

2. Proposals

2.1. 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.

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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.

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2.2. 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 1 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 1 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).

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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

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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 2 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 2 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.

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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 site¹.
It is also used by land managers² (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 3 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

¹ <https://www.gov.uk/guidance/waste-exemption-nwfd-2-temporary-storage-at-the-place-of-production--2>

² <https://www.gov.uk/guidance/waste-exemption-nwfd-3-temporary-storage-of-waste-at-a-place-controlled-by-the-producer>

Table 3 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 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.

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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 4 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 4 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 exemptions³. The design principles that we used to develop these options can be found in Annex 1.

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Go to question 52.

Go to question 53.

³ <https://www.gov.uk/guidance/waste-exemption-nwfd-2-temporary-storage-at-the-place-of-production--2>

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.

The case for action

Table 5 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 5 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.

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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 6 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 6 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.

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Go to question 58.

Go to question 59.

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 place⁴ (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 7 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 7 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.

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

Go to question 61.

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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 8 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 8 Estimated compliance picture for S1 and 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 exemptions⁵.

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 S1 and 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.

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Go to question 64.

Go to question 65.

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:

- New S1 – for oils and similar wastes in secure containers

⁵ <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 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

Go to question 66.

2.3. 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 U11⁶.

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 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.

⁶ See Schedule 2, Paragraph 17 of the EPRs

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.

Go to question 67.

Go to question 68.

Go to question 69.

Go to question 70.

2.4. 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 assessment⁷ shows that the introduction of the new exemption registration service decreased business costs by

⁷ <https://www.gov.uk/government/publications/business-impact-target-statutory-guidance>

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.

Go to question 71.

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.

Go to question 72.

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.

Go to question 73.

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.

Go to question 74.

2.5. 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.

Go to question 75.

3. 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 were 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.⁸ A revised impact assessment will only be published with the final government response to the consultation, once RPC provides a final sign-off.

Go to question 76.

Go to question 77.

Go to question 78.

Go to question 79.

Go to question 80.

Go to question 81.

⁸ In particular the proposed options for prohibiting use of exemptions in specified circumstances