Department
for Environment
Food & Rural Affairs

A consultation on proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care

January 2018

Llywodraeth Cymru
Welsh Government

Executive summary

The case for action

1. The UK has the ambition to become a world leader in resource efficiency and resource productivity and to increase competitiveness. We aim to work towards our ambitions of doubling resource productivity and zero avoidable waste by 2050, maximising the value we extract from our resources and minimising the negative environmental impacts associated with their production, use and disposal.

2. Waste sites operating under a permit or exemption play a critical role in managing waste through the resource chain to achieve high levels of resource efficiency. Criminal activity and poor performance in the waste industry undermines this ambition by creating shortcuts for waste to be illegally dumped, disposed of cheaply or fly-tipped. This results in resources not being recycled or recovered and fed back into the economy to increase resource efficiency.

3. Waste crime has serious impacts on the natural environment through pollution to air, water and land. Communities suffer from odour, litter, dust, vermin, and fly infestations from poor performing waste sites or fly-tipped waste. Fires at waste sites located nearby to key infrastructure and local amenities can risk the closure of main roads, railway lines, schools and hospitals, as well as damaging amenity for nearby communities. The 25 Year Environment Plan[1] includes a commitment to seek to eliminate waste crime and illegal waste sites over the lifetime of the plan, prioritising sites of highest risk.

4. The economic cost of waste crime is significant. The Environmental Services Association (ESA) estimated that the cost to the UK economy in 2013 was between £568m and £808m[2] per year, and the cost to the English economy in 2015 was at least £604m[3]. The cost to the Welsh economy was at least £15 million in 2015[4]. The main economic costs are lost business revenues to the legitimate waste sector, loss of

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[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673203/25-year-environment-plan.pdf

[2] The Environmental Services Association (2014) Waste crime: Tackling Britain's dirty secret - http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

[3] The Environmental Services Association (2017) Rethinking Waste Crime - http://www.esauk.org/esa_reports/20170502_Rethinking_Waste_Crime.pdf

[4] Natural Resources Wales Waste Crime Review report (2017) (Eunomia). Available on request.

Landfill Tax through misclassification of waste and costs to the public sector of clearing abandoned waste sites and fly-tipped waste.

5. The causes of waste crime and poor performance are multifaceted and complex. The introduction of Landfill Tax contributed significantly to the increased volume of waste that has been re-used, recycled and recovered over the last 20 years. This has resulted in an 80% reduction of municipal waste being sent to landfill in the UK, with clear benefits to the environment and the tax payer. Criminals, however, have taken advantage of this increased cost of legitimate disposal of waste by collecting or storing waste at lower prices without any intention of recovering it or disposing of it correctly.

6. Criminally minded individuals are deliberately choosing to enter the industry because of the low barrier to entry, the ability to gain large profits in short time periods, and the low perceived risk of being caught and of subsequent enforcement action. Additionally, the industry still has too many poor performers who do not comply with the conditions of their waste permit or exemption, either deliberately, or through negligence.

7. Every person that deals with or produces waste, whether they are a multinational waste company or a householder, has a duty of care to make sure that waste is dealt with properly and does not end up being disposed of illegally. Where households do not check that the waste being taken away will be managed properly this makes it easy for criminals to offer waste collection services and then fly-tip indiscriminately.

Our approach

8. We are committed to tackling waste crime and poor performance. The UK government has allocated an extra £30 million to the Environment Agency for the next four years on top of the £23 million allocated in the 2015 Spending Review. This funding is specifically for tackling waste crime in England, to ensure the Environment Agency have the resources needed. We have given local authorities the power to issue fixed penalty notices for small-scale fly-tipping, as well as powers to seize and crush vehicles involved, and worked with HMRC to tackle Landfill Tax fraud. Sentencing guidelines for those convicted of waste crimes, including fly-tipping, have been tightened up recently.

9. In 2015, we published a consultation[5] on enhancing enforcement powers at waste sites. We have taken forward six legislative changes proposed in the consultation. Four of the proposals were implemented in October 2015[6]. The remaining two proposals will enable the regulators to secure a site against entry by physical means, and require

[5] https://consult.defra.gov.uk/waste/enhanced_powers_to_tackle_waste_crime/

[6] Environmental Permitting (England and Wales) (Amendment) (No. 3) Regulations 2015 (S.I. 2015/1756)

occupiers and landowners of a waste site to remove all the waste at a site not just the waste that was unlawfully deposited. These will be laid in Parliament and the National Assembly for Wales shortly.

10. We also published a call for evidence in 2015 on a number of measures to tackle waste crime and poor performance at waste sites. Following overwhelming support to take forward these measures, and further engagement with the waste industry, we have developed proposals that we intend to seek views on in this consultation. Since the call for evidence, we have listened to industry's views about other measures that can help tackle waste crime and poor performance. We are also seeking views on those through this consultation process.

11. The Department for the Environment, Food and Rural Affairs (Defra) is also developing a strategic approach to waste crime and fly-tipping as part of the Resources and Waste Strategy. This will set out further measures to: 1) prevent waste crime happening in the first place, by driving up standards and ensuring everyone plays by the same rules, 2) detect waste crime and take swift action by using data and intelligence across agencies and 3) deter illegal activity by taking speedy and tough enforcement action.

The focus of this consultation

12. This consultation seeks views on:

    a. Raising the standard of operator competence across all permitted waste sites by strengthening the regulator' assessment and enforcement abilities.

    b. Reforming the exemptions element within the waste permitting regime.

    c. Introducing a Fixed Penalty Notice for household Duty of Care offences for fly-tipping.

13. We invite organisations and individuals to send in their views and evidence to support and inform the future direction and policy options to tackle waste crime and persistent poor performers.

Contents

Introduction

This document is about tackling crime and poor performance in the waste sector. The consultation is divided into three sections. **Part A** focuses on raising the standard of operator competence across all permitted waste sites by strengthening the regulators' assessment and enforcement abilities. **Part B** is about reforming the exemptions regime within the waste permitting system. **Part C** sets out proposals for a Fixed Penalty Notice for household Duty of Care offences related to fly-tipping.

Two draft impact assessments estimating the costs and benefits arising from the proposals in Part A and Part B are published with this consultation. The Regulatory Policy Committee (RPC), an independent advisory non-departmental public body providing scrutiny on the evidence and analysis supporting the estimates of costs and benefits in regulatory proposals, considered these draft impact assessments. The RPC were not satisfied the impact assessments provided sufficient evidence to support the proposals, and required that they are further reviewed (see Sections 5 in Part A and B for more details). We will review the impact assessments to address RPC concerns alongside the consultation. We will also use the responses to the consultation to improve the analysis. Revised impact assessments will only be published alongside the final government response to the consultation once they have received a fit-for-purpose opinion from the RPC. No impact assessment was developed for Part C, as the proposals have no impact on businesses. However, Part C includes questions on the potential costs and benefits of the proposals.

The Department for the Environment, Food and Rural Affairs (Defra) and the Welsh Government are seeking views on the proposed approach and invite comments by 26 March 2018.

1. Purpose of the consultation

In 2015, Defra and Welsh Government published a call for evidence[7] setting out a range of measures in response to calls from the waste industry for government to do more to

[7] https://consult.defra.gov.uk/waste/enhanced_powers_to_tackle_waste_crime/

prevent waste crime. As stated in the 2015 government response[8], the majority of the respondents supported government taking forward the measures.

We have since worked with the regulators and the waste industry to develop the proposals to tackle crime and poor performance in the waste sector. We have tested the direction of the proposals with the waste industry in a workshop on improving the standard of operator competence in July 2016 and a workshop on reviewing the exemptions regime in February 2017.

In 2016, a Cutting Red Tape Review[9] also asked businesses, trade associations and industry experts to tell us where regulation causes barriers to growth, innovation and productivity in the waste sector. This review received responses about waste crime as well as regulatory burdens and the findings recognised that the two issues are closely related. Smart and proportionate regulation, effectively enforced, is essential in managing waste. It safeguards the environment and human health as well as protecting legitimate operators from the small minority who break the rules. The proposals in this consultation take forward part of the plan of action set out in the Cutting Red Tape Review to allow government to focus its resources on pursuing and prosecuting those who break the law and undermine investment by legitimate operators.

The consultation also sets out proposals to increase householder awareness on their waste duty of care, and introduce a Fixed Penalty Notice to provide local authorities with a more proportionate and less costly alternative to prosecuting in court householders who fail to pass their waste to authorised waste carriers.

We are now seeking views from the waste industry, local authorities and others on the proposals.

2. Geographic extent and definitions

This document and descriptions of law relate to England and Wales only.

In part A and B, references to ‘the regulators’ or ‘regulators’ are references to the Environment Agency (EA) and Natural Resources Wales (NRW). However, some facilities that operate under the environmental permitting regime are regulated by local authorities.

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466879/waste-crime-consult-sum-resp.pdf

[9] https://www.gov.uk/government/publications/waste-and-recycling-sector-cutting-red-tape-review

Therefore, where appropriate, local authorities are included in references to ‘the regulators’ or ‘regulators’.

In part C, references to ‘the regulators’ or ‘regulators’ are references to the EA, NRW and local authorities.

Unless otherwise stated, ‘the government’ or ‘we’ are references to both the UK government and the Welsh Government.

3. Audience

This consultation is primarily (but not exclusively) aimed at:

- operators of permitted and exempt waste facilities
- local authorities
- waste producers
- waste brokers and dealers
- waste carriers
- relevant professional and membership organisations
- consultants operating in the waste and resources sector

As these proposals extend to all operators of regulated facilities and exempt activities, this consultation will also be of interest to all businesses across England and Wales that hold an environmental permit or a registered exemption.

4. Responding to this consultation

Please respond to this consultation using the citizen space consultation hub at Defra https://consult.defra.gov.uk/waste/crime-and-poor-performance-in-the-waste-sector

By email to: Wastecrime.Consultation@defra.gsi.gov.uk or in writing to:

Waste Regulation and Crime
Defra
Area 2B, Nobel House
17 Smith Square
London SW1P 3JR

Please send responses for Wales:
By email to: waste@gov.wales or in writing to:
Waste & Resource Efficiency Division
Department for Natural Resources

Welsh Government
Cathays Park
Cardiff, CF10 3NQ

5. Duration

This consultation will run for **10 weeks**. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate consultation procedures. The consultation opens 15 January 2018 - The consultation closes 26 March 2018.

6. After the consultation

After the consultation, a summary of the responses to this consultation will be published and placed on the government websites at www.gov.uk/defra and www.gov.wales.

The summary will include a list of names and organisations that responded but not personal names, addresses or other contact details. However, information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes e.g. Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998.

If you want information, including personal data that you provide to be treated as confidential, please say so clearly in writing when you send your response to the consultation why you need to keep these details confidential. If we receive a request for disclosure under the FOIA, we will take full account of your explanation, but we cannot provide an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.

This consultation is being conducted in line with the "Consultation Principles" as set out in the Better Regulation Executive guidance which can be found at https://www.gov.uk/government/publications/consultation-principles-guidance.

If you have any comments or complaints about the consultation process, please address them to:

By e-mail: consultation.coordinator@defra.gsi.gov.uk, or in writing to:
Consultation Co-ordinator, Defra, 8A, 8th Floor, Nobel House, 17 Smith Square
London SW1P 3JR

About you

A wide range of businesses, organisations and individuals are involved with or take an interest in the waste sector. The questions below are intended to grasp this diversity and put your responses in perspective with those of other respondents.

a) What is your name?

b) What is your email address?

c) What is your organisation?

d) Would you like your response to be confidential?

e) Are you responding as or on behalf of:

a) an individual
b) a local authority
c) a business
d) another type of organisation
If you answered d) please specify

f) If you are replying as an individual, do you:

a) run your own waste business
b) work for a business or organisation in the waste sector
c) have an interest in this consultation for other reasons
If you answered c) please specify

g) If you are replying on behalf of an organisation or business, please specify whether your organisation or business:

a) manages waste as their main activity
b) manages waste as a secondary activity
c) supports the waste industry (e.g. trade body, consultancy)
d) has an interest in the waste sector for other reasons
If you answered b) c) or d) please specify

h) Do you, or does the business or organisation you represent carry out waste operations under an environmental permit?

a) No

b) Yes

If you answered yes, please specify

i) Do you, or does the business or organisation you represent carry out waste operations under a registered waste exemption?

a) No
b) Yes

If you answered yes, please specify which exemptions:

U1 U16 T4 T6 T8 T9 T12 D7 S1 S2 other

j) Are you, or is the business or organisation you represent registered as a waste carrier, broker or dealer?

a) No
b) Yes

If you answered yes, please specify

k) If you are in business or part of an organisation, where is it established?

a) England
b) Wales
c) Located elsewhere

l) How many staff are employed in your business or organisation?

a) Fewer than 10
b) 10 - 49
c) 50 - 249
d) 250 or more
e) I am replying as an individual

Part A: Raising the standard of operator competence at permitted waste sites

Part A of this consultation seeks views on proposals to strengthen the regulators' assessment and enforcement of operator competence to raise the standard of competence across all permitted waste sites.

1. Background

Operators of permitted waste sites need to be competent to run their site successfully and in a manner which protects the environment and human health. 'Competence' in this context means the ability to comply with the conditions of their permit and run a waste site effectively without negatively impacting the environment or local communities.

There is evidence from the waste industry and regulators that a lack of competence is causing poor performance across the sector. The reasons why operators do not hold the appropriate levels of competence are varied. Whilst certain operators deliberately choose not to achieve the levels of competence needed to run their waste site in line with their permit, other operators are ignorant about what levels of competence they need.

The regulators are required to assess that an operator has the appropriate level of competence needed to fulfil the obligations of their waste permit and operate their facility safely. When the previous waste management licensing system was replaced in 2007 by the Environmental Permitting Regulations (EPRs), all existing waste management licences automatically became environmental permits without any amendment, and without any reassessment of the operator's competence. Changes were made to the way that a waste operator's competence was assessed. The previous 'fit and proper person' test, as set out in past legislation, was replaced with a more light touch approach. Paragraph 13 of Schedule 5 to the EPRs sets out that a regulator must refuse an application for the grant of an environmental permit if the applicant cannot satisfy the regulator that they will:

- be the operator of the regulated facility; and
- operate the regulated facility in accordance with the environmental permit.

The Environmental Permitting Core Guidance[10] explains how the EPRs should be applied in practice and Chapter 9 of the guidance sets out the scope and application of operator competence. Using their powers under the EPRs, the regulator may refuse an application,

[10] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf

set permit conditions or take enforcement action. When exercising their powers, the regulators must have regard to the Core guidance. The Core Guidance advises that operator competence can be considered by the regulator at any time, whether as part of the determination of an application or during the life of a permit, and the appropriate action to take where the regulator finds inadequate operator competence.

The four elements of operator competence are outlined in the Core Guidance: 1) past operator performance, 2) management systems, 3) technical competence, and 4) financial competence/provision.

Since 2008 the regulators have strengthened the enforcement of certain elements of operator competence by including permit conditions when issuing or transferring a waste permit. There are currently about 11,800 environmental permits relating to operations at waste sites or installations. An estimated 9,200 permits now have a technical competence and a management system condition. However, around 2,600 permits that were issued before 2008 and not varied since do not contain such conditions. This has inadvertently created an imbalance in the waste permitting stock resulting in an un-level playing field.

All permits that were issued before 2008 would eventually be varied to include technical competence and management system conditions, but it is estimated that on the current rate of variation this would take around 20 years and so will not deliver the increase in competence standards across the sector needed now. Nor do we believe it is appropriate to vary all 2,000 permits in one go as the cost of the variations would necessarily be borne by operators, and scarce permitting expertise would need to be diverted from dealing with other permit applications.

2. The case for action

The most effective way to tackle poor performance is for the regulators to intervene at the permit application stage to ensure that operators have the appropriate level of competence in the first place or not issuing a permit if an operator cannot demonstrate the appropriate level of competence.

The regulators use Operator Risk Appraisal (OPRA) to determine the level of risk from an activity. An operator’s compliance record forms a significant part of their overall risk. Operators with a good record of permit compliance can expect to fall into band A or B whereas operators with serious or multiple permit breaches will fall into bands D, E and F.

Evidence from the Environment Agency (EA)[11] shows that, in England in 2015/16 465 (4%) permits in the waste industry had poor compliance with permit conditions and were rated band D, E or F. Of these, 203 are persistent poor performers who have been rated DEF for two years or more. In 2015, 69 (73%) of the serious pollution incidents caused by permitted waste sites were rated DEF. Of the 14 waste sites that were designated as sites of high public interest in 2015 by the regulators, 9 (64%) had a DEF rating. Evidence from Natural Resources Wales (NRW) shows that, in Wales 6.5% of the 603 permitted operational waste facilities in Wales were poor performing and rated bands D, E or F. Dealing with poor performing sites also costs the regulators substantially more than they receive in permit fees due to the need to respond to complaints and intervene more frequently to drive up standards.

Poor competence can also lead to a site operator failing to comply with the regulators' enforcement requirements and ultimately abandoning their site, leaving the government to clear the remaining waste. There are approximately 40 abandoned sites in England and Wales. The waste at abandoned sites is not stored or managed in accordance with the conditions of the permit, increasing the risk of fires which can involve large amounts of waste and burn for prolonged periods. The costs to the regulators and local services to deal with these fires are significant. For example, costs incurred by the London Fire Brigade in attending one site in London over the course of 2013 to 2015 were nearly £1m.

Changes to the Core Guidance in 2013 further clarified the ability of the regulators to refuse and revoke permits on operator competence grounds. This resulted in a reduction of 6% (217 to 203) of persistent poor performers from 2014 to 2015. Whilst this was clearly beneficial, it did not go far enough to strengthen the ability of the regulators to assess and enforce all four areas of competence to significantly raise the standard of operator competence and reduce the number of poor performing sites.

3. Our approach

The vast majority of respondents to the 2015 Call for Evidence[12] supported proposals to increase the standard of operator competence across the waste sector. To fulfil the commitment made in the 2015 government response we are proposing to raise the bar to hold and obtain a waste permit by strengthening the regulators' assessment and enforcement of the competence of waste operators. For each element of the four elements of operator competence we are proposing to:

[11]https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553539/Regulating_the_waste_industry_2015_evidence_summary.pdf

[12] https://consult.defra.gov.uk/waste/enhanced_powers_to_tackle_waste_crime/

1. **Past Performance –** widen the scope of offences, behaviour and relevant persons that the regulators can take account of when assessing competence.

2. **Management Systems** – require all permitted waste operators to manage and operate in accordance with a written management system.

3. **Technical Competence** – require all permitted waste operators to demonstrate appropriate technical knowledge of their waste site and provide details of the Technically Competent Manager.

4. **Financial Competence/Provision** – require the operator of any permitted site to be financially capable of running their waste business and provide financial security.

The 2015 government response[13] concluded that operator competence should be better enshrined in legislation. We have since discussed with the regulators which sections of the EPRs need to be amended to implement the proposals and which parts of the Core Guidance need to be clarified to better reflect the scope of the powers. This will tighten the regulatory regime whilst still enabling the waste industry the flexibility to operate. We will take forward the proposals through a combination of:

- enshrining certain elements in the EPRs
- amending the EPRs to create a level playing field for all waste permits
- amending guidance.

4. Proposals

4.1. Past Performance

The current situation

The regulators have the power in the EPRs to assess an operator's past performance to determine whether they are competent to hold a permit and effectively run a waste site. The Core Guidance sets out that the regulators can take into account an operator's compliance with regulatory requirements, such as enforcement or suspension notices, and convictions for relevant offences when assessing past performance. This assessment also extends to 'relevant persons', defined in the Core Guidance as being associated or in

[13] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466879/waste-crime-consult-sum-resp.pdf

partnership with the waste operation, for example the director, manager, secretary, or a corporate body.

Regulators take into account offences that are committed in relation to the environment or the operation of a waste site. The regulators have set out relevant offences that permit applicants and holders should be aware of (Table 1).

Table 1 List of relevant offences for permit applications for waste activities and installations[14]

Offence
Control of Major Accident Hazards Regulations 1999
Control of Major Accident Hazards Regulations 2015
Control of Pollution (Amendment) Act 1989: Section 1, 5 or 7
Customs and Excise Management Act 1979: Section 170 and 170B (for environmental/metal theft related offences only)
Environment Act 1995: Section 110
Environmental Permitting (England and Wales) Regulations 2016: Regulation 38
Environmental Protection Act 1990: Section 33, 34, 34B and 59
Food and Environment Protection Act 1985: Section 9
Fraud Act 2006: Section 1 (for environmental/metal theft related offences only)
Hazardous Waste (England and Wales) Regulations 2005
Hazardous Waste (Wales) Regulations 2005
Legal Aid, Sentencing and Punishment of Offenders Act 2012: Section 146
Pollution Prevention and Control (England and Wales) Regulations 2000
Proceeds of Crime Act 2002: Sections 327, 328, 329, 330, 331 & 332 (for environmental/metal theft related offences only)
Producer Responsibility Obligations (Packaging Waste) Regulations 2007
Scrap Metal Dealers Act 1964 (for environmental/metal theft related offences only)
Scrap Metal Dealers Act 2013 (for environmental/metal theft related offences only)
Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 & 25 (for environmental/metal theft related offences only)
Transfrontier Shipment of Waste Regulations 1994
Transfrontier Shipment of Waste Regulations 2007
Vehicles (Crimes) Act 2001: Part 1
Waste Electrical and Electronic Equipment Regulations 2006
Waste Electrical and Electronic Equipment Regulations 2013
Waste (England and Wales) Regulations 2011: Regulation 42
Water Resources Act 1991: Section 85, 202 or 206

This list includes offences specific to waste sites, such as not complying with the conditions of an environmental permit under the EPRs, or obstructing an enforcement

[14] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552882/LIT_8189.pdf

officer carrying out an inspection under the Environment Act 1995. It also includes offences such as using a waste company as a front for money laundering under the Proceeds of Crime Act 2002, or committing metal theft under the Scrap Metal Dealers Act 2013.

The Core Guidance states that regulators must take into account the terms of the Rehabilitation Offenders Act (ROA) 1974[15]. A person with a spent conviction must be treated as not having committed or been convicted of that offence. Whilst the ROA 1974 only applies to individuals, the Core Guidance states that corporate bodies should be treated the same way as an individual.

A person must declare previous unspent offences and previous compliance history when making a permit application or when applying to transfer or vary a permit. Intentionally providing incomplete or false information is an offence under the EPRs and a permit may be refused or revoked on that basis. If a person who is applying or transferring a permit has been convicted of a relevant offence or has poor compliance history, then the regulators assess the scale of an offence and previous compliance to establish the likelihood of re-offending and whether the operator is still competent to run a waste site. If the regulators determine that a person is still sufficiently competent then this information will be used by the regulators to target inspections and take early action if performance starts to decrease.

The case for action

A recent spot-check by the EA National Enforcement Service highlights the extent of operators who have been convicted of related offences. The review of 22 permits chosen at random showed that holders of three of the 22 permits (13.6%) were convicted of a relevant offence and would have their competence to run a waste site reviewed. An additional one permit would be considered high risk and a further seven would be medium risk, but are not able to be captured under the current definition of relevant offences. We, therefore, believe that the scope of relevant offences in the Core Guidance is not wide enough because it only relates to offences committed in relation to the environment and waste. Additionally, we are seeing a significant increase in the level of fraudulent behaviour in the waste industry. Certain waste operators falsify paperwork and records in order to misclassify waste, for example recording hazardous waste as inert waste in order to pay substantially lower landfill tax to dispose of it.

The call for evidence highlighted the potential impact of the changes to the ROA 1974 on the waste industry. In particular, a conviction that led to a fine is now spent within 12

[15] https://www.legislation.gov.uk/ukpga/1974/53

months rather than five years. As the majority of waste and environmental convictions lead to fines (approximately 90%), an operator who is a repeat offender and fined every year for harming the environment and human health could apply for an environmental permit without the regulators being able to take into account those spent convictions 12 months after their last conviction. In such cases, it may be likely that the operator will not comply with future permit conditions given their previous convictions and issues they had running a waste operation. In addition, the regulators can consider permit applications based on compliance history going beyond 12 months, in case poor past compliance did not lead to one or more convictions. We concluded in the government response that there is a case for reviewing whether relevant spent convictions for up to 5 years for waste operators should be considered when determining the suitability to hold a permit. After further consideration, we believe that there is a case for this and we have developed proposals that benefit the waste industry, whilst still respecting the rehabilitation periods for offenders.

Regulatory enforcement officers are being faced with an increase in abusive language and behaviour from certain waste operators, and an increasing number of incidents where operators block access to a site and relevant records. Whilst the steps for regulators to deal with this unacceptable behaviour are set out in their guidance documents[16, 17], and the powers of the EPRs enable the regulators to take account of behaviour, the Core Guidance does not make the scope of the power in EPRs sufficiently clear that the regulators can decide to not issue, transfer, vary or continue a permit because of repeated poor behaviour. Regulators are able to convict operators of unacceptable behaviour, which would mean that they would have a 'relevant offence' as above, but convictions are made only in the most serious of cases and the operator is able to continue to operate whilst the conviction is secured through the courts.

There is also growing evidence that operators, who are not compliant with the regulators' enforcement action or are convicted of an offence, will transfer their permit to another person or apply for another permit under another person's name. The other named person can often be related to the operator, for example, a friend, family member or partner. The operator is getting around the system and is still involved in the running of the site, for example taking decisions that influence the running of the site or receiving a share of the profits from the site. This is not being captured by the current definition of 'relevant person' in the Core Guidance, however, and the regulators are not able to enforce against this. Whilst the regulators already have the power to not issue, transfer or to revoke a permit if they believe the operator on the permit is not the actual operator, this does not capture the situations where the person may not be the actual operator anyway, but is making

[16] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552592/LIT_10503.pdf

[17] https://naturalresources.wales/media/680303/complaints-and-commendations-policy-january-2017.pdf

decisions on the running of the site. The regulators have recently successfully prosecuted individuals who were the controlling mind of a non-compliant waste operation after the permit has been issued. The person was making the key decisions about the management of the site but was not named on the permit and there are currently grounds for revoking or not issuing that permit.

Our proposals

As concluded in the government response, strengthening the regulators' assessment and enforcement of an operator's past performance will increase the regulators' knowledge to help make a more informed decision about whether an operator should be issued or continue to hold a permit. Doing so will raise the standards of competence at waste sites by preventing people who are not competent or able to fulfil their waste permit conditions from holding a permit or obtaining a permit in the first place.

We are proposing the changes below to strengthen the regulators' assessment and enforcement of past performance.

Widening the definition of relevant offences

To enable the regulators to gather the appropriate level of information about individuals, we are proposing to widen the definition of relevant offences. We want to enable the regulators to take account of offences, such as tax evasion or money laundering, that have been committed in relation to any sector, not just committed within the waste industry. To achieve this, we propose to remove the reference to 'environment or the operation of a waste site only' under the definition of relevant offence, so a relevant offence is widened to 'an offence that impacts on a person's ability to operate of a waste site'. To make this clear and transparent for permit holders and applicants, we propose to amend guidance by removing the limiting reference to environment and metal theft in respect of the following Acts of Parliament:

- Customs and Excise Management Act 1979
- Fraud Act 2006
- Proceeds of Crime Act 2002
- Scrap Metal Dealers Act 2013
- Theft Act 1968

We are also proposing to broaden the definition of relevant offences listed in Table 1 to include offences committed under the Serious Crime Act 2015 and the Public Order Act 1986. This will enable the regulators to take into account offences that are committed in relation to an organised crime group, and violent and threatening behaviour.

The process for an operator to provide information about their previous offences or how the regulators gather the information of previous offences will not alter from this change. This change would mean that during an application, transfer, variation or review of a permit, the regulators will assess against the broadened list of offences and will be able to make a more informed decision about whether a person is competent to run a site.

Q1. Do you think widening the definition of relevant offences will enable the regulators to make a more informed decision about operator past performance?

Q2. Do you think the Serious Crime Act 2015 and the Public Order Act 1986 should be added to table 1? Should offences in other Acts of Parliament be added to table 1?

Rehabilitation of offenders

After discussing with the relevant government departments we have concluded that it is not appropriate to amend the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to include waste operators. Waste operators are not comparable to other occupations listed on the Exceptions Order mainly because they are not involved with vulnerable persons. As set out in the call for evidence, under the Home Office's Scrap Metal Dealers Act 2013, in-line with section 7(3) of the ROA 1974, a local authority can take a person's spent convictions into account in exceptional circumstances. We do not believe that the regulators should always take into consideration spent convictions. Rehabilitation periods of offenders should be respected and spent convictions for the past 5 years should only be taken into account in exceptional circumstances. An example of an exceptional circumstance may be when an operator is a repeat offender fined every year for harming the environment and human health. Currently, such an operator would be able to apply for an environmental permit without the regulators being able to take into account those spent convictions if applying 12 months after their last conviction.

Q3. Do you think it should be made clearer that regulators can take spent offences into account in exceptional circumstances?

As the majority of waste permits are operated by corporate bodies, treating corporate bodies the same as individuals when assessing spent convictions has a significant negative impact on the waste sector. We believe that corporate bodies should be treated differently from individuals and the regulators should be able to consider the convictions of corporate bodies. The regulators will assess the scale of the conviction to establish the likelihood of re-offending and make an informed decision about the suitability to hold a waste permit.

Q4. Do you think that corporate bodies should be treated differently from individuals and the regulators should be able to consider the convictions of corporate bodies?

Poor behaviour

We are proposing to make it clearer that the regulators are able to take into account an operator's poor behaviour towards regulatory officers when assessing past performance. We understand that the definition of what counts as poor behaviour can be subjective, so to apply a consistent approach across all enforcement teams, we believe that guidance should be amended and aligned to the definition used by the regulators in their guidance documents. The EA's guidance, for example, defines poor behaviour as 'Behaviour or language (written, verbal or online) that we consider may cause staff to feel intimidated, afraid, offended, threatened or abused'. We are also proposing that preventing access to a site or relevant records or information is considered as poor behaviour. This change will make it clear that poor behaviour is unacceptable and can be taken into account when the regulators are deciding whether to issue, transfer or vary a permit.

Q5. Do you think that ensuring the regulators can take account of poor behaviour will enable the regulators to make a more informed decision about operator past performance?

Widening the definition of relevant person

We are proposing that the definition of 'relevant person' could be widened to capture operators who are not compliant with the regulators' enforcement action, or convicted of an offence, and then transfer their permit to another person or apply for another permit under another person's name. This change will seek to capture operators who the regulators consider are the controlling mind of the management of a site, for example because they are taking decisions that influence the running of the site or are receiving a share of the profits from the site. Whilst the regulators can already prosecute a person who is the controlling mind of a non-compliant site, a change of this kind could make it clear what action the regulators can take at an earlier stage, for example during permit application, if they are aware that an operator is the controlling mind of a waste site, despite the permit being transferred or set up in another person's name. Any widening of the definition of a relevant person is not about a person being guilty by association. We do not think it is proportionate to propose a relevant person is any person connected with a known operator, for example, a family member or partner.

Q6. Do you think that widening the definition of relevant person will enable the regulators to make a more informed decision about operator past performance?

The impact of this change

The proposed changes will not result in any additional burden on legitimate operators and there will only be minimal costs on the regulators.

Waste operators

We do not anticipate any direct costs to operators, as operators already have to provide information about offences when applying for or transferring a permit so this will not increase the burden of doing this. This change will result in certain operators not being issued with a permit or not being able to transfer their permit because they have been convicted of the broadened list of relevant offences, they have demonstrated poor behaviour or they are captured by the new definition of relevant offences. We consider, however, that these people should not be regarded as competent to operate a waste site.

Regulators

A permitting officer would have to spend additional time checking a permit application or transfer against the widened definition of relevant offences or any poor behaviour. We calculate the total cost to the regulators as £17,505 - £35,010 per year on an ongoing basis.

4.2. Management Systems

The current situation

The Core Guidance makes it clear that, in order to ensure a high level of environmental protection. Operators should have effective management systems in place. This applies to all permitted activities including waste management facilities. Under the EPRs, the regulators have the power to revoke a permit if an operator is considered not to have an effective management system.

A well written and implemented management system identifies how day to day activities need to be carried out in order to minimise the risk of pollution and therefore reduces the impact on the local community and the environment. Producing a written management system needs not be unduly onerous. As explained in the Core Guidance, the nature of the management system should be proportionate to the complexity of the operation at the site. Since 2008, the majority of permits that have been issued, or varied, contain a modern management system condition that requires the operator to:

> *"manage and operate the activities in accordance with a written management system that identifies and minimises risks of pollution, including those arising from*

operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints".

The generic risk assessments associated with permits are based on the assumption that the operator will have an effective management system. Guidance on developing a management system and what should be included is set out online[18] by the regulators.

The case for action

One of the most effective ways to address poor performance, safeguard compliance and incentivise continual improvement is to require operators to develop and implement a formal written management system. A well designed and implemented management system is an effective means for operators to monitor, manage and improve their performance.

Permits issued prior to 2008 did not include a condition that required a written management system, although some did require the operator to have a working plan (a rudimentary management system). Some of those permits have since been varied to include the modern condition but it is estimated that 2,500 of the 6,700 pre-2008 permits still do not contain the modern management system condition and 2,000 operators are operating without an adequate written management system. Placing these operators under a legally enforceable requirement would provide a means of delivering a step change in performance standards.

Regulators assess an operator's compliance against permit conditions and other associated obligations. In the absence of a modern management system condition in the permit, it is not possible to score an operator for poor site management unless it results in non-compliance with another condition. Consequently, sites without the condition may have fewer breaches of permit conditions recorded against them than those with permits issued after 2008. Clearly, this disadvantages operators with newer permits and results in under-reporting of poor performance among operators with older permits. Ensuring all permit holders are required to operate in accordance with a written management system would deliver greater environmental protection, fairer outcomes for good performers and provide a level playing field across the waste sector.

[18] https://www.gov.uk/guidance/develop-a-management-system-environmental-permits (England) and https://naturalresources.wales/permits-and-permissions/environmental-permits/environment-management-system/?lang=en (Wales)

Our proposals

The 2015 call for evidence sought views on whether the requirement for management plans and their content should be embodied in legislation, or whether they should be left to the regulators to determine. Following the consultation, government concluded that a consistent approach to the use of the management system is important, and that it would discuss with the regulators and industry how best to ensure a consistent approach across the sector. The proposal has been developed up as a result of those discussions and is set out below.

Clarifying the legal requirement for management systems

In order to overcome the legacy issues arising with many older waste permits which do not have a management system condition, we propose to amend the EPR to require all regulated facilities that undertake waste operations to be managed and operated in accordance with a written management system. The minimum content of which will be set out for the regulators to enforce. This would enable regulators to treat non-compliance of a management system in the same way they do a breach of permit condition and allow them to use the full range of enforcement options including, where necessary, enforcement or suspension notices. This change would remove the inconsistency between pre-2008 and post-2008 permits by placing all waste operators under a similar obligation to have a written management system. In doing so it would also address a significant cause of non-compliance and poor performance.

Q7. Do you think that it would be beneficial for all waste permit holders to operate in accordance with a written management system?

The impact of this change

Waste operators

Of the 2,000 sites that are operating without an adequate written management system, we have estimated that approximately 1,000 operators would need to develop and implement a written management system and a further 1,000 would amend their working plan to meet the modern format.

The estimated average cost of writing a management system is £3,000 and of reviewing and revising a working plan so it complies with the modern management system condition is £1,000.

Regulators

Any additional costs to the regulators will be minimal. There is existing guidance on management systems available to operators so there will be no additional development costs although it is likely minor amendments will be required. Site audits and inspections involve a range of actions which can include checking an operator's management system where one is in place. The regulator's charging scheme already includes an element in their annual subsistence charges for this work.

4.3. Technical competence

The current situation

All permitted waste sites need to demonstrate appropriate levels of technical competence. Under the EPRs, the regulators have the power to refuse or revoke a permit if an operator is not considered to have sufficient technical competence. Since 2008, all permits that have been issued, or varied, contain a permit condition for the operator to be technically competent through a government approved scheme. Prior to this, this requirement was set out in the Waste Management Licensing Regulations 1994.

Whilst all permitted sites need to demonstrate technical competence, the conditions of the permit, supported by the Core Guidance, sets out how all operators of waste sites need to demonstrate suitable levels of technical competence. It specifies the two government approved schemes that currently meet the criteria given by regulators. They are the CIWM/WAMITAB[19] scheme of individual operator competence and the ESA/EU Skills[20] scheme of corporate competence. Some large waste management businesses prefer to use the ESA/EU to develop in-house systems, whilst other waste businesses would chose to assess and develop individual employees through the CIWM/WAMITAB scheme or employ an external Technically Competent Manger (TCM) to provide advice on the management of the site. Operators need to keep up their technical competence throughout the life of the permit and demonstrate their continuing competence to the regulators.

The case for action

As set out in the 2015 government response, an appropriate standard of technical competence across the waste sector is essential to ensure that waste sites are being operated in a way that does not result in poor performance. There is, however, potentially

[19] Chartered Institution of Wastes Management / Waste Management Industry Training and Advisory Board

[20] Environmental Services Association / Energy and Utility Skills

a significant gap in the level of technical competence in the waste sector. This gap is a being caused because, whilst the regulators are clear that waste sites need to demonstrate technical competence, there is no longer a specific legal requirement in the EPRs that a waste site has to demonstrate their technical competence through a scheme approved by government. The regulators are able to use the full range of their discretionary enforcement powers, such as enforcement and suspension notices, on permits that contain a technical competence condition (permits issued or varied after 2008) because there is a legal requirement in the EPRs for the operators to fulfil the conditions of their permit. The regulators, however, do not have the option of using the full range of their discretionary enforcement powers on a permit that does not contain a technical competence condition (the majority of permits issued before 2008) and consider it a disproportionate use of their powers to always revoke these permits if the waste site is not demonstrating sufficient levels of technical competence. Always revoking a permit because of poor technical competence is not the best way to increase the performance across the waste sector and could lead to sites continuing to operate without a permit.

The regulators could vary a permit to include a technical competence condition after a site is inspected at a cost to the operator. It estimated that at the current rate of permit variation, it would take around 20 years to vary the pre-2008 permits to include a technical competence condition and that would not achieve the step change in behaviour from the whole sector needed now. It is not appropriate to vary all these permits at once and the majority of the costs will fall to operators.

Following the 2015 call for evidence, the scheme providers and the regulators are working together to review the time TCMs should be present on site. The time a TCM must spend on site currently depends on the type of permit, location and the regulatory compliance rating, although currently a TCM does not need to attend a site for more than 48 hours per week regardless of the type of operation or performance.

There is also significant evidence, however, that certain TCMs are not acting in a proper manner. Some TCMs are spread too thinly, providing cover at many waste sites at the same time, whilst other TCMs are known to provide poor or wrong advice to waste operators or operators are fraudulently using a TCMs credentials without the TCM knowing. If a TCM covers many waste sites, the operator of one of those sites can show the regulators that they meet suitable levels of technical competence because they have employed a TCM. The TCM will not have the time or ability to influence the running or compliance levels, in-line with the agreed time to be on a site, to ensure that the site performs well as they have too many other sites to cover. The management of the site is regarded as not being technically competent because the TCM is not providing effective technical input.

There is currently no process for the regulators to take action against TCMs who act improperly. Once an individual or company has gained a qualification through a

government approved scheme and becomes a TCM, the qualification cannot currently be taken away from the individual providing they keep up their training requirements.

There is currently also no requirement on a waste site to notify the regulator of the identity of their TCM unless specified in their permit condition. Knowing the TCM would enable the regulator to build up a national picture of TCMs against waste permits and cross reference the data against CIWM / WAMITAB qualifications or EU Skills records to prevent fraud.

Our proposals

Given the support in the call for evidence 2015, we are proposing changes to the EPRs and guidance to strengthen the regulators' assessment and enforcement of an operator's technical competence to address the current gap in technical competence and raise the standard of performance across the waste sector.

Clarifying the legal requirement for technical competence

We propose to create a level playing field for all permits by making it explicit in the EPRs that all permitted waste sites need to demonstrate technical competence through a scheme approved by government. This change will provide the regulators the flexibility to use the full range of their enforcement powers, such as enforcement or suspension notices, on all waste operation permits to ensure they are technically competent. It will create consistency across all waste permits and drive up the standard of technical competence in the waste sector by ensuring that all waste operators demonstrate their technical competence through an approved scheme.

Q8. Do you think that including an explicit requirement in the EPRs for permitted waste sites to demonstrate technical competence through a scheme approved by government will address the current gap in technical competence?

Notifying the regulators of the technical competence at a site

We propose to insert a requirement into the EPRs for operators to notify the regulators of the TCM arrangements at their waste site and when a TCM changes at the site. This will enable the regulators to build up a national list of TCMs against waste permit data and cross reference that against data provided by WAMITAB and EU Skills to detect fraud. We propose that the regulators ask for the full name and WAMITAB/CIWM reference of the TCM, or name of auditor and date of last audit for EU Skills, to be included in the waste return. We believe that including this requirement in legislation, rather than the regulator simply requesting this in a waste return, would help to ensure that all waste operators do provide this information. It will also enable the regulators to use the full range of their

enforcement powers to ensure operators provide this information as it would be a breach of a deemed permit condition in the EPRs.

Q9. Do you think that inserting a requirement into the EPRs for operators to inform the regulators of the TCM at their waste site will address the current gap in technical competence?

Action against technically competent managers acting improperly

The regulators and technical competence scheme providers are considering whether to introduce a system to address TCMs that act improperly by covering multiple waste sites or providing poor or wrong advice to waste operators. This could be done through a 'registration' system, where a TCM would need to have both a technical competence qualification and be registered as a TCM in order to be considered competent by the regulators. We are not proposing to create a whole new system or scheme and we will build on the current competence schemes. If a TCM acts improperly they could be de-registered, and their ability to work as a TCM would be suspended or removed entirely.

We believe that the responsibility of running a waste site ultimately lies with the operator and an operator should undertake due diligence when employing a TCM. A registration system will mean that the regulators will regard a waste site whose TCM has been deregistered as not being able to demonstrate technical competence.

We do not think it is appropriate to create a specific criminal offence in the EPRs to sanction a TCM who acts improperly. We believe that taking away TCMs' ability to work is a sufficient sanction to incentive positive behaviour. Additionally, creating an offence for TCMs could result in a situation where an operator may claim a defence that the TCM should be prosecuted instead of them and they could argue they are free from responsibility from the actions at their site.

Q10. Do you think the current competence schemes should be amended to include a TCM registration process to address the current gap in technical competence?

Impacts of this change

The proposed changes will impact the waste site operators, the regulators and the providers of the government approved schemes.

Waste operators

There will be a cost on a proportion of operators to become technically competent through an approved government scheme, although this is a cost that should currently be incurred by all waste sites. We estimate that the technical competence gap could be as high as

2,000 waste operators. Permits issued and varied after 2008 already have a technical competence condition in their permit and large scale operators are likely to have already undertaken a technical competence qualification through an approved scheme.

We understand that the majority of waste operators would train an employee to become technically competent through the individual WAMITAB/CIWM scheme, rather than the corporate ESA/EU skills scheme, as the operators who use the ESA/EU skills scheme are likely to already be technically competent. Based on current information, we have not been able to quantify what proportion of waste operators will employ a TCM, rather than training a current employee. It would be useful for industry to provide any information on this in order for us to determine the impact of this change on the waste sector.

Q11. Do you have any information about the proportion of waste sites that would employ a TCM, rather than training a current employee? Do you have any information about the proportion of sites not currently adequately covered by a TCM?

We have currently estimated that the cost to the waste sector is £3.45m - £3.65m to develop technically competent staff and £209k - £277k per year to demonstrate their continuing competence.

The regulators will undertake a risk based approach to implementing the technical competence element at sites. The regulators will focus on poorest compliance sites that are not competent within one year of the regulations coming into force and will expect all remaining sites to gain a technical competent qualification within two years.

There will be a minimal cost to operators to inform regulators who the TCM is at a waste site, as it should not increase the time it takes for an operator to complete a waste returns form.

Technical competence scheme providers

As set out in the Core Guidance, we are clear that technical competence qualifications could be delivered through any scheme approved by government and encourage other schemes to be developed. The two approved schemes have been running for around eight years so the infrastructure to deliver qualification is already in place through a network of course centres across the country. There would be an impact on the scheme providers as more operators need to gain a technical competence qualification, however the infrastructure is in place to deal with this increase and the operators will need to pay for the qualification so there is no financial impact on the scheme providers.

Regulators

We do not envisage that there will be any significant costs to the regulators to assess the additional number of operators that will undertake a qualification through an approved scheme. The regulators act as beneficiaries of the schemes, which is typical of independent third party accreditation. The regulators check that sites are using one of the schemes and accept the qualification as evidence of technical competence, therefore avoiding the need to get directly involved in the training and assessment process. The task of checking technical competence forms part of a list of a regulators compliance assessment that is carried out during inspection or audit and the process for checking technical competence is already accounted for in the subsistence fee during inspection of sites. There will also be a minimal cost to the regulator to include a TCM's full name, field and qualification number in the annual waste return and to check these returns to minimise fraud.

4.4. Financial Competence and provision

The current situation

All operators are expected to be in a financial position to comply with the obligations of their permit throughout the life of that permit. This includes during day to day operations and when returning the site to a satisfactory state prior to surrendering the permit. The majority of operators comply with their permit by cleaning up the site before applying to surrender the permit.

Whilst operators of landfill and mining waste operations are required to make financial provision for future closure and aftercare of their site, this is not the case for other waste operators.

The case for action

Operators need to ensure that the way they run their business complies with their permit. Failure to ensure adequate site infrastructure, pollution prevention measures, plant and equipment or staff training can all result in poor performance and permit breaches. It is therefore important to ensure that anyone applying for a permit has sufficient financial standing to meet these obligations. Where an operator does not meet this requirement there is a danger that the liability for dealing with any remaining waste falls to the landowner. This can occur when a company goes into administration, in cases of insolvency where the permit may be disclaimed as onerous property, or when the operator chooses to abandon the site and cannot be found. It can also be precipitated by a major incident if the operator is unable to fund the clean-up.

Abandoned waste sites can pose a risk to health, increase the risk of environmental damage and have a significant effect on local amenity including disruption to businesses in the immediate vicinity. The severity of any impact depends upon a number of factors but there is rarely a solution that does not ultimately involve removal of the abandoned waste. There have been a number of high profile cases in recent years involving operators abandoning sites and leaving behind large quantities of waste. On occasion, waste operators have adopted a tactic of stockpiling waste on a site before abandoning it to leave others to deal with their liabilities. These operators do not have to cover the costs of disposing of the wastes and can therefore undercut legitimate waste operators.

In addition, a number of sites have suffered waste fires which have required prolonged and repeated intervention by public services and caused concern and disruption to local communities. The cost to regulators and other public services has been substantial.

Responsibility for clearing abandoned sites where the operator cannot be traced normally falls to the landowner but in some instances the costs can fall on taxpayers, particularly where there is no recognised owner of the land.

Our proposals

The majority of respondees to the 2015 call for evidence supported the introduction of a financial competence assessment and some form of financial provision from waste operators. We have liaised with the regulators, industry and other key stakeholders to further develop proposals for financial competence and for financial provision.

Financial Competence

It is important that an operator's financial standing and credibility is assessed at the permit application stage to ensure they are capable of meeting their obligations under that permit. Those operators who are unable to demonstrate adequate financial standing should not receive a permit. It is also important that an operator's financial competence is maintained throughout the lifetime of a permit to ensure they are financially able to run a waste business.

In determining applications, regulators can undertake credit checks to consider whether the applicant is/remains financially able to meet the full obligations of their permit(s). Checks are only generally undertaken, however, where the regulator is informed that the applicant has been or is subject to insolvency proceedings. The same is true of checks during the life of the permit.

Improving these checks would provide greater assurance that applicants are financially able to meet the full obligations of their permit. We do not consider that increasing

permitting charges to resource the regulator to do this is sensible when other third party organisations are better placed to professionally provide efficient checks on operators.

The Core Guidance states that the operator of any regulated facility should be financially capable of complying with their environmental permit but also says that regulators should only consider financial solvency explicitly in cases they have reason to doubt the financial viability of the activity. We propose that regulators can require an independent report from a recognised[21] financial organisation to be submitted by the operator with all permit applications and transfers, and at any time during the life of the permit.

The purpose of the report is to rate the financial solvency and risks associated with the applicant's business model. It will provide the necessary insight into whether at the time of the assessment an operator is financially competent to fulfil their permit obligations. The regulator would be able to stipulate the format and content, which will be proportionate to and dependent upon the size and complexity of the facility and the operator's business. The information would inform the regulator's permitting and enforcement decisions. We also expect that the report will benefit some operators in their discussions with potential investors.

Q12. Do you think that an independent report that rates business solvency and risks will enable the regulators to confirm that operators are financially able to meet their permit obligations?

Financial Provision

It may be necessary to secure funds to cover liabilities that might arise in the event of an operator being unable or unavailable to meet their permit obligations. The majority of respondents to the call for evidence supported the introduction of some form of financial provision for non-landfill waste operations. Many respondees thought financial provision should cover both returning the land to a satisfactory state and foreseeable clean-up costs relating to the breach of a permit or environmental accident. A number of respondents urged the government to link the assessment of financial provision to the level of risk posed by a waste site.

Consideration was given to requiring operators to have insurance to cover the cost of removing waste from their site. After discussion with the insurance industry, however, it became clear that insuring operators against their own illegal actions will create perverse incentives whereby an operator could abandon their site in the knowledge that the cost of clean-up would fall to the insurer. In light of this, the insurance market is reluctant to offer insurance products to cover abandonment. The option of establishing an industry super fund was also considered. If all waste permit holders were to pay into the fund then

[21] Recognised by the Financial Conduct Authority or Prudential Regulation Authority

regulators would be able to draw down funds to pay for clearing abandoned sites. This option was discounted because the availability of such a fund may result in an abrogation of individual responsibility and, like an insurance scheme, actually incentivise abandonment. In addition, contributions to the fund might fall disproportionately on larger companies who would be the least likely to act in a manner that resulted in the fund being used.

There is not, therefore, a viable and effective industry-wide scheme that pools together operators' risk in a way that does not lead to perverse incentives. We believe that the most pragmatic approach is for operators to take out individual financial provision agreements, based on the nature of their operation or their performance as an operator, rather than the whole sector.

We believe there are significant benefits in regulators having the power to require operators to make financial provision. This would enable the regulators to use their full range of enforcement powers to ensure operators meet this requirement.

Requiring all waste site operators to provide financial provision would meet the policy objective to significantly reduce the number of waste sites being abandoned and costs to taxpayer to pay to clear abandoned waste sites. There would be a significant disincentive for an operator to stockpile waste and then abandon the site. It would also increase compliant behaviour across the whole waste sector, as operators would be incentivised to run their business in-line with permit conditions to avoid the risk of insolvency or going into administration. A number of respondents to the call for evidence suggested that the requirement to make financial provision should apply to higher risk operators rather than all waste site operators. Targeting financial provision in this way would lead to a reduction in sites being abandoned and reduce costs to the taxpayer to clear abandoned waste. It would also balance protecting the public purse against an increase in costs to waste businesses, as the number waste sites that are abandoned are a small proportion of the total number of sites.

Q13. Do you think that all waste site operators or only higher risk operators should be required to make financial provision?

If financial provision is targeted at only the higher risk operators the regulators will need a clear supporting framework which identifies relevant criteria to ensure this is done in a fair and consistent manner. There is no single indicator that an operator is likely to fail or that a site is likely to be abandoned. There are certain factors, however, that may indicate an increased risk of this happening or that the impact will be particularly severe. These may include factors such as waste type, market conditions, pollution potential, risk to local amenity, proximity to transport infrastructure, financial competence. Once the framework has been developed it will be included in guidance.

Q14. What risk criteria do you consider should be taken into account when determining which waste operations should be required to make financial provision?

Many respondents to the 2015 call for evidence expressed the view that the amount of financial provision should be based on the cost of returning the land to a satisfactory state to meet permit surrender requirements and to foreseeable clean-up costs resulting from a permit breach or environmental accident.

We consider that the financial provision must reflect the cost of clearing the maximum quantity of wastes allowed onto the site under the permit at any one time and disposing of that waste to landfill (or the most appropriate alternative if landfill is not an option). Using landfill as the assumed disposal route should ensure sufficient funds are available to achieve the clearance.

Many permits specify maximum throughput rather than maximum storage. In such cases, the amount of provision would be calculated using figures provided by the operator stating the maximum quantity of waste by type that they would hold on their site at any one time. These figures would be written into the operator's management plan and would be binding.

Q15. Do you think the proposed basis for calculating the amount of financial provision would be sufficient?

In exceptional circumstances we propose that regulators may extend the provision to include costs of responding to and completing remedial measures in the event of a permit breach or environmental accident where the risks indicate this to be justified. Guidance on 'exceptional circumstances' would be set out.

Q16. Do you think that regulators should be able to extend financial provision in exceptional circumstances?

We recognise that the inherent value of certain waste streams, for example scrap metal, which may make recovery of waste a viable option. However, the variability in market value for such wastes and the potential for additional costs to separate them for recovery hinder the use of a standard recovery rate when calculating the financial provision required. One option to reflect this inherent but variable value would be to provide a fixed percent reduction on the level of financial provision required for wastes with significant recovery values.

Q17. Do you think the level of required financial provision should be reduced for wastes with significant and demonstrable recovery values?

In order to apply financial provision, regulators would produce a standard costs model and associated guidance which operators would be required to follow to calculate the amount

of provision. Operators would calculate their liability and identify the mechanism they wish to use to make the provision. The operator and regulator would then agree the amount and mechanism. Both parties would need to periodically review the sum and mechanism to ensure they remain adequate and secure.

There are a number of established options available for making financial provision which are already used by landfill operators including performance bonds, third party cash deposits and escrow accounts. Any mechanism must ensure that funds are sufficient, secure (even in the event of insolvency) and available when required. Currently, landfill operators may choose to use insolvency proof bonds, or alternatively to secure or set aside funds through escrow or trust managed accounts. We believe that in common with the landfill sector, other operators should be able to agree with the regulator the most appropriate form of financial provision that meet these criteria.

Q18. Do you think that it is appropriate for operators to agree the mechanism for making financial provision with the regulator?

Managing financial provision funds

Landfill operators are already required to make financial provision for the long term maintenance and aftercare of their sites. They make financial provision using a variety of different mechanisms which the regulators check, agree and administer. The core role of regulators does not normally extend to the management of funds. Other organisations have more expertise and experience in this area. In addition, regulators exercising direct control of funds can be problematic with funds being lost when a company dissolves and disclaims their permit as onerous property.

We believe that there may be potential benefits from sub-contracting the holding and administration of financial provision to third party financial institutions. The regulator would retain responsibility for agreeing the amount of financial provision required and oversee legal agreements governing its use.

Q19. Do you think it is beneficial for financial institutions to be involved in the holding and management of financial provision funds? What are the opportunities and risks?

The amount of financial provision which a landfill operator is required to make must be adequate to discharge the obligations of the permit. This includes the closure and aftercare obligations and a sum for specified events such as a gas leak or leachate breakout.

In the absence of the operator, the regulator may intervene to carry out works allowed for under the financial provision agreement. In acting as the ‘operator of last resort’ it incurs costs which are not covered by the financial provision fund. These costs can be substantial

and may include actions such as the serving of certificate of default, the consideration of site specific pollution risks and tendering for consultants or contractors to remove pollution risks. These costs are inevitable and it seems unreasonable that they do not follow the ‘polluter pays principle’ and fall instead upon the regulator.

Q20. Do you think that alternative funding should be found to cover the costs of managing sites in the absence of the operator? How is this best achieved?

Ensuring financial provision funds continue to reflect liabilities

A landfill operator’s financial provision is calculated at the permit application stage and the cost profile, the timetable for building up and using the funds, is normally only reviewed against inflation or for a substantial permit variation. In line with guidance, the regulators do not carry out periodic checks to ensure that the operator is building and maintaining their funds as agreed, or charging an adequate gate fee (as required by the Landfill Directive) to cover future costs. There is, therefore, a risk that income is insufficient to fund essential pollution prevention works.

To ensure that the amount of financial provision available more accurately reflects future costs, regulators would need to seek more frequent updates from operators about the works carried out at their site and the funds available for future work so that this can be checked against projected costs. A more robust scrutiny of the funding available for future works will reduce the risk of those funds being insufficient.

Q21. Do you think that operators of landfill sites should report more frequently on current and projected works at their site and the state of their financial provision fund? Are there more effective ways of preventing shortfalls in funds for maintenance and aftercare?

Impacts of this change

Financial Competence

Waste operators

An operator will need to obtain an independent financial report when applying for a new permit or transferring a permit. Based on a small survey of business health check products offered by the financial services sector we expect that this will cost operators around £50 for each report. There were 1,167 applications for new permit and permit transfers in 2016 so the maximum total cost is estimated to be £58,000 per annum.

Regulators

Regulators will assess the independent financial report as part of the application determination process and this will need to be resourced. The total additional cost to regulators is calculated to be £26,000 per year.

Financial Provision

Providing regulators with the ability to require financial provision should reduce the number of abandoned waste sites. This would have positive impacts on the natural environment and society through less waste being abandoned. It would also have financial benefits for the taxpayer, as less public funds are used to clear abandoned waste. The cost to the waste industry will be dependent on whether financial provision is targeted or provided by all waste sites.

5. Estimated costs and benefits of proposals

An impact assessment was developed to estimate the costs and benefits on the economy, environment and society from the proposals to strengthen operator competence.

The main costs will be on waste site operators and the regulator. Specific costs are set out in each proposal. Operators will face transition costs to become technically competent, produce management systems and become familiar with the changes. There will also be an ongoing cost on operators to obtain a financial competence report. The main cost for regulators is the additional time to check financial competence reports in permit applications and transfers.

The proposals will reduce the number of poor performing sites. This will result in benefits to society from avoided environmental damage and decreased impacts on local communities. A reduction in poor performing site will also mean the regulators will have to deal with fewer pollution incidents from poor performing sites. There will also be non-monetised benefits from the proposals. Mainly, the proposals will result in the creation of a more level playing field where non-compliant waste operators will be less able to undercut legitimate and compliant businesses. Other non-monetised benefits include the reduction of health impacts from pollution incidents and the improvement in the reputation of the waste industry from less poor publicity of poor performing sites.

A number of assumptions were made when calculating the costs and benefits. The main assumptions were: estimating the proportion of waste operators impacted by the intervention, the costs to the waste site operators, and the decrease in the number of poorly compliant sites from the intervention.

The Regulatory Policy Committee (RPC), an independent advisory non-departmental public body providing scrutiny on the evidence and analysis supporting the estimates of costs and benefits in regulatory proposals, reviewed the draft impact assessment relating to Part A (operator competence) of the consultation. RPC have indicated the draft impact assessment requires more work to clarify the approach to calculate costs and benefits, as well as address technical analytical issues.

RPC questioned our approach to estimate the direct costs and benefits of the proposals to businesses, and in particular whether each of the considered options (i.e. option 1, current situation, and implementation of tighter regulations in options 2 and 3) were compared to the same baseline, as this would change the relative costs and benefits calculated for each option, and possibly lead to a risk of double counting. RPC also requested that a summary calculation sheet is added to detail the expected costs and benefits of option 3.

The post-consultation impact assessment will be revised to account for the consultation responses and address RPC comments. A revised impact assessment will only be published alongside the final government response to the consultation, once RPC provides a final sign-off.

Q22. Have you experienced an increase or a decrease in criminality and poor performance in the waste sector over the last few years? What are your expectations for the future if nothing is done to tackle the issue?

Q23. Overall, how effective do you think Options 2 and 3, as described in the impact assessment, would be to tackle criminality and poor performance in the waste sector? What is your preferred option?

Q24. Do you think that any of the proposals will impose additional costs on yourself or your organisation?

Q25. Do you think that the proposed analytical approach appropriately covers all potential costs and benefits that would arise from implementing the proposals?

Q26. Do you think that any of the costs and benefit covered in the impact assessment should not be accounted for in the costings?

Q27. Do you have any evidence that would support the calculation of benefits or costs of the operator competence proposals to business? Are you aware of any other sources of evidence that would improve the costings?

Part B: Reforming waste exemptions

Part B of this consultation seeks views on options for changing the waste exemptions to prevent them being used to hide waste crime**.**

1. Background

Waste exemptions are exemptions from the need for an environmental permit for waste recovery and disposal operations. Since exemptions were first introduced in 1994, the government has made extensive use of them to provide a light-touch form of regulation for small-scale, low risk waste management activities.

In England and Wales, there are 59 types of exempt waste operations available for the use (U), treatment (T), storage (S) and disposal (D) of waste. These are currently prescribed in Schedule 3 of the Environmental Permitting (England and Wales) Regulations 2016 (the EPRs[22]). Similar provisions exist in Scotland and Northern Ireland.

Apart from exemption T11 for the treatment of waste electrical and electronic equipment (WEEE), it is free to register one or more exemptions at a site. The registration is valid for three years and then automatically expires, and can be re-registered or "renewed" for another three years. Each exemption has conditions setting out the types and quantities of waste that can be managed. The conditions also set out what treatments can be carried out, how the waste must be stored, and which environmental protection measures must be complied with.

Registering an exemption is not the same as applying for and receiving an environmental permit. A permit amounts to "permission" from the regulators to carry a set of particular activities. In contrast, by registering an exemption, the establishment or undertaking is self-certifying that they have read and understood the conditions of the exempt activity and will comply with them. At the point of registration, the regulators do not assess whether the criteria defined in the exemption are met.

As a light touch alternative to permitting, waste exemptions have been successful. They are widely used with around 500,000 exemptions registered with the regulators across more than 100,000 sites in England and Wales. Exemptions are mainly registered by businesses but also by charities, schools, public sector organisations and government bodies. A large proportion of exemptions are registered at agricultural sites by farmers.

[22] http://www.legislation.gov.uk/uksi/2016/1154/contents/made

The Environment Agency (EA) in England and Natural Resources Wales (NRW) in Wales regulate 57 out of the 59 exempt waste operations, while local authorities regulate the two others[23].

Currently, the regulators inspect exempt waste sites when problems arise or there is intelligence of illegal activity. They also carry out some targeted campaigns of inspection of particular waste streams or industry sub-sectors. This approach is reflected by the fact that the administration of the public register and the inspection of exempt waste operations is funded through Defra and Welsh government grant-in-aid (GiA) alone. This is different from operations subject to an environmental permit, where applicants pay fees and regulated facilities are subject to annual charges based on factors such as the nature of the site and the compliance record. These charges fund ongoing compliance checking at these permitted waste sites.

Where inspections reveal that the rules laid down for an exemption are not being complied with at a particular site, the EA and NRW have a duty to remove this exemption from the public register. A waste operation which does not meet the conditions and limits set out in the exemption registered and does not have a permit is illegal, even if the exemption is still registered with the regulators.

2. The case for action

Respondents to the call for evidence on the extent of waste crime carried out at sites operating under registered exemptions raised a range of concerns about the ways exemptions are abused to hide illegal waste operations. The 2017 ESA Report[24] also recommended that waste exemptions should be reviewed so that they only cover 'genuinely low risk activities', and that funding is made available to support regular inspections. Additionally, as part of the 2016 UK government Red Tape Waste Review[25], some organisations raised concerns that exemptions allowed activities that overlap with standard rules permits.

Since the rules for exemptions were last comprehensively revamped in 2010, evidence has been building that some operators are carrying out illegal waste activities at exempt sites. Regulators, industry groups and trade bodies have all identified exemptions with

[23] These are T3 (treatment of waste metals and metal alloys by heating for the purposes of removing grease etc.) and T7 (treatment of waste bricks, tiles and concrete by crushing, grinding or reducing in size)

[24] http://www.esauk.org/esa_reports/20170502_Rethinking_Waste_Crime.pdf

[25] https://www.gov.uk/government/publications/waste-and-recycling-sector-cutting-red-tape-review

high potential for masking illegal activity such as stockpiling large amounts of undocumented or unsuitable waste and avoiding Landfill Tax.

In response to this, the EA and NRW both carried out broad ranging reviews of the exemptions regime in 2015 and 2016. As part of these reviews, the regulators discussed the regime with businesses and trade bodies, collected evidence from case studies and, in the case of the EA, conducted a site visit campaign.

2.1. Gathering evidence

The EA reviewed exemptions data held on their systems and consulted area staff through a call for evidence to establish which waste exemptions were the most at risk of masking illegal activity. Through this exercise and discussions with industry they identified 10 exemptions as being of most concern. These are:

- U1 - Use of waste in construction
- U16 - Use of depolluted end-of-life vehicles for parts
- T4 - Preparatory treatments (baling, sorting, shredding etc)
- T6 - Treatment of waste wood
- T8 - Mechanical treatment of end-of-life tyres
- T9 - Recovery of scrap metal
- T12 - Manual treatment of waste
- D7 - Burning waste in the open
- S1 - Storage of waste in secure containers
- S2 - Storage of waste in a secure place

Based on the findings from this exercise, the EA designed a campaign to visit 589 sites that had exempt waste operations registered across five EA areas. The campaign was designed to give a statistical analysis of the level of offending for each of the ten exemptions of concern and identify the key types of offences occurring at exempted sites. It focussed exclusively on exemptions registered at non-agricultural sites, as analysis showed that many farmers registered exemptions on a ‘just in case’ basis and many were not in use. Alongside the campaign, the EA compiled 48 case study examples of illegal activity at exempt sites and spoke to trade bodies seeking further views on the exemptions regime.

In Wales, NRW also conducted a review involving the Customer Care Centre, Permitting Service, Operations and Knowledge Strategy and Planning teams. Key external stakeholders and supporting organisations were contacted to gain an informal view of their concerns in relation to the existing waste exemption system. The review looked at current available data sources (incident recording system, illegal waste lists and exemption registration system), customer care data (recent survey on the registration system, enquiry data and referrals), incident investigations, compliance assessment reports and court cases to assess evidential links to waste exemption issues.

2.2. Findings

The EA campaign was completed in 2016 and the findings confirmed concerns raised by industry and trade bodies. Out of all the sites visited, 30% were found to be illegal or potentially illegal (meaning it was not possible to establish compliance). A further 22% of the sites did not use the exemptions registered (see Figure 1). Overall, the campaign identified that deregistration was required at 38% of the sites visited and a number of prosecutions and formal cautions were recommended. Of those sites that were illegal, the most common issues identified were the handling of waste not allowed by that exemption or in excess of the quantity limits allowed under that exemption.

EA officers also recorded concerns regarding the location or operation of some compliant sites. Site location and technical competence are not factors that are generally set out in exemption conditions as they require some level of inspection.

Additional evidence from EA case studies supported the findings of the campaign. In some cases, sites were found to be storing tens of thousands of tonnes of waste, 20 to 30 times more waste than their exemption limit allowed.

In Wales, the NRW review found that of the 46 suspected illegal waste sites where they were carrying out investigations, approximately 40% of these sites were linked to the abuse of exemptions. Of the sites that were assessed for the types of exemptions associated with the illegal activity, approximately two thirds of the illegal waste sites were connected with the abuse of an U1 exemption.

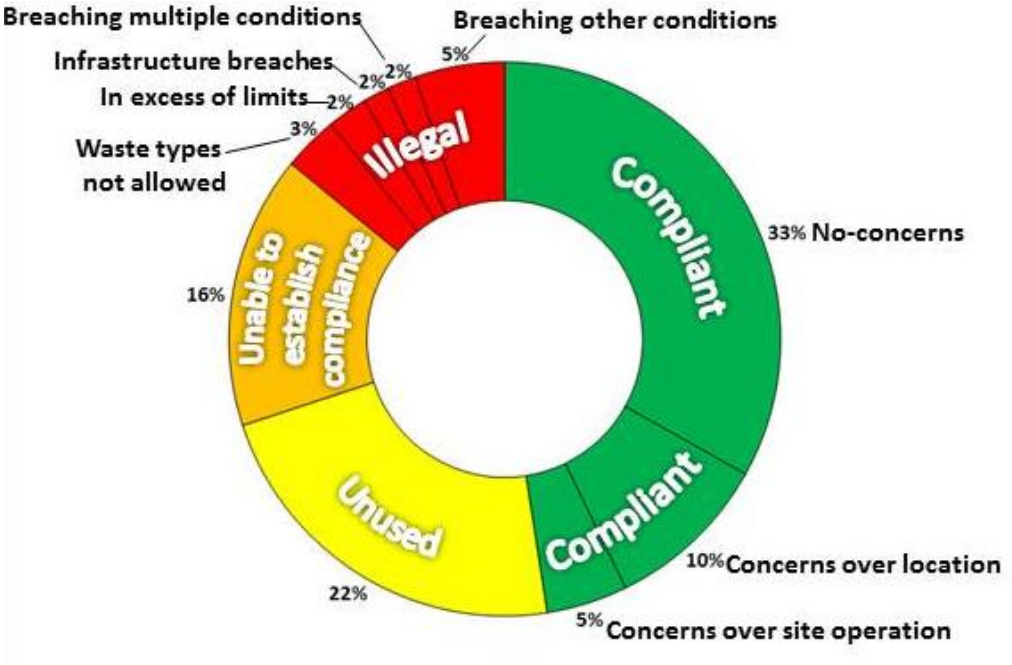

Figure 1 Compliance status of exempt waste sites visited as part of the EA campaign

2.3. Using exemptions to hide illegal activities

Some breaches of exemptions conditions are minor and technical in nature and operators that are committed to remedying them can be brought back into compliance. Other breaches are deliberate. In these cases, the registration of an exemption is effectively being used to avoid the costs of a permit and to hide waste crime. The act of registering an exemption provides an easy route into the waste industry with minimum barriers to market entry and low levels of regulatory oversight. It is also used to convey to customers that an operation is legitimate because it is registered with the regulators. This means that illegal waste sites with registered exemptions can 'hide in plain sight', operating alongside and directly competing with compliant waste sites with limited risk of discovery.

Illegal activities at exempt sites can cause serious pollution to the natural environment and misery for nearby communities in the form of odour, litter, dust, vermin, fly infestations and fires. Dealing with these incidents imposes significant costs on landowners, regulators and local authorities.

These illegal sites are also anti-competitive; undermining other businesses and acting as a disincentive to investment. Indeed, the waste industry has identified exemptions related illegal activity as a key problem that undermines legitimate businesses in the sector. The ESA report estimated that illegal activity at sites with registered exemptions costs the English economy £87m a year in lost turnover to the legitimate waste management industry and lost tax revenue.

It is therefore the government's intention to identify through this consultation, the most proportionate and cost-effective ways of tackling illegal waste operations at exempt sites, and to ensure that exemptions only cover low-risk activities.

3. Our approach

Following their reviews of the exemptions regime, the EA and NRW worked up a number of measures to prevent exemptions being used to hide waste crime. We have refined these through discussions with industry, including through a stakeholder workshop in February 2017.

The proposals developed for consultation through this process focus on four areas:

1. Prohibiting the use of waste exemptions in specified circumstances;
2. Making changes to the ten waste exemptions identified as being associated with the greatest levels of non-compliance and illegality;
3. Requiring additional information to support effective regulation of the regime;
4. Improving the process to register or continue an exemption.

To support this approach the proposals have been designed using a set of high-level principles as follows.

3.1. What should exemptions be for?

Exemptions are widely used and provide an important 'light touch' approach to the regulation of low risk waste activities. The consultation proposals are therefore designed in recognition that many businesses and organisations make wide use of, and comply with the conditions of exemptions and should therefore be able to continue to benefit from them.

Exemptions should be for:

- Waste producers who manage their wastes to maximise recovery and, where recovery is difficult, disposal at the place of production that minimises the impact on the environment.
- Supporting the waste collection and recovery market where the wastes and activities involved have been assessed as low-risk.

We want to encourage waste producers to properly minimise, assess, reuse or recover their own waste before it enters the waste management chain to comply with the waste hierarchy. Being exempt from permitting and associated costs encourages re-use and recovery on-site. Where that is not possible, waste should be properly segregated, assessed and prepared to go to the correct onward facility.

3.2. What should exemptions look like?

Exemption description and conditions should be clear, robust and enforceable. Lack of compliance should be easy to identify, to make enforcement easier and both operator and the regulators should be able to easily ensure that exempted sites are compliant. Therefore, exempt operations should have well-defined limits and conditions that are easily understood and measureable by both the operator and the regulators. Exempt activities should be of a small enough size, to allow the regulators to easily assess on site when waste quantities are stored or processed in excess of the exemption limits.

3.3. How should exemptions fit into the regulatory regime?

Waste exemptions should only be for low-risk activities that complement the permitting regime and do not undermine it. The risk arising from the exempt waste operations should be proportionate to the level of scrutiny the exemption scheme is funded for. Exemptions should not allow larger and more risky activities than those activities that have been assessed as needing permitting, in order to best control and monitor risks to the environment and human health.

3.4. What waste operations should not be exempt?

Wastes that have been identified as problematic to handle, whether that is to store, recover or dispose of at the place of production should not be included in exemptions. Wastes and activities that attract waste crime should also not be exempt. As waste criminals look at changes in waste material markets to identify where they can make the most profit, regular reviews of exemptions are necessary to ensure that new risks are addressed. Additionally, exemptions should not include waste types and treatment processes that require high-levels of technical understanding and competence.

4. Proposals

4.1. Prohibiting the use of waste exemptions in specified circumstances

Waste operators commonly register multiple exemptions at a single site, often with a view to using them together with other exemptions or permits at that site. This:

- intensifies waste operations and increases the risk profile of a site;
- makes it difficult to establish which activities are covered by the permit or by multiple exemptions, and so determine regulatory compliance;

- complicates monitoring and increases costs for the regulators;
- is common at sites of concern where illegal activity is discovered.

We have developed a number of proposals to address this.

Prohibiting the use of exemptions at permitted sites

The current situation

Operators often register exemptions on sites that already operate under a waste permit to increase the scope or scale of activities, for example to extend the area where they could store waste or to increase the amount of waste that could be stored.

The case for action

Some operators think they can register exemptions at permitted sites as an alternative 'work around' to varying their permit to expand their activity. This creates real problems for local areas in terms of noise, dust, smells and pest infestations. A quarter of the case studies of problematic exemptions submitted by EA area staff related to sites which had registered exemptions at a permitted site. The registration of exemptions at permitted sites complicates monitoring of the sites and increase costs for the regulators, as it is difficult to establish which activities are covered by the permit or by the exemption, and so determine regulatory compliance.

Our proposals

We propose changing the regulations so that, as is already the case for installations, an exempt waste operation cannot be carried out at a permitted waste operation. This would mean that exempt waste operations would not be able to be carried out within the permitted area that is designated on the approved site plan agreed as part of the permitting process. We propose that where an exempt waste operation has direct technical links with other activities carried under an adjacent permitted waste site, this exempt waste operation should also be included in the permit. This would for example be the case where the waste processed as part of a waste exemption is going to be subjected to treatment or is resulting from treatment at an adjacent permitted site.

An exception to the rule for adjacent exempt waste activities would be where the waste being stored outside the permitted area prior to treatment has been originally produced at that place (i.e. storage of waste at the place of production).

This measure would not affect places where exempt waste activities are carried out adjacent to permitted operations where there are no direct technical links to that permitted operation. As an example, a farm may continue to hold a permit for an anaerobic digestion facility in one part of the farm, together with a U10 exemption to spread milk for agricultural benefit elsewhere on the farm.

This measure would affect all sites that currently hold a combination of waste permits and waste exemptions. Permit operators would need to apply for a variation to their permit to be able to continue to carry out additional activities covered by the exemptions or stop them altogether (see section 7, Transitional provisions). No new exemptions would be registered at permitted waste sites from the point of implementation.

Q28. Do you think the proposal to restrict registration of exemptions at permitted waste operations would help tackle illegal activity and stop waste operators expanding their activity without appropriate controls?

Q29. Do you think that exempt waste operations that have direct technical links with other activities carried out at an adjacent permitted waste site should be included in the adjacent operator's permit?

Q30. Do you have further evidence on the current unlawful use of exemptions at permitted sites?

Q31. Do you think that the proposals will impose specific costs or bring benefits on yourself or your organisation?

Limiting the number of exemptions registered at a site

The current situation

There is no limit to the number of exemptions that can be registered at a single site. This means that an operator could register multiple exemptions for separate waste activities but actually use them to support a large scale operation that would be more properly regulated through a permit.

The case for action

Registering multiple exemptions at a single site can be used to hide large scale illegal waste activities. The EA found through its campaign that out of all case studies provided by its operational area staff, 36% involved sites with multiple exemptions registered. At these sites, the conditions of multiple exemptions were breached. Even when the limits of each individual exemption were not breached, multiple activities lead to significant quantities of waste on site thereby increasing the overall risk from the site.

At the same time, legitimate operators often register exemptions they do not need or use. This is particularly true for agricultural operators and EA data shows that an average of 6.3 exemptions are registered at sites processing agricultural waste (non-agricultural waste sites register on average 1.8 exemptions).

Farmers carry out a wide range of waste related activities and in some cases make full use of a large number of exemptions. However, registration of multiple exemptions on a 'just-in-case' basis makes it difficult for regulators to identify where they should direct and prioritise compliance inspections.

Our proposals

We are considering four options for addressing these issues.

- Option 1: Clarify the regulations so that it is clearer that where more than one exemption is registered at a site, then the storage limit for each waste type is limited to the lowest limit set out in any one exemption. For example, registering an exemption allowing 50 cubic metres of wood to be stored together with another exemption allowing 60 cubic metres of wood to be stored would result in an overall storage limit of 50 cubic metres (and not 50 + 60 = 110 cubic metres).

- Option 2: limit the total number of exemptions that can be registered at any non-agricultural waste site concurrently to three and at agricultural sites to 8.

- Option 3: Prohibit the registration of specified exemptions at the same site where their registration together is deemed to commonly provide a cover for illegal waste activities.

- Option 4: Any combination of Options 1, 2 and 3.

Q32. Overall which of the proposed options do you support and which do you prefer?

Q33. Are there any particular exemptions that you think should not be registered at the same site under option 3?

Q34. Do you have further evidence on the registration of multiple exemptions at single sites to hide unlawful activities?

Q35. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

4.2. Changes to specific exemptions

The following proposals set out options for reducing illegal activities associated with each of the exemptions of concern listed in section 2.1. For each exemption, the broad options available are:

- **Option 1** - **Keep the exemption with no changes to its conditions.** This may be considered the best option where evidence is presented that the exemption provides wide benefits in its present form, and that these outweigh the risks of illegal activity associated with it, or would be lost under options 2 and 3.

- **Option 2** - **Change the exemption, amend its conditions**. The option sets out changes designed to make it easier to spot and stop illegal activities while allowing low risk legitimate activities to continue. The changes proposed under this option differ for each exemption of concern, but include reducing the quantity of waste that can be accepted annually and reducing the amount of waste on site at any point in time. They also include limiting the types of waste that can be handled and tightening up the environmental controls such as where and how waste must be stored and/or treated. Annex 1 outlines the overarching design principles we have used to inform the changes proposed for each exemption under this option. The principles cover our approach to making changes to the:
    - Quantity of waste that can be processed on site
    - Quantity of waste stored on site and the time it is stored for
    - Types of waste that can be handled
    - Application of fire prevention controls
    - Revision of conditions so it is easier to assess compliance
    - Improvements to waste descriptions

    The detailed changes to conditions envisaged for each exemption in line with these principles are set out in Annexes 2 to 9. In each of these annexes, Part 1 shows the link between specific issues with the exemption and changes proposed for the exemption. Part 2 sets out the specific changes to exemption conditions that we are proposing under this exemption. Option 2 is not considered for Exemption U16.

- **Option 3 - Remove the exemption and require activities it covers to be carried out under a permit**. This may be considered the best option where the more stringent compliance checks required by an environmental permit could be the most effective way of preventing illegal activity. This option is not considered for Exemptions D7, S1 and S2.

The case for action and options considered for each exemption is set out below.

Exemption U1 - Use of waste in construction

The current situation

Exemption U1 is for the use of up to a total of 5,000 tonnes of specified waste types in construction. The latest data shows 46,745 U1 exemptions registered in England and Wales.

The case for action

Table 2 shows what the EA estimate the picture for compliance with U1 could be across England based on their targeted campaign and other information collected during their exemption review.

Table 2 Estimated compliance picture for U1 across England

% compliant	% illegal / potentially illegal	% not in use
50	30	20

Based on the available evidence, a significant proportion of registered U1 exemptions are not used appropriately. Often U1 exemptions are used unlawfully to dispose of unsuitable, sometimes hazardous waste. In some cases, operators have misdescribed waste unintentionally. But in many cases the deposit of inappropriate wastes indicates purposeful abuse of the exemption to avoid the costs of landfill disposal.

Concerns have been raised that some waste operators search for opportunities to use a U1 exemption to discard their waste by offering to build on or fill holes in land for free or even by paying the landowner to do so. Wastes are often deposited in excess quantities that amount to disposal and are of poor quality.

Once construction work has been completed, it is difficult for the regulators to establish whether or not the operator complied with the U1 rules, and whether or not the waste was suitable. Almost a quarter of all sites visited during the EA's field campaign had completed their construction work before the EA compliance check. If these sites were illegally depositing unsuitable and / or contaminated waste, any negative environmental impact could be observed after many years.

Case study: Use of unsuitable waste under a U1 exemption

U1 exemptions are registered for a wide range of inappropriate uses. As an example, the owner of a waste management and haulage firm was ordered to pay over £100k for waste offences after being found guilty of the illegal use of waste at two sites with registered U1 exemptions.

At the first site, a U1 exemption had been registered for the construction of a 250 m long bund using soil/stones and other inert materials. When the EA visited the site, it found the 8,000 tonne bund contained materials that should not have been present including pieces of glass, metal, wood, rubber, wire, steel and asbestos. Much of the waste material used was unsuitable for construction of the bund.

At the second site, up to 2,500 tonnes of waste material had been used to maintain and repair tracks and a farm yard. The surface appeared to comprise appropriate materials but on inspection plastic pipes, fragments of metal, rubber, green waste, silicone cartridges, fabric and wood were discovered.

Commenting on the case, the EA said: “The defendant is an experienced waste operator and knew the types of wastes that were not acceptable for deposit at these two sites. He was motivated by profit and saved a considerable amount of money by not taking this waste to a landfill for safe disposal”.

Our proposals

We propose the following options for exemption U1:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 2 (Part 2)
- Option 3: Remove the exemption and require activities it covers to be carried out under a permit

The design principles that we used to develop these options can be found in Annex 1.

Note that Option 2 restricts waste types and activities in relation to specific construction activities rather than specifying an overall limit for the exemption (see Annex 2 for further information).

Q36. Do you have further evidence on the current unlawful use of this exemption?

Q37. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q38. Which of the proposed options for exemption U1 do you support and which do you prefer?

Q39. Under Option 2 do you think the U1 exemption should allow any additional types of construction activities beyond those listed in Annex 2? If so please describe the activities together with the waste types and quantities needed.

Q40. Under Option 2 do you think the quantities of waste allowed for each specified construction activity are appropriate?

Q41. Under Option 2 are the waste types listed sufficient to carry out each specified waste activity?

Exemption U16: Use of depolluted end-of-life vehicles for vehicle parts

The current situation

Exemption U16 is for the refurbishment of vehicles using vehicle parts dismantled from end-of life vehicles (ELVs) that have already been depolluted (with no remaining liquids or hazardous components). The latest data shows 1,318 U16 exemptions registered in England and Wales.

The case for action

None of the sites using a registered U16 exemption were found to be compliant when the EA carried out its targeted campaign visits. Based on this and other evidence collected during their exemption review, the EA estimate compliance with this exemption is very low. Industry trade bodies tell us that very large numbers of ELVs are dismantled illegally every year, with a significant proportion occurring at sites in relation to which an exemption is registered and which process more vehicles than they are allowed to under the U16 exemption. This exemption may also be used by organised criminal groups or gangs to carry out significant mass dismantling of non-depolluted ELVs to sell the parts. This situation significantly increases the risk of pollution and distorts the market for second-hand vehicle parts. In line with other exemptions, the EA estimate that around 22% of U16 exemptions are not in use.

Our proposals

Given the level of illegal activities occurring under this exemption and the fact that no compliant site was found during the campaign, we do not consider that making amendments to the U16 exemption would deter waste crime. On this basis, our proposals for exemption U16 are:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Remove the exemption and require activities it covers to be carried out under a permit

Q42. Do you have further evidence on the current unlawful use of this exemption?

Q43. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q44. Which of the proposed options for exemption U16 do you support?

Exemption T4: Preparatory treatments (baling, sorting, shredding etc.)

The current situation

Exemption T4 is for low-risk storage and treatments in preparation for further processes. The latest data shows 8,345 T4 exemptions registered in England and Wales

The case for action

Table 3 shows what the EA estimate the picture for compliance with T4 could be across England based on their targeted campaign and other information collected during their exemptions review.

Table 3 Estimated compliance picture for T4 across England

% compliant	% illegal / potentially illegal	% not in use
63	17	20

T4 exemptions are sometimes used to cover inappropriate recovery activities. There are also instances where operators treat wastes not allowed under this exemption or in volumes beyond the limits set, as is the case for most of the exemptions of concern. In addition, the storage of combustible wastes under this exemption can increase fire risks. The absence of drainage and infrastructure requirements can also increase the risk of water pollution, notably in relation to the processing of plastics and rubber.

The T4 exemption can presently be used to carry out large scale activities, including recycling activities, without a permit. This is out of line with other regulatory controls as some of the throughputs and storage limits set out for this exemption are in excess of standard rules and even bespoke permits. If the maximum 7-day processing capacity for all wastes was reached, a T4 site would be processing over 900,000 tonnes per year. The limits for specific waste types are also high, going up to 260,000 tonnes per year.

Case study: abuse of a T4 exemption

T4 exemptions provide for a range of low risk storage and treatment activities but are sometimes used illegally for activities such as the treatment of mixed commercial waste. In one instance a company registered a T4 exemption for its skip hire business and was sorting and collecting mixed waste at the site. When the EA visited the site they found that the operator was stocking large quantities of a wide variety of wastes not allowed under this exemption, including batteries, tyres, wood, mixed commercial waste and soil. They also observed that drums were leaking oil onto the soil.

The company was fined £6,660 and had to pay costs of £9,768, a victim surcharge of £120 and compensation of £9,350. The company's director was also fined £4,140 for two offences of consenting to the company's illegal waste operations.

Our proposals

We propose the following options for exemption T4:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 3 (Part 2)
- Option 3: Remove the exemption and require activities it covers to be carried out under a permit

The design principles that we used to develop these options can be found in Annex 1.

Q45. Do you have further evidence on the current unlawful use of this exemption?

Q46. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q47. Which of the proposed options for exemption T4 do you support and which do you prefer?

Exemption T6: treating waste wood and waste plant matter

The current situation

Exemption T6 is for the low-risk treatment of non-hazardous wood waste. The latest data shows 24,806 T6 exemptions registered in England and Wales.

This exemption is used in a number of ways for low-risk activities:

- It is used by tree-surgeons or land managers (e.g. farmers and other landowners such as estates and country parks) to chip waste from natural wood at the site of production prior to collection (to make it easier to transport) or to use as a mulch on the site[26].
  It is also used by land managers[27] (e.g. farmers and other landowners such as estates and country parks) to bring their own waste to a central site where they chip it either to send on for recovery elsewhere or, if naturally occurring, for re-use somewhere else on their land.

- It is registered at sites that only take natural wood wastes that have not had any treatments and chip mainly for heat recovery in a combustion plant that is not subject to the Industrial Emission Directive, or for use as an animal bedding.

- Farmers also register T6 exemptions for chipping natural wood wastes to supply biomass boilers.

- Pallet recovery businesses use a T12 exemption to manually sort and mend broken pallets for re-use and then chip the wood that cannot be re-used using a T6 exemption.

The case for action

Table 4 shows what the EA estimate the picture for compliance with T6 could be across England based on their targeted campaign and other information collected during their exemptions review

Table 4 Estimated compliance picture for T6 across England

% compliant	% illegal / potentially illegal	% not in use
25	10	65

The EA has collected considerable evidence of T6 related non-compliance, including by organised criminal groups. Based on campaign visits, it has also identified that the T6 exemption has the highest proportion of registrations not in use. The large percentage of

[26] https://www.gov.uk/guidance/waste-exemption-nwfd-2-temporary-storage-at-the-place-of-production--2

[27] https://www.gov.uk/guidance/waste-exemption-nwfd-3-temporary-storage-of-waste-at-a-place-controlled-by-the-producer

exemptions not in use could be because they have either been registered on a ‘just in case’ basis or for a one-off activity (e.g. by a tree surgeon as described above).

In addition to the low risk activities described above, T6 exemptions are used by businesses offering a waste management service to others and taking in mixed wood waste streams constituted of untreated and treated non-hazardous wood wastes. These types of sites mainly rely upon the gate fee and market forces for onward recovery through combustion. The reliance upon market demand for waste for fuel often results in stockpiling of wood and has led to several major incidents involving fires that have threatened or closed down major infrastructure.

Case study: the impact of storing wood waste in excess of storage limits

Once a T6 exemption is registered waste wood can be stockpiled quickly, leading to real risks of a waste fire. In May 2014, an operator in Thoby Priory (Essex) commenced operations for a waste wood facility operating under a T6 and five other exemptions. Despite repeated visits from the EA and the fire service providing guidance on how to manage the waste wood and comply with the exemptions, the site quickly exceeded its storage limits. Just three months later, in August 2014, a fire started. At this point there was approximately 5,000 tonnes of mixed waste wood on the site, ten times the T6 exemption limit.

Nine fire appliances attended at the peak of the blaze and firefighters had to dampen down neighboring businesses which had flammable material and asbestos stored. The smoke from the fire affected nearby residential communities. Fire water was not contained and polluted ten kilometres of river and watercourses: 2,500 fish were killed as a result. The fire burnt for months with an Essex Fire and Rescue appliance on site until October. Ash was still smoldering and burning nine months later.

The EA spent £223,000 which included 40 officers working over 1,000 hours dealing with the incident. Brentwood Council spent £3,000 on air monitoring. Clean-up costs reached £250,000. A 1.2km pipe was installed to take away the contaminated water to a private sewer, with £30,000 spent on road-tankers.

In May 2016, Chelmsford Crown Court sentenced the operator to 15 months in jail suspended for two years. In addition to the suspended sentence, the operator was banned from being a company director for ten years.

Indeed, stockpiling of waste in excess of storage limits was mentioned in every T6 case study example collected in the review of exemptions. The majority were listed as “High Risk Fire Sites”, which are sites that have been identified by the EA as having the potential to catch fire and cause localised disruption. Issues of site abandonment and concerns over the potential for illegal export were also raised in several examples. There were two examples of organised crime groups being involved in non-compliance with T6 exemptions. The EA also identified that poor handling and storage of wood under this

exemption has in some instances led to significant dust and noise nuisance for local communities.

Non-compliance with T6 conditions is of particular concern because of fire risk. However, the level of exemptions not in use makes it extremely difficult for the regulators to pinpoint those sites that are operating and therefore identify those posing such a risk.

Concerns have been raised that wood wastes, especially where they come in mixed loads, are not described properly, meaning that non-hazardous and hazardous waste woods (which are prohibited under a T6 exemption) are mixed together. Operators may rely on visual inspection alone to segregate the wood, and this type of assessment is often not adequate to distinguish between non-hazardous and hazardous woods. As the wastes have been misdescribed, they then end up in uses that are not permitted. In particular, they may be burnt in combustion plants as a fuel not designed to burn at high enough temperatures and residence times to eliminate toxic emissions to air. They may also end up being used for purposes such as woodchip paths and animal bedding, which could pose a risk to animal and human health.

As with T4, the conditions set out for the T6 exemption appear to be out of line with other regulatory controls for the waste it deals with. At the moment the standard rules permit for treatment of waste wood (SR2015No.23) only allows 5,000 tonnes per year. In contrast, a T6 exemption at full processing capacity allows for the treatment of 26,000 tonnes of wood waste. This disparity means that those operating under a permit are disadvantaged as they are more heavily regulated, and are notably required to complete a Fire Prevention Plan for combustible wastes.

Our proposal

We propose the following options for exemption T6:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 4 (Part 2)
- Option 3: Remove the exemption and require activities it covers to be carried out under a permit

The design principles that we used to develop these options can be found in Annex 1.

Q48. Do you have further evidence on the current unlawful use of this exemption?

Q49. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q50. Which of the proposed options for exemption T6 do you support and which do you prefer?

Exemption T8: mechanical treatment of end-of-life tyres

The current situation

Exemption T8 is for treating tyres to prepare them for further processes. The latest data shows 1,404 T8 exemptions registered in England and Wales.

The case for action

Table 5 shows what the EA estimate the picture for compliance with T8 could be across England based on their targeted campaign and other information collected during their exemption review.

Table 5 Estimated compliance picture for T8 across England

% compliant	% illegal / potentially illegal	% not in use
42	16	42

Case study: stock-piling of tyres under a T8 exemption

Where waste tyres are brought onto a site with little consideration of their onward destination stockpiling beyond exemption limits can quickly become a concern. In this example significant activity at a tyre export site with a registered T8 exemption prompted the EA to investigate. They found around 30,000 tyres had been accumulated creating a significant fire risk, with rail tracks close to the site prompting concerns of a potentially serious incident. The T8 exemption allows that a maximum of 1,200 commercial tyres, or 4,800 car or van tyres can be treated every week.

An enforcement notice to remove the tyres from the site was issued by the EA, but the situation at the site did not improve. As a result, the director of the company and the company were prosecuted and each ordered to pay a £2,000 fine and £3,750 costs.

The evidence collected by the EA suggests that some businesses are storing and processing tyres under a T8 exemption in much higher quantities than allowed under the exemption (so as to maximise gate fee revenues) with little attention paid to treatment and onward recovery. This creates two major sets of issues:

1. the risk of incidents, including excessive stockpiling, abandonment, fly-tipping, waste fires and illegal shipment abroad;

2. legitimate businesses which operate under a permit and who have invested heavily in infrastructure to manage tyres safely are disadvantaged when compared to non-compliant businesses due to the costs of meeting permit requirements.

Our proposal

We propose the following options for exemption T8:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 5 (Part 2)
- Option 3: Remove the exemption and require activities it covers to be carried out under a permit

The proposals would not affect those that produce and only store waste tyres as part of their business (e.g. tyre fitters, garages, roadside recovery operators). Storing tyres prior to collection at their own premises is covered by NWFD exemptions[28]. The design principles that we used to develop these options can be found in Annex 1.

Q51. Do you have further evidence on the current unlawful use of this exemption?

Q52. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q53. Which of the proposed options for exemption T8 do you support and which do you prefer?

Exemption T9: recovery of scrap metal

The current situation

Exemption T9 provides for small scale low-risk recovery of scrap metal. The latest data shows 6,051 T9 exemptions registered in England and Wales.

[28] https://www.gov.uk/guidance/waste-exemption-nwfd-2-temporary-storage-at-the-place-of-production--2

The case for action

Table 6 shows what the EA estimate the picture for compliance with T9 could be across England based on their targeted campaign and other information collected during their exemption review.

Table 6 Estimated compliance picture for T9 across England

% compliant	% illegal / potentially illegal	% not in use
44	41	15

The EA campaign found that the T9 exemption had one of the highest levels of illegal activity amongst the 10 exemptions of concern. This exemption is often used to carry out significant quantities of metal recycling in excess of exemption limits. In some instances, this involves non-permitted hazardous wastes in locations that are densely populated, leading to negative impacts on local residents.

T9 sites have also been found to have accepted metal containing wastes from material recycling facilities leading to subsequent problems with flies, odour and drainage, and the potential for pollution.

Our proposals

We propose the following options for exemption T9:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 6 (Part 2)

Option 3: Remove the exemption and require activities it covers to be carried out under a permit. The design principles that we used to develop these options can be found in Annex 1.

Q54. Do you have further evidence on the current unlawful use of this exemption?

Q55. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q56. Which of the proposed options for exemption T9 do you support and which do you prefer?

Exemption T12: Manual treatment of waste

The current situation

Exemption T12 is for carrying out small-scale, low-risk, manual treatment of waste to make it re-usable or to recycle the components. The latest data shows 1,554 T12 exemptions registered in England and Wales.

The case for action

Table 7 shows what the EA estimate the picture for compliance with T12 could be across England based on their targeted campaign and other information collected during their exemption review.

Table 7 Estimated compliance picture for T12 across England

% compliant	% illegal / potentially illegal	% not in use
65	11	24

As with other exemptions, the key issues identified during the campaign were that some sites were processing types or quantities of waste beyond what is allowed under a T12 exemption. This exemption is typically used where the wastes are of low-value and they are difficult to treat (meaning that wastes are sometimes collected, stockpiled and then abandoned). Risk of fire and the occurrence of non-genuine recovery are also a significant concern. A significant issue relates to the treatment of mattresses: during the campaign, all sites holding a T12 exemption and processing this type of waste were found to be non-compliant.

Case study: abuse of exemptions for mattress recycling in Kent

A company in Kent had registered a T12 exemption together with T4, T8, T10 exemptions to cover all steps of the process for recycling mattresses. Under T12, a maximum of 5 tonnes of mattresses can be sorted and dismantled indoors at any one time.

When EA officers visited the company they found piles of mattresses in excess of 5 metres in height at two different locations, with a total tonnage of waste thought to be around 2,300 tonnes. This high-density of mattresses was placing the site and the surrounding estate at high risk of fire, and the level of accumulation meant emergency services would not have enough space to tackle an incident.

EA officers had safety concerns when visiting the site due to the risk of collapse of the piles. Accumulation of water at the site also raised concerns of water pollution incidents. This is an example of where the registration of several exemptions at the same site increases the risk of incidents to a level that should prompt regulation under an environmental permit. In one year EA officers had to spend in excess of 150 hours to deal with the site – an amount of regulator resources considerably above what should be expected for "low-risk" activities regulated under waste exemptions.

The operator was found guilty of failing to meet the exemption requirements. He received a six-month prison sentence, suspended for two years. He was also subjected to a requirement to undertake 300 hours of unpaid work and asked to pay £6,000 to cover prosecution costs

Our proposals

We propose the following options for exemption T12:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 7 (Part 2)
- Option 3: Remove the exemption and require activities it covers to be carried out under a permit

The design principles that we used to develop these options can be found in Annex 1.

Q57. Do you have further evidence on the current unlawful use of this exemption?

Q58. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q59. Which of the proposed options for exemption T12 do you support and which do you prefer?

Exemption D7: Burning waste in the open

The current situation

Exemption D7 allows for the burning of plant tissue and untreated wood waste in the open air. The latest data shows 47,396 D7 exemptions registered in England and Wales.

It is legally used by land-managers to dispose of naturally occurring vegetation once they have cut down and cleared it at that site. This should only happen at the place where the

land management has taken place[29] (i.e. the place of production of the waste). Disposal should only be used where it is the best environmental option, for example when transport costs are excessive or there are disease control needs. In other circumstances waste recovery, such as composting or use as fuel, is the preferred option.

The case for action

Table 8 shows what the EA estimate the picture for compliance with D7 could be across England based on their targeted campaign and other information collected during the exemptions review.

Table 8 Estimated compliance picture for D7 across England

% compliant	% illegal / potentially illegal	% not in use
48	25	27

Based on the available evidence D7 non-compliance is a heightened issue in more rural areas. The main observed illegal activities were:

- burning of non-natural woods such as treated non-hazardous and hazardous wood and non-wood wastes;
- gathering of waste from several sites, for burning at a central location, such as a depot.

Our approach

We recognise the practical and economic need for this exemption for specified wastes, particularly in rural areas that are distant from waste recycling sites. We are therefore only proposing options 1 and 2 for exemption D7:

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 8 (Part 2)

The design principles that we used to develop these options can be found in Annex 1.

Q60. Do you have further evidence on the current unlawful use of this exemption?

[29] This is the case for all disposal exempted activities, as set out in Schedule 2, Chapter 4, Section 1 of EPRs

Q61. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q62. Which of the proposed options for exemption D7 do you support and which do you prefer?

Exemptions S1: Storage in secure containers and Exemption S2: Storage in a secure place

The current situation

The main purpose of exemptions S1 and S2 is to allow single stream recyclable wastes to be stored for a limited time before they are sent to another site for recovery. It can be legitimately used to empty smaller containers into larger containers in preparation for onwards transportation. Sorting or any kind of treatment is not allowed under these exemptions. The latest data shows 17,833 S1 exemptions and 23,622 S2 exemptions registered in England and Wales.

The case for action

Table 9 shows what the EA estimate the picture for compliance with S1 and S2 could be across England based on their targeted campaign and other information collected during the exemptions review

Table 9 Estimated compliance picture for S1and S2 across England

% compliant	% illegal / potentially illegal	% not in use
52	13	35

The evidence collected suggests that S1 and S2 are used to illegitimately increase storage capacity at treatment facilities registered under the 'T' exemptions which have their own associated storage, and also to increase storage capacity at permitted sites. The majority of S1 and S2 exemptions visited for the project were registered alongside other exemptions. The other main illegal use of S1 and S2 exemptions is the storage of multiple waste streams beyond their specified limits.

Some wastes under S2 can only be stored at certain locations, such as docksides, and are sometimes mis-described either deliberately or by mistake (e.g. to store scrap metal). Finally, it is often the case that businesses register these exemptions to store their own

waste. This is not necessary as storage by the producer of the waste pending collection is already covered by the NWFD2 and NWFD3 exemptions[30].

The regulators generally consider the S2 exemption to be more problematic than the S1, though this is largely due to a greater volume of S2 registrations – there are approximately three times more registered S2 exemptions than S1 exemptions. These exemptions are often registered interchangeably due to a lack of operator understanding.

Our proposals

We recognise the practical and economic need for these exemptions to allow for gathering and bulking wastes together for onward transport for recovery. By reducing the limits and having stricter controls on waste types, quantities and storage conditions, such activities are expected to be low risk as well as beneficial for resource recovery. We are therefore only proposing options 1 and 2 for the exemptions S1and S2.

- Option 1: Keep the exemption with no changes to its conditions
- Option 2: Change the exemption, amend its conditions – see Annex 9 (Part 2)

The design principles that we used to develop these options can be found in Annex 1.

Q63. Do you have further evidence on the current unlawful use of this exemption?

Q64. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

Q65. Which of the proposed options for exemptions S1 and S2 do you support and which do you prefer?

Option 2 tightly constrains exemptions conditions but it also restructures and splits S1 and S2 into six different exemptions to distinguish waste types which are stored in different ways or for different purposes. The number of exemptions reflects the large number of waste types covered under the existing S1 and S2 exemptions. We think that splitting these out helps clarify precisely what the exemptions are for, and makes the conditions clearer, but we would like to invite views on whether the proposed approach works.

The detailed specific changes that we propose under Option 2 are set out in Annex 9. The proposed split of exemptions is as follows:

[30] https://www.gov.uk/guidance/waste-exemption-nwfd-2-temporary-storage-at-the-place-of-production--2; https://www.gov.uk/guidance/waste-exemption-nwfd-3-temporary-storage-of-waste-at-a-place-controlled-by-the-producer

- New S1 – for oils and similar wastes in secure containers
- New S2 – for commonly collected recyclables for recovery elsewhere
- New S4 for wastes at dockside prior to import/export
- New S5 for solid hazardous wastes
- New S6 for other non-hazardous wastes
- New S7 for construction wastes

Under this proposal, the existing S3 condition would remain unchanged

Q66. Do think that the proposal to split the existing S1 and S2 exemptions into six new exemptions as set out under Annex 9 would help clarify what the exemptions are for and make the conditions clearer?

4.3. Requiring additional information to support effective regulation

The current situation

Very little information is currently gathered about the activities exempt operators are actually carrying out, especially in relation to waste types and quantities. Currently, records must be kept and made available for only T9, T11, T3, T7, U10 or U11[31].

The case for action

Poor compliance of particular exemptions can come to the attention of the regulators at any time. Whilst an option may be to remove these particular exemptions from the regulations and require the activity to be carried out under a permit, the significant time needed for legislative changes means that it can't be used to address illegal activity swiftly. In addition, depending on the level of non-compliance, withdrawing a particular exemption might not be appropriate when there is a strong case for keeping it available for those businesses which operate legally.

Requesting additional information at the point of renewal or registration of an exemption, and/or at the end of the operation is one way of addressing issues of abuse with particular exemptions when they arise. Regulators already have the power to do this under Regulation 61 of the EPRs but have historically kept information requests to a minimum to reduce burdens on exemptions users. However, in cases where potential problems with the use of particular exemptions arise, this information would help prioritise compliance

[31] See Schedule 2, Paragraph17 of the EPRs

activity and inspections. A further benefit would be that it could be used to facilitate local authority waste planning, to ensure there is enough capacity in a particular authority to manage the waste.

Our proposals

We propose making it compulsory for operators to keep and make records available on request for all waste exemptions. The information that is kept and recorded would include: chronological records of the quantity, nature, origin and, where relevant, destination and treatment method of all waste disposed of or recovered in the course of that operation. Most of this information will be already kept and recorded by those organisations subject to the Duty of Care regulations, and these organisations could therefore use their existing records to meet their exemption requirements. For ease of access it could be required that this information is recorded and stored in an electronic format or in a system identified by the regulator.

We also propose that regulators gather more information for specific exemptions on a case by case basis where illegal activity is identified as a problem through either:

- Additional questions at registration, for example, types and quantities of waste that are going to be stored, used, treated or disposed of.
- Records relating to ongoing activities occurring under a registered exemption, after registration.
- A requirement for end of operation returns.

Q67. Do you think that operators should be required to keep and make available to the regulator records of the activities carried under any exemption?

Q68. Should operators be required to keep the records required in an electronic format and/or in a system identified by the regulator?

Q69. Do you think that the regulator should be able to impose additional information requirements for individual exemptions on a case by case basis at registration, on an ongoing basis or at end of operation to address issues of poor compliance?

Q70. Do you think any additional information requirements should be implemented immediately, notably in relation to the 10 exemptions of concern described in section 4.2?

4.4. Better exemptions regulation

We are keen to identify any areas where exemptions regulation could be improved for users of exemptions. The proposed changes to exemptions of concern have also led us to consider changes that may need to be introduced in tandem. These are summarised below.

Exemptions registration

Analytics show that it takes on average 22 minutes to register an exemption using the online service. The Business Impact Target assessment[32] shows that the introduction of the new exemption registration service decreased business costs by around £400,000 a year. The service is already subject to continuous improvement to enhance the customer experience, in response to feedback given through the online feedback service.

Q71. Do you have any suggestions on how you think the exemptions registration service can be improved further?

Waste codes

Having reviewed the waste codes used across exemptions we propose introducing a number of changes to make them clearer and less ambiguous. The list of waste code changes is proposed in Annex 10.

Q72. Do you support the changes to the waste codes set out in Annex 10?

Consistency of conditions across exemptions

Under Section 4.2 we are proposing changes to the conditions for some waste types that also feature in other exemptions that are not covered in this consultation. If we make these changes for the exemptions of concern only there will be a lack of consistency with other exemptions. Annex 11 highlights the main waste types and exemptions where there would be an inconsistency.

Q73. If we change the conditions for the exemptions of concern would you support the alignment of conditions across exemptions listed in Annex 11?

For the exemptions U8 and U9 listed in Annex 11 (Table 1), what do you think the new aligned conditions should be?

[32] https://www.gov.uk/government/publications/business-impact-target-statutory-guidance

For the exemptions U8, U9, T1 and T2 listed in Annex 11 (Table 2), what do you think the new aligned conditions should be?

For the exemptions U8 and U9 listed in Annex 11 (Table 3), what do you think the new aligned conditions should be?

New standard rules permits

If the proposals to change or remove some exemptions goes forward after consultation some currently exempt activities will need to have a standard or bespoke permit for a waste operation. Some operations already have standard rules available, such as storage and treatment of wood waste, others such as storage and treatment of tyres do not. The existing standard rules that relate most closely to the waste managed under the ten exemptions in section 4.2 are shown in Annex 12.

There will be a separate consultation by the regulators on standard rules for any common waste operations that need a permit as a result of any proposals from this consultation that are taken forward. Transitional arrangements for the implementation of the revised regulations will allow time for a permit application to be made.

Q74. Do you think that the standard rules for the ten exemptions set out in Annex 12 are sufficient? Are new standard rules also needed?

4.5. Transitional provisions

The changes that are being proposed for exemptions will result in a number of activities that currently operate under a registered exemption needing to be subject to a different level and type of regulation.

General aims and principles for transitional arrangements

In determining the transitional arrangements and the relative timing to require migration to the new arrangements, the first principle will be to prioritise the transition based on environmental risk and any need to enhance the regulators ability to exercise appropriate controls where this is thought not to be the case now.

A second principle will be to allow reasonable time periods for operators to take informed judgements about the options that are open to their business and to take the necessary steps to comply with the new regulatory requirements.

Thirdly, the arrangements should aim to reduce the administrative effort and cost associated with making changes to a minimum for all those who will remain subject to a

waste exemption. These activities pose the lowest risk and therefore should be given the easiest route to regularising their position under the changed system.

Proposed transitional timescales

We propose that:

- Operators registering an exempt waste operation from the date that the Regulations come into force will have to comply with the new Regulations.

  Operators with exemptions that were registered before the regulations come into force will be able to continue to rely on the pre-existing conditions of those exemptions until they expire or 18 months from when the new regulations come into force whichever is sooner.

Q75. Do you think that the proposed timescales to implement the changes to the exemptions regime are adequate?

5. Estimated costs and benefits of proposals

An impact assessment accompanies this consultation document. It provides an estimate of the costs and benefits to a number of recipients (i.e. businesses, government, the regulators, society and the environment), arising from making changes to the 10 exemptions of concern (section 4.2.).

The impact assessment considers the costs and benefits arising from tackling the issue of operators systematically and wilfully involved in illegal activity, and registering exemptions in a view to draw a veil of legitimacy over their activities. Indeed, this type of serious illegal activity results in direct costs to businesses in the form of lost market shares and unfair competition, as well as direct losses of revenues for government (e.g. landfill tax avoidance). The impact assessment also identified direct costs to environment and society, such as those arising from pollution incidents, or from the negative impacts on local communities that inappropriate waste management can lead to.

In the impact assessment the main benefits originate from the transfer of waste from illegal exemptions to legitimate businesses operating under environmental permits or waste exemptions. This was assumed to result in increased benefits to businesses who manage more waste, and therefore in an increase in tax revenues to government. The regulators, environment and society were also anticipated to benefit from a reduction in costs, as a result of a decrease in the number of pollution incidents and a shift towards appropriate waste management practices.

The main costs of the proposals included: costs to legitimate businesses to register and maintain new exemptions and apply for new permits in order to accommodate the increase in waste quantities previously processed under illegal exemptions; and capital and equipment costs to upscale existing recovery facilities.

The Regulatory Policy Committee (RPC), an independent advisory non-departmental public body providing scrutiny on the evidence and analysis supporting the estimates of costs and benefits in regulatory proposals reviewed the draft impact assessment relating to Part B (waste exemptions) of the consultation. RPC have indicated the draft impact assessment requires more work to clarify the approach to calculate costs and benefits, as well as address technical analytical issues.

RPC questioned our approach to estimate the direct costs and benefits of the proposals to businesses, and in particular whether each of the considered options (i.e. option 1, current situation, and implementation of tighter regulations in options 2 and 3) were compared to the same baseline, as this would change the relative costs and benefits calculated for each option. They also questioned whether particular costs to businesses where omitted in options 2 and 3, and whether the transfer of waste from illegal businesses to compliant businesses should be counted as a benefit to compliant businesses. RPC also asked more details regarding the incorporation of taxes in the cost and benefit calculations.

The post-consultation impact assessment will be revised to account for the consultation responses and address RPC comments. It will also include an economic appraisal of the other proposals included in the consultation but not currently costed, should we wish to take them forward as a result of the consultation.[33] A revised impact assessment will only be published with the final government response to the consultation, once RPC provides a final sign-off.

Q76. Have you experienced an increase or a decrease in criminality and poor performance in the waste sector over the last few years? What are your expectations for the future if nothing is done to tackle the issue?

Q77. Overall, how effective do you think Options 2 and 3, as described in the impact assessment, would be to tackle criminality and poor performance in the waste sector? What is your preferred option?

Q78. Do you think that any of the proposals will impose additional costs on yourself or your organisation?

[33] In particular the proposed options for prohibiting use of exemptions in specified circumstances

Q79. Do you think that the proposed analytical approach appropriately covers all potential costs and benefits that would arise from implementing the proposals?

Q80. Do you think that any of the costs and benefit covered in the impact assessment should not be accounted for in the costings?

Q81. Do you have any evidence that would support the calculation of benefits or costs of the exemptions proposals to business? Are you aware of any other sources of evidence that would improve the costings, including for the proposals not covered in the current impact assessment?

Part C: Duty of care fixed penalty notice

Part C of this consultation seeks views on the introduction of a fixed penalty notice (FPN). The FPN would target householders who breach their duty of care by not taking reasonable steps to ensure their waste is passed to an authorised person. To support this we are also looking at ways to improve householders awareness of their duty of care.

1. Background

The law places a duty on occupiers of domestic property (householders) to give their waste to an 'authorised person'. This is defined further in legislation, but is normally either the local authority collection service or a registered waste carrier. Householders are required to take all reasonable steps to ensure that any transfer of waste produced at their property is to an authorised person. Further guidance is in the Duty of Care (waste) Code of Practice[34]. Householders are not required to complete a written description of the waste.

Household waste collection is funded from Council Tax rather than paid for at the point of use. Local authorities also offer free at the point of use disposal and recycling services at household waste and recycling centres. They may charge separately for collection of certain wastes such as bulky waste, for example fridges and beds. These charges vary considerably across the country but are often around £20-£30 per item. Charges may also be levied for items such as garden waste, which is on average around £40 per year. Where a householder produces building type waste, for example, when carrying out renovation work, the cost of hire of a small (4 yard) skip is about £100 to £250 across the country. Often in these cases, if they employ a contractor to do the works, the contractor may charge to take the waste away as part of the contract or hire in separate skip or grab services.

[34] https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice

2. The case for action

2.1. Current options for enforcement of duty of care in respect of householders

Government is committed to tackle fly-tipping. Householders can be prosecuted or issued with an FPN if they fly-tip waste themselves. While two-thirds of fly-tipped waste is household waste, this is often fly-tipped because a householder has allowed an unauthorised person to take it away, rather than them fly-tipping it themselves. Since householders are not required to complete a waste transfer note describing the waste, there is not an FPN option currently available for this offence and the only option is for the regulator (usually the local authority in this case) to take the offender to court. Every year there are a number of successful prosecutions against householders who have broken the law by failing to make reasonable checks and giving their waste to an unauthorised person. However, these prosecutions are costly for the regulators and for the court, and having a more flexible range of penalties to use could be more effective at changing behaviour and reducing the costs in particular to local authorities. Successful prosecutions also result in householders being left with a criminal record, even if they had no idea the waste was going to be fly-tipped and paid for its disposal in good faith.

2.2. About fixed penalty notices

We have already introduced a number of FPN powers to tackle illegal waste activity and related anti-social behaviour such as littering, fly-tipping and failing to produce a waste transfer note.

FPNs are designed to be ‘on-the-spot’ penalties negating the need for more formal action such as prosecution in court. A person issued with an FPN can decide to pay it instead of being prosecuted. However, the person can also decide not to accept the FPN and ask that the matter be dealt with in court instead. If found guilty they would face both a penalty of some kind from the court and would also have a criminal record, which would not be the case with an FPN. The prosecution would be for the duty of care offence, not for refusing to pay the fixed penalty.

Generally, authorities use FPNs to deal with more minor offences, which frees up resources and time to concentrate prosecution through the courts for more major or serious cases and offences. Table 10 shows related waste offences in England that already have the option of a FPN.

Table 10 Related waste offences in England that already have the option of a FPN[35] (Figures for Wales in brackets when different from English figures)

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty	FPN money from this offence can be spent on functions relating to:
Littering[36]	£75 (£75)	£50 (£75)	£80 (£150)	£50 (£50)	Litter, dog control, graffiti and fly-posting
Fly-tipping	£200	£150	£400	£120	There are no restrictions on how councils can use income
Failure to produce a waste transfer note	£300	£300	£300	£180	Waste on land

3. Our approach

We would like to improve public awareness of the duty on householders and the risks they take when not passing their waste to an authorised person.

We also consider that regulators should be able to tackle small scale fly-tipping of household waste through fixed penalties rather than costly prosecutions, and that in many cases this approach is preferable to a household being left with a criminal record.

As outlined in the UK Government's Litter Strategy, we will provide improved guidance on the appropriate and proportionate use of these powers, and encourage councils to be transparent about enforcement activity. In addition, the UK Government will be issuing clearer guidance on what can be charged for at household waste and recycling centres.

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[35] https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils

[36] The government has recently announced its intention, subject to Parliamentary approval, to increase the level of fixed penalties in England for littering (and for the related offences of unauthorised distribution of free printed material in a designated area, graffiti and fly-posting). With effect from 1 April 2018, the default FPN is expected to increase to £100, with a maximum of £150. With effect from 1 April 2019, the minimum fixed penalty is also expected to be increased to £65.

The UK Government's view is that residents should be able to dispose of household DIY waste free of charge. The UK Government will consider clarifying the law if councils continue to charge for disposal of reasonable amounts of DIY waste. This will make it easier for householders to dispose of their rubbish in a responsible manner.

4. Proposal

We would like to invite views on what more we can do to improve householder awareness of their duty of care and the steps they should take to protect against their waste being fly-tipped.

In tandem we propose providing enforcement authorities with new powers to issue FPNs to occupiers of a domestic property (householders) who fail to take all reasonable measures to ensure that any transfer by them of household waste produced on the property is to an authorised person. The power would be made available to the EA, NRW and waste collection authorities, who currently enforce the other waste duty of care offences. We also propose to work to improve householder awareness of their Duty of Care and FPNs.

4.1. Improving householder awareness

The government would like to invite views on how we should work with local authorities and other stakeholders on measures to improve household awareness of the waste duty of care. As a first step we propose ensuring that updated, simple and consistent guidance is available on Gov.uk and Gov.Wales but would like to know what else you think would work in terms of targeting of messages, use of communications methods, and involvement of local authorities, government, the waste industry and others. In recent years the government has worked with industry and regulators to raise awareness of the duty of care as it applies to waste producing businesses through the 'Right Waste, Right Place' campaign[37]. We would be interested in lessons learnt from this or other approaches that might work for households.

Q82. Do you believe that householders are currently sufficiently aware of their duties and the risk of prosecution when passing their waste to an unauthorised person?

Q83. What more could be done to improve householder awareness of their duty of care and prevent fly-tipping of household waste?

[37] http://www.rightwasterightplace.com/#intro

In 2016 the government published the Waste Duty of Care Code of Practice[38]. This sets out reasonable measures that should be taken to comply with the duty of care before passing on waste to another person. These include:

- Checking that the person offering to take your waste is registered to transport the waste. In England you can check whether a waste carrier is registered on the Environment Agency's public register or by calling 03708 506 506. In Wales you can check on the Natural Resource Wales public register or by calling 0300 065 3000.
- Recording any checks you make, or asking the person or business for evidence of their authorisation, such as a copy of their waste carrier registration.

Q84. Do you think that the Waste Duty of Care Code of Practice provides enough guidance on reasonable measures that can be taken to meet the household duty of care?

Q85. Do you think there are any other reasonable measures to meet the household duty of care that should be set out in guidance to households?

4.2. How the fixed penalty notice could be used

The proposed FPN could be used mainly in the following circumstances:

- Where waste is found in fly-tipping that can be traced back to a householder who is found to have failed to take reasonable steps to secure that that waste was transferred by them to an authorised person
- Where an unauthorised carrier is found to be carrying waste that can be traced back to a householder
- Where a householder is found to be transferring its waste to an unauthorised person at a site that does not have a permit or exemption.

We propose to limit the use of this FPN to the first transfer of waste from a householder to an unauthorised carrier / person (operator of an unauthorised site). In other instances, for example if the householder transferred the waste to an authorised person and that person then transferred it to an unauthorised person, the enforcement authority would not be able to issue a FPN against the householder.

Our policy is clear that enforcement action through fixed penalty notices should only be taken when it is proportionate and in the public interest to do so. Disproportionate enforcement activity undermines legitimate messages against fly-tipping related offences. Under no circumstances should regulators use fixed penalty notices as a means to

[38] https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice

generate income. We propose updating the Statutory Duty of Care (waste) code of practice to provide guidance to regulators on the use of this new fixed penalty notice.

Q86. Do you think that the introduction of a FPN for the offence of a householder passing their waste to an unauthorised person would help tackle fly-tipping?

Guidance is already available on how local authorities issue and enforce FPNs for environmental offences[39], and on how and when environmental officers can issue FPNs[40].

Q87. Do you think that government should provide further guidance to regulators on the use of the proposed FPN?

4.3. Proposed penalties for the householder duty of care FPN

In a first instance, we propose to set the level of the fine equivalent to that of a fly-tipping FPN (See Table 11).

The level of monetary penalty should make the decision to hire an unauthorised waste carrier potentially more expensive to a householder than hiring an authorised carrier, but less than the cost of being prosecuted in court. Table 12 shows how the proposed default penalty might compare against legitimate disposal and prosecution using available data and assumptions on costs of these routes.

Table 11 Proposed level of penalty

Offence	Default penalty	Minimum default penalty	Maximum full penalty	Minimum discounted penalty
Failure of the occupier of a domestic property to take all reasonable measures to secure that any transfer by them of household waste produced on the property is to an authorised person.	£200	£150	£400	£120

[39] https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils

[40] https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices

Table 12 Level of deterrent

Scenario	**1** Hiring an authorised waste carrier		**2** Hiring an unauthorised waste carrier and paying a FPN		**3** Hiring an unauthorised waste carrier and court prosecution
Typical cost of the Waste Carrier	£190[41]		£114[42]		£114[34]
Cost of court/FPN	£0		£200		£240[43] (Fine) + £210 (Reimbursement of Local Authority Costs [44])
Total cost	£190		£314		£564

Q88. Do you think that the proposed levels of penalty for this FPN are correct?

Q89. Following implementation of the FPN, do you think that local authorities should communicate how frequently they use these penalties, and the impact on fly-tipping?

Q90. Do you think the introduction of this FPN will impose any additional costs on local authorities or other issuing authorities?

Q91. Do you think the introduction of this FPN will make savings for local authorities or other issuing authorities?

[41] Typical prices (inc. VAT) for hiring a waste removal provider, for around 4.6 m^3 of waste (6 yds)

[42] Based on the assumption that an unauthorised waste carrier would charge 40% less than an authorised provider

[43] Rounded average of fines received in court for the period 2011-2016 for occupiers of domestic properties failing to ensure they transfer their waste to an authorised person (Section 34 (2A) of Environmental Protection Act 1990, see here: http://www.legislation.gov.uk/ukpga/1990/43/contents)

[44] Typical costs to local authorities to bring a small scale fly-tipping case to court. See https://www.legislation.gov.uk/ukia/2016/196/pdfs/ukia_20160196_en.pdf (p.9)

Q92. Do you think that other parties than local authorities and other issuing authorities could incur costs of benefit from the introduction of this FPN?

Q93. Do you think that the proposal will impose additional costs on yourself or your organisation?

Q94. Do you have any other information on the possible cost or benefits of issuing fixed penalty notices?

4.4. Appeals process

There is currently no obligation for an authority that issues FPNs to offer an appeals process to someone that might want to dispute a FPN[45]. If a person was taking the decision to not pay the FPN (for example because they do not accept their guilt), then the issuing authority would need to make a decision whether or not they prosecute that person for the act which led to the FPN. If they do, then the matter proceeds through the criminal courts system. The person prosecuted would then be able to argue their innocence before the court.

There may be occasions, however, when it would be helpful for an issuing authority to provide a process for a person to dispute a householder duty of care FPN without both parties having to proceed to court. Where offered, an appeals process would need to cover:

- how, when and where to appeal
- what happens if the appeal is successful (no further action will be taken and the FPN will be cancelled)
- what happens if the appeal is rejected and the offender does not pay
- how to complain

Q95. Do you think that issuing authorities should be able to offer an appeals process for people to dispute a householder duty of care FPN?

Q96. Do you think that issuing authorities would incur any additional costs by providing an appeals process for people to dispute the issuing of a householder duty of care FPN?

[45] https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils

Q97. Do you think there are any other steps the appeal process should cover?

Q98. What are the best ways to ensure that the recipients of a FPN are made aware of the appeal process if one is available?

Ultimately, if an issuing authority does not offer an appeals process then there will be an independent and rigorous process for dealing with the disputed issuing of an FPN through the courts. This process would follow that set out for other existing FPNs.

Q99. Where an issuing authority chooses not to offer an appeals process do you think the right of appeal is adequately provided for through the courts?

Annexes

Annex 1- Overarching design principles for exemptions reform

Reducing the quantity of waste that can be accepted

What is the issue?

Some exemptions allow significantly more waste to be accepted than under standard rules permits. As an example, the T6 exemption allows 5 times more waste to be accepted per year than under the equivalent standard rule[46].

In addition, exempt operations are not subject to the same level of scrutiny through inspection as permitted operations, and those using waste exemptions are not required to demonstrate technical competence or submit quarterly waste returns.

As a result, poor performance is not detected early and sites often only get inspected once a problem arises. Therefore the risk of incidents, such as fires, and illegal activity is much greater. This situation also creates an unfair and unlevel playing field between waste businesses operating under environmental permits and those operating under waste exemptions.

Design Principle

- Waste exemptions should allow for significantly less waste to be accepted at a site than under the equivalent environmental permits.

Approach and proposal

- For each exemption standard rules allowing similar waste activities were identified.
- We started from the point that the quantity of waste allowed under an exemption should be less than that dealt with by businesses operating under equivalent standard rules. This means we looked both at the maximum amounts of waste allowed under a standard rules permit and the quantity of waste actually accepted by businesses under that permit according to site returns data.
- The new proposed waste quantities ensure that high risk activities only occur at permitted sites and that there is no overlap between use of exemptions and permits for activities of similar scale.

[46] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479480/LIT_10296.pdf

Reducing the quantities and time of storage on site

What is the issue?

Stockpiling of wastes has become a big issue. Often, gate fees are the main source of revenue for those operating under waste exemptions, and these operators are therefore inclined to accept large quantities of waste, even if they do not have a secure market for any recyclables or legal disposal routes. Even where there is a market for a particular waste stream, changes in the market can lead to stockpiling either because the cost of disposal is prohibitive or because the operator is waiting for the price of the waste materials to rise before selling.

Often, the most acute issue arising from stockpiling is fire risk, as waste accumulated for more than 3 months becomes increasingly at risk of self-combustion.

In addition, the recyclability of many wastes declines with time in storage, particularly if they are contaminated, for example with food residues. This can also attract vermin and pests, and generate smell, leading to severe negative impacts on local communities.

In some instances, sites are abandoned and large piles of waste blight local communities and the environment. Private landowners, local authorities and regulators can be left to clear these abandoned sites at significant cost.

Design principle

- Storage quantities and maximum storage time should be set at an appropriate level to prevent stockpiling, and be linked to an operational need for storage, to encourage turnover and sustain waste recovery at the site or waste export to another site.

Approach and proposal

- Depending on the exemption, different criteria were taken into account to set new proposed limits.
- As an example, if an exemption is used to bulk up waste, the maximum storage quantity has to be set to that of a single container that can be transported by one vehicle to the next facility for recovery. Only one container can be transported at a time, so having multiple containers on site does not allow for saving on transport costs.
- In other cases, such as when waste is recovered on site, storage times and quantities were set to sustain typical recovery turnover, and avoid stockpiling.

Limiting the types of waste that can be handled

What is the issue?

Different types of issues can arise from allowing certain types of waste managed under particular exemptions.

A first set of issues relates to waste types that require a complex assessment to ascertain whether they are hazardous. This is the case for those waste types that have mirror entry codes (non-hazardous and hazardous), and therefore require a hazardous waste assessment. When such wastes are received in a mixed state (e.g. wood from construction and demolition), only a small proportion of hazardous waste, when it cannot be adequately separated, will render the load hazardous. In such instances, identifying the presence of hazardous waste can be challenging, and will often require carrying out a chemical assessment. If the waste is incorrectly assessed, then it can end up at facilities not permitted to take those wastes, such as combustion plants not designed to eliminate toxic emissions to air. Such potential consequences make these types of wastes incompatible with the remit of the waste exemption regime, which is meant to only cover low-risk activities and require limited technical knowledge.

Certain waste types, such as mattresses, are also difficult to recycle, and the resulting separated materials are often of very low-value. In such instances, an operator's main revenue will be generated from gate fees and not onward recovery. This can lead to issues of stockpiling and site abandonment.

The collection of certain wastes can also provide some exempted operators with a sustained source of revenue from charging gate fees, but often these operators do not invest into the necessary infrastructure and equipment to recover these wastes. Tyres, for example, are easy to collect, and we are aware of a number of instances where operators register a T8 exemption and subsequently stockpile tyres way above the maximum quantity allowed, with no intention to recover them. Such sites can be subject to fires – they also undercut legitimate businesses, which have the necessary infrastructure to properly recover tyres.

Design principles

- Waste exemptions should generally only include waste types that: 1) do not require complex assessments or advanced technical knowledge to be handled appropriately; 2) are easy to handle and process and for which there is a sustainable market to sell secondary materials; and 3) do not attract waste criminals.

- Waste types that need a complex assessment to identify if they are hazardous are removed from exemptions wherever possible, with the exception of producers handling their own waste.

Approach and proposal

- We reviewed all waste types currently listed under the 10 exemptions of interest.
- Evidence gathered by the regulators and through consultation with the industry was used to identify waste types that are problematic and should be excluded from the proposals.

Tightening up fire prevention controls

What is the issue?

Permitted operations that handle combustible wastes are now required to store that waste in accordance with the EA's Fire Prevention Plan' (FPP) guidance[47] or produce their own plan giving alternative measures to control the risk from fire. The waste to which the FPP Guidance applies to include: wood, scrap metal, rags and textiles, paper, plastic and tyres.

Applying the FPP guidance only to permitted operations implies that exempted sites are of lower risk even where they are managing the same wastes in significant quantities. We know that the risks are the same and could be even higher due to the lower level on entry by operators (e.g. no need for technical competence) and low-level of inspection by the Regulator. Requiring lesser controls for exempted operations creates an unlevel playing field between businesses operating under permits and waste exemptions.

Design principle

- Exempted operations managing combustible wastes should have equivalent levels of controls and requirements as permitted sites to reduce fire risk.

Approach and proposal

- Of the exemptions specified in the consultation those allowing the handling of combustible waste were reviewed.
- For these exemptions, we are proposing to apply the same requirements as under the FPP Guidance, including maximum stack heights (no more than 4m), storage quantities and dimensions (no more than one pile of the size that is specified in the FPP guidance for a particular waste type) and length of storage (no more than 3 months). However, as exemptions require set limits, it is not possible to provide operators with the option to develop a separate plan specifying alternative measures.
- Where the new storage limits mean that the risk is much smaller, we have not required distance requirements between piles or boundaries to be applied.

[47] https://www.gov.uk/government/publications/fire-prevention-plans-environmental-permits/fire-prevention-plans-environmental-permits

It should be clear when a site is compliant

What is the issue?

Often, it is difficult to assess on-site, without using a weighbridge or other specialist technical equipment, whether the maximum quantities of waste allowed under a particular exemption are exceeded.

This is particularly the case where exemptions allow for such large quantities of waste to be stored that it is difficult to appreciate on-site when limits are exceeded. This is also the case because some waste quantities are defined in tonnes, while it is much easier to ascertain volumes or number of units when visiting sites. Conversion factors[48] allowing for converting tonnages into volumes are also difficult to use, as they vary considerably depending on the type of waste and its level of compaction.

The issue here is that operators are sometimes able to exceed their limits without being stopped, which increases the risk of incidents, such as fires, and also indirectly encourages businesses to rely on gate fees as their main source of revenue, rather than to invest on recovery infrastructure. Ultimately, this also increases burden on the regulator and the operator, who cannot easily assess whether a site is compliant.

Design principle

- Waste quantity limits should be defined in such a manner that makes it easy for an operator or a regulator to ascertain whether a site is compliant with its exemption conditions.

Approach and proposal

- The proposals implement the use of volumes or, where more appropriate, number of units instead of tonnages to define maximum waste quantities. These measurement units can be paced out and simply measured or counted without the need of specialist equipment.

- As explained elsewhere in this document, new smaller limits were set to meet a number of criteria, including operational requirements, and the need to reduce risk and fit the FPP guidance. Much smaller limits also mean that issues of non-compliance can be identified quickly, before the situation becomes out of control.

[48] www.wrap.org.uk/content/waste-conversion-factors-wrap-construction-tools

Better, more explicit waste descriptions to accompany waste codes

What is the issue?

The way waste types and codes are currently displayed in the Environmental Permitting Regulations (EPR)[49] means that operators have to consult other regulation or guidance, such as the waste classification technical guidance WM3[50], to appropriately assess whether a particular waste falls into the scope of a particular exemption.

A key issue is that the lists of waste types provided in the EPR for each exemption only refer to material types (e.g. Bricks, Concrete, Plastic...), with no details on the origin or source of these wastes (e.g. construction and demolition) or on any requirements to conduct an hazardous waste assessment. Currently, it is in particular not clear for an operator to assess from the EPR only, and without consulting additional guidance, whether there is a mirror entry code that requires a hazardous waste assessment to be carried out.

The current situation lacks clarity and imposes unnecessary burden on operators to meet their requirements. It also increases chances of misclassifying waste, increasing the risk of incidents, environmental damage and other negative impacts.

Design principle

- The regulations should make it easy for operators and regulators to identify what wastes are permitted under a particular exemption and whether any hazardous waste assessment needs to be carried out.

Approach and proposal

- The intention of the proposal is to use WM3 guidance to improve in the EPR the description of wastes allowed under the exemptions, to clarify the origin or source of the wastes, and whether a hazardous waste assessment needs to be carried out.

- Although we intend to avoid mirror-entry code wastes wherever possible it is not always a practical option.

[49] http://www.legislation.gov.uk/uksi/2016/1154/contents/made

[50] https://www.gov.uk/government/publications/waste-classification-technical-guidance

Annex 2 – U1 Use of waste in construction

Part 1: Specific issues and proposed changes

Issue	Issue detail	Rationale for change	Proposed changes
Disposal not recovery	U1 is for recovery activities not disposal. Before a permit is issued for a recovery activity a recovery assessment is carried out to ensure there is a need for the deposit and it is a genuine recovery.	Waste exemptions are free to register and therefore the registrant (operator) self-certifies that they will meet the terms of the exemption including that it is a recovery. When inspection is carried out often there are breaches of the exemption and the activity or quantities used mean that it is not a recovery operation. It should be obvious to the Regulator when a U1 operation does not meet the definition of recovery and there should not be a need for a complex recovery assessment. There are other options to complete work – use raw materials, use wastes that have reached a quality standard and are no longer waste. Alternatively the CL:AIRE code of practice can be used. http://www.claire.co.uk/projects-and-initiatives/dow-cop/28-framework-and-guidance/111-dow-cop-main-document	The exemption has been limited to very specific uses that this exemption would typically be used legitimately for. The quantities and waste types specified for each use have been determined using published engineering standards for different types of activity. More specified uses may come out in consultation. Anything outside of these activities or quantities would need a permit with more detailed assessment to prove that it is a recovery operation.
Wrong waste types are often used	There are a wide-range of waste types listed in the U1 exemption that are not typically used by the majority of businesses.	Using the deposit for recovery standard rules SR2015No39 as a basis for the exemption.	Reduce the list of wastes to the most common and typically used that have proven to have the appropriate properties needed for the specified activity.

Issue	Issue detail	Rationale for change	Proposed changes
	They are also not as clearly described as they could be.	The permit is very restrictive on the waste types that can be used and for what purpose. U1 should be of a lower risk than a recovery permit.	Improve the descriptions so that there is greater clarity on the quality of the waste that can be used.
Too close to sensitive receptors	When an exempt U1 activity is breached sometimes the waste is unsuitable and can be near to sensitive receptors which can pose a risk especially at the quantities currently allowed.	The reduction in waste types used with more specific treatment standards introduced as restrictions will reduce the amount of inappropriate wastes used.	Introduce distance criteria around springs, wells and boreholes and watercourses for storage. The waste types and quantities are much reduced and quality improved so that the risk will be lower overall.
Contraries in waste (contamination)	Often the hard-core and soils are mixed or contaminated with other wastes such as wood, metal plastic and sometimes asbestos.	These cause contamination of the land and amenity issues. Biodegradable waste degrades and can form gas and leachate. Asbestos waste is hazardous to human health. Soils may contaminated naturally or man-made with heavy metals and may contain chemicals such as persistent organic pollutants (POPs).	Make it clear in the descriptions that the waste should have been properly segregated before it comes to site and where a hazardous waste assessment must have been carried out to code the waste correctly.
Quantities too high	The current 5000 tonnes of waste is a significant amount and can pose a high-risk to the environment. Often this amount is also exceeded and is not compliant on waste types either.	By reducing the overall quantities and specifying particular uses it is much clearer to the Regulator and to the operator when they are compliant. As an example an operator may build tracks, create a hardstanding area to park machinery and build a small barrier to prevent fly-tipping on their land as long as they comply with the conditions set out for each specified activity.	Remove the general limit and replace it with specific quantities for particular jobs. Reduce quantities to very small amounts to align with low-risk operations. In theory an operator could use greater quantities of waste under the proposed changes but would have to show that they are being used for very specific activities, so making compliance easier to establish.

Part 2: Option 2 - Proposal

U1 - Use of clean hard-core, waste minerals, road planings and other specified wastes to construct and maintain surfaces and barriers

Table A - Specified uses and restrictions

Use	Type of construction	Maximum quantity of waste	Additional restrictions
A	tracks, footpaths, bridleways.	1.2 m^3 of waste in total per metre length of track of no more than 500mm depth for tracks etc.	All contaminative wastes e.g. plastic must have been removed and waste must have been processed to the size required to provide a suitable surface or engineering strength.
B	sub-base for roads.	1.2 m^3 of waste in total per metre length of track of no more than 300mm depth.	
C	hardstanding around gateways.	10 m^3 in a single use.	
D	hardstanding for parking and keeping of vehicles and equipment and keeping livestock off wet ground.	100 m^3 in a single use for general hardstanding areas.	
E	Barriers and walls to protect and secure premises and livestock.	Barriers and walls no more than 1.25m high and 1.5 metres at the base.	
F	Mending of banks for watercourse maintenance. Barriers for flood defence in accordance with any flood permit or exemption where required.	Barriers no more than 1.25m high and 1.5 metres at the base and must be in accordance with permit or exemption.	
G	Soft surfacing for paths and animal standing and exercise areas.	For paths and tracks 1.2 m^3 of waste in total per metre length of no more than 300mm depth.	

Use	Type of construction	Maximum quantity of waste	Additional restrictions
		250 m^3 in a single use for a livestock woodchip pad or corral, no more than 500mm depth. 100 m^3 for any other single use of no more than 300mm depth.	
H	Secure storage prior to uses A-F. Maximum of 100 m^3 (~125 tonnes) of waste in total at any one time pending use.	12 month storage limit.	Must be stored more than 50 metres from a spring, well or borehole and at least 10 metres from any watercourse.
I	Secure storage prior to use G. Maximum of 100 m^3 of waste in total at any one time pending use.	3 months storage limit.	Must be stored more than 50 metres from a spring, well or borehole and at least 10 metres from any watercourse.

Table B - Waste Types

Permitted waste types					
Source from which the waste was produced	**Sub-source**	**Waste code**	**Broad description**	**Additional restrictions for each waste type and specified uses and storage in Table A**	**Hazardous waste assessment required**
01 Waste resulting from exploration, mining, quarrying and physical and chemical treatment of minerals	01 01 wastes from mineral excavation.	01 01 02 (AN)[1]	Wastes from mineral non-metalliferous excavation.	Restricted to waste overburden and interburden only Uses A,B,C,D,E Storage H	No
	01 04 Wastes from physical and chemical processing of non-metalliferous minerals.	01 04 08 (MN)[2]	Waste gravel and crushed rocks other than those mentioned in 01 04 06.	Non-hazardous only Uses A,B,C,D,E Storage H	Yes
		01 04 09 (AN)	Waste sand and clays	Uses A,B,C,D,E Storage H	No
02 Wastes from agriculture, horticulture, aquaculture, forestry, hunting, and fishing,	02 01 wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing.	02 01 03 (AN)	Plant tissue waste	Restricted to waste wood and bark from natural vegetation Chipped form only Use G only Storage I	No

[1] AN – Absolute non-hazardous

[2] MN - Mirror non-hazardous

Permitted waste types					
Source from which the waste was produced	**Sub-source**	**Waste code**	**Broad description**	**Additional restrictions for each waste type and specified uses and storage in Table A**	**Hazardous waste assessment required**
food preparation and processing	02 03 wastes from fruit, vegetables, cereals, edible oils, cocoa, coffee, tea and tobacco preparation and processing; conserve production; yeast and yeast extract production, molasses preparation and fermentation.	02 03 99 (AN)	Soil from cleaning and washing vegetables	Use E only Storage H	No
	02 04 waste from sugar processing.	02 04 01 (AN)	Soil from cleaning and washing beet	Use E only Storage H	No
03	03 01 waste from wood processing and the production of panels and furniture.	03 01 01 (AN)	Waste bark and cork	Chipped form only Use G only Storage I	No
	03 03 waste from pulp, paper and cardboard production and processing.	03 03 01 (AN)	Waste bark and wood	Chipped form only Use G only Storage I	No
17 Construction and demolition wastes	17 01 Concrete, bricks, tiles and ceramics.	17 01 01 (MN)	Concrete	Metal from reinforced concrete must have been removed. Uses A,B,C,D,E Storage H	Yes
		17 01 02 (MN)	Bricks	Uses A,B,C,D,E	Yes

Permitted waste types					
Source from which the waste was produced	**Sub-source**	**Waste code**	**Broad description**	**Additional restrictions for each waste type and specified uses and storage in Table A**	**Hazardous waste assessment required**
		17 01 03 (MN)	Tiles and ceramics	Uses A,B,C,D,E Storage H	Yes
		17 01 07 (MN)	Mixtures of concrete, bricks, tiles and ceramics other than those mentioned in 17 01 06	Metal from reinforced concrete must have been removed. Uses A,B,C,D,E Storage H	Yes
	17 03 bituminous mixtures.	17 03 02 (MN)	Bituminous mixtures other than those mentioned in 17 03 01	Non-hazardous bituminous mixtures. Crushed road planings only Uses A,B,C,D Storage H	Yes
	17 05 Soil stones and dredging spoil.	17 05 04 (MN)	Soil and stones other than those mentioned in 17 05 03	Restricted to topsoil, peat, subsoil and stones only Uses E and F only Storage H	Yes
		17 05 06 (MN)	Dredging spoil other than those mentioned in 170507	Non-hazardous dredging spoil Where dried sand and gravels uses A,B,C,D,E Where not sand and gravels uses E and F only Storage H	Yes

Permitted waste types					
Source from which the waste was produced	**Sub-source**	**Waste code**	**Broad description**	**Additional restrictions for each waste type and specified uses and storage in Table A**	**Hazardous waste assessment required**
19 Wastes from waste management facilities off-site waste water treatment plants and the preparation of water intended for human consumption and water for industrial use	19 12 Wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified.	19 12 09 (AN)	Minerals (for example sand, stones) only	Restricted to wastes from treatment of waste aggregates that are otherwise naturally occurring minerals Does not include fines from treatment of any non-hazardous waste or gypsum from recovered plasterboard Uses A,B,C,D,E	No
		19 12 12 (MN)	Other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11	Restricted to crushed bricks, tiles, concrete and ceramics only Metal from reinforced concrete must have been removed Does not include fines from treatment of any non-hazardous waste or gypsum from recovered plasterboard Uses A,B,C,D,E Storage H	Yes
20 Municipal wastes (household waste and similar commercial,	20 02 garden and park wastes	20 02 01 (AN)	Biodegradable waste	Natural wood in chipped form only Use G only Storage I	No

Permitted waste types					
Source from which the waste was produced	**Sub-source**	**Waste code**	**Broad description**	**Additional restrictions for each waste type and specified uses and storage in Table A**	**Hazardous waste assessment required**
industrial and institutional wastes) including separately collected fractions		20 02 02 (AN)	Soil and stones	Restricted to topsoil, peat, subsoil and stones only Uses E and F only Storage H	No

Annex 3 - T4 Preparatory treatments, baling, sorting, shredding

Part 1: Specific issues and proposed changes

	Issue detail	Rationale for change	Proposed changes
Risks from stockpiling	Stockpiling of waste is a common issue on T4 sites and can lead to risks of abandonment and fire. Collected waste should be treated and either totally recovered or sent onto a final recovery site as soon as possible to ensure that it does not deteriorate to the point that recovery becomes more difficult.	Currently very high quantities especially as many of the wastes types are volumetrically high as very light e.g. plastics and food and drink cartons. Current acceptance limits in excess of those permitted by standard rules.	3 month storage to encourage turnover. Therefore reduced all storage limits to 100 $m^3$for each waste type.
Risks from combustible wastes	The wastes have been identified as combustible and therefore vulnerable to the risk of fire	All combustible wastes should have the same controls as identified in the Fire Prevention Plan Guidance to reduce and control the risk from fire where that risk is the same as a permitted site.	3 month storage limit for combustible wastes to align with the FPP Guidance. Waste stacks and piles limited to 4m high. Storage quantities of 100 m^3 less than that of permitted sites and therefore not all the FPP requirements are needed.
Storage of multiple wastes increasing overall risk	T4 has a wide range of wastes that can be stored and treated at the moment there is no limit on the total amount of waste that can be stored.	Reduce overall storage and throughput quantities to an order or magnitude less than standard rules and bespoke permits. Encourages throughput and discourages stockpiling which is a fire-risk and often reduces the recoverability of waste as it deteriorates over time.	Individual storage limits in m^3 for all waste types. Total of 300 m^3 of any combination of the wastes on site at any one time.
Total yearly processing rates significantly in excess of even bespoke treatment permits	If the maximum 7-day processing capacity for all wastes was reached the site would be processing over 900,000 tonnes per year.	Multiple waste streams treated on the same site increase the risk of the exempt activity. Exempt activities should be of a lower risk than permitted operations and processing quantities	Decrease overall annual acceptance to 500 tonnes with individual acceptance limits for each waste type.

	Issue detail	Rationale for change	Proposed changes
	Even individual limits for each waste are excessively high. Ranging between 5,200 – 260,000 tonnes per year. These are serious quantities which pose high risks of fire in particular and should be controlled through the permitting process and associated compliance assessment activities such as inspection.	should not be in excess of standard or bespoke permits e.g. The following allow only 5000t per year. • SR2008No15 Materials recycling facility (no building) • SR2008No22 Materials recycling facility (no building)	
Treatment activities	Granulation not currently listed as a treatment. It's not clear whether densifying of waste through extrusion which produces heat is allowed.	Add granulation to the list of treatments as it does not increase the overall risk of the activity. Extrusion was not meant to be excluded from the current exemption.	Granulation added. Clarified when heat is permitted as part of the treatment process.
Containment	No sealed drainage to prevent contaminated effluent from waste entering controlled waters. Containment to prevent litter from paper and cardboard.	Standardising appropriate containment across exemptions.	Sealed drainage put in for wastes that could be contaminated with other substances particularly food and drink. Widened to include same containment measures for plastics, cans and foil and food and drink cartons.
Changes to waste coding	07 02 13 Food and drink cartons only.	This code refers to a process waste. This is a production process waste not a product that is waste. Food and drink cartons will all be Chapter 15 waste, even if arising from a production process.	Remove this code.

Part 2: Option 2 proposal

T4 - Treatment of relevant waste by baling, sorting, shredding, pulverising, densifying, crushing, granulating or compacting it

<table>
<tr><th>All</th><th colspan="3">Current conditions</th><th colspan="3">Changes proposed under Option 2</th></tr>
<tr><td>Specified activities</td><td colspan="3">Treatment of relevant waste by baling, sorting, shredding, pulverising, densifying, crushing or compacting it. Associated storage.

• Where the treatment involves pulverising waste
o the total quantity of waste over any 7 day period does not exceed 5 tonnes.
o The treatment is carried out indoors.

• Where the treatment involves densifying of waste the treatment does not involve the application of heat.</td><td colspan="3">Treatment of relevant waste by baling, sorting, shredding, pulverising, <u>granulating,</u> densifying, crushing or compacting it. Associated storage.

• Where the treatment involves pulverising or granulating the waste
o the total quantity of waste over any 7 day period does not exceed 2 tonnes.
o The treatment is carried out indoors.

• Where the treatment involves densifying of waste the treatment does not involve the external application of heat. Heat produced as a by-product during the extrusion process is permitted.</td></tr>
<tr><td>General conditions applying to all wastes</td><td colspan="3">• Must be treated and stored in a secure place.
• The waste arrives at the place where the operation is carried out in an unmixed state
• The waste is stored and treated in an unmixed state.</td><td colspan="3">• Must be treated and stored in a secure place.
• Storage up to 3 months in total before and after treatment (unless fully recovered and no longer waste).
• Max stack height 4m.
• The waste arrives at the place where the operation is carried out in an unmixed state
• Each waste type must be stored separately and not mixed together during any treatment.
• Where more than one waste type is accepted at the site the total of all wastes accepted at the site must not exceed 500 tonnes per year.
• Where more than one waste type is accepted at the site the total of all wastes stored at the site must not exceed 300 m^3 (60-150 tonnes) at any one time.
• No individual pile or stack may exceed 100 m^3.
• Each stack or where stored in a container each container must be accessible in case of fire.</td></tr>
<tr><td>Waste type</td><td>Waste codes</td><td>Annual acceptance) (tonnes) / 7-day limit</td><td>Storage limits and conditions</td><td>Waste codes</td><td>Annual acceptance (tonnes) / 7-day limit</td><td>Storage limits and conditions</td></tr>
<tr><td>Cans and foil only</td><td>15 01 04
20 01 40</td><td>100 tonnes per 7 day period (outdoors) (= 5,200 tonnes per year)

500 tonnes per 7 day period (indoors)(= 26,000 tonnes per year)</td><td>• 12 months
• 500 tonnes</td><td>15 01 04
20 01 40</td><td>100 tonnes (434 m^3) per year

2 tonnes per 7 day period</td><td>• 3 months
• 100 m^3 (23 tonnes)
• Packaging waste that has contained food or drink must be stored on sealed drainage</td></tr>
</table>

All	Current conditions			Changes proposed under Option 2		
						• Must be baled or in an enclosure designed and maintained to prevent the escape of litter stored outside.
Food and drink cartons only	07 02 13 15 01 02 15 01 05	100 tonnes per 7 day period (outdoors) (= 5,200 tonnes per year) 3,000 tonnes per 7 day period (outdoors) (= 156,000 tonnes per year)	• 12 months • 500 tonnes	~~07 02 13~~ 15 01 02 15 01 05	100 tonnes (500 - 714 m^3) per year. 2 tonnes per 7 day period	• 3 months. • 100 m^3 (14-22 tonnes) • Must be stored on sealed drainage. • When stored outside must be baled or in an enclosure designed and maintained to prevent the escape of litter stored outside.
Glass	15 01 07 16 01 20 17 02 02 19 12 05 20 01 02	5,000 tonnes per 7 day period (=260,000 tonnes per year)	• 12 months • 5,000 tonnes	15 01 07 16 01 20 17 02 02 19 12 05 20 01 02	300 tonnes (352 – 909 m^3) per year 6 tonnes per 7 day period	• 3 months. • 100 m^3 (33-85 tonnes). • Must be stored on sealed drainage.
Paper and cardboard (excluding food and drink cartons)	03 03 08 03 03 07 15 01 01 19 12 01 20 01 01	500 tonnes per 7 day period (outdoors) (= 26,000 tonnes per year) 3,000 tonnes per 7 day period (outdoors) (= 156,000 tonnes per year)	• 12 months • 15,000 tonnes • Up to 1,000 tonnes may be stored outdoors so long as it is stored in an enclosure designed and maintained to prevent the escaper of litter.	03 03 08 03 03 07 15 01 01 19 12 01 20 01 01	300 tonnes per year (333 – 1428 m^3) 6 tonnes per 7 day period	• 3 months. • 100 m^3 (21 tonnes – 90 tonnes if 03 03 07). • Must be baled or in an enclosure designed and maintained to prevent the escape of litter if stored outside.
Plastic	02 01 04 07 02 13 12 01 05 15 01 02 16 01 19 17 02 03 20 01 39	100 tonnes per 7 day period (outdoors) (= 5,200 tonnes per year) 3,000 tonnes per 7 day period (indoors) (= 156,000 tonnes per year)	• 12 months • 500 tonnes	02 01 04 07 02 13 12 01 05 15 01 02 16 01 19 17 02 03 20 01 39	100 tonnes (278 -715 m^3) 2 tonnes per 7 day period	• 3 months. • 100 m^3 (14 -36 tonnes). • Packaging waste that has contained food or drink must be stored on sealed drainage. • Must be baled or in an enclosure designed and maintained to prevent the escape of litter if stored outside.

All	Current conditions			Changes proposed under Option 2		
	19 12 04			19 12 04 – clean plastics only		
~~**Textiles and clothes – outdoors**~~	~~04 02 22~~ ~~15 01 09~~ ~~19 12 08~~ ~~20 01 10~~ ~~20 01 11~~	~~1,000 tonnes per 7 day period (outdoors) (= 52,000 tonnes per year)~~	• ~~12 months~~ • ~~1,000 tonnes~~	~~04 02 22~~ ~~15 01 09~~ ~~19 12 08~~ ~~20 01 10~~ ~~20 01 11~~[53]	~~500 tonnes (3,703-5,882 m^3)~~ ~~10 tonnes per 7 day period~~	• ~~3 months~~ • ~~400 m^3 (68-108 tonnes).~~
Textiles and clothes - ~~indoors~~	04 02 22 15 01 09 19 12 08 20 01 10 20 01 11	3,000 tonnes per 7 day period (indoors) = 156,000 tonnes per year	• 12 months • 1,000 tonnes	04 02 22 15 01 09 19 12 08 20 01 10 20 01 11	100 tonnes per year 2 tonnes per 7 day period	• 3 months. • 100 m^3 (17-27 tonnes).

[53] A crossed-through waste code indicates we are proposing not to keep it

Annex 4 - T6 Treatment of waste wood and waste plant matter by chipping, shredding, cutting or pulverising

Part 1: Specific issues and proposed changes

	Issue detail	Rationale for change	Proposed changes
Risks from stockpiling	Stockpiling of waste is a common issue on T6 sites and can lead to risks of abandonment and fire.	Collected waste should be treated and sent onto a recovery site as soon as possible to ensure that it does not deteriorate to the point that recovery becomes more difficult.	3 month storage to encourage turnover. Therefore reduced storage limit to 300 m^3 in total on site regardless of the stage of processing or storage.
Risks from combustible wastes	Wood is a combustible waste and has a high risk of fire. Chipped wood especially can start to degrade rapidly and self-ignite.	All combustible wastes should have the same controls as identified in the Fire Prevention Plan (FPP) Guidance to reduce and control the risk from fire where that risk is the same as a permitted site. Where that risk is lower the controls can be less restrictive.	3 month storage limit for combustible waste to align with the FPP Guidance. Waste stacks and piles limited to 4m high in accordance with FPP Guidance. Storage quantities are less than that of permitted sites and therefore not all the FPP requirements are needed.
Risks from specific types of waste **Wood from construction 17 02 01**	Hazardous waste wood is being mixed with non-hazardous waste wood either at the place of production (prior to collection) or at the T6 Treatment facility. Proper assessment in accordance with WM3 is not being carried out and the hazardous waste wood is not being separated out. In particular 17 02 01 is a non-hazardous mirror entry code that requires a hazardous	A non-hazardous mirror entry code cannot legally be assigned to an item of treated wood (or any mixed wood waste that contains it) unless an appropriate assessment has been performed (in accordance with technical guidance WM3). The consequence of not carrying out this assessment is that the wood is chipped and then goes down the wrong recovery route. It can end up in animal bedding which is then later spread to land. Most ends up being burnt for energy recovery but if it hasn't been properly assessed it will end up at the wrong type of facility without appropriate environmental controls.	We propose removing 17 02 01 wood from construction from T6.

	Issue detail	Rationale for change	Proposed changes
	waste assessment to be carried out.	Hazardous waste wood and treated waste wood are subject to Chapter IV of the Industrial Emissions Directive (IED) which specify the standards that must be adhered to to prevent pollution of the environment and harm to human health.	
Changes to waste coding or description	Wood 03 01 01	03 01 01 should be described as waste bark and cork not wood.	Change to bark and cork. Update all descriptions to make sources more explicit.

Part 2: Option 2 - Proposal T6 -Treatment of waste wood and waste plant matter by chipping, shredding, cutting or pulverising

All	**Current conditions**			**Changes proposed under Option 2**		
Specified activities	Chipping, shredding, cutting, pulverising and associated storage.			Sorting, chipping, shredding, cutting, pulverising and associated storage.		
General conditions applying to all wastes	**None**			Where there is no sealed drainage then the site must be more than 50m from a spring, well or borehole and 10 metres from any water course.		
Waste types	**Waste codes**	**Waste acceptance**	**Storage limits and conditions**	**Waste codes**	**Waste acceptance**	**Storage limits and conditions**
Plant tissue waste	02 01 03	26,000 tonnes per year 500 tonnes per 7-days	3 months after treatment No limit before treatment 500 tonnes treated	02 01 03, Plant tissue waste from agriculture, horticulture, aquaculture, forestry, hunting and fishing	500 tonnes per year Maximum acceptance 10 tonnes per week (30 m3)	3 months total on site Maximum of 300m^3 of waste on site at any one time. (3 months' worth at 30m^3 per week) Max stack height 4m
Plant tissue waste	200201			200201, Plant tissue waste from parks and		

All	Current conditions			Changes proposed under Option 2		
			No containment measures specified	gardens (including cemeteries)		
Wood	030101, 030301, 170201			030301, Wood and bark wastes from pulp, paper and cardboard production and processing		
Wooden packaging only	150103			150103, Wooden packaging only		
				030101, Waste bark and cork wastes from wood processing and the production of panels and furniture		

Annex 5 - T8 Mechanical treatment of end-of-waste tyres

Part 1: Specific issues and proposed changes

	Issue detail	Rationale for change	Proposed changes
Illegal disposal	The main issue is that the exemption is used for illegal disposal rather than recovery.	Reducing quantities of tyres allowed will help to identify more quickly when a site is being operated illegally. T8 activities often undercut permitted waste operations where there are tighter restrictions and more checks on compliance through site inspection which is funded through permit subsistence charges.	Very strict limits and conditions that will mean most will need to be permitted.
Annual waste acceptance	There is no annual waste acceptance but the 40 tonnes a week treatment limit equates to 249,600 car or van tyres.	Lowering the quantities significantly means that it can be identified earlier if an exempt activity is becoming out of control.	Restrict to 20 tonnes per year.
Risks from combustible wastes and stockpiling	Tyres especially any that have been contaminated have been identified as a combustible waste. Stockpiling and abandonment are common.	All combustible wastes should have the same controls as identified in the Fire Prevention Plan Guidance to reduce and control the risk from fire relative to the size and risk of the exempt activity. Lowering the quantities significantly means that it can be identified earlier if an exempt activity is becoming out of control.	3 months storage limit. Maximum 4m height stack. Max 2.5 tonnes storage.

Part 2: Option 2 - Proposal T8 - Mechanical treatment of end-of-waste tyres

All	Current conditions			Changes proposed under Option 2		
Specified activities	• Cleaning tyres and separating from rims • Re-treading of tyres for re-use • Baling, peeling, shaving, shredding • Granulating • Associated storage			• Cleaning tyres and separating from rims • Re-treading of tyres for re-use • Baling, peeling, shaving, shredding • Granulating • Associated storage		
General conditions applying to all wastes	Granulating is carried on indoors only			Granulating is carried on indoors only		
Waste types	**Waste codes**	**Annual acceptance (tonnes) / 7-day throughput**	**Storage limits and conditions**	**Waste codes**	**Annual acceptance (tonnes) / 7-day throughput**	**Storage limits and conditions**
End of life tyres and shredded or granulated end-of-life tyres	16 01 03 19 12 04	60 tonnes of truck tyres per 7 days (1200 commercial tyres per 7 days or 62,400 per year) OR 40 tonnes of any other tyres per 7 days (4800 car or van tyres per 7 days or 249,600 tyres per year)	3 months Combined storage limit of all wastes stored on site at any one time limited to 60 tonnes (1200 commercial tyres/4800 car or van tyres)(128-214 m^3) No waste pile may be more than 10 tonnes	16 01 03 19 12 04	20 tonnes per year (2,400 car or van tyres or 400 commercial tyres) Max 0.5 tonne (60 tyres) end-of life tyres in any form per week. (10 Commercial tyres) (0.5 tonnes of shred)	3 months Combined storage limit of whole tyres or treated tyres (tyre crumb, shavings etc.) stored on site limited to 2.5 tonnes Max stack height 4m Where stored in containers each container must be accessible in case of fire

Annex 6 - T9 Recovery of scrap metal

Part 1: Specific issues and proposed changes

	Issue detail	Rationale for change	Proposed changes
Annual waste acceptance	There is no annual waste acceptance.	T9 activities are often situated in small yards close to residential and other business properties.	Restrict to 500 tonnes per year.
Risks from combustible wastes	Scrap metal, especially any contaminated with oil, has been identified as a combustible waste.	All combustible wastes should have the some controls as identified in the Fire Prevention Plan Guidance to reduce and control the risk from fire relative to the size and risk of the exempt activity. Storage quantities are less than that of permitted sites and therefore not all the FPP requirements are needed.	No waste is stored longer than 12 months. 3 month storage limit for metal wastes that have oil contamination. 3 months for cable rubber, plastic and other non-metal wastes. Waste stacks and piles limited to 4m high. Limit to 500 m^3 total storage and 250 m^3 maximum stack size. Requirement to ensure access to all waste in case of fire.
Additional treatment activities being carried out under T9	Stripping and granulation often carried out already on these sites but not specified in the treatment activities.	The activity is useful and low-risk and is covered by the low-risk position LRP515. Adding it to the T9 means the position can be removed.	Stripping and granulation of cables added to the list of treatment activities. Separate storage conditions and quantity limits set for stripped cable and resulting plastic and rubber waste.

	Issue detail	Rationale for change	Proposed changes
Risks from specific types of waste Wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified 191202 – Ferrous metals 191203 – Non-ferrous metals 150104 Metallic packaging	Metals segregated at MRFs are often not clean (containing contraries, plastics etc.) and can give rise to odour, flies and high Biological Oxygen Demand run-off Packaging waste can contain residues such as food and drink that are odorous and attract flies, or oil and chemicals that are highly polluting.	T9 activities are often situated in small yards close to residential and other business properties. Odour and flies are a particular nuisance and any activities involving these wastes should be carried out away from such properties and ideally in a building.	We propose removing codes 191202 and 191203 from this exemption. Keep 150104 but limited to only clean packaging.
Waste acceptance	Many sites accept wastes that are from prohibited sources as the operator finds it hard to understand the coding. This leads to problematic wastes being accepted. Many sites accept WEEE which is not permitted under this exemption.	Wastes cause issues such as odour, flies etc. There are specific handling and treatment standards for WEEE that mean that a permit is required.	Make the waste descriptions more explicit and state the sources of the waste. Make it explicit in the exemption title that WEEE is excluded. Exclude it in the list of activities.
Sealed drainage	Common issue when visiting sites is that the storage and treatment areas are not on sealed drainage.	This is a requirement but it is not worded clearly in the exemption.	Clarify requirement that all storage and treatment areas are on sealed drainage.

Part 2: Option 2 - Proposal
T9 - Recovery of scrap metal (excluding WEEE)

All	**Current conditions**				**Changes proposed under Option 2**			
Specified activities	Sorting, grading shearing by manual feed, baling, crushing. Cutting it with hand-held equipment. Associated storage.				Sorting, grading shearing by manual feed, baling, crushing. Cutting with hand-held equipment. Stripping and granulation of cables. Associated storage. Waste classified as WEEE is excluded.			
General site conditions applying to all waste.	Recovery is carried on at a location with sealed drainage.				All storage and treatment areas are on sealed drainage.			
Scrap metal	**Waste codes**	**Annual acceptance (tonnes) / 7-day limit**	**Storage time and quantity limits**	**Other conditions**	**Waste codes**	**Annual acceptance (tonnes) / 7-day limit**	**Storage time and quantity limits**	**Other conditions**
	02 01 10 15 01 04 16 01 17 16 01 18 19 12 02 19 12 03 17 04 01 17 04 02 17 04	No annual waste acceptance specified. No weekly throughput specified.	No waste is stored longer than 24 months. 1000 tonnes on site at any one time. Total quantity of any cables stored or	Height of any stack or pile does not exceed 5 metres.	02 01 10 15 01 0416 01 17 16 01 18 ~~19 12 02~~ ~~19 12 03~~ [54] 17 04 01 17 04 02 17 04 03	500 tonnes per year.	No waste is stored longer than 12 months. 3 month storage limit for metal wastes that have oil contamination. 3 months for cable rubber and plastic and any other non-metal waste separated from metal.	Height of any stack or pile does not exceed 4m. Waste stacks must be accessible in case of fire.

[54] A crossed-through waste code indicates we are proposing not to keep it

All	Current conditions				Changes proposed under Option 2			
	0317 04 04 17 04 05 17 04 06 17 04 07 17 04 11 20 01 40	.	treated does not exceed 50 tonnes.		17 04 04 17 04 05 17 04 06 17 04 07 17 04 11 20 01 40		500 m^3 on site at any one time. Maximum stack size 250 m^3 (27.5-225 tonnes - weight depending on metal type) on site at any one time. Stripped Cables – Maximum 25 m^3 stored in container(s). Cable rubber and plastic covers when stripped and any other non-metal waste – Maximum 10 m^3 stored in container(s).	Where stored in containers each container must be accessible in case of fire.

Annex 7- T12 Manual treatment of waste

Part 1: Specific issues and proposed changes

	Issue detail	Rationale for change	Proposed changes
Risks from stockpiling	Stockpiling of waste is a common issue on T12 sites and can lead to risks of abandonment and fire.	No annual throughput currently - Added annual throughput for each waste type. Where appropriate this is expressed as a unit rather than a tonnage.	3 month storage to encourage turnover. Reduced all acceptance limits for each waste type.
Risks from combustible wastes	Some of the wastes have been identified as particularly vulnerable to the risk of fire.	All combustible wastes should have the same controls as identified in the Fire Prevention Plan Guidance to reduce and control the risk from fire where that risk is the same as a permitted site.	3 month storage limit for combustible wastes to align with the FPP Guidance. Waste stacks and piles limited to 4m high. Storage quantities less than that of permitted sites and therefore not all the FPP requirements are needed.
Storage of multiple wastes increasing overall risk	T12 has a wide range of wastes that can be stored and at the moment there is no limit on the total amount of waste that can be stored.	Reduce overall storage and throughput quantities to an order or magnitude less than standard rules and bespoke permits. Encourages throughput and discourages stockpiling which is a fire-risk and often reduces the recoverability of waste as it deteriorates over time.	Individual storage limits in m^3 for all waste types. Total of 300 m^3 of any of the wastes or combination of on site at any one time.
Treatment activities being carried out under T12	There are separate treatment limits depending on what sort of treatment is being carried out.	This makes understanding the quantity limits quite complicated. Under the new proposals the individual and overall limits are much reduced it and it makes less sense to have different limits.	Amalgamate treatment activities and put one single limit per waste type.
Unsuitable storage for recovery or reuse to be achieved	Wastes stored inappropriately cannot be recovered properly Following the waste hierarchy re-use should be a priority followed by recycling into another use.	Where storage outside is likely to reduce the reuse of the waste or reduce its capacity to be recycled then it should be stored indoors or in a covered container.	Made storage to be inside a building where storing outside would make the waste harder if not impossible to prepare for recycling or reuse.

	Issue detail	Rationale for change	Proposed changes
Unsuitable storage or treatment resulting in amenity issues	Some wastes give rise to amenity issues through noise, dust, odour or attraction of pests and vermin.	Some wastes especially if they are stockpiled outside provide places for vermin to live and can attract vermin and pests into an area. Wastes can also start to degrade more rapidly if they become wet and can cause odours. In addition degradation of the waste makes it harder if not impossible to prepare for recycling or reuse.	Made storage and or to be inside a building where waste can cause amenity issues or degrade.
Making storage a treatment limits clearer	Some wastes e.g. pallets have different limits set out in different rows depending on the type of treatment.	These can be confusing and the overall limits have been significantly reduced meaning that there is no need to have separate limits. This makes it simpler to understand and enforce.	Rows for treatment of windows and doors and for pallets have been merged.
Risks from specific types of waste **Mattresses**	There is and increasing problem with collection and stockpiling of mattresses. This leads to abandonment, risk of fire and attraction of pests nesting in the mattresses.	These wastes are easy to collect but difficult to dismantle and the resultants materials are of low-value. Profit is mainly through the collection or gate fee. It's likely that only through economies of scale provided by a permitted facility and through any future extended producer responsibility scheme would make this activity profitable and less likely to attract waste crime.	As a result we propose to remove mattresses from T12 altogether.
Waste coding and description	20 01 99 Bicycles 20 01 99 Footwear	Bicycles are vehicles and should be coded as 16 01 06. Footwear is classified as clothing and should be coded 20 01 10. Add 17 05 04 to allow stone only. Add 17 09 04 to windows to allow composites.	Add, remove or change relevant codes and descriptions.

Part 2: Option 2 - Proposal

T12 - Manual treatment of waste

All	**Current conditions**				**Changes proposed under Option 2**			
Specified activities	Waste specific but includes: Sorting, repairing, refurbishing, dismantling and associated storage.				Waste specific but includes: Sorting, repairing, refurbishing, dismantling and associated storage.			
General conditions applying to all wastes	None				• Must be treated and stored in a secure place. • The waste arrives at the place where the operation is carried out in an unmixed state. • Each waste type must be stored separately and not mixed together during any treatment. • Where more than one waste type is accepted at the site the total of all wastes accepted at the site must not exceed 500 tonnes per year. • Where more than one waste type is accepted at the site the total of all wastes stored at the site must not exceed 300 m^3. • No waste stack before or after treatment may exceed the storage limits for the specified waste type. • Max stack height 4m. • Each pile or stack or where stored in a container each container must be accessible in case of fire.			
Waste type	**Waste codes**	**Annual acceptance (tonnes) / 7-day limit**	**Treatments**	**Storage limits and conditions**	**Waste codes**	**Annual acceptance**	**Treatments**	**Storage limits and conditions**
Bicycles and bicycle parts only	20 01 99	None	Sorting, repairing or refurbishing	2 years 100 tonnes	16 01 06	1000 bicycles per year	Sorting, repairing or refurbishing	12 months 100 bicycles at any one time. Treatment and storage carried on indoors
Clothing, fabrics, carpets only	20 01 10 20 01 11	None	Sorting, repairing or refurbishing	2 years 100 tonnes	20 01 10 20 01 11	100 tonnes per year	Sorting, repairing or refurbishing	3 months 100 m^3 (17-27 tonnes depending on material) Treatment and storage carried on indoors
Coat hangers only	20 01 38 20 01 39 20 01 40	None	Sorting and dismantling	12 months 100 tonnes	20 01 38 20 01 39 20 01 40	50 tonnes per year	Sorting and dismantling	3 months 50 m^3 (11.5 tonnes)

All	**Current conditions**				**Changes proposed under Option 2**			
Domestic pots and pans only	20 01 40	None	Sorting and dismantling	2 years 100 tonnes	20 01 40	50 tonnes per year	Sorting and dismantling	12 months 50 m^3
Footwear only	20 01 99	None	Sorting, repairing or refurbishing	2 years 100 tonnes	20 01 10	100 tonnes per year	Sorting, repairing or refurbishing	3 months 100 m^3 (17-27 tonnes) Treatment and storage carried on indoors
Furniture only	20 03 07	None	Sorting, repairing or refurbishing	2 years 100 tonnes	20 03 07	50 tonnes per year	Sorting, repairing or refurbishing	12 months 200 m^3 (34 – 54 tonnes) Treatment and storage carried on indoors
Garden tools only	20 01 38 20 01 39 20 01 40	None	Sorting, repairing or refurbishing	2 years 100 tonnes	20 01 38 20 01 39 20 01 40	50 tonnes per year	Sorting, repairing or refurbishing	12 months 50 m^3
Lock gates only	20 01 38 20 01 39 20 01 40	None	Sorting and dismantling	2 years 100 tonnes	20 01 38 20 01 39 20 01 40	100 tonnes per year	Sorting and dismantling	12 months 50 lock gates
~~Mattresses only~~	~~200307~~	~~None~~	~~Sorting and dismantling~~	~~12 months 5 tonnes Treatment and storage carried on indoors~~				
Stone, bricks, wood only	17 01 02 17 02 01 17 09 04 20 01 38	None	Sorting, repairing or refurbishing	500 tonnes	17 01 02 17 02 01 17 09 04 20 01 38 17 05 04	100 tonnes per year	Sorting, repairing or refurbishing	12 months 100 m^3

All	Current conditions				Changes proposed under Option 2			
Telegraph poles only	20 01 37*[55] 20 01 38 20 01 40	None		12 months 100 tonnes	17 02 01, 17 02 04*	100 tonnes per year	Sorting and dismantling	12 months 200 telegraph poles
Windows, doors only	17 02 01 17 02 02 17 02 03 20 01 02 20 01 38 20 01 39 20 01 40	None	Sorting, repairing or refurbishing	100 tonnes - sorting , repairing or refurbishing (2 years) 10 tonnes sorting and dismantling (12 months)	17 02 01 17 02 02 17 02 03 20 01 02 20 01 38 20 01 39 20 01 40 17 09 04	100 tonnes per year	Sorting, repairing, refurbishing or dismantling	3 months 50 m^3
Wooden pallets only	15 01 03	None	Sorting, repairing or refurbishing	100 tonnes - sorting , repairing or refurbishing (2 years) 100 tonnes sorting and dismantling (12 months)	15 01 03	100 tonnes per year	Sorting, repairing, refurbishing or dismantling.	3 months 100 m^3

[55] an asterisk (*) next to a code denotes that it is hazardous waste.

Annex 8 - D7 Burning waste in the open

Part 1: Specific issues and proposed changes

	Issue detail	Rationale for change	Proposed changes
Burning waste not at the place of production	This exemption is sometimes abused by collectors of waste or businesses that produce vegetation waste as part of their business. They gather waste from several sites and burn at a central location such as their depot.	Disposal is only permitted to be carried out at the place where the waste was produced but this could be made clearer in the exemption conditions.	Make the title of the exemption and the specified activities clearer.
Risks from combustible wastes	Wood and vegetation is a combustible waste and has a high risk of fire. Chipped wood especially can start to degrade rapidly and self-ignite.	All combustible wastes should have the same controls as identified in the Fire Prevention Plan (FPP) Guidance to reduce and control the risk from fire where that risk is the same as a permitted site. Where that risk is lower the controls can be less restrictive.	3 month storage limit for combustible waste to align with the FPP Guidance. Waste stacks and piles limited to 4m high in accordance with FPP Guidance. Storage quantities less than that of permitted sites and therefore not all the FPP requirements are needed.
Removal of specific types of waste 03 01 05 - wastes from wood processing and the production of panels and furniture 03 03 01 - wastes from pulp, paper and cardboard production and processing	The exemption currently allows the burning of off-cuts from furniture manufacture and paper production. One on the waste codes for off-cuts of furniture is a Mirror entry.	Waste wood off-cuts produced in a work-shop or factory setting could be better used as a fuel in a heating or power appliance. Or separately collected for recycling. Waste that have Mirror entry codes are legally required to be assessed to ascertain their hazardous waste status.	Propose removing these codes.
Other changes to waste codes and descriptions	02 01 07 would captures waste from forestry that are not plant tissue.	Wrong code.	Remove code 02 01 07.

Part 2: Option 2 - Proposal D7 - Burning of vegetation and wood at the place of production only

All	**Current conditions**			**Changes proposed under Option 2**		
Specified activities	The burning of relevant waste on open land			Burning of vegetation and wood at the place of production only		
General conditions applying to all wastes	• The total quantity of waste burned over any period of 24 hours does not exceed 10 tonnes • The total quantity of waste stored at any one time is 20 tonnes • The waste is stored no longer than 6 months			• The total quantity of waste burned over any period of 24 hours does not exceed 20 m^3. • The total quantity of waste pending disposal by burning in the open is 40 m^3 any one time. • The waste is stored no longer than 3 months pending disposal by burning.		
Waste types	**Waste codes**	**Annual waste acceptance/ treatment limit**	**Storage limits and conditions**	**Waste codes**	**Annual waste acceptance / treatment limit**	**Storage limits and conditions**
Plant tissue	02 01 03 02 01 07 20 02 01	No yearly quantity as on site of production.	6 months 20 tonnes	02 01 03 ~~02 01 07~~ 20 02 01 Plant tissue consisting of Cut vegetation and plant tissue waste from the clearance and maintenance of agricultural premises, parks and gardens and other land. Including untreated waste bark and wood.	No yearly quantity as on site of production. 20 m^3 per 24 hours.	40 m^3 of waste pending disposal by burning at any one time. Maximum height of stack or pile 4 metres.
Sawdust, shavings and cuttings from	03 01 05			~~030105~~		

All	Current conditions			Changes proposed under Option 2		
untreated wood only						
Waste bark and wood	030301			~~030301~~ [56]		

[56] A crossed-through waste code indicates we are proposing not to keep it

Annex 9 - Temporary storage of waste under S1 and S2

Part 1: Specific issues and proposed changes

Issues specific to S1 Storage of waste in secure containers and proposed changes

	Issue detail	Rationale for change	Proposed changes
Risks from combustible wastes	Some of the wastes have been identified as particularly vulnerable to the risk of fire.	All combustible wastes should have the same controls as identified in the Fire Prevention Plan Guidance to reduce and control the risk from fire where that risk is the same as a permitted site.	3 month storage limit for all wastes to align with the FPP Guidance. Storage quantities less than that of permitted sites and therefore not all the FPP requirements are needed. Retain 3 m^3 for waste oils and absorbents.
Treatment activities being carried out under S1	This exemption is often registered and treatments are also carried out on the site. The exemption specifically states that it is for recovery elsewhere.	By making the title clearer the customer can see right away that the waste can only be stored and not recovered at the site. All other exemptions have their own associated storage limits and conditions set out. Storage at the place of production is covered by the non-registerable exemption NWFD2.	Suggested title changes – proposed tables below.
Registering storage and treatment exemptions together to increase overall capacity	This exemption is often registered and treatments are also carried out on the site. The exemption specifically states that it is for recovery elsewhere.	Each exemption is risk-assessed on its own merits. When combinations of exempt operations are registered together that changes and often increases the risk profile.	Restrict the types of exemptions that can be registered together then we keep the overall risk of the combined activities low.
Risks from specific types of waste **Waste oils**	There are a range of additional oils that are of no higher risk than those already listed and are currently covered by a low-risk position LRW545 https://www.gov.uk/government/publications/low-risk-waste-activities-guidance	Where there is no higher risk and a need has been identified then the waste codes and waste types should be added to the exemption.	Add appropriate codes and conditions to allow storage only. 13 03 01* insulating or heat transmission oils containing PCBs

	Issue detail	Rationale for change	Proposed changes
			13 03 06* mineral-based chlorinated insulating and heat transmission oils other than those mentioned in 13 03 01 13 03 07* mineral-based non-chlorinated insulating and heat transmission oils 13 03 08* synthetic insulating and heat transmission oils 13 03 09* readily biodegradable insulating and heat transmission oils

Issues specific to S2 and storage in a secure place and proposed changes

	Issue detail	Rationale for change	Proposed changes
Risks from stockpiling	Stockpiling of waste is a common issue on S2 sites and can lead to risks of abandonment and fire. Collected waste should be sent onto a recovery site as soon as possible to ensure that it does not deteriorate to the point that recovery becomes more difficult.	It appears that the maximum size skip (Roll-on / Roll-Off (Ro-Ro)) is around 40 yd^3 or 30.58 m^3. As only one Ro-Ro can be carried on a vehicle at a time then there is no need to store more than this and frequent turn-over rather than stock-piling would be encouraged. Smaller containers / collection vehicles can be used where preferred.	3 month storage to encourage turnover. Therefore reduced all storage limits to 40 m^3 for each waste type for each of the main recyclable waste – cartons, plastics and plastic packaging, can and foil only, paper and cardboard, glass, textiles and clothes.
Risks from combustible wastes	Some of the wastes have been identified as particularly vulnerable to the risk of fire.	All combustible wastes should have the same controls as identified in the Fire Prevention Plan Guidance to reduce and control the risk from fire where that risk is the same as a permitted site.	3 month storage limit for combustible wastes to align with the FPP Guidance. Waste stacks and piles limited to 4m high. Storage quantities less than that of permitted sites and therefore not all the FPP requirements are needed.
Storage of multiple wastes increasing overall risk	S2 has a wide range of wastes that can be stored and at the moment there is no limit on the	Break the tables into two so that an overall limit can be set to ensure that quantities stored are not excessive.	That would be a total of 186 m^3 of these types of waste on site at any one time.

	Issue detail	Rationale for change	Proposed changes
	total amount of waste that can be stored.	Allow one skip of each specified waste type up to 5 different waste types	
Treatment activities being carried out under S2	This exemption is often registered and treatments are also carried out on the site. The exemption specifically states that it is for recovery elsewhere.	By making the title clearer the customer can see right away that the waste can only be stored and not recovered at the site. All other exemptions have their own associated storage limits and conditions set out. Storage at the place of production is covered by the non-registerable exemption NWFD2.	Suggested title - S2 temporary storage of waste in a secure place for recovery at another place.
Registering storage and treatment exemptions together to increase overall capacity	This exemption is often registered and treatments are also carried out on the site. The exemption specifically states that it is for recovery elsewhere.	Each exemption is risk-assessed on its own merits. When combinations of exempt operations are registered together that changes and often increases the risk profile.	Restrict the types of exemptions that can be registered together then we keep the overall risk of the combined activities low.
Risks from specific types of waste **Tyres**	Tyres have been identified as a particularly high risk from illegal activity. Not only are they commonly fly-tipped they also pose a significant fire-risk when illegally stockpiled. Rogue collectors are undercutting legitimate permitted operators.	Tyres can already be stored by the producer of the waste e.g. The tyre fitter/ retailer at their premises. NWFD2 – storage of waste at the place of production prior to collection by a registered carrier. They can also be stored at a place controlled by the producer (NWFD3) – this would allow for example: Mobile fitters and roadside recovery businesses to change tyres and take the waste tyres back to their depot and store prior to collection by a registered carrier. Anyone else running a business taking and treating tyres in needs a certain amount to make the business viable especially when the cost of	As a result we propose to remove tyres and tyre chip and crumb from S2 altogether.

	Issue detail	Rationale for change	Proposed changes
		equipment such as balers and shredders are factored in.	
Mattresses	There is and increasing problem with collection and stockpiling of mattresses. This leads to abandonment, risk of fire and attraction of pests nesting in the mattresses.	The changes to T12 allow the treatment of small quantities of waste mattresses. There doesn't seem to be a legitimate need to collect mattresses at an intermediate site when they could go directly to a T12 or a permitted facility. There are still the NWFD exemptions for storage and collection points.	As a result we propose to remove mattresses from S2 altogether.
WEEE **Fluorescent tubes** **Single use cameras**	Many sites are not complying with the storage requirements of the WEEE Directive. T17 for fluorescent tubes has been recently updated with reduced quantities and more explicit conditions.	The requirements of the WEEE Directive are referred to but not explicit in the exemption. This means you are relying upon the operator to go and read that guidance which is quite extensive. The limits and condition for fluorescent tubes should not be the same as for T17.	Put the requirements of the WEEE Directive in the exemption so there is no need to refer to other guidance. Add single use camera codes to the general WEEE section. Split fluorescent tubes out from WEEE to make it clear and put storage and quantity requirements for fluorescent tubes in that match the T17 requirements.
Other changes to waste coding	Cartons 20 01 01, 20 01 39, 07 02 13	Packaging is excluded from 20 01 codes. 07 02 13 can't be used to describe food and drink cartons.	Remove these codes.
	Printer cartridges.	20 01 39, 15 02 01 codes not appropriate for this waste type.	Remove these codes.
	Aqueous paint 16 10 02.	16 10 02 not appropriate.	Replace code with 08 01 20 aqueous solution containing paint.
	Soils from cleaning fruit and vegetables only.	02 03 99 not appropriate.	Replace code with 02 03 01.
	Solder metal, skimmings, ashes and residues.	10 08 99 not appropriate.	Remove this code other codes adequately cover this waste.
	Wine bottle corks only.	20 01 38 not appropriate as packaging excluded from 20 01 codes.	Remove this code.

Part 2: Option 2 - Proposal

Proposed NEW S1 - Temporary interim storage and bulking of waste in secure containers for recovery at another place

All	**Current conditions**			**Changes proposed under Option 2**		
Treatments	Storage only			Storage only		
General conditions applying to all wastes	• Storage at a secure place for the purposes of recovery elsewhere. • The total quantity of storage containers at the storage place at any one time is 20 (80 m^3). • No waste is stored longer than 12 months. • The person storing the waste is the owner of the containers or has the consent of the owner. • Each waste type is stored separately.			• Storage in a secure container for the purposes of recovery elsewhere. • The total quantity of storage containers at the storage place at any one time is 5 (total of 15 m^3). • No waste is stored longer than 3 months. • The person storing the waste is the owner of the containers or has the consent of the owner. • Each waste type is stored separately.		
	Waste codes	**Annual throughput (annual acceptance) (tonnes) / 7-day limit**	**Storage limits and conditions**	**Waste codes**	**Annual throughput (annual acceptance) (tonnes) / 7-day limit**	**Storage limits and conditions**
Waste oils	13 01 09*[57] to 13 01 13* 13 02 04* to 13 02 08* 13 07 01*	None	• 12 months • 3 m^3 • Must be stored with secondary containment	13 01 09* to 13 01 13* 13 02 04* to 13 02 08* 13 07 01*	None	• 3 months • 3 m^3 • Must be stored with secondary containment

[57] an asterisk (*) next to a code denotes that it is hazardous waste.

All	Current conditions			Changes proposed under Option 2		
Waste electrical insulating oil	NA	NA	NA	13 03 01* 13 03 06* 13 03 01 13 03 07* 13 03 08* 13 03 09* 13 03 10*	None	• 3 months • 3 m^3 • Must be stored with secondary containment
Absorbents, filter materials, (including oil filters not otherwise specified) wiping cloths, protective clothing contaminated by dangerous substances.	15 02 02*	None	• 3 m^3	15 02 02*	None	• 3 months • 3 m^3 • Must be stored with secondary containment
Absorbents, filter materials, wiping cloths, protective clothing other than those mentioned in 150202	15 02 03	None	• 3 m^3	15 02 03	None	• 3 months • 3 m^3
Oil filters	16 01 07*	None	• 3 m^3	16 01 07*	None	• 3 months • 3 m^3 • Must be stored with secondary containment
Solvents and solvent mixtures	14 06 02* 14 06 03* 20 01 13*	None	• 6 months • 5 m^3 • A – the waste is stored in a container • C- the waste is stored with secondary containment	14 06 02* 14 06 03* 20 01 13*	None	• 3 months • 5 m^3 • the waste is stored in a container the waste is stored with secondary containment

All	Current conditions			Changes proposed under Option 2		
Waste cleaning solution containing 2% sodium metasilicate and 1-2% waste oil only	11 01 13* 12 03 01* 16 07 08*	None	• 3 months • 3 tonnes • A – the waste is stored in a container • C- the waste is stored with secondary containment	11 01 13* 12 03 01* 16 07 08*	None	• 3 months • 3 m^3 • the waste is stored in a container • the waste is stored with secondary containment
CFCs HCFCs and HFCs	14 06 01*	None	• 6 months • 18 tonnes • A – the waste is stored in a container • C- the waste is stored with secondary containment	14 06 01*	None	• 6 months • 5 m^3 • the waste is stored in a container • the waste is stored with secondary containment
Paints (excluding specialist and industrial paints, wood preservatives, aerosol and spray paints, inks adhesives and resins) pending re-use as paint only	20 01 27* 20 01 28 08 01 11* 08 11 12	None	• 6 months • 10,000 litres • A – the waste is stored in a container • C- the waste is stored with secondary containment	20 01 27* 20 01 28 08 01 11* 08 11 12	None	• 6 months • 10,000 litres (10 m^3) • the waste is stored in a container • the waste is stored with secondary containment

Proposed NEW S2 (S1 combined) - Temporary interim storage and bulking of commonly collected recyclables for recovery at another place

All	**Current conditions**			**Changes proposed under Option 2**		
Specified activities	Storage only			Storage and bulking only		
General conditions applying to all wastes in this table	• Storage at a secure place for the purposes of recovery elsewhere. • The total quantity of storage containers at the storage place at any one time is 20 (8000 m^3). • No waste is stored longer than 12 months. • The person storing the waste is the owner of the containers or has the consent of the owner. • Each waste type is stored separately.			• Storage at a secure place or in a secure container for the purposes of recovery elsewhere. • Where waste is not stored in a secure container then it must be stored in a secure place. • Where more than one waste type is accepted the total quantity of waste accepted at the storage place is 500 tonnes per year. • Where more than one waste type is accepted the total quantity of waste at the storage place at any one time is 300 m^3. • No waste is stored longer than 3 months. • The person storing the waste is the owner of the containers or has the consent of the owner • Each waste type is stored in a separate container or separate stack or pile.		
Waste description	**Waste Code**	**Annual acceptance (tonnes) / 7-day limit**	**Storage limits and conditions**	**Waste Code**	**Annual acceptance (tonnes) / 7-day limit**	**Storage limits and conditions**
Food and drink cartons only	07 02 13 15 01 01 15 01 02 15 01 05 20 01 39	None	• 12 months • 500 tonnes (*3571 m^3)* *(117x 40 yrd Ro-Ro)*	~~07 02 13~~ 15 01 01 15 01 02 15 01 05 ~~20 01 39~~ ~~20 01 01~~ [58]	100 tonnes per year	• 3 months • 40 m^3 • Stack or pile maximum 4 metres high • the waste is stored in a baled form or if not baled in a covered container or indoors
Plastic and plastic packaging	07 02 13 12 01 05		• 12 months • 500 tonnes	07 02 13 12 01 05	100 tonnes per year	• 3 months • 40 m^3

[58] A crossed-through waste code indicates we are proposing not to keep it

All	Current conditions			Changes proposed under Option 2		
<u>including farm plastics</u>	15 01 02 16 01 19 19 12 04 20 01 39		(Farm plastics - D The waste is stored in doors).	15 01 02 16 01 19 19 12 04 20 01 39 ~~02 01 04~~ [59]		• Stack or pile maximum 4 metres high • the waste is stored in a baled form or if not baled in a covered container or indoors
Cans and foil only	15 01 04, 20 01 40	None	• 12 months • 400 m^3	15 01 04 20 01 40	100 tonnes per year	• 3 months • 40 m^3 • Stack or pile maximum 4 metres high • the waste is stored in a baled form or if not baled in a covered container or indoors
Paper and cardboard (excluding food and drink cartons) only	15 01 01 19 12 01 20 01 01 03 03 08 03 03 07	None	• 12 months • 15,000 tonnes *(71,430 m^3)* *(2343 x 40yrd Ro-Ro)* • J – the waste is stored in a baled form, in a container or indoors, • K – within the additional quantity limit specified in the third column (storage limit at any one time) of the table and notwithstanding additional specific conditions J up to 1000 tonnes may be stored outdoors so long as it is stored in an enclosure designed and maintained to prevent the escape of litter	15 01 01 19 12 01 20 01 01 03 03 08 03 03 07	300 tonnes per year	• 3 months • 40 m^3 • Stack or pile maximum 4 metres high • the waste is stored in a baled form or if not baled in a covered container or indoors
Glass	15 01 07	None	• 12 months	15 01 07	300 tonnes per year	• 3 months

[59] A crossed-through waste code indicates we are proposing not to keep it

All	Current conditions			Changes proposed under Option 2		
	20 01 02		• 400 m^3 • B – the storage place has sealed drainage	20 01 02		• 40 m^3 • Stack or pile maximum 4 metres high • If not in a container and stored outside must be on sealed drainage
Textiles and clothes	04 02 22 15 01 09 19 12 08 20 01 10 20 01 11	None	• 12 months • 1000 tonnes *(5000 m^3) (164 x 40 yrd Ro-Ro)*	04 02 22 15 01 09 19 12 08 20 01 10 20 01 11	100 tonnes per year	• 3 months • 40 m^3 • Stack or pile maximum 4 metres high • the waste is stored in a baled form or if not baled in a covered container or indoors

Proposed NEW S4 - Temporary interim storage of waste at a dockside pending export or after import

All	Current conditions			Changes proposed under Option 2		
Specified activities	Storage only			Storage only		
General conditions applying to all wastes in this table	Only at a dockside pending export or after import			Only at a dockside pending export or after import • Where waste is not stored in a secure container then it must be stored in a secure place.		
Waste Types	**Waste codes**	**Annual acceptance**	**Storage limits and conditions**	**Waste codes**	**Annual acceptance**	**Storage limits and conditions**
Electric arc furnace dust only	10 02 07*	None	• 3 months. • 2,500 tonnes. • D – the waste is stored indoors. • E- the waste is stored as a dock prior to being exported or after being imported. • F - the waste must arrive at the storage place in bags and must be stored there in bags or drums.	10 02 07*	None	• 3 months. • 1000 bags or drums. • The waste must arrive at the storage place in bags and must be stored there in bags or drums. • The waste is stored indoors.
Olive pulp and pellet only	02 03 04	None	• 3 months. • 5,000 tonnes.	02 03 04	None	• 3 months. • 1000 m^3.

All	Current conditions			Changes proposed under Option 2		
			• B – the storage place has sealed drainage. • C- the waste is stored with secondary containment. • E- the waste is stored as a dock prior to being exported or after being imported.			• The waste is stored on sealed drainage. • The waste is stored with secondary containment.
Poultry litter ash only	10 01 01	None	• 12 months. • 3,000 tonnes. • D – the waste is stored indoors. • E- the waste is stored as a dock prior to being exported or after being imported.	10 01 01	None	• 12 months. • 1000 m^3. • The waste is stored indoors.
Scrap Metal	02 01 10 16 01 17 16 01 18 19 12 03 17 04 01 17 04 02 17 04 03 17 04 04 17 04 05 17 04 06 17 04 07 19 12 02 17 04 11	None	• 6 months. • 15,000 tonnes. • B – the storage place has sealed drainage. • E- the waste is stored as a dock prior to being exported or after being imported.	02 01 10 16 01 17 16 01 18 19 12 03 17 04 01 17 04 02 17 04 03 17 04 04 17 04 05 17 04 06 17 04 07 19 12 02 17 04 11	None	• Maximum storage length 6 months. • No more than 1500 m^3 of scrap metal in total to be stored on site. Each stack or pile size must be no more than: • Loose metal and more than 150mm in size – 750 m^3. • Metal under 150mm or baled – 450 m^3. Each stack or pile must: • Be no more than 4 metres high. • Have a Max width or length 20 metres. • There must be a separation distance of at least 6 metres between waste piles and the site perimeter, any buildings, or other combustible or flammable materials. • The waste is stored on sealed drainage.
Synthetic gypsum and pulverised fuel ash only	10 01 01 10 01 02 10 01 05	None	• 3 months. • 2,500 tonnes.	10 01 01 10 01 02 10 01 05	None	• 3 months. • 1000 bags or drums.

All	Current conditions			Changes proposed under Option 2		
	10 01 15		• D – the waste is stored indoors. • E- the waste is stored as a dock prior to being exported or after being imported. • F - the waste must arrive at the storage place in bags and must be stored there in bags or drums.	10 01 15		• The waste must arrive at the storage place in bags and must be stored there in bags or drums. • The waste is stored indoors.

Proposed NEW S5 - Temporary interim storage and bulking of solid hazardous and non-hazardous wastes pending recovery elsewhere

All	Current conditions			Changes proposed under Option 2		
Treatments	Storage only			Storage only		
General conditions applying to all wastes	None			None		
Waste description	**Waste Codes**	**Annual acceptance**	**Storage limits and conditions**	**Waste Codes**	**Annual acceptance**	**Storage limits and conditions**
Wood including telegraph poles and railway sleepers (hazardous and non-hazardous)	03 01 05 17 02 01 17 02 04* 19 12 06* 19 12 07 20 01 37* 20 01 38	None	• 12 months • 100 tonnes	03 01 05, 17 02 01, 17 02 04* 19 12 06* 19 12 07, 20 01 37* 20 01 38	None	• 3 months. • Stack or pile maximum 4 metres high. • 40 m^3or 100 telegraph poles.
WEEE	09 01 10 09 01 11* 09 01 12 16 02 11*	None	• 6 months. • 400 m^3. • I – the waste is stored in accordance with the	Fluorescent and other gas	None	• 6 months. • 5 m^3. • The waste is stored in a sealed container on an impermeable surface with sealed drainage.

All	Current conditions			Changes proposed under Option 2		
	16 02 13* 16 02 14 16 02 16 20 01 21* 20 01 23* 20 01 35* 20 01 36		requirements under paragraph 1 of Annex VIII to the WEEE Directive.	discharge lamps 20 01 21*		
				WEEE (excluding fluorescent and other gas discharge lamps) 16 02 11* 16 02 13* 16 02 14 16 02 16 20 01 23* 20 01 35* 20 01 36	None	• 6 months. • 40 m^3. • Stack or pile maximum 4 metres high. • The waste is stored on an impermeable surface with sealed drainage. • Any WEEE intended for re-use and any display equipment (e.g. TV or computer monitor) with a broken screen shall be stored in a building or under weatherproof covering.
Batteries	16 06 01* 16 06 02* 16 06 03* 16 06 04 16 06 04 16 06 05 20 01 33* 20 01 34	None	• 6 months. • 10 tonnes. • A – the waste is stored in a container. • B – the storage place has sealed drainage.		None	• 6 months. • 10 m^3. • the waste is stored in a container. • the storage place has sealed drainage.

All	Current conditions			Changes proposed under Option 2		
Solder metal, skimmings, ashes and residues	10 03 16 10 04 05* 10 05 04 10 05 11 10 06 04 10 08 11 10 08 99	None	• 3 months. • 100 tonnes. • G – the waste is stored in bags or drums.	10 03 16 10 04 05* 10 05 04 10 05 11 10 06 04 10 08 11 ~~10 08 99~~ [60]	None	• 3 months. • 100 m^3. • the waste is stored in bags or drums.

Proposed NEW S6 - Temporary interim storage and bulking of non-hazardous wastes only pending recovery elsewhere

All	Current conditions			Changes proposed under Option 2		
Treatments	Storage only			Storage only		
General conditions applying to all wastes	None			None		
Waste description	**Waste Codes**	**Annual acceptance**	**Storage limits and conditions**	**Waste Codes**	**Annual acceptance**	**Storage limits and conditions**
Aqueous paint related waste only	16 10 02	None	• 6 months. • 1000 litres. • A – the waste is stored in a container. • C- the waste is stored with secondary containment.	~~16 01 02~~ [61] Aqueous solution containing aqueous paint 08 01 12	None	• 6 months. • 1000 litres (1 m^3). • the waste is stored in a container. • the waste is stored with secondary containment.

[60] A crossed-through waste code indicates we are proposing not to keep it

[61] A crossed-through waste code indicates we are proposing not to keep it

All	Current conditions			Changes proposed under Option 2		
Tyres, tyre chip and crumb.	16 01 03, 19 12 04	None	• 3 months. • 40 tonnes. • H - The total quantity stored together does not exceed 10 tonnes.	Complete Removal		
Mattresses only	20 03 07	None	• 3 months. • 5 tonnes. • D – The waste is stored indoors.	Complete Removal		
Edible oil and fat only	20 01 25	None	• 12 months. • 5,000 tonnes. • A – the waste is stored in a container. • C- the waste is stored with secondary containment.	20 01 25	None	• 3 months. • 10 m^3. • the waste is stored in a container. • the waste is stored with secondary containment.
Mammalian protein only	02 01 02	None	• 12 months. • 60,000 tonnes. • D – the waste is stored indoors.	02 01 02	None	• 3 months. • 40 m^3. • the waste is stored indoors.
Mammalian tallow only	02 01 02	None	• 12 months. • 60,000 tonnes. • D – the waste is stored indoors.	02 01 02	None	• 3 months. • 40 m^3. • the waste is stored indoors.
Photographic films and papers	09 01 07 09 01 08	None	• 12 months. • 50 tonnes. • J – the waste in stored in baled form, in a container or indoors.	09 01 07 09 01 08	None	• 12 months. • 40 m^3. • the waste in stored in baled form, in a container or indoors.
Printer cartridges only	08 03 18 15 01 02 16 02 16 20 01 39	None	• 6 months. • 5000 units. • D – the waste is stored indoors.	08 03 18 ~~15 01 02~~ 16 02 16 ~~20 01 39~~	None	• 6 months. • 5000 units. • the waste is stored indoors.
Wine bottle corks only	03 03 01 15 01 02	None	• 12 months. • 500 tonnes.	03 03 01 15 01 02	None	• 12 months. • 40 m^3.

All	Current conditions			Changes proposed under Option 2		
	15 01 03 20 01 38			15 01 03 ~~20 01 38~~ [62]		

Proposed NEW S7 - Temporary interim storage of wastes from construction or to be used in construction pending recovery elsewhere

All	Current conditions			Changes proposed under Option 1		
Treatments	Storage only			Storage only		
General conditions applying to all wastes	None			None		
Waste description	**Waste Codes**	**Annual acceptance**	**Storage limits and conditions**	**Waste Codes**	**Annual acceptance**	**Storage limits and conditions**
Non-hazardous Construction and demolition waste capable of being used in its existing state only	17 01 01 17 01 02 17 01 03 17 01 07 17 02 02 17 02 03 17 04 01 to 17 04 07 17 06 04 17 08 02	None	• 12 months. • 100 tonnes.	17 01 01 17 01 02 17 01 03 17 01 07 17 02 02 17 02 03 17 04 01 to 17 04 07 17 06 04 17 08 02	None	• 12 months. • 100 m^3.
Marble chips only	01 04 08 19 12 09	None	• 12 months. • 5000 tonnes.	01 04 08 19 12 09	None	• 12 months. • 5000 m^3.

[62] A crossed-through waste code indicates we are proposing not to keep it

All	**Current conditions**			**Changes proposed under Option 1**		
Soils from cleaning fruit and vegetables only	02 04 01 02 03 99	None	• 6 months. • 100 tonnes.	02 04 01 ~~02 03 99~~ 02 03 01	None	• 6 months. • 100 m^3.
Road planings, waste road chippings, road sub-base only	17 03 01* 17 03 02 17 05 04	None	• 12 months. • 500 tonnes.	17 03 01* 17 03 02 17 05 04	None	• 12 months. • 500 m^3.

Annex 10 – Proposed waste code and description changes

Proposed changes to waste codes and descriptions to exemptions of concern to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
D7	No	02 01 07 03 01 05	03 01 05 -Remove this code.	This code is unnecessary. Wood is plant tissue and therefore coded 02 01 03 and this code is applicable to forestry. Therefore the code 02 01 07 would capture wastes from forestry that are not plant tissue. Inconsistent with T6. See previous comments on mirror entries, and waste acceptance, noting that that 03 01 05 is also a wood waste.	These codes have been removed from draft D7 proposal.
T4	No	07 02 13	Remove this code.	The code refers to process waste. This is a production process waste, not a product that is waste. Food and drink cartons will all be chapter 15, even if arising from the production process. This is how we would code any process waste.	This code has been removed from draft T4 proposal.

Proposed changes to waste codes and descriptions to exemptions of concern to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
T6	No	03 01 01 03 03 01 15 01 03 17 02 01	Remove 03 01 01 or restrict it to cork and bark. Add the words 'other than that arising from waste transfer stations' to the waste types descriptions. Mirror entry wood issue.	Registered T6 sites are accepting mixed and pre-sorted wood from waste transfer stations. This is not allowed under these waste codes and steps are needed to make the exclusion explicit. 03 01 01 cannot legally be assigned as a classification to wood waste (the mirror entry codes 03 01 04* /05 are provided for wood in that subchapter). 03 01 01 can only legally be assigned to cork and bark. Given the wider wood issues serious consideration should be given to mirror entry waste acceptance controls being made explicit here.	In daft T6 proposal 17 02 01 has been removed. 03 03 01 and 03 01 01 have better descriptions. 15 01 03 remains for chipping of pallets where they can't be refurbished.
T9	No	None	Add a specific provision in the exemption that no WEEE can be treated under these codes.	There is an issue around misclassification of waste. WEEE is misclassified under these codes and directed to an inappropriate site.	Added to draft T9 proposal.
T12	No	20 01 99 Bicycles	Replace with code 16 01 06	Bicycles are vehicles	Replaced with code 16 01 06
		20 01 99 footwear	Replace with code 20 01 10	Footwear is clothing	Replaced with code 20 01 10
		17 09 04 stone bricks wood	Add code 17 05 04	This code is necessary if the intention is to allow discrete loads of stone. 17 09 04 will only allow stone as part of a mixed load.	Added code 17 05 04
		Telegraph poles	Remove 20 01 codes	Not a household waste type so not a 20 01 source code	Codes changed to 17 02 01 and 17 02 04*[63]

[63] an asterisk (*) next to a code denotes that it is HAZARDOUS WASTE.

Proposed changes to waste codes and descriptions to exemptions of concern to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
		Windows and doors	Add code 17 09 04	Windows and doors are often composite waste – so arise as a mixed waste (17 09). Need to add a code to authorise composites as well as single materials	Code added 17 09 04
S1	Yes	20 01 01 cartons	Remove this code from the reference to cartons	Packaging is excluded from 20 01 codes	Cartons now in draft S2 proposal Code 20 01 01 removed
S2	Yes	16 10 02 aqueous paint waste	Replace with 08 01 12 if this is intended to describe water based paint, or 08 01 20 if an aqueous solution containing paint.	This is for collection and recycling of paint wash-waters rather than collection of therefore 08 01 20 is the more appropriate code	Aqueous paint waste is now in Removed code 16 10 02
		07 02 13 20 01 39	Remove these codes from the reference to food and drink cartons	These codes cannot describe these wastes	Codes 07 02 13 and 20 01 39 removed in new S2 proposal
		20 01 39 15 01 02	Remove these codes from the reference to printer cartridges	These codes cannot describe these wastes	Printer cartridges moved to new S6 proposal Codes 20 01 39 and 15 01 02 removed in relation to printer cartridges
		02 03 99	Replace with 02 03 01 in relation to soils from cleaning and washing vegetables only	'99' codes should not be used where a more appropriate code is available	These wastes are now in new S7 proposal.

Proposed changes to waste codes and descriptions to exemptions of concern to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
		10 08 99	Remove this code in relation to Solder metal, skimmings, ashes and residues	'99' codes should not be used where a more appropriate code is available. The materials are adequately described by the other codes in this section	These wastes are now in new S5 proposal Code 10 08 99 removed in relation to Solder metal, skimmings, ashes and residues
		20 01 38	Remove this code in relation to wine bottle corks	Packaging is excluded from 20 01 codes and wine corks are classified as packaging	This waste is now in new S6 proposal Code 20 01 38 removed in relation to wine bottle corks

Proposed changes to waste codes and descriptions to other exemptions to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
D2	No	20 03 99	Replace with code 20 01 99	Existing government and EA guidance indicates 20 01 99 should be used for offensive waste.	Update with proposed changes after consultation.
D3	No	20 03 99	Replace with code 20 01 99	Existing government and EA guidance indicates 20 01 99 should be used for offensive waste.	
D4	No	02 01 03	Add 20 02 01 code	The code used does not cover the full extent of the activity described.	

Proposed changes to waste codes and descriptions to other exemptions to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
D6	No	02 01 07 (There are no codes listed in the regulations, but this code appears in the list on gov.uk This might be an error in IED and gov.uk guidance) 17 02 01 (see text)	Remove 02 01 07. Either remove 17 02 01 or add mirror entry waste acceptance controls)	This code is unnecessary. Wood is plant tissue, 02 01 03. The plant tissue code is applicable to forestry. (02 01 07 would therefore capture waste from forestry that are not plant tissue). Inconsistent with T6. 17 02 01 is known to be a very high risk mirror entry waste, none of our compliance checks have identified any operator checking the classification of waste wood accepted, the consequence being serious concerns about threats to the gov RHI scheme, contaminated wood reaching inappropriate destinations.	
D8 (non-hazardous)	No	02 01 07, 15 01 03 and 20 01 38	Remove this code. Remove 20 01 38 too. Recommend adding 'untreated' to text of 15 01 03	This code is unnecessary. Wood is plant tissue and therefore coded 02 01 03 and this code is applicable to forestry. Therefore the code 02 01 07 would capture wastes from forestry that are not plant tissue. Inconsistent with T6. The waste described in the text is legally excluded from 20 01, so cannot be 20 01 38...it would instead fall under 15 01 03. 15 01 03 is a wood mirror entry, so I recommend as a minimum restricting it to untreated wood, and given the wider wood issues recommend mirror entry waste acceptance controls.	
T5	No	19 05 99	Replace this code with 19 05 03 using the description 'compost that requires further treatment'	'99' codes should not be used where a more appropriate code is available (legally are not allowed to be used).	
T13	No	20 01 99 food wastes	Use 20 01 08	'99' codes should not be used where a more appropriate code is available.	
T16	Yes	20 01 39	Remove this code	This code is redundant as it excludes packaging. The other codes capture everything.	
		15 01 02	Remove this code	This code will not apply to ink and toner cartridges.	
T18	No	01 04 09 clay effluent from ceramic manufacture	Replace with 16 10 02	Appears a more suitable code.	
T20	No	19 09 99	Replace with 16 10 02	'99' codes should not be used where a more appropriate code is available.	

Proposed changes to waste codes and descriptions to other exemptions to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
T21	No	19 08 99	Replace with 16 10 02 or 16 10 04	'99' codes should not be used where a more appropriate code is available. Liquids should not be assigned a 99 code.	
		20 03 99	Consider removing this code.	The wastes this applies to are likely to be adequately captured by the other codes.	
T23	No	02 01 07	Remove this code	This material is captured by code 02 01 03.	
		02 01 99	Use 02 01 06 for faecal contaminated bedding and 02 01 03 for uncontaminated bedding	'99' codes should not be used where a more appropriate code is available contaminated bedding can be coded 02 01 06, and uncontaminated bedding is likely to be plant tissue so 02 01 03 can be used.	
		20 01 01	Consider adding the 15 01 packaging codes	The 20 01 01 code will not authorise paper and cardboard that is separately collected packaging. If the intention of the exemption is to authorise these wastes, then the codes need to be added.	
T24	No	02 01 07	Remove this code	This material is captured by code 02 01 03	
		02 01 99	Use 02 01 06 for faecal contaminated bedding and 02 01 03 for uncontaminated bedding	'99' codes should not be used where a more appropriate code is available contaminated bedding can be coded 02 01 06, and uncontaminated bedding is likely to be plant tissue so 02 01 03 can be used.	
T25	No	02 01 07	Remove this code	This material is captured by code 02 01 03.	
		02 01 99	Use 02 01 06 for faecal contaminated bedding and 02 01 03 for uncontaminated bedding	'99' codes should not be used where a more appropriate code is available contaminated bedding can be coded 02 01 06, and uncontaminated bedding is likely to be plant tissue so 02 01 03 can be used.	
T26	No	20 01 01	Consider adding the 15 01 packaging codes	The 20 01 01 code will not authorise paper and cardboard that is separately collected packaging. If the intention of the exemption is to authorise these wastes, then the codes need to be added.	
T30	Yes	09 01 06	Add 09 01 01, 09 01 02, 09 01 03 and 09 01 04	09 01 06 describes the output of the recovery process. The additional codes are required to capture the wastes that are input.	

Proposed changes to waste codes and descriptions to other exemptions to clarify and address mis-coding					
Exemption	**Hazardous codes present**	**Potentially anomalous code**	**Proposal**	**Rationale**	**Action**
U3	No	20 01 01	Consider adding the 15 01 packaging codes	The 20 01 01 code will not authorise paper and cardboard that is separately collected packaging. If the intention of the exemption is to authorise these wastes, then the codes need to be added.	
U5	No	19 02 10 biodiesel	Consider using 13 07 01	Agency advice is to use chapter 13 hazardous code for biodiesel. If 19 02 code is appropriate then consider 19 02 11*	
U7	No	19 08 99	Replace with 16 10 01*/02	'99' codes should not be used where a more appropriate code is available.	
U8	Yes	19 05 99	Replace with 19 05 03	'99' codes should not be used where a more appropriate code is available. If this is not 'off-spec' compost then it is probably not waste.	
		17 01 02 and 17 09 04 stones and bricks	Replace 17 09 04 with 17 05 04	Appears a more appropriate code.	
U10	No	02 01 99 02 03 99	Replace with 16 10 02 where the reference is to a liquid waste	'99' codes should not be used where a more appropriate code is available.	
		19 05 99	Replace with 19 05 03	'99' codes should not be used where a more appropriate code is available. If this is not 'off-spec' compost then it is probably not waste.	
U11	No	02 01 99	Consider whether a more appropriate code can be identified	'99' codes should not be used where a more appropriate code is available.	
		02 03 99	Replace with 02 03 01	'99' codes should not be used where a more appropriate code is available.	
		19 05 99	Replace with 19 05 03	'99' codes should not be used where a more appropriate code is available. If this is not 'off-spec' compost then it is probably not waste.	
U13	No	02 01 07	Remove this code	Plant tissue from forestry is adequately described by 02 01 03.	
U14	No	02 01 03	Remove this code	02 01 03 is not ash.	

Annex 11 – Individual waste type comparator

Table 1: Wood wastes

	Exemptions where changes may be required		Exemptions amended under section 4.2 proposals		
Broad waste type	**U8 Use of waste for a specified purpose**	**U9 Use of waste to manufacture finished goods**	**New T6 Treatment of wood waste**	**New T12 Manual treatment of waste**	**New S5 Temporary interim storage and bulking of solid hazardous and non-hazardous wastes pending recovery elsewhere**
Total of all wastes stored on site at any one time	No overall tonnage. Also none for storage only prior to use	No overall tonnage – each related to specific use	300 m^3	300 m^3	None as total of all listed waste less than 200 m^3
Length and max storage relevant to comparison wastes	Prior to use none specified	Prior to use none specified	3 months in total before and after treatment unless fully recovered (no longer waste)	3 months 12 months telegraph poles	3 months Stack or pile maximum 4 metres high 3 months
Untreated wood	1000 tonnes	x	300 m^3 (inc. pallets)	Pallets 100 m^3	40 m^3 or 100 telegraph poles
Non-haz wood	100 tonnes	100 tonnes		200 telegraph poles	
Haz wood	100 tonnes	x	X		

Table 2: Common recyclables

	Exemptions where changes may be required				Exemptions amended under section 4.2 proposals		
Broad waste type	**U8 Use of waste for a specified purpose**	**U9 Use of waste to manufacture finished goods**	**T1 Cleaning, washing, spraying or coating relevant waste**	**T2 Recovery of textiles**	**New T4 Preparatory treatment (baling, sorting shredding etc.)**	**New T12 Manual treatment of waste**	**New S2 Temporary interim storage and bulking of commonly collected recyclables for recovery at another place**
Total of all wastes on site at any one time	No overall tonnage for	No overall tonnage – each	300 tonnes	20,000 tonnes	Total of 300 m^3 of any combination of the	300 m^3	300 m^3

	Exemptions where changes may be required				Exemptions amended under section 4.2 proposals		
Broad waste type	**U8 Use of waste for a specified purpose**	**U9 Use of waste to manufacture finished goods**	**T1 Cleaning, washing, spraying or coating relevant waste**	**T2 Recovery of textiles**	**New T4 Preparatory treatment (baling, sorting shredding etc.)**	**New T12 Manual treatment of waste**	**New S2 Temporary interim storage and bulking of commonly collected recyclables for recovery at another place**
	storage only prior to use	related to specific use			wastes on site at any one time		
Length of storage relevant to comparison wastes	Prior to use none specified	Prior to use None specified	3 months prior to treatment	None specified	3 months in total before and after treatment unless fully recovered (no longer waste)	3 months 12 months telegraph poles	3 months 4 metres high
Paper and cardboard	Shredded 100 tonnes	15,000 tonnes	300 tonnes	x	100 m^3	x	40 m^3
Glass	50 tonnes	5,000 tonnes	300 tonnes	X	100 m^3	x	40 m^3
Packaging	x	x	300 tonnes	X	x	x	40 m^3
Textiles and clothes	x	x	300 tonnes	20,000 tonnes	x	100 m^3	40 m^3
Plastics	x	x	300 tonnes	x	100 m^3	X	40 m^3

Table 3: Rubber, tyres, scrap metal

	Exemptions where changes may be required		Exemptions amended under section 4.2 proposals		
Broad waste type	**U8 Use of waste for a specified purpose**	**U9 Use of waste to manufacture finished goods**	**New T8 Mechanical treatment of end-of-life tyres**	**New T9 Recovery of scrap metal**	**New S4 Temporary interim storage of waste at a dockside pending export or after import**
Total of all wastes on site at any one time	No overall tonnage – each related to specific use	No overall tonnage – each related to specific use	2.5 m^3	500 m^3	None specified

	Exemptions where changes may be required		Exemptions amended under section 4.2 proposals		
Broad waste type	**U8 Use of waste for a specified purpose**	**U9 Use of waste to manufacture finished goods**	**New T8 Mechanical treatment of end-of-life tyres**	**New T9 Recovery of scrap metal**	**New S4 Temporary interim storage of waste at a dockside pending export or after import**
Length of storage relevant to comparison wastes	Prior to use none specified	Prior to use none specified	3 months in total before and after treatment unless fully recovered (no longer waste)	x	6 months Each stack or pile size must be no more than : Loose metal and more than 150mm in size – 750 m^3 Metal under 150mm or baled – 450 m^3 Each stack or pile must: Be no more than 4 metres high Have a Max width or length 20 metres There must be a separation distance of at least 6 metres between waste piles and the site perimeter, any buildings, or other combustible or flammable materials
Shredded or granulated rubber	1000 tonnes	30 tonnes	2.5 m^3	x	x
End-of-life tyres	40 tonnes for silage clamps	X	2.5 m^3	x	x
Metal	x	500 tonnes	x	500 m^3 Max stack 250 m^3	1500 m^3

Annex 12 – Existing standard rules

Exemption	Potentially suitable standard rules currently available	Notes
U1 Use of waste in construction	https://www.gov.uk/government/publications/sr2015-no39-use-of-waste-in-a-deposit-for-recovery-operation	Standard rules were produced specifically to cover construction and reclamation activities as part of the 2010 Regulatory changes. Revisions were consulted on in 2014 and new standard rules Published in 2015. These rules specifically cover deposit for recovery operations that would no longer be carried on under the revised U1.

Exemption	Potentially suitable standard rules currently available	Notes
U16 Use of depolluted end of life vehicles	None that only deal with depolluted vehicles only. https://www.gov.uk/government/publications/sr2015-no13-75kte-vehicle-storage-depollution-and-dismantling-authorised-treatment-facility https://www.gov.uk/government/publications/sr2015-no18-metal-recycling-vehicle-storage-depollution-and-dismantling-facility	Most vehicles under U16 are not depolluted and therefore non-compliant with U16. Therefore, it is unlikely that there is a genuine need for an additional standard rules only dealing with depolluted vehicle dismantling.
T4 Preparatory treatments (baling, sorting, shredding etc.)	https://www.gov.uk/government/publications/sr2015-no21-75kte-materials-recycling-facility https://www.gov.uk/government/publications/sr2015-no22-materials-recycling-facility-no-building	These standard rules are the most likely fit for treatment of typically recyclable wastes.
T6 Treatment of wood waste and waste plant matter by chipping, shredding, cutting or pulversing	https://www.gov.uk/government/publications/sr2015-no23-treatment-of-waste-wood-for-recovery	The current standard rules were developed specifically to cover treatment of wood waste and should be able to cover the majority of T6 operations that are likely to need a permit.
T8 Mechanical treatment of tyres	None that specifically deal with tyres only. https://www.gov.uk/government/publications/sr2015-no6-75kte-household-commercial-and-industrial-waste-transfer-station-with-treatment https://www.gov.uk/government/publications/sr2015-no7-household-commercial-and-industrial-waste-transfer-station-with-treatment-no-building	These rules allow no more than a total of 50 tonnes of intact and shredded waste vehicle tyres (waste codes 16 01 03 and 19 12 04) to be stored at the site. It is likely that a tyre only option will be needed.

Exemption	Potentially suitable standard rules currently available	Notes
T9 Recovery of scrap metal	https://www.gov.uk/government/publications/sr2015-no16-metal-recycling-site https://www.gov.uk/government/publications/sr2015-no14-75kte-metal-recycling-site	Most T9 operations will still be carried out under T9 and those that do not should be able to use existing standard rules.
T12 Manual treatment of waste	None that specifically deal with manual treatment of single waste streams. https://www.gov.uk/government/publications/sr2015-no21-75kte-materials-recycling-facility https://www.gov.uk/government/publications/sr2015-no22-materials-recycling-facility-no-building https://www.gov.uk/government/publications/sr2015-no6-75kte-household-commercial-and-industrial-waste-transfer-station-with-treatment https://www.gov.uk/government/publications/sr2015-no7-household-commercial-and-industrial-waste-transfer-station-with-treatment-no-building	Some wastes are covered under materials recycling facility (clothes, textiles, pallets, footwear etc.). Some will be covered by waste transfer and treatment – mattresses, furniture (bulky waste), windows and doors.
S1 storage of waste in a secure container	None specifically for storage only.	
S2 Storage of waste in a secure place	None specifically for storage only.	
D7 Burning waste in the open	None - Not required.	

Annex 13 – Question and Answer form

About you

a) What is your name?

b) What is your email address?

c) What is your organisation?

d) Would you like your response to be confidential?

a) No ☐

b) Yes ☐

If you answered Yes to this question please give your reason:

e) Are you responding as or on behalf of:

a) an individual

b) a local authority

c) a business

d) another type of organisation

If you answered d) please specify

f) If you are replying as an individual, do you:

a) run your own waste business

b) work for a business or organisation in the waste sector

c) have an interest in this consultation for other reasons

If you answered c) please specify

g) If you are replying on behalf of an organisation or business, please specify whether your organisation or business:

a) manages waste as their main activity

b) manages waste as a secondary activity – please specify what the main activity is

c) supports the waste industry (e.g. trade body, consultancy) – please specify

d) has an interest in the waste sector for other reasons – please specify

If you answered b) c) or d) please specify

h) Do you, or does the business or organisation you represent carry out waste operations under an environmental permit?

a) No ☐

b) Yes ☐

If you answered yes, please specify

i) Do you, or does the business or organisation you represent carry out waste operations under a registered waste exemption?

a) No ☐

b) Yes ☐

If you answered yes, please specify which exemptions:

☐ U1 ☐ U16 ☐ T4 ☐ T6 ☐ T8 ☐ T9 ☐ T12 ☐ D7 ☐ S1 ☐ S2 ☐ other

j) Are you, or is the business or organisation you represent registered as a waste carrier, broker or dealer?

a) No ☐

b) Yes ☐

If you answered yes, please specify

k) If you are in business or part of an organisation, where is it established?

a) England ☐

b) Wales ☐

c) Located elsewhere ☐

l) How many staff are employed in your business or organisation?

a) Fewer than 10 ☐

b) 10 – 49 ☐

c) 50 – 249 ☐

d) 250 or more ☐

e) I am replying as an individual ☐

Part A

Q1. Do you think widening the definition of relevant offences will enable the regulators to make a more informed decision about operator past performance?

A. ☐ Yes ☐ No

Do you have any comments?

Q2. Do you think the Serious Crime Act 2015 and the Public Order Act 1986 should be added to table 1?

A. ☐ Yes ☐ No.

Should offences in other Acts of Parliament be added to table 1? Do you have any other comments?

Q3. Do you think it should be made clearer that regulators can take spent offences into account in exceptional circumstances?

A. ☐ Yes ☐ No

Do you have any comments?

Q4. Do you think that corporate bodies should be treated differently from individuals and the regulators should be able to consider the convictions of corporate bodies?

A. ☐ Yes ☐ No

Do you have any comments?

Q5. Do you think that ensuring the regulators can take account of poor behaviour will enable the regulators to make a more informed decision about operator past performance?

A. ☐ Yes ☐ No

Do you have any comments?

Q6. Do you think that widening the definition of relevant person will enable the regulators to make a more informed decision about operator past performance?

A. ☐ Yes ☐ No

Do you have any comments?

Q7. Do you think that it would be beneficial for all waste permit holders to operate in accordance with a written management system?

A. ☐ Yes ☐ No

Do you have any comments?

Q8. Do you think that including an explicit requirement in the EPRs for permitted waste sites to demonstrate technical competence through a scheme approved by government will address the current gap in technical competence?

A. ☐ Yes ☐ No

Do you have any comments?

Q9. Do you think that inserting a requirement into the EPRs for operators to inform the regulators of the TCM at their waste site will address the current gap in technical competence?

A. ☐ Yes ☐ No

Do you have any comments?

Q10. Do you think the current competence schemes should be amended to include a TCM registration process to address the current gap in technical competence?

A. ☐ Yes ☐ No

Do you have any comments?

Q11. Do you have any information about the proportion of waste sites that would employ a TCM, rather than training a current employee?

Do you have any information about the proportion of sites not currently adequately covered by a TCM?

Q12. Do you think that an independent report that rates business solvency and risks will enable the regulators to confirm that operators are financially able to meet their permit obligations?

A. ☐ Yes ☐ No

Do you have any comments?

Q13. Do you think that all waste site operators or only higher risk operators should be required to make financial provision?

A. ☐ All waste site operators ☐ Only higher risk operators

Q14. What risk criteria do you consider should be taken into account when determining which waste operations should be required to make financial provision?

Do you have any comments?

Q15. Do you think the proposed basis for calculating the amount of financial provision would be sufficient?

A. ☐ Yes ☐ No

Do you have any comments?

Q16. Do you think that regulators should be able to extend financial provision in exceptional circumstances?

A. ☐ Yes ☐ No

Do you have any comments?

Q17. Do you think the level of required financial provision should be reduced for wastes with significant and demonstrable recovery values?

A. ☐ Yes ☐ No

Do you have any comments?

Q18. Do you think that it is appropriate for operators to agree the mechanism for making financial provision with the regulator?

A. ☐ Yes ☐ No

Do you have any comments?

Q19. Do you think it is beneficial for financial institutions to be involved in the holding and management of financial provision funds?

A. ☐ Yes ☐ No

What are the opportunities and risks? Do you have any comments?

Q20. Do you think that alternative funding should be found to cover the costs of managing sites in the absence of the operator?

A. ☐ Yes ☐ No

How is this best achieved? Do you have any comments?

Q21. Do you think that operators of landfill sites should report more frequently on current and projected works at their site and the state of their financial provision fund?

A. ☐ Yes ☐ No

Are there more effective ways of preventing shortfalls in funds for maintenance and aftercare? Do you have any comments?

Q22: Have you experienced an increase or a decrease in criminality and poor performance in the waste sector over the last few years?

A. ☐ Increase ☐ Decrease

What are your expectations for the future if nothing is done to tackle the issue?

Q23: Overall, how effective do you think Options 2 and 3, as described in the impact assessment, would be to tackle criminality and poor performance in the waste sector?

A. ☐ Effective ☐ Ineffective

What is your preferred option?

☐ Option 1 ☐ Option 2

Q24: Do you think that any of the proposals will impose additional costs on yourself or your organisation?

A. ☐ Yes ☐ No

Do you have any comments?

Q25: Do you think that the proposed analytical approach appropriately covers all potential costs and benefits that would arise from implementing the proposals?

A. ☐ Yes ☐ No

Do you have any comments?

Q26: Do you think that any of the costs and benefit covered in the impact assessment should not be accounted for in the costings?

A. ☐ Yes ☐ No

Do you have any comments?

Q27: Do you have any evidence that would support the calculation of benefits or costs of the operator competence proposals to business?

Do you have any comments?

Are you aware of any other sources of evidence that would improve the costings?

Do you have any comments?

Part B

Q28. Do you think the proposal to restrict registration of exemptions at permitted waste operations would help tackle illegal activity and stop waste operators expanding their activity without appropriate controls?

A. ☐ Yes ☐ No

Do you have any comments?

Q29. Do you think that exempt waste operations that have direct technical links with other activities carried out at an adjacent permitted waste site should be included in the adjacent operator's permit?

A. ☐ Yes ☐ No

Do you have any comments?

Q30. Do you have further evidence on the current unlawful use of exemptions at permitted sites?

A. Do you have any comments?

Q31. Do you think that the proposals will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q32. Overall which of the proposed options do you support and which do you prefer?

Support 1☐ 2☐ 3☐ 4☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ 4☐ (Select one preference)

Q33. Are there any particular exemptions that you think should not be registered at the same site under option 3?

A. Do you have any comments?

Q34. Do you have further evidence on the registration of multiple exemptions at single sites to hide unlawful activities?

A. Do you have any comments?

Q35. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q36. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q37. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q38. Which of the proposed options for exemption U1 do you support and which do you prefer?

Support 1☐ 2☐ 3☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ (Select one preference)

Q39. Under Option 2 do you think the U1 exemption should allow any additional types of construction activities beyond those listed in Annex 2?

A. ☐ Yes ☐ No

If so please describe the activities together with the waste types and quantities needed:

Q40. Under Option 2 do you think the quantities of waste allowed for each specified construction activity are appropriate?

A. ☐ Yes ☐ No

Do you have any comments?

Q41. Under Option 2 are the waste types listed sufficient to carry out each specified waste activity?

A. ☐ Yes ☐ No

Do you have any comments?

Q42. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q43. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q44. Which of the proposed options for exemption U16 do you support?

A. 1☐ 2☐

Q45. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q46. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q47. Which of the proposed options for exemption T4 do you support and which do you prefer?

Support 1☐ 2☐ 3☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ (Select one preference)

Q48. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q49. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q50. Which of the proposed options for exemption T6 do you support and which do you prefer?

Support 1☐ 2☐ 3☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ (Select one preference)

Q51. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q52. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q53. Which of the proposed options for exemption T8 do you support and which do you prefer?

Support 1☐ 2☐ 3☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ (Select one preference)

Q54. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q55. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q56. Which of the proposed options for exemption T9 do you support and which do you prefer?

Support 1☐ 2☐ 3☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ (Select one preference)

Q57. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q58. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q59: Which of the proposed options for exemption T12 do you support and which do you prefer?

Support 1☐ 2☐ 3☐ (tick as many as apply)

Prefer 1☐ 2☐ 3☐ (Select one preference)

Q60. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q61. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q62: Which of the proposed options for exemption D7 do you support and which do you prefer?

Support 1☐ 2☐ (tick as many as apply)

Prefer 1☐ 2☐ (Select one preference)

Q63. Do you have further evidence on the current unlawful use of this exemption?

A. Do you have any comments?

Q64. Do you think that any of the options will impose specific costs or bring benefits on yourself or your organisation?

A. Do you have any comments?

Q65. Which of the proposed options for exemptions S1 and S2 do you support and which do you prefer?

Support 1☐ 2☐ (tick as many as apply)

Prefer 1☐ 2☐ (Select one preference)

Q66: Do think that the proposal to split the existing S1 and S2 exemptions into six new exemptions as set out under Annex 9 would help clarify what the exemptions are for and make the conditions clearer?

A. ☐ Yes ☐ No

Do you have any comments?

Q67. Do you think that operators should be required to keep and make available to the regulator records of the activities carried under any exemption?

A. ☐ Yes ☐ No

Do you have any comments?

Q68. Should operators be required to keep the records required in an electronic format and/or in a system identified by the regulator?

A. ☐ Yes ☐ No

Do you have any comments?

Q69. Do you think that the regulator should be able to impose additional information requirements for individual exemptions on a case by case basis at registration, on an ongoing basis or at end of operation to address issues of poor compliance?

A. ☐ Yes ☐ No

Do you have any comments?

Q70. Do you think any additional information requirements should be implemented immediately, notably in relation to the 10 exemptions of concern described in section 4.2?

A. ☐ Yes ☐ No

Do you have any comments?

Q71. Do you have any suggestions on how you think the exemptions registration service can be improved further?

Do you have any comments?

Q72. Do you support the changes to the waste codes set out in Annex 10?

A. ☐ Yes ☐ No

Do you have any comments?

Q73. If we change the conditions for the exemptions of concern would you support the alignment of conditions across exemptions listed in Annex 11?

A. ☐ Yes ☐ No

Do you have any comments?

For the exemptions U8 and U9 listed in Annex 11 (Table 1), what do you think the new aligned conditions should be?

For the exemptions U8, U9, T1 and T2 listed in Annex 11 (Table 2), what do you think the new aligned conditions should be?

For the exemptions U8 and U9 listed in Annex 11 (Table 3), what do you think the new aligned conditions should be?

Q74. Do you think that the standard rules for the ten exemptions set out in Annex 12 are sufficient? Are new standard rules also needed?

A. ☐ Sufficient ☐ New standard rules needed

Do you have any comments?

Q75. Do you think that the proposed timescales to implement the changes to the exemptions regime are adequate?

A. ☐ Yes ☐ No

Do you have any comments?

Q76. Have you experienced an increase or a decrease in criminality and poor performance in the waste sector over the last few years?

A. ☐ Increase ☐ Decrease

What are your expectations for the future if nothing is done to tackle the issue?

Q77. Overall, how effective do you think Options 2 and 3, as described in the impact assessment, would be to tackle criminality and poor performance in the waste sector?

A. ☐ Effective ☐ Ineffective

What is your preferred option?

Q78. Do you think that any of the proposals will impose additional costs on yourself or your organisation?

A. ☐ Yes ☐ No

Do you have any comments?

Q79. Do you think that the proposed analytical approach appropriately covers all potential costs and benefits that would arise from implementing the proposals?

A. □ Yes □ No

Do you have any comments?

Q80. Do you think that any of the costs and benefit covered in the impact assessment should not be accounted for in the costings?

A. □ Yes □ No

Do you have any comments?

Q81. Do you have any evidence that would support the calculation of benefits or costs of the exemptions proposals to business?

Do you have any comments?

Are you aware of any other sources of evidence that would improve the costings, including for the proposals not covered in the current impact assessment?

Do you have any comments?

Part C

Q82. Do you believe that householders are currently sufficiently aware of their duties and the risk of prosecution when passing their waste to an unauthorised person?

A. ☐ Yes ☐ No

Do you have any comments?

Q83. What more could be done to improve householder awareness of their duty of care and prevent fly-tipping of household waste?

Do you have any comments?

Q84. Do you think that the Waste Duty of Care Code of Practice provides enough guidance on reasonable measures that can be taken to meet the household duty of care?

A. ☐ Yes ☐ No

Do you have any comments?

Q85. Do you think there are any other reasonable measures to meet the household duty of care that should be set out in guidance to households?

A. ☐ Yes ☐ No

Do you have any comments?

Q86. Do you think that the introduction of a FPN for the offence of a householder passing their waste to an unauthorised person would help tackle fly-tipping?

A. ☐ Yes ☐ No

Do you have any comments?

Q87. Do you think that government should provide further guidance to regulators on the use of the proposed FPN?

A. ☐ Yes ☐ No

Do you have any comments?

Q88. Do you think that the proposed levels of penalty for this FPN are correct?

A. ☐ Yes ☐ No

Do you have any comments?

Q89. Following implementation of the FPN, do you think that local authorities should communicate how frequently they use these penalties, and the impact on fly-tipping?

A. ☐ Yes ☐ No

Do you have any comments?

Q90. Do you think the introduction of this FPN will impose any additional costs on local authorities or other issuing authorities?

A. ☐ Yes ☐ No

Do you have any comments?

Q91. Do you think the introduction of this FPN will make savings for local authorities or other issuing authorities?

A. ☐ Yes ☐ No

Do you have any comments?

Q92. Do you think that other parties than local authorities and other issuing authorities could incur costs of benefit from the introduction of this FPN?

A. ☐ Yes ☐ No

Do you have any comments?

Q93. Do you think that the proposal will impose additional costs on yourself or your organisation?

A. ☐ Yes ☐ No

Do you have any comments?

Q94. Do you have any other information on the possible cost or benefits of issuing fixed penalty notices)?

Do you have any comments?

Q95. Do you think that issuing authorities should be able to offer an appeals process for people to dispute a householder duty of care FPN?

A. ☐ Yes ☐ No

Do you have any comments?

Q96. Do you think that issuing authorities would incur any additional costs by providing an appeals process for people to dispute the issuing of a householder duty of care FPN?

A. ☐ Yes ☐ No

Do you have any comments?

Q97. Do you think there are any other steps the appeal process should cover?

A. ☐ Yes ☐ No

Do you have any comments?

Q98. What are the best ways to ensure that the recipients of a FPN are made aware of the appeal process if one is available?

Do you have any comments?

Q99. Where an issuing authority chooses not to offer an appeals process do you think the right of appeal is adequately provided for through the courts?

A. ☐ Yes ☐ No

Do you have any comments?