



Briefing 07/31 May 2007

Better waste regulation

TO: ALL CHIEF EXECUTIVES, MAIN CONTACTS AND EMAIL CONTACTS (Scotland)

CC: ALL CHIEF EXECUTIVES, MAIN CONTACTS (England, Wales & Northern Ireland)

Scottish Executive & SEPA consultation

Key issues

The Scottish Executive and SEPA are seeking opinion on the current legislative and regulatory system of waste management in Scotland, with a view to improving the regime and its practical application

Issues covered include regulation, exemptions and licensing

Consultation Deadline is 22 June 2007

1. Introduction

The Scottish Executive and Scottish Environment Protection Agency (SEPA) have issued a joint consultation on the regulation of waste in Scotland. The Scottish Executive is responsible for all aspects of waste law and regulation in Scotland and SEPA, as an environmental regulator, implements all waste regulations and provides technical and practical advice contributing to the development of policy and legislation. Both are seeking opinion on the current legislative and regulatory system

of waste management in Scotland, with a view to improving the regime and its practical application.

Opinions are sought to establish whether the correct balance is being struck in translating and implementing the permitting requirements of the Waste Framework Directive, and on the simplifications that can be made to the Scottish system of waste management regulation to make improvements that benefit both business and the environment. It is hoped that some simplifications may be easy to deliver in a short timescale while others may require longer term investigation, further development and consultation.

This briefing paper invites APSE members to express their views on the proposals outlined via the specific set of consultation questions. The Association will then use the feedback received to formulate a collective response on behalf of the membership in Scotland. All comments should be sent by email to gsimpson@apse.org.uk by **8 June 2007** at the latest, in order for the Association's full formal response to be submitted by the 22 June 2007 closing date.

The consultation can be downloaded in full from www.sepa.org.uk.

2. Underpinning objectives

The main driver of waste policy in Europe and Scotland is the requirement to ensure that waste does not cause harm to human health or the environment. This requirement is explicit in Article 4 of the Waste Framework Directive which requires that: Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, air, soil and plants and animals
- without causing a nuisance through noise or odours
- without adversely affecting the countryside or places of special interest

Beyond protecting the environment and human health, the Waste Framework Directive also aims to encourage the minimisation and recovery of waste, especially by recycling, the use of recovered materials, and to discourage waste disposal. These aims have been reaffirmed in more recent European legal instruments, such as the Landfill Directive (99/31/EC), which sets ambitious targets for reducing the disposal of biodegradable municipal waste to landfill.

The National Waste Plan for Scotland (2003) sets out the strategy to fulfill these targets and also establishes the direction of SEPA's and the Scottish Executive's policies for sustainable waste management to 2020. Amongst other things, the National Waste Plan seeks to ensure a reduction in landfilling of municipal waste from around 90% to 30% by 2020. Accordingly, there is now a major commitment of funding by the

Executive through the Strategic Waste Fund to transform Scotland's record on waste reduction, recycling and composting.

New facilities will be required to deliver the National Waste Plan and meet the Landfill Directive diversion targets. This consultation presents an opportunity to identify and address regulatory disincentives and improvements to the waste management licensing system.

3. Consultation Questions

Better Waste Regulation

The Scottish Executive and SEPA are committed to the principles of better regulation and believe that a regime designed around better regulatory principles should:

- Eliminate outdated or unnecessary provisions in legislation
- Consolidate, streamline or merge regulatory regimes where possible
- Base regulatory permitting, inspection and enforcement on sound risk principles
- Ensure where companies break the law that enforcement can be swift and effective
- Minimise the administrative burdens on companies and regulators wherever possible
- Empower regulators to enforce regulations in a fair, consistent and proportionate manner
- Promote best practice and advice to regulated companies wherever possible

Q1. We are interested in views about the extent to which the proposals in the current consultation address the principles of better regulation (noted above).

Q2. If you think further action is warranted with the principles of better regulation in mind we would be interested in specific proposals for change

When does waste cease to be waste?

WRAP (the Waste & Resources Action Programme) was established in 2001 to promote sustainable waste management and to create markets for recycled resources. It was set up as a not-for-profit company limited by guarantee by DEFRA, DTI and the Scottish Executive, and it has taken the lead in the development of protocols which set out detailed technical standards for determining when waste is fully recycled into a new product. Building on the success of its "Quality Protocol for the Production of

Aggregates from Inert Waste in Scotland” and the BSI PAS 100 certification system for high quality composts, WRAP, in conjunction with SEPA and industry, is developing further protocols to cover:

- Glass recycling
- Thin film (including agricultural) plastic
- IBA (incinerator bottom ash)
- PFA (pulverised fuel ash)
- Wood
- Digestate from Anaerobic Digestion
- Tyres

It is possible that further protocols will be developed for other materials such as PET plastics (Polyethylene terephthalate), HDPE plastics (High-density polyethylene), paper etc.

Q3. Apart from those already suggested, are there any other waste streams for which protocols could usefully be developed? Please give reasons.

Exemptions

According to the consultation, the current procedure for making new exemptions and amendments to existing exemptions has been criticised as being inflexible and insufficiently responsive to advances in waste technology and innovation for lower risk recovery activities.

While SEPA considers individual cases on their merits and will have regard to the Scottish Executive’s intentions for prospective changes to exemptions, the strict legal position is that a waste management license is required until such time as an exemption for the activity has been drafted, consulted on, and approved by the Scottish Parliament. The procedure can take as long as 2 years if the changes are complex.

As the Directive allows competent authorities to make exemptions, SEPA could be given the powers to do this. This would mean that the requirements for legislation, including 12-week consultations and the preparation of regulatory impact assessments would not apply, and the Parliamentary process would be avoided. Safeguards may however be necessary to ensure that the system remained accountable.

Q4. Would you like to see SEPA take responsibility for drafting and issuing exemptions, or would you prefer to maintain the exemptions in the legislative system? Please provide the grounds for your views and an indication of how any new system would work.

Q5. Are there any activities that you think would be suitable for an exemption that are not currently exempt? You need to provide as much information as possible on the activity and the benefits of covering it with an exemption from licensing as opposed to a waste management license.

Q6. Should some exemptions, for example, the more complex exemptions benefit from an appeal mechanism, with balancing consultation requirements? Please provide the supporting thoughts behind your answer.

Q7. What aspects and areas of the registration system should be improved upon? It would help if you could explain why and how?

Q8. For which exemptions should electronic registration be considered and if so what impact would this have on you?

Q9. Should the requirement that SEPA inspect exemptions annually be relaxed to require 'periodic inspection' in line with the requirements of the Waste Framework Directive? Please give details of how you think the Directive requirement should be enforced.

Waste Management Licensing

The Scottish Executive and SEPA have identified specific areas which they believe could benefit from improvements to the waste management licensing system.

➤ Financial Provision

In essence a person is not 'fit and proper' to hold a licence if it appears to SEPA that the person 'has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence'. This position was adopted by SEPA in 2004 following an internal review and subsequent consultation with industry. Prior to 2004, financial provision was perceived to be one of the most costly and time-consuming aspect of the licensing process.

Q10. As a financial provision is not a Directive requirement for non-landfills, it may be possible to dis-apply the financial provision requirements of the licensing system for some activities. As SEPA's post-2004 position has already reduced the burden of the financial provision requirement on applicants, would this still be useful or necessary?

Q11. What sorts of activities should such dis-application apply to?

➤ Operator Technical Competence

Scots law currently requires that waste managers demonstrate technical competence. At present, the Waste Management Licensing Regulations 1994 (as amended) specify that the Waste Management Industry Training and Advisory Board (WAMITAB)'s

certificates of technical competence (COTC) shall be the only means of demonstrating technical competence in compliance.

Q12. Do consultees agree that demonstration of operator technical competence is important and should be retained as a requirement of the licensing system? Please explain the reason for your view, whether in agreement or not.

Q13. Do consultees agree that the legislation should make provision for more technical competence assessor bodies? If yes, under what conditions?

Q14. Do consultees think that for some, or all, waste management activities, a formal, externally accredited technical competence is unnecessary? If so, please provide suggestions and justifications for the types of activities that could potentially be undertaken without technical competence qualifications.

Q15. Consultees views are sought on whether they consider that continued professional development should be required, and if so, for whom, and how

➤ Relevant Convictions

It is proposed that the “relevant convictions” requirement of the Fit and Proper Persons test be retained as it is considered a useful deterrent to rogue operators. The “relevant convictions”, which are listed in the 1994 Regulations, relate to offences under a range of environmental legislation.

Q16. Do consultees agree that the relevant convictions test should be retained, and are there any areas for improvement in terms of the requirements or in its implementation? If there are alternatives, what are

➤ SEPA and Waste Management Licensing

Guidance to SEPA on licensing has been provided through the published series of documents known as Waste Management Papers (WMPs).

Q17. Is there enough (or too much) guidance for businesses on waste management licensing? Is it the right sort of guidance or could it be improved?

Q18. Do consultees think that SEPA could improve its template approach to

➤ Mobile Plant Licensing

The Scottish Executive and SEPA are interested in exploring whether the current restrictive list of licensable mobile plant activities should be extended to cover other activities. For example, shellfish processors are often in remote locations where access to a range of licensed waste management techniques or facilities is often limited. An initial assessment by SEPA has indicated that a change in the law to make provision for small scale mobile composting under a mobile plant license would introduce a locally available solution to the shellfish producers that might not otherwise be economically viable.

Q19. Do you think the SEPA proposal for an amendment to the law to include mobile composting units would be helpful to industries such as the shellfish producers; and who else might benefit from such a composting exemption, e.g. hoteliers, catering facilities?

Q20. Are there any other activities/processes that might benefit from mobile plant licensing? It would help if you could say why the activities/processes might be suitable for a mobile plant license and what the benefits would be.

Q21. Do you think that SEPA should be free to add to the categories of mobile plant that may be licensed without the need for changing Regulations?

➤ License Modification

Under the current legislative system, the boundary of fixed sites licensed under the waste management regime cannot be changed. Anyone wanting to expand their site needs a new license to cover the new area of ground, or to surrender the original license and apply for a new license for the larger area.

Q22. Would it be beneficial to provide a mechanism that will allow an operator to apply to change his site boundary without obtaining a new license?

Q23. Are there other license modification issues that should be considered? Please give an indication of the possible advantages and disadvantages.

Q24. Do consultees agree that SEPA should have similar charging powers for regulator initiated modifications under waste management licensing that it already has under the PPC regime?

➤ Transfer of Licenses

In Scotland, the legislation does not allow partial transfers. The benefit of allowing this would be greater flexibility for license holders.

Q25. Do consultees agree that there would be benefits in allowing both full and partial transfer and if so, what are those benefits? What safeguards would there need to be?

➤ Surrender of Licenses

Licenses can currently be surrendered partially or fully so long as the surrender requirements of the Waste Management Licensing Regulations 1994 are complied with. The contaminated land regime under the Environmental Protection Act 1990 is intended to deal with historic contamination issues and it is proposed that the removal of this requirement would be a simplification of the license surrender process in cases where there was no suspected pollutant linkage between the current licensed activity and historical activities at the site. This would perhaps encourage site remediation and restoration, and remove the duplication between the Waste Management Licensing Regulations and the contaminated land regime.

Q26. Do consultees agree that historic waste management activities should be excluded from the surrender requirement in circumstances where there is no suspected pollutant linkage to licensed activities? Is this practical and what are the advantages or disadvantages of removing this requirement?

➤ Revocation, enforcement and sanctions

In relation to revocation, enforcement and sanction provisions of the waste management licensing regime, the Scottish Executive and SEPA are interested in any specific observations or suggestions that consultees may have.

Q27. Can consultees suggest any improvements to the way licenses are enforced and what benefits would those improvements bring?

➤ Inspection of Waste Management Licensed facilities by SEPA

SEPA currently uses information from site inspections and its operator performance assessments (OPA) to inform and establish proportionate, risk-based inspection frequencies for each site. Through this system, SEPA deploys its resources to target higher risk activities with a higher number of inspection. Operators who perform well benefit from a reduced number of inspections.

Q28. Do you agree that site inspections should be based on risk and operator performance? Please say why.

At present, the Environmental Protection Act 1990 provides that the competent authority should be able to charge for the cost it incurs in undertaking the licensing procedures. The current charging scheme reflects the relative risks associated with different waste management activities in terms of the types of waste, the quantities of waste, and the type of waste management operation.

Q29. Do you think that charging should include consideration of the potential risks associated with an activity and operator performance?

➤ Final Considerations

Q30. Do you consider that there are other areas where improvements should be considered, for example: Duty of Care; Registered Waste Carriers; or Special Waste?

4. Summary

The current legislation on waste regulation was written at a time when Scotland's principal means of dealing with waste was to landfill it. New policies, practices and technologies have emerged in recent years which mean that the legislative controls could perhaps be improved to encourage innovation and ensure that the aims and requirements of the Waste Framework Directive are delivered in their modern context. The Scottish Executive and SEPA are therefore right to review the current regulations and APSE would encourage all its members to take the time to respond to these consultation questions.

All comments should be forwarded by email to gsimpson@apse.org.uk by **8 June 2007 at the latest**. Please note that following feedback, the Association will then formally submit its response in time for consultation closure date of **22 June 2007**.

Should you wish to respond directly to SEPA, the address you should send it to is: -

Scottish Environment Protection Agency
Waste Policy Unit
Corporate Office
Erskine Court,
Castle Business Park,
Stirling
FK9 4TR

Gillian Simpson
Research & Advisory Officer