

## Executive Note

### The Waste Management Licensing Amendment (Scotland) Regulations 2006 SSI/2006/541

The above instrument was made in exercise of the powers conferred by section 2(2) of the **European Communities Act 1972**. The instrument is subject to negative resolution procedure.

#### Policy Objectives

This instrument has three purposes, described below, all of which relate to waste management licensing exemptions, as provided for by the Waste Management Licensing Regulations 1994 (as amended). These exemptions provide that, in certain carefully-defined circumstances, a waste management activity may be carried out under a simpler regulatory regime than may activities carried out under full waste management licenses. All waste management activities must, however, be carried out in such a way as to attain objectives regarding the protection of the environment and human health. This general requirement is repeated specifically for exemptions by Regulation 17(4) of the 1994 Regulations.

- **Codification.** Exemptions are of great interest to waste management operators and others, and the regulations have consequently been amended about a dozen times. This has made it difficult for practitioners to find the up-to-date legislation. Now that this instrument has codified exemptions, we would intend to make a practice of re-issuing the entire exemption schedule any time further changes are made.
- **New and broadened exemptions.** The instrument makes changes to lessen the burden of regulation on the recycling and recovery of gypsum, tyres, fish, shells, biodiesel, gas discharge lamps, crushed glass, farm compost, water treatment sludges, medical waste, excavation material and dredging spoils, and waste electrical and electronic equipment. The use of natural processes and materials as water filters is encouraged by exemptions for biobeds and Sustainable Urban Drainage Systems. The storage period for road planings is increased.
- **Limit values for special waste exemptions.** Under Article 11(4) of the codified Waste Framework Directive (2006/12/EC) all exemptions shall be notified to the European Commission. Under Article 3(4) of the Hazardous Waste Directive (91/689/EEC) exemptions relating to hazardous waste (called “special waste” in Scotland) shall be notified at least three months prior to coming into force, for the Commission to agree. Neither of these requirements has been met in respect of Scottish exemptions before, and the opportunity of codification was taken to do so. This has necessitated the insertion of limit values into a number of exemptions dealing with special waste to meet the requirements of Directive 91/689/EC. These are discussed in the attached Regulatory Impact Assessment.

## Consultation

A public consultation was held between November 2005 and February 2006 on the general principle of codification, and on specific proposals for making exemptions in force in Scotland compliant with Directive 91/689/EEC. The consultation was sent to over 280 addresses, including local authorities, political parties and MSPs, NHS Trusts and Health Boards, licensed landfill operators, other waste managers, community groups and regulators.

25 responses were received, which supported the intentions described above. In addition, this consultation also invited specific requests for further exemptions. The responses included a number of such requests. These are reflected in the amendments set out in this instrument. The new exemptions were discussed individually with the interests proposing them, and with the Scottish Environment Protection Agency.

## Financial Effects

The instrument has no financial effects on the Scottish Executive. For local government and business (including charities and community organisations) the three aims set out above have the following effects:-

- **Codification** will make the up-to-date legal situation easier of access. This should result in a small reduction in costs.
- **New and broadened exemptions** will increase the numbers of operations which will qualify for exemptions rather than full waste management licences. Application fees for full waste management licences for these kinds of operations potentially range, depending on activity and scale, from £488 to £8,191, with an annual subsistence fee from £179 to £19,355. There are other fees for modification or variation, surrender and transfer. Exemptions, by contrast, may be registered at costs varying from zero to £739, the only other charges being annual fees of zero to £613.
- **Limit values for special waste exemptions** are the only aspect of this instrument which will increase, rather than reduce costs. The effect would be to make those operations which are currently exempt but which do not meet the limit values pay the costs of full waste management licences rather than exemptions, or to cease. However, we are not aware of any operations which fall into this category.

Further information is set out in the attached Regulatory Impact Assessment.

Scottish Executive Environment & Rural Affairs Department  
November 2006

# REGULATORY IMPACT ASSESSMENT

## Waste Management Licensing Exemptions: a Codification

### Introduction

The Scottish Executive has taken the opportunity of the codification of Schedule 3 to **review a number of exemptions** from the waste management licensing system. This follows on from work to align the regime controlling special wastes in Scotland with the Hazardous Waste Directive. The Special Waste Amendment (Scotland) Regulations 2004, which achieve this in most respects, came into full force on 1 July 2004. The outstanding issue is to ensure that exemptions for special waste operations meet the requirements of Article 3 of the Directive.

The only exemptions which are being removed are those in paragraphs 42 and 43 of Schedule 3. These paragraphs are to be repealed as consultations have not uncovered any party which currently meets the requisite criteria for the exemptions, and it will be impossible for someone to do so in the future. Following consultations with interested parties and discussion with the Scottish Environment Protection Agency (SEPA), however, this instrument introduces a range of new and extended exemptions. This reduces the regulatory burden in a manner considered below.

This document provides a Regulatory Impact Assessment (RIA) for the exemptions reviewed, and those to be added or removed. It discusses policy options, and aims to outline the risks, costs and benefits for the changes. In some cases, quantification of the costs and benefits has not been possible owing to their intangible nature.

**This RIA addresses only the new exemptions and those which are being amended or removed. The codification itself does not result in a regulatory impact other than in cases in which changes are made – except for the positive impact that the codification will make the law more easily accessible to all parties.**

### Purpose and intended effect of the measures

#### *(i) Objective*

Not all current exemptions listed in Schedule 3 to the Waste Management Licensing Regulations 1994 (as amended) (WMLR) appear to comply with the requirements of the Hazardous Waste Directive for the establishment of limit values. The objective, therefore is that all exemptions relating to special waste should meet the requirements of this Directive. Furthermore, the object of the addition of new exemptions is to lessen the regulatory burden on a wider range of recycling and recovery activities, thereby further encouraging the type of waste management operations which will meet the objectives of environmental and human health protection. The amendments will be covered by a statutory instrument entitled the Waste Management Licensing Amendment (Scotland) Regulations 2006.

(ii) *Background*

Scottish legislation on waste stems from the Waste Framework Directive (WFD), which has been transposed into UK law mainly through the Environmental Protection Act 1990, and through its subsequent amendments and related subordinate legislation, especially the WMLR. Articles 9 and 10 of the WFD state that any establishment or undertaking that carries out waste disposal or recovery operations must obtain a permit from the competent authority (in Scotland, SEPA). Article 11 of the WFD states that, under certain conditions, establishments or undertakings carrying out waste recovery, or disposal of their own waste at the place of production, may be exempted from the permit requirements imposed by Articles 9 and 10. They may not, however, be exempted from requirements that the necessary measures shall be taken to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.

In respect of hazardous, or special waste, the rules for these exemptions have been tightened by Article 3 of the Hazardous Waste Directive, which forbids the disposal of hazardous waste by establishments or undertakings at the place of production under exemption, and requires the adoption of general rules containing limit values. This recognises that an additional level of protection is appropriate in the case of hazardous wastes. Proposed exemptions for hazardous waste must be notified to the European Commission.

Regulation 17 of the WMLR permits the activities listed in Schedule 3 to be exempted from the requirements of full waste management licences. It also establishes that exemptions shall not be available for the disposal of special (that is, hazardous) waste by establishments or undertakings at their place of production.

(iii) *Rationale for Government Intervention*

The Executive's review has been conducted to ensure that the remaining requirements of Article 3 of the Hazardous Waste Directive are met in respect of exemptions available in Scotland. **In these circumstances it was considered that there was little point in changing one, or some, of the relevant exemptions, while leaving others to which the Hazardous Waste Directive applies untouched.** The Executive has notified the exemptions proposed in the consultation to the European Commission. The post-consultation changes have also been notified, and we are awaiting any comment.

In order to impose the full protection intended by the Hazardous Waste Directive, full limit values have been applied to exemptions concerning special waste. An example is that the exemption in paragraph 3(c) of Schedule 3, for the storage of waste oil prior to burning as a fuel, has an upper limit of 23,000 litres applied on the amount of waste oil which could be stored without applying for a full waste management licence, with the protection and monitoring that would imply.

The risk of infraction proceedings, however, should we fail to bring our exemption regime for special waste, is more easily quantified. Judgment has already been given by the European Court of Justice against the UK in this respect. The next stage of the proceedings, which has already been instituted, could lead to the imposition of daily fines. The matter of fines is considered in more detail under **Options**. Government intervention is required as, to alter the legal framework, an amendment to the WMLR is required. This is properly a matter for the Scottish Executive.

## Consultation

Within the Scottish Executive we have consulted colleagues in Enterprise, Transport and Lifelong Learning Department, and Solicitors. We also carried out detailed consultations with SEPA.

These proposals formed the subject of a twelve-week consultation with interested parties. Interested parties were specifically invited to comment on the proposed codification, revised special waste exemptions and the draft RIA. They were also invited to give their views in more general discussions on the future of waste regulation, and to suggest further exemptions.

As a result of these discussions, other activities were identified as being appropriate for exemption status and inclusion in Schedule 3. The new activities to be added to Schedule 3 are listed below.

Certain activities leading to the recovery and/or recycling of the following waste materials are to be granted new exemptions to be added to Schedule 3, where they meet the requirements shown:

- (a) Gypsum
- (b) Tyres
- (c) Fish
- (d) Shells
- (e) Biodiesel
- (f) Gas discharge lamps
- (g) Crushed glass
- (h) Farm compost
- (i) Water treatment sludges
- (j) Medical Waste
- (k) Excavation material
- (l) Dredging spoils
- (m) Use of Autoclaves

The following operations which encourage the use of natural processes and materials as water filters are deemed appropriate for exemptions in accordance with new rules added to Schedule 3:

- (a) Biobeds
- (b) Sustainable Drainage Systems (SUDS)

Discussion during the consultation period also identified an unnecessary limit on the storage time of road planings. Hence this limit (paragraph 19(3)) has been removed from Schedule 3.

## Options

### (i) Identify options

Option 1: **Do nothing.**

This represents the base case of business as usual against which other options are compared. The requirements of the Hazardous Waste Directive are not fulfilled.

Option 2: **Consolidate the exemptions in the WMLR but make few or no changes to exemptions for special waste.**

To the extent that no changes are made to the exemptions, but they are merely consolidated, effectively the regulatory position does not alter – it is merely clarified. The requirements of the Hazardous Waste Directive are not fulfilled.

Option 3: **Consolidate the exemptions in the WMLR and make changes to those dealing with special waste to implement Community law.**

The regulatory position is clarified and the requirements of the Hazardous Waste Directive are fulfilled.

These options will impact mainly on administrative costs, which would be borne chiefly by the Scottish Executive and SEPA, though there are potentially very rare cases in which they could impact on the costs of carrying out waste management activities for which the rules governing exemptions are changed. Administrative costs are as follows:-

**Option 1** implies no change for any party, so there would be no costs attributable to any regulatory change. However, this option also implies continued non-compliance with the Directive. This could lead to fines being levied, as a result of legal proceedings which are already in train. The Commission has published guidance on how it calculates the fines it thinks appropriate in the circumstances. These are set out in OJ No D242, 1996 and OJ No C63, 1997. The Commission's proposed fine is advisory. The actual fine imposed is that decided on by the Court, but the Court has stated that it has found the Commission's proposal helpful. The Commission's proposed fine is based on a uniform flat rate multiplied by 2 coefficients relating to the offence itself, and then by a deterrent effect factor that takes account of the Member States' ability to pay and the weighting of votes in Council. The maximum advised fine that could be imposed on the UK for the most serious of breaches and the maximum duration is €534,000 (c £365,000) per day (over £133 million per year). Fines are levied against the Member State, but since other parts of the UK have indicated their intention to comply with the Directive, any non-compliance would be the fault of Scotland alone, and the Scottish Administration would therefore have to pay the fines, and indeed the costs of any legal action.

**Option 2** will involve the Scottish Executive (and SEPA) in the costs involved in making, printing and publishing the codified legislation. These are difficult to quantify but would occur in the ordinary course of the business of these organisations. In view of the lack of difference made by the proposed changes to the practical situation, no expense with regard to guidance will be required. However, the failure to implement the Directive would still entail the danger of incurring the fines and costs described above.

**Option 3** will entail the costs of making, printing and publishing the codified legislation. It would also involve minor administrative costs in advising any parties affected by changes to the exemptions of these changes, and action they should take as a result. These latter costs would fall mainly on SEPA. Their magnitude would depend on the number of operators affected by changes to the exemptions. This is estimated to be very small: consequently the costs in this respect are likely to be negligible. This option, however, would obviate the dangers of costs arising from fines.

Both Option 2 and Option 3 admit of the possibility of making new exemptions. In both cases there are the administrative costs outlined above, and those of any guidance needed, as well as training costs in applying the new exemptions. This expense would largely be borne by SEPA.

*(ii) Issues of equity or fairness*

Any increase in regulatory costs or the costs of waste management arising from the changes are likely to be absorbed by the operator (which, in the case of exemptions, is also the waste producer) or passed on to those who use the services provided by the operator. They will thus be borne to those who contribute to, or occasion, the production of the waste. This is in keeping with the “polluter pays” principle, and provides an incentive to minimise waste production.

**Costs and benefits**

*(i) Sectors and groups affected*

The Scottish Executive believes that the changes on hazardous waste will have a direct negative effect only on operators affected by the change to paragraphs 3(c), 6(2), 28 and 38. These are operators who:-

- store waste oil prior to its use for fuel, in quantities in excess of 23,000 litres (and who do not have, in any case, either a waste management licence or a PPC permit covering the whole of their operation);
- and
- store more than 10 tonnes of samples without a waste management licence or PPC permit.

As discussed, the Scottish Executive does not believe the removal of paragraphs 42 and 43 will affect any existing operators, This view appears to have been confirmed by the lack of objections being received during the consultation process: therefore we believe this step will have no cost effect.

The intention of the change to paragraph 29 is to ensure that existing operators who are excluded from the effect of the Pollution Prevention and Control Regulations 2000 continue to be so excluded. It does not, therefore, change their regulatory position. Similarly, the change to paragraph 17 is for simplicity and legal certainty.

The new exemptions would affect those sectors which recover and recycle the wastes listed above, now and in the future. Any effect in this respect can only be positive.

(ii) *Benefits*

The principal benefit of the **codification** which forms the background to these changes is that it makes the law more accessible to waste operators and regulators alike. Mainly this issue is one of convenience: however, to the extent that this reduces the time taken to locate any particular provision it also has the potential to reduce legal fees, for example. Simplifying the regime could have the effect of encouraging operators into the recovery and recycling business.

Obviously the addition to Schedule 3 of the **new exemptions** increases the range of activities that operators will be able to undertake without having to pay the larger cost of obtaining a full waste management licence, and paying subsequent related fees. Application fees for full waste management licences for these kinds of operations range, depending on activity and scale, from £488 - £8,191, with an annual subsistence fee ranging from £179 - £19,355. There are also other fees for modification or variation, surrender and transfer. Exemption costs range from £0 - £739, the only other charges being annual fees ranging from £0 - £613.

The new exemptions will continue to require that the objectives of protection of the environment and human health should be observed, and the exemptions are framed to ensure that risks are minimised.

The principal benefit of applying the controls in the **Hazardous Waste Directive** to exemptions is that it would put an end to infraction proceedings and thus obviate the dangers of the costs described above. However, it would also ensure that these exemptions are available only in respect of relatively benign and small-scale activities. Larger-scale and more dangerous activities would have to be carried out under the more stringent controls of a full waste management licence. These changes would reduce the risk to human health and the environment.

The benefits for each of the three options have been identified below:-

- Option 1 – do nothing. There are zero benefits attaching to this option beyond the saving of the administrative costs of codification (which are difficult to quantify, but likely to be small). There are, however, disbenefits arising from failing to apply the full range of controls in the Hazardous Waste Directive to exemptions.
- Option 2 – codify but make few or no changes to exemptions for special waste. This option would have the benefits of clarity and accessibility discussed above, but would still have the serious disbenefits arising from failing to apply the Hazardous Waste Directive properly.
- Option 3 – codify exemptions and make changes necessary to bring those dealing with special waste into compliance with Community law. The option would give rise to the benefits of codification discussed above *and* the benefits of more careful controls on hazardous wastes, as well as avoiding substantial fines.

Options 2 and 3 allow for the making of new exemptions: these have the benefits discussed above.



### *(iii) Costs*

Should a business wish to continue to store more than 23,000 litres of waste oil, 1000 tonnes of returned waste or 10 tonnes of samples, this would amount to a requirement to operate under a full waste management licence or a PPC permit, rather than under an exemption. These costs are likely to be of four figures, depending on the kind of licence sought, opposed to an exemption, which in these cases is free.

Alternatively, an operator could simply cease to store more than the permitted maxima.

The consolidation of exemptions to the WMLR, and changes to exemptions dealing with hazardous waste, are intended to improve regulatory certainty and ensure that the full protection of the law on hazardous waste is extended to waste management operations, while correctly transposing the HWD. The actual changes required to do so are very small, and we do not anticipate that there will be many operators – if any – affected by them. If any operators are affected by the new limit values, they will have the option of keeping within the new limits, and thus remaining unaffected by the legislation. Where the amount of waste they store exceeds the new limits, we believe that the risk justifies the greater degree of caution which the stricter licensing requirements entail. At the same time the possibility of substantial fines for non-compliance with Community legislation is avoided.

New exemptions will have the administrative costs outlined above. Where an activity which was formerly carried out under a waste management licence is carried out instead under an exemption, this will have the effect of reducing SEPA's revenue in line with the figures stated above. At the same time, however, SEPA's charges relate to the amount of regulatory effort required. This is considerable greater in the case of waste management licences than in that of exemptions, so the new exemptions will have the effect of reducing SEPA's costs. Given that charges are based on cost recovery, the effects on SEPA's finance would balance out.

It is also the case that the Scottish Executive hopes that more operators will be encouraged to undertake the kind of recovery and recycling activities facilitated by the new exemptions. This would involve more regulatory effort for SEPA, but also a greater income. Again, this should balance out.

### **Small/Micro Firms Impact Test**

Prior to the issue of the consultation paper on which small businesses were invited to comment, we were not aware of any small businesses which would be affected by the new limits on activities dealing with hazardous waste, or with the removal of the exemptions in paragraphs 42 and 43. In particular, it is a very remote possibility indeed that any microbusiness would wish to store wastes in quantities greater than those we are now introducing and as there was no response to the consultation to conflict with this assumption, this view appears to be vindicated.

The new exemptions, on the other hand, are likely to be of assistance to small businesses in particular.

## **Business forms**

No new forms are to be introduced as a result of these changes.

## **Competition assessment**

The changes do not apply selectively. They do not, therefore, result in imposition of costs, or the availability of benefits, to some operators in any industrial sector, but not to others. The one possible exception is the increase in the exemption limit for composting from 400 tonnes to 1000 tonnes for farmers only. This is based, however, on the fact that farmers (and organic farmers in particular) are in a unique position regarding both the need to deal with biodegradable materials, and the opportunity to use them beneficially, within their own business.

## **Enforcement, sanctions, monitoring and review**

SEPA is the authority currently responsible for issuing, enforcing and ensuring compliance with waste management licences and PPC permits, as well as for registering and enforcing and ensuring compliance with exemptions. It will continue to be so, in exactly the same way as it is currently. There will be no change to any of the sanctions currently in force, or to SEPA's present charges for licences, permits, and authorising exemptions. The changes to the current regulatory situation are unlikely to result in major changes to SEPA's enforcement practices. There will, however, be the need for training for its officers in respect of the new exemptions described above. The Scottish Executive and SEPA will monitor and review the effectiveness of these changes.

## **RIA 2005/34**

## **Minister's Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister **ROSS FINNIE**

Date **8 November 2006**

## ANNEX

### THE WASTE MANAGEMENT LICENSING AMENDMENT (SCOTLAND) REGULATIONS 2006

#### Implementation And Delivery Plan

The main objective of the Regulations is to ensure that all exemptions relating to special waste and listed in Schedule 3 to the Waste Management Licensing Regulations 1994 (as amended), meet the requirements of the Hazardous Waste Directive with respect to limit values. Whilst doing this, the opportunity has been taken to review and add to the full list of exemptions. *They do not constitute a fundamental change in policy therefore there is no need for an implementation and delivery plan to implement them.* The codification itself does not result in a regulatory impact other than in cases in which changes have been made to existing exemptions or in the case of activities added to the list.

The Scottish Environment Protection Agency (SEPA) will remain responsible for the regulation and enforcement of the legislation.

These Regulations will come into force on 1 December 2006.

#### Post-implementation review

The Scottish Executive and SEPA will monitor and review the effectiveness of these changes.

The effect of these amending regulations will be reviewed when appropriate within 10 years of its coming into force date and will form part of an overall review exercise of the waste regime.

#### Summary and recommendation

*Option 3 within the RIA is recommended.* The Regulations codify exemptions and make changes necessary to bring those dealing with waste into compliance with community law. The main benefit of the codification which forms the background of these changes is that it makes the law more accessible to waste operators and regulators alike. Simplifying the regime could have the effect of encouraging operators into the recovery and recycling business.

*There would be serious disbenefits in adopting either options 1 or 2, arising from failing to apply the Hazardous Waste Directive to exemptions.*

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No benefits in doing nothing.	Possible saving of administrative costs of codification which were likely to be small.  <b><i>Failure to apply full range of controls in the Hazardous Waste Directive to exemptions would incur significant fines.</i></b>
2	Make waste legislation more accessible to regulators and operators.	Potential to reduce legal fees and encourage operators into recovery and recycling business.  <b><i>Failure to apply full range of controls in the Hazardous Waste Directive to exemptions would incur significant fines.</i></b>
3	<p>Make waste legislation more accessible to regulators and operators.</p> <p>Apply full range of controls in the Hazardous Waste Directive to exemptions.</p> <p>Addition of new exemptions to Schedule 3.</p>	<p>Potential to reduce legal fees and encourage operators into recovery and recycling business.</p> <p>Avoid incurring significant fines.</p> <p>The addition of new exempt activities to Schedule 3 which were formerly carried out under a full waste management licence will firstly have the effect of reducing operator costs as an exemption license is considerably cheaper than a full one. This in turn would reduce SEPA's revenue, however as the charges relate to the amount of regulatory effort required, and this is considerably greater in the case of full waste management licenses than in that of exemptions, the new exemptions will have the effect of <i>reducing</i> SEPA's costs. Overall, the effect on SEPA's finance would balance out.</p>