

Waste Management Licensing (Scotland) Amendment Regulations 2016

**Partial/Final Business and Regulatory
Impact Assessment**

January 2016

TITLE OF PROPOSAL

1. Waste Management Licensing (Scotland) Amendment Regulations 2016, incorporating amendments to:

- The Waste Management Licensing (Scotland) Regulations 2011.

PURPOSE AND INTENDED EFFECT

Background

1. Tyres are generally perceived to be made mostly of rubber, but they are in fact a complex combination of metals, minerals and hydrocarbons.
2. The major environmental risk for scrap tyre deposits is fire. Waste tyre fires are notoriously difficult to control. It is therefore important to ensure that waste tyres are stored correctly to avoid these risks to the environment and human health. In addition to atmospheric pollution from acrid smoke produced by tyre fires other mobile polluting contaminants, including cyanide, sulphur dioxide can be released. The contaminants may potentially be available for leaching in the incomplete combustion products that remain after the fire.
3. Tyres are made from a combination of potentially polluting materials: metals, minerals and hydrocarbons. During combustion of tyres several chemicals are emitted which have an impact on human health, including sulphur dioxide, carbon monoxide, benzene, metals such as chromium and arsenic, polycyclic aromatic hydrocarbons and dioxins.
4. Waste tyres were banned from being landfilled in Scotland in 2004 by the EU Landfill Directive (1999/31/EU). Since then, waste tyres have been a problematic waste stream with poorly developed recycling and recovery markets. However, waste management operators are attracted to waste tyre collection by the low barriers to entry and the easy financial returns associated with collection. In many cases there has been little regard for end markets and the true costs of accessing those markets. As a result it has become easy to build up a large stockpile of waste tyres.
5. The Waste Management Licensing (Scotland) Regulations 2011 currently allow operators to register a Paragraph 17 exemption to store up to 1,000 waste tyres (just under 10 tonnes) on a site at any one time so long as they register the exemption with SEPA. Operators often also register a complementary Paragraph 11 exemption, which allows the sorting, baling or shredding of up to 10 tonnes of waste tyres at any one time. These exemptions can be registered on-line with SEPA, are free to register, and are only notifiable to SEPA once. SEPA does not have the discretion to refuse registrations.

OBJECTIVE

6. The objective of these new regulations is to create a situation where tyre fires and illegal dumping of tyres are less likely, and more tyres move up the waste hierarchy towards recycling.

7. In recent years, there has been an increasing recognition, both in Scotland and internationally that our resources are finite, and there therefore these resources need to be better managed and conserved so that the maximum value can be derived from them. The Scottish Government held a consultation on a circular economy strategy called Making Things Last, in 2015, which included a proposal to explore the potential for schemes aimed at increasing recycling and reuse of tyres. Removal of these exemptions and thereby requiring the licensing of all operators will make it easier for SEPA to regulate the storage and treatment of waste tyres.

RATIONALE FOR GOVERNMENT INTERVENTION

8. Experience over the last 10 years has shown that these exemptions are widely abused. The exemptions have been used to deposit and stockpile large quantities of waste tyres without prospect of end uses for the waste tyres. Collection for stockpiling (rather than collecting for a certain end market) undermines the properly functioning market. The storage and treatment of waste tyres under the terms of exemption Paragraphs 11 and 17 has often been associated with businesses which ignore the quantity limits in the exemptions, businesses which fail because of a lack of end markets, fire risk and abandonment. The amount of regulatory effort SEPA is putting into enforcing the terms of the exemptions is disproportionate to the benefits intended by these exemptions. We therefore intend removing waste tyres from exemption Paragraphs 11 & 17 so that the sites are brought into licensing, that those operating the sites are competent to do so, and that the risks of fire and abandonment associated with business failure.

9. Scottish Government believes the risks associated with waste tyres are best managed through waste management licences where the storage and fire risks and the financial risks associates with business failure and subsequent site clearance can be better managed and regulated. By moving waste tyre storage sites into waste management licensing SEPA will be able to check whether operators are competent to operate waste tyre storage and treatment sites, to prevent the re-entry of previously convicted waste tyre site operators, to better regulate the quantities stored on site, to impose conditions to reduce fire risk, and to ensure that sufficient financial provisions are in place to cover the costs of waste tyre removal in the event of business failure.

CONSULTATION

Sectoral consultation: Direct Business Engagement

10. A consultation on these regulations took place between 27 October 2015 and 30 November 2015. During this period the Scottish Government wrote to all holders of paragraph 11 and paragraph 17 exemptions, informing them of the proposed removal of these exemptions, and the consequent requirement to apply for a waste management licence. In addition, the Scottish Government has consulted with COSLA, CIWM, Scottish Environmental Services Association (SESA), Tyre Recovery Association (TRA) and SEPA.

Consultation Responses

11. Only 3 responses were received – from CIWM, SESA and TRA, and all of these were supportive of the removal of these exemptions.

OPTIONS CONSIDERED

OPTION 1 – do nothing (baseline scenario)

Benefits

Operators

12. Small operators would continue to benefit from these exemptions by not having to pay the licensing costs (see paragraphs 18 & 19 below).

Costs

13. A case in 2014 in Wishaw illustrated the difficulties associated with the inclusion of waste tyres under exemptions paragraphs 11 & 17. In 2014 SEPA became aware of a waste tyre dump at Netherton Industrial Estate in Wishaw operated by Earthmover Tyre Recycling Limited. Despite having registered the Paragraph 17 exemption for the storage of no more than 1,000 waste tyres, the company accumulated 114,000 waste tyres over a very short period of time. The location of the site and concerns about the potential for fire and associated impacts on Wishaw General Hospital, the nearby railway line, and commercial and household properties led to widespread concerns. SEPA, working in partnership with other agencies, stepped in to clear the site of waste tyres because of the immediate concerns. It cost SEPA and the public purse **£437,000** to clear the site. The Director of the Earthmover Tyre Recycling Limited was jailed in 2015 for 14 months and his former company was fined £195,000.

14. In addition, the abuse of these exemptions has repeatedly resulted in significant costs to the public purse, through SEPA, the police and fire services having to deal with fires that release toxic smoke into the air. Tyre fires can last days, even weeks to properly extinguish, requiring the attendance of dozens of firefighters. Together with clean-up costs, this can run to hundreds of thousands of pounds.

OPTION 2 – removal of waste tyres from exemption Paragraphs 11 & 17 of Schedule 1 of the Waste Management Licensing (Scotland) Regulations 2011

Benefit

15. This will prevent operators abusing the permit regime and ensure that everyone who stores and/or treats waste tyres is brought formally within the regulatory system via the granting of a permit subject to the necessary conditions. SEPA will be better able to monitor and regulate activity. This will benefit:

- a) The general public who will be less likely to have to bear to consequences of poor practice, such as large scale fires, which endanger the surrounding area through fire damage and a wider area through the toxic fumes emitted by burning tyres.
- b) Local authorities, who will not have to bear the cost of clearing up the mess left by irresponsible dumping / storage of tyres.
- c) Existing responsible licenced operators who will no longer be undercut in the market by unlicensed operators.

Costs

Operators

16. Small operators handling – or claiming to handle – less than 1,000 tyres at any given time will now be required to apply for and pay for a permit. A site taking an equivalent amount of tyres to that which the exemptions allow (1,000 tyres or 10 tonnes) would fit into the lowest charging band as set out below.

17. N.B. Where a site licence authorises both the treatment and the keeping of waste, the subsistence charge in respect of both activities shall be the higher of the sums deriving from Table 1 (which is about treatment – see first lot of charges below) and Table 2 (which is only about storage – see second lot of charges below).

18. A treatment licence (including associated storage) would be -
- <5,000 tonnes, Application fee £1,562, Annual subsistence fee £2,539
 - 5,000 – 25,000 tonnes, Application fee £1,943, Annual Subsistence £3,420
 - 25,000 – 75,000 tonnes, Application fee £2,403, Annual Subsistence £3,834
 - >75,000 tonnes, Application fee £3082, Annual Subsistence £5035
- A storage licence (with no treatment on site) cost would be –

- <5,000 tonnes, Application fee £1,012, Annual Subsistence £1,324
- 5,000 – 25,000 tonnes, Application fee £1,393, Annual Subsistence £2,126
- 25,000 – 75,000 tonnes, Application fee 1,731, Annual Subsistence £2,772
- >75,000 tonnes, Application fee £2,235, Annual Subsistence £3,694

SEPA charging scheme is set out at:

http://www.sepa.org.uk/media/143547/waste_management_fees_and_charges_scheme_2015.pdf

Local authorities and householders

19. None

Regulator (SEPA)

20. Any additional costs incurred by SEPA in regulating additional licensees will be recovered via its charging scheme.

Costs to SEPA

SCOTTISH FIRMS IMPACT TEST

Sectors and Groups affected

21. This will not affect any businesses other than those currently holding para 11 and para 17 exemptions for the storage and treatment of waste tyres.

Competition Assessment

22. If adopted, the proposed actions would create a situation where all operators storing and/or treating waste tyres would be required to have a waste management licence. Therefore no operator will be unfairly disadvantaged.

LEGAL AID IMPACT TEST

23. The proposals would not create any new offences or sanctions. It is therefore very unlikely that they will result in increased legal aid expenditure.

24. This assessment has been discussed with the Scottish Government Access to Justice Team who have agreed with our view.

ENFORCEMENT, SANCTIONS AND MONITORING

25. SEPA, as the relevant regulator, will enforce the licensing regime.

SUPPORT

Support for those moving into scope

26. The Scottish Government has written to all those likely to be affected by this action, informing them of the coming change, and inviting their comments. In addition, the Waste Management Licensing (Scotland) Amendment Regulations 2016 include provisions that will allow unlicensed operators a period of 6 months from the coming into force date of the Regulations (30 March) in which to apply for a waste management licence. During this period, SEPA officials will work to provide transitional assistance to those who need it.

IMPLEMENTATION

27. SEPA, as the relevant regulator, will enforce the licensing regime.

POST IMPLEMENTATION REVIEW

28. Scottish Government officials will liaise with SEPA during the transition and implementation stage to ensure that any emerging issues are dealt with.

SUMMARY AND RECOMMENDATION

29. After careful consideration the Scottish Government recommends the adoption of option 2, removal of waste tyres from exemption Paragraphs 11 & 17 of Schedule 1 of the Waste Management Licensing (Scotland) Regulations 2011.

30. We recommend this option on the basis that it will reduce clean-up costs incurred by public bodies in respect of unlicensed operators, increase public safety by reducing the likelihood of tyre fires, and make it easier for SEPA to regulate these activities.

DECLARATION

31. I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Richard Lochhead MSP, Cabinet Secretary for Rural Affairs, Food and the Environment



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