

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 EPRs¹). 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.

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 others².

¹ <http://www.legislation.gov.uk/ukxi/2016/1154/contents/made>

² 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)

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 Report³ 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 Review⁴, 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 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.

³ http://www.esauk.org/esa_reports/20170502_Rethinking_Waste_Crime.pdf

⁴ <https://www.gov.uk/government/publications/waste-and-recycling-sector-cutting-red-tape-review>

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.

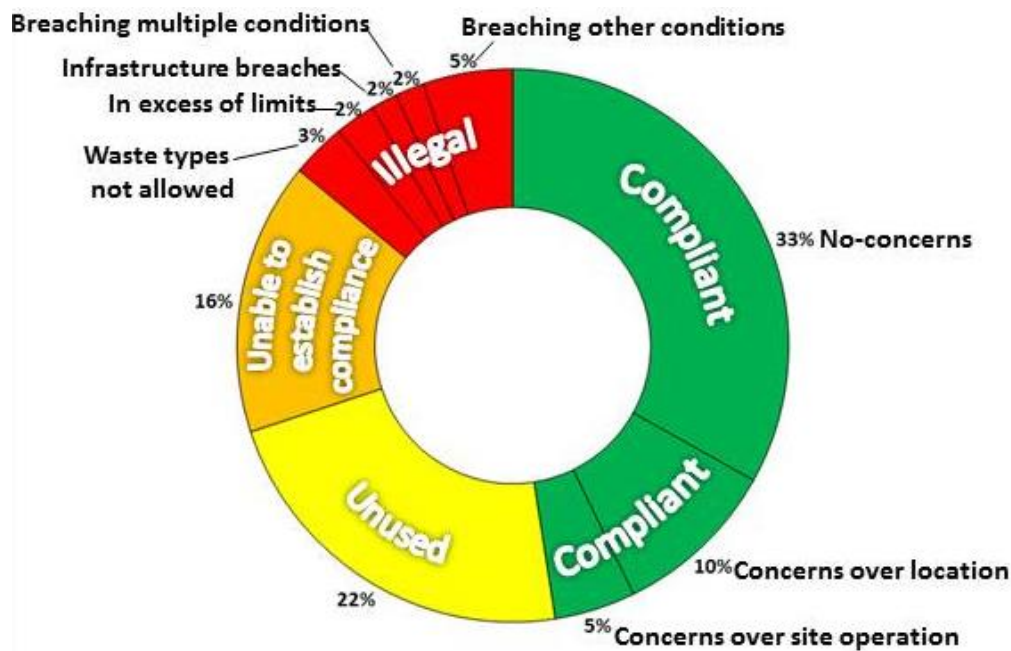


Figure 1 Compliance status of exempt waste sites visited as part of the EA campaign

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.