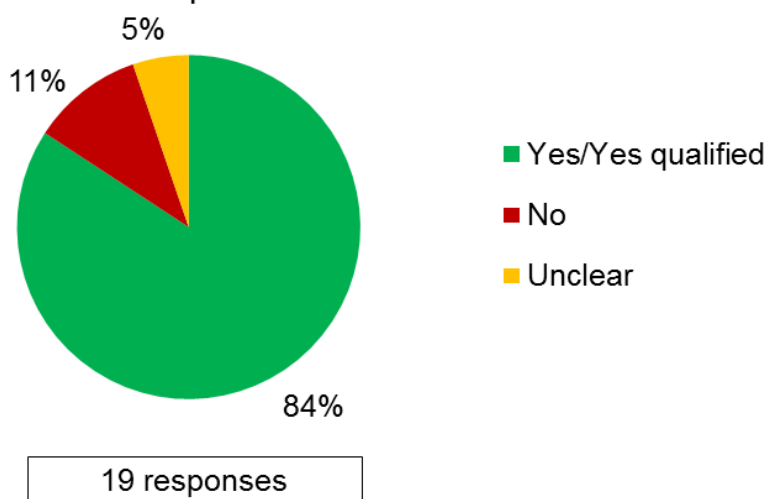
1. 83% (19 respondents) supported the approach, agreeing that alignment with the NPF would facilitate a more integrated approach to the work of SEPA, support the delivery of outcomes and allow for more accurate performance measurement. The emphases placed on partnership working was particularly welcomed. Questions were raised regarding the definitions of ‘sustainable development’, ‘sustainable economic growth’ and ‘ecosystem services’. While the approach was felt to be logical, one respondent felt that the draft Statutory Guidance could be made clearer regarding alignment between the NPF and SEPA’s General Purpose. Strategic alignment between local and national approaches was also felt necessary. Suggested ways of improving the ‘line of sight’ to the NPF included making use of a diagram or adding a strong positive statement about the interrelationship between the strands of SEPA’s purpose and expected behaviours and outcomes.

2. 4% (1 respondent) did not agree with the approach taken. The respondent had particular concerns regarding the NPF, finding public health policies to be incompatible with the Scottish Government’s current economic strategy.

3. 13% (3 respondents) did not make it explicitly clear whether they agreed with the approach or not. While the draft Guidance was welcomed, concerns were raised regarding certain paragraphs, where the drafting obscured SEPA’s priority to protect and improve the environment. There was also concern for the disparity across other Scottish Government policy documents in the definition of sustainable economic growth and sustainable development. One respondent disagreed with the issuance of Statutory Guidance entirely, regarding it as an old-fashioned approach which prioritised “symmetry” over “efficiency and effectiveness”.

Question 2 – Does the draft Statutory Guidance reflect the wider ambitions of the Scottish Government’s public service reform agenda ?

Question 2 - Percentage Total of those who offered a response



There was majority agreement that the draft Statutory Guidance reflected the wider ambitions of the Scottish Government’s public service reform agenda.

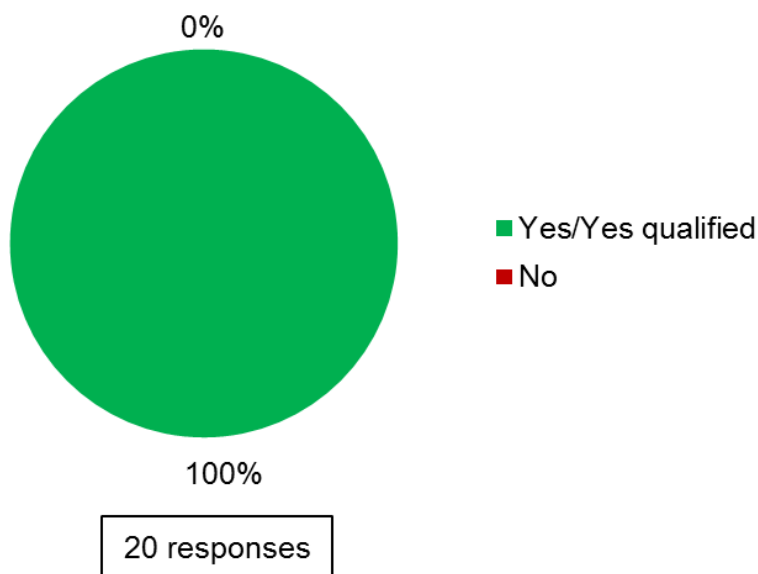
1. 84% (16 respondents) agreed that the draft Statutory Guidance would enhance partnership working and presented a consistent and holistic approach to key Scottish Government ambitions for public service reform. Concerns were raised regarding certain paragraphs where a small number of respondents felt the drafting had the effect of reducing the environment to a commodity. There was a desire for the draft Guidance to make reference to the “Precautionary Principle” and place a greater emphasis on preventative measures. Some respondents made comments regarding the Scottish Government’s definition of sustainable economic growth and sustainable development. Clarification as to how SEPA would handle perceived conflicts of interest was also sought. It was felt that a more detailed framework which guaranteed SEPA the ability to adapt and respond to the potential conflict between local and national agendas would be helpful. The draft Guidance should also enable SEPA to take account of the competitiveness of Scotland with other parts of the UK and internationally, and require that regulation be applied using cost-based evidence.

2. 11% (2 respondents) did not agree, finding the draft Guidance unclear in its consultation form as to whether it reflected the ambitions of the Scottish Government’s public service reform agenda. It was felt necessary that further guidance regarding the actions that are expected of SEPA to demonstrate that it is aligned with the public service reform agenda was needed. One respondent felt the guidance should be strengthened to reflect SEPA’s duties as a community planning partner under the Community Empowerment Bill currently being considered by the Scottish Parliament.

3. It was unclear from one respondent (5%) whether they considered the draft Guidance to reflect the wider ambitions for public service reform. However, the respondent did agree on the importance of public services working together and recognised the need for both individual and collective responsibility for achieving outcomes.

Question 3 – Do you agree with this guidance being presented in a single document ?

Question 3 - Percentage Total of those who offered a response

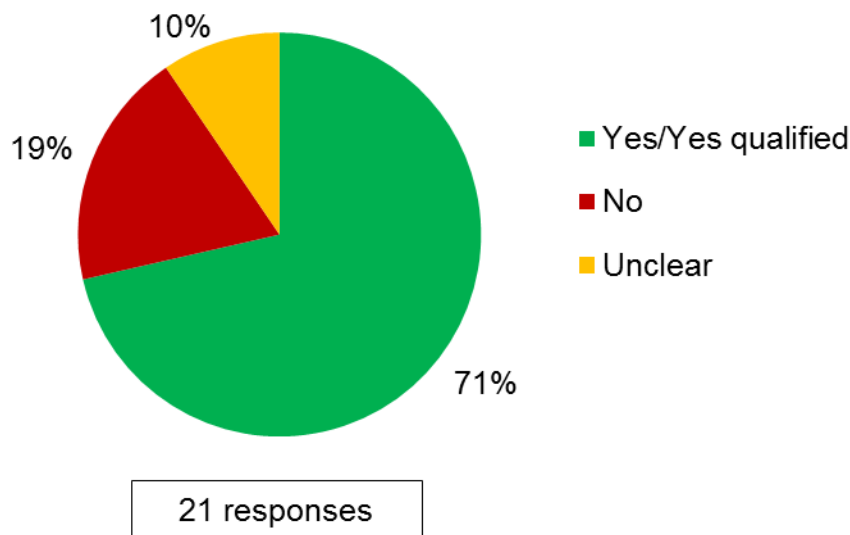


Of those who offered a response, there was unanimous agreement with the guidance being presented in a single document.

1. Respondents agreed this to be a sensible approach which significantly improved clarity. The draft Statutory Guidance was found to be easy to read and comprehend, and it was acknowledged that having a single document would streamline guidance and simplify the policy and regulatory landscape.
2. 25% (5 respondents) qualified their support, even though they had ticked the “yes” box. One respondent highlighted a referencing error to the statute which made the rationale less clear. Another respondent, while agreeing with the principle of presenting the guidance in a single document, felt that the draft Guidance did not achieve this as it referred to other external documents such as SEPA’s Corporate Plan. While helpful, it was proposed that the draft Guidance would also benefit from appendices with good practice examples or case studies of effective partnership working.

Question 4 – Do you agree with the proposed Ministerial Expectations beneath the High Level Outcomes for SEPA ?

Question 4 - Percentage Total of those who offered a responses



There was majority agreement with the proposed Ministerial Expectations beneath the High Level Outcomes for SEPA.

1. 71% (15 respondents) felt the proposed Ministerial Expectations set clear objectives which were transparent, measurable and would contribute towards the public service continuous improvement agenda. Suggested revisions were made to improve clarity further. It was recommended that the columns for the High Level Outcomes were re-ordered to follow the ordering of SEPA's General Purpose, and it was proposed that reference to the Scottish Government's policy for a move towards a circular economy be mentioned. The phrases 'gathering intelligence' and 'proportional regulation' were queried for reasons relating to ambiguity. A new Ministerial Expectation for ensuring that SEPA has the capacity to measure the weight and direction of its input from a Regulatory perspective alongside other local factors was proposed. While welcomed, a stronger focus on a 'risk-based' approach to regulation was suggested to enable SEPA to focus on high priority areas and not to dilute resources across too wide a range of issues. Delivery of the Ministerial Expectations by SEPA remained a key concern.

2. 19% (4 respondents) did not agree with the proposed Ministerial Expectations. Again it was suggested that the column order for the High Level Outcomes be switched to reflect the ordering of SEPA's General Purpose. Revisions to the Ministerial Expectations under the Health and Wellbeing Outcome were proposed to recognise the nature of health inequalities and the need to support action. One respondent found the guidance too vague to be helpful, asking for a more balanced emphasis between advice and compliance, and evidence of specific actions for SEPA to take. It was felt that the Guidance as currently drafted raised the risk of 'mining' environmental capital to the detriment of future generations, and that there were no provisions to support SEPA staff with balancing conflicts. The Ministerial Expectations were also found to be output focussed. It was felt by one respondent that introducing this type of checklist implied strong operational direction from Government and would risk diverting SEPA from an outcome focus, achieved in large part through collaboration often at a local level.

3. It was unclear how two respondents felt (10%). It was believed that the draft Guidance could be clearer in showing the Ministerial Expectations as clear and meaningful indicators which can be measured and evaluated, with a clear evidence base. A desire was expressed for the draft Guidance to make a specific mention for small scale low impact hydropower schemes as part of SEPA's proportionate and risk-based approach to regulation.

Scottish Government Response

The Scottish Government welcomes the strong stakeholder support for the approach taken and is pleased that the vast majority of respondents agreed with the alignment of SEPA's General Purpose with the National Performance Framework, the presentation of the Guidance in a single document, and with the proposed Ministerial Expectations beneath the high level outcomes for SEPA.

We note that, overall, stakeholders found the Guidance easy to use and understand but we welcome the range of textual amendments and additions suggested by stakeholders.

Based on the feedback received, a number of amendments have been made to the Guidance. These amendments are primarily designed to provide additional clarity and do not substantively alter Ministerial expectations or the outcomes which SEPA are to deliver.

Annex A - List of Consultation Respondents

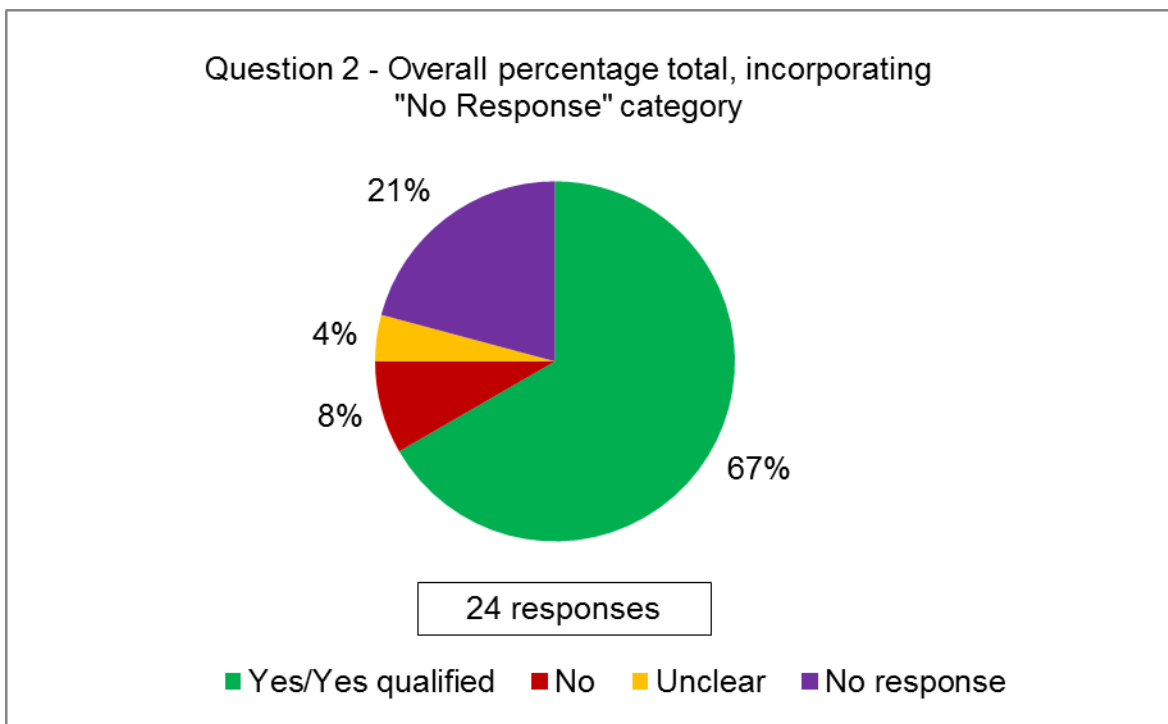
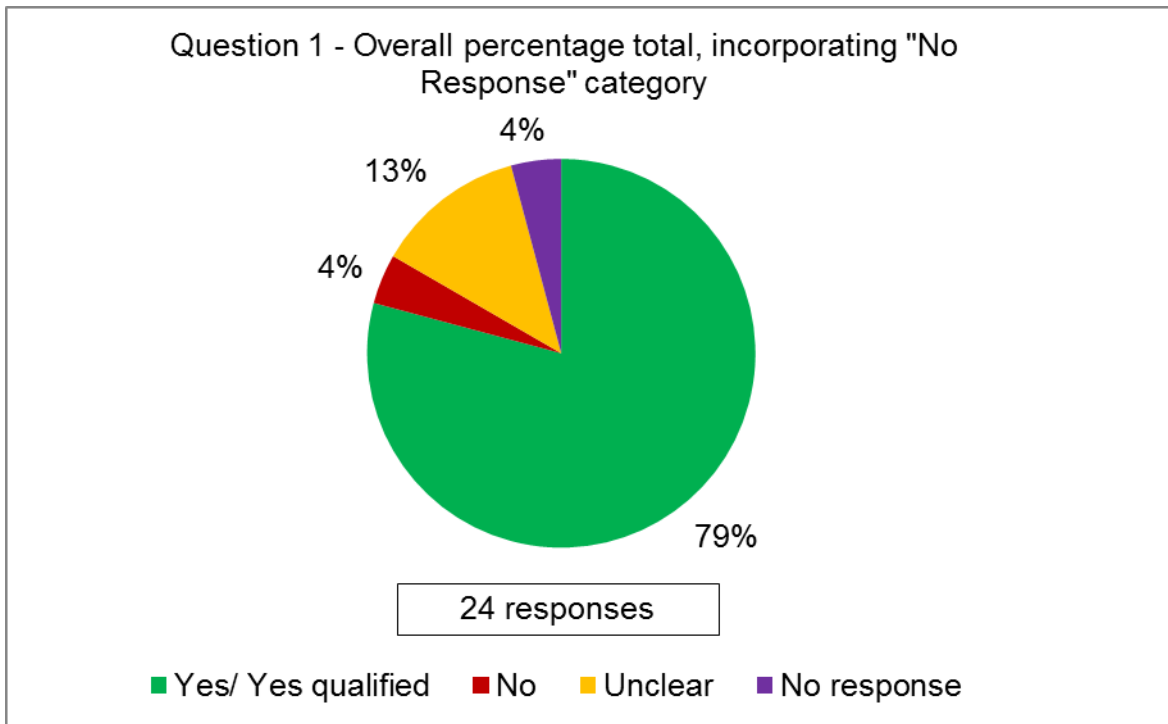
Individuals

Andrea Ross, School of Law, University of Dundee
Dr Fenton F Robb
Gavin King-Smith

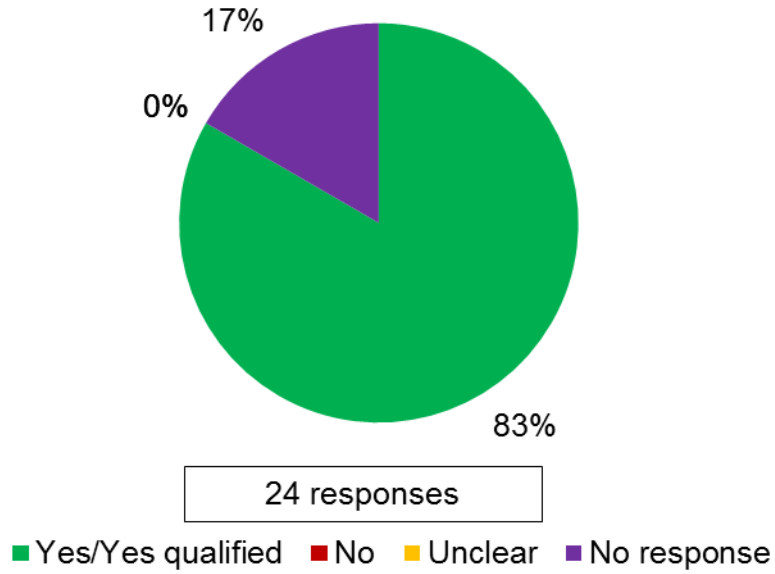
Organisations

Citizens Advice Scotland
Community Resources Network Scotland
Dounreay Site Restoration Ltd.
Falkirk Council
NHS Health Scotland
Nuclear Decommissioning Authority
Orkney Islands Council
Royal Town Planning Institute (RTPI) Scotland
RSA 2020 Public Services and RSA Scotland
Scotch Whisky Association
Scottish Environment Protection Agency
Scottish Managed Sustainable Health Network
Scottish Power
Scottish Property Federation
Scottish Water
Scottish Wildlife Trust
Stirling Council
The Law Society of Scotland
UK Environmental Law Association – Scottish Law Working Group
West Lothian Council
Women’s Environmental Network Scotland (WENS)

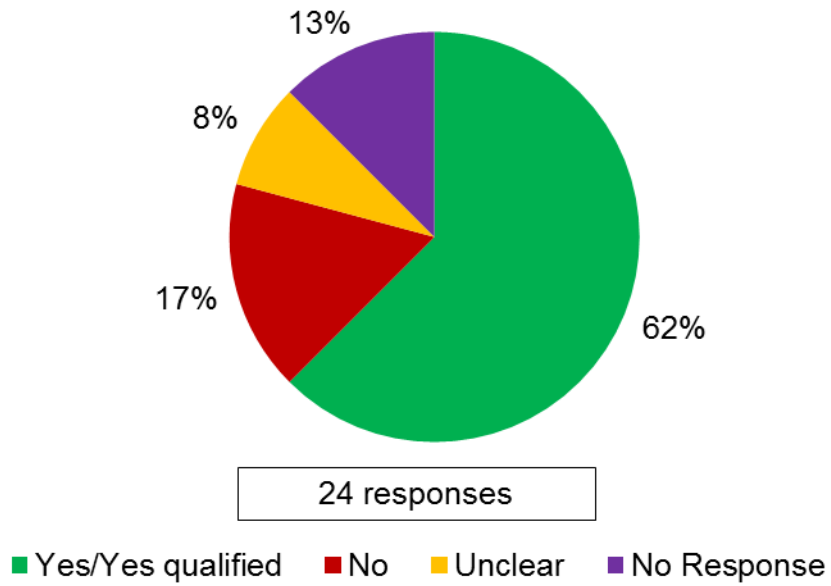
Annex B - Pie Charts incorporating proportion of respondents who issued a "No Response"



Question 3 - Overall percentage total, incorporating "No Response" category



Question 4 - Overall percentage total, incorporating "No Response" category





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ISBN: 978-1-78412-972-9 (web only)

Published by the Scottish Government, December 2014

The Scottish Government
St Andrew's House
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EH1 3DG

Produced for the Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS41147 (12/14)

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