

**Better Environmental
Regulation Programme**

Consultation on Proposals for an Integrated Authorisation Framework

January 2017

Part 6 – Waste

6 Part 6 - Waste

6.1 Background

6.1.1 The integrated authorisation framework provides an opportunity to review the waste authorisation regime in Scotland (noting that any proposals applicable to radioactive waste are described in Part 7). While successful in reducing harms from waste management activities and facilitating millions of tonnes of resource recovery, decades of evolution has left it unnecessarily complex both for SEPA and waste managers, relying on at least eight separate statutory instruments (and their amendments) for implementation.

6.1.2 The current waste regulatory regime can be poorly mapped to risk, can over-regulate low risk activities and under-regulate higher risk activities. It has not kept pace with the new waste and resource economy where value recovery has priority, nor is it well enough equipped to prevent the infiltration of serious and organised crime.

6.1.3 With respect to waste and resource management, the integrated authorisation framework aims to create *“an authorisation regime for waste and resource management which protects the environment and communities, prevents waste crime and supports the move to a zero waste society and a circular economy”*. The proposed integrated authorisation framework must therefore:

- Provide simplified and responsive regulation that is proportionate to risk;
- Encourage and facilitate genuine resource recovery whilst making abuse more difficult;
- Promote resource efficiency; and
- Favour the practical application of the waste hierarchy.

In addition, the proposed integrated authorisation framework also aims to:

- Re-transpose the Waste Framework, Industrial Emissions, Landfill, End-of-Life Vehicles, Batteries, WEEE and Sewage Sludge Directives;
- Be simple enough to be easily understood and implemented;
- Provide a streamlined process for review and amendment in order to take account of innovation, changes in risk and abuse of the system; and
- Reduce administrative burdens and increase regulatory clarity.

6.1.4 Developing the integrated authorisation framework for waste requires consolidation of a range of waste management-related legislation. These include the existing authorisation and exemption regimes and all relevant technical requirements applied through the legislation listed below:

- Sections 33 to 44 (except for S.34), 59, 64, 65, 66, 71, 73, 74, 78 of the Environmental Protection Act 1990 (EPA 1990);
- The Waste Management Licensing (Scotland) Regulations 2011 (WML 2011);
- Section 5 of Schedule 1 to the Pollution Prevention & Control (Scotland) Regulations 2012 (PPC 2012);
- Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991;
- Sludge (Use in Agriculture) Regulations 1989;
- Special Waste Regulations 1996;
- End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003; and
- Landfill (Scotland) Regulations 2003.

6.1.5 We propose that the relevant parts of these regulations are repealed and replaced by the integrated authorisation framework marking a significant step to streamline the legislative landscape. Provisions used by local authorities and regulators other than SEPA will remain in place to ensure continuity. For example, Section 33 of the Environmental Protection Act 1990 (“EPA 1990”) is used by local authorities to tackle fly-tipping and equivalent powers must, and will, be retained.

6.1.6 For clarity, the Duty of Care obligations (S.34 of the EPA 1990) and the consignment note procedures in the Special Waste Regulations 1996 are not included in these reforms as they do not relate directly to the granting of authorisations. Further, nothing in this consultation will affect the producer responsibility schemes or the transfrontier shipment regime.

Improvements to waste regulation

6.1.7 Many specific changes are proposed in the consultation document but it is useful to highlight some for special consideration by the waste industry. These include:

- Consolidation of all waste permitting legislation and technical requirements into one framework;
- Removing duplication where more than one authorisation is needed to cover the same activity on a site;
- A duty to promote sustainable resource-use placed on all authorised persons to help embed circular economy thinking across a range of industries;
- More flexible permitting approaches such as whole site, and corporate, permits to suit the needs of operators;
- The ability to use standard rules in permits and registrations to improve regulatory consistency;
- A refreshed FPP test, better able to uphold high standards in the industry and to tackle threats from criminal activity;
- A suite of authorisations designed to ensure all those managing other persons' waste (i.e. working in the waste industry) fulfil FPP criteria;
- More effective enforcement tools to better deal with non-compliance, failing sites and illegal deposits of waste;
- A more flexible approach to suspension and revocation of authorisations gives SEPA more effective powers to intervene where necessary;
- The ability for SEPA to create new notification level authorisations to facilitate low risk industry developments without waiting for legislative change;
- A lighter touch approach to waste collection points supporting innovative means of recovering waste;
- A joined-up approach for applying waste (including sewage sludge) to agricultural land for benefit; and
- A simplified and more targeted approach to waste carriers registrations removing the confusing terminology around "professional collectors".

6.2 Proposed new legislative regime

6.2.1 As described in parts 1 – 4, the aim is to have common administrative processes across all regulated activities whilst retaining the separate technical requirements specific to each regime.

What is the “regulated activity” for waste management?

6.2.2 The key offences in S.33 of EPA 1990 have been used for 25 years to establish the need for a waste authorisation. S.33 will be recast into a set of integrated offences and while the wording may change, the effect is very much the same. The integrated authorisation framework will provide a ‘general prohibition’ with the effect that “carrying on a regulated activity without an authorisation” is an offence. This is similar to Section 33(1)(a) of EPA 1990 which makes it an offence to “deposit or treat, keep or dispose of waste in or on land” without an authorisation.

6.2.3 In order to give effect to this general prohibition it is necessary to set out the regulated activities. For waste the regulated activity is “waste management” which we propose to define as *“the collection, transport, recovery and disposal of waste, and actions taken as a dealer or broker of waste”*. This broad definition captures the current range of regulated waste activities, including those specified in Articles 23 and 26 of the Waste Framework Directive (WFD) and enables integration of PPC 2012, WML 2011, the Sludge Regulations, carriers licensing and broker and dealer’s licensing.

6.2.4 In the integrated authorisation framework “Waste” will be defined in accordance with the WFD. The management of waste types specifically excluded from the scope of the WFD will not require an authorisation as a waste management activity. “Collection”, “recovery”, “disposal”, “broker” and “dealer” will also be defined in accordance with the WFD. The proposed waste definition does not refer to “controlled waste” or the Controlled Waste Regulations 1992. It will no longer be necessary to refer to these regulations for the purpose of waste permitting; however, these regulations will remain as they provide important functions with respect to charging for waste services by local authorities.

Exclusions from the regulated activity

6.2.5 The proposed definition of “waste management” is broad so it is necessary to carry forward some clear exclusions. In addition to the exclusions from the definition of “waste” set out in Article 2 of the WFD, two further exclusions are proposed;

- The management of waste by persons acting in their capacity as householders. This ensures that, for example, carrying household waste to a civic amenity (CA) site, burning leaves or burying a dead pet in a garden does not fall within the scope of the integrated authorisation framework. We do not consider the management of waste as a householder to fall within the scope of the WFD as householders are not ‘establishments or undertakings’; and

- The recovery or disposal of waste where it is a licensable or exempt marine activity under Part 4 of the Marine (Scotland) Act 2010 or Part II of the Food and Environment Protection Act 1985 as administered by Marine Scotland. The intent of this is to prevent duplication of regulation.

Where waste activities will fit in the tiers of authorisation

- 6.2.6 Having established the need, subject to the exclusions, to be authorised to carry out a “waste management” activity it is necessary assign each specific activity (e.g. composting, landfill etc.) to the most appropriate and proportionate tier of authorisation as described in more detail in the main consultation.
- 6.2.7 It is important to note the flexibility to place waste activities within the four tiers is constrained by the WFD. These limitations primarily affect the ability to use GBRs:
- Article 23 of the WFD places an obligation on Member States to require those who carry out waste treatment (i.e. any recovery or disposal of waste) to obtain a permit;
 - Article 24 allows Member States to exempt some specified operations from the permit requirement; and Article 26 requires the competent authority keeps a register of establishments and undertakings subject to exemptions from the permit requirements. The competent authority must also maintain a register of carriers, brokers and dealers of waste.
- 6.2.8 Two general types of authorisation are, therefore, envisaged by the WFD:
- A permit. In our view a permit for the purposes of the WFD is a prior authorisation which may be granted or refused and, if granted, is issued in writing. As such, we consider that either a permit or a registration in the integrated authorisation framework will satisfy the WFD requirement for a permit to be obtained; and
 - Exemptions. The WFD allows for exemptions from the requirement to obtain a permit. We consider notifications in the integrated authorisation framework satisfy the WFD requirement for general rules to apply and the requirement to keep a register of those carrying on specified exempted operations.
- 6.2.9 The WFD requirement for SEPA to hold a register of those carrying out lower risk activities therefore effectively restricts the use of GBRs to the non-WFD activity of ‘storage of waste prior to collection’.

6.3 Overview and comparison of arrangements

6.3.1 This section identifies key features of the integrated authorisation framework which may be of particular interest to waste managers and compares them to the current regulatory arrangements.

Integration of authorisations

6.3.2 The integration of the four main regulatory regimes provides an opportunity to remove some of the overlaps which currently exist. For example:

- Using waste ash as a feedstock in roadstone coating plant or cement batching plant. Currently, these facilities require a PPC Part B permit and a separate waste management authorisation. Under the integrated authorisation framework, the primary permit covering plants of this type will also be able to act as the waste authorisation;
- Crushing waste bricks, tiles and concrete requires both a PPC Part B Permit and a separate waste management authorisation. This means that some construction and demolition waste facilities have a WML covering the whole site and a PPC Part B permit for the individual crushers on that site. Under the integrated authorisation framework this duplication will be removed;
- The use of waste to construct a flood embankment may need an authorisation under CAR 2011 for flood prevention works and a separate authorisation to enable the importation and use of waste in construction. In future a single authorisation can cover the whole project; and
- The importation of sewage sludge from other works, septic tanks and sewer cleaning into a sewage works for treatment currently requires both a CAR licence and a separate waste management authorisation. In future, the authorisation for the primary activity (operating a sewage works) can cover these additional waste management activities.

Authorised persons

6.3.3 The integrated authorisation framework describes the authorised person as having responsibility for overall compliance with the authorisation and what is meant by “control”. This is a clearer approach than is currently set out in the waste regime and will ensure that only those persons who are actually in control of an activity will receive permits and registrations. This will help prevent circumstances where an applicant, who would not themselves be in control of an activity, is acting on behalf of a person or group who will be in control but who are not a Fit and Proper Person.

Universal Outcomes

- 6.3.4 The proposed universal outcomes are to use best practice to prevent and mitigate environmental harm, promote sustainable resource use and prevent incidents and accidents and limit their consequences.
- 6.3.5 The outcome to promote sustainable resource use provides an opportunity to embed circular economy thinking across a range of regulated industries. It would be defined so as to include the waste hierarchy as well as efficiency in using raw materials, water and energy. We hope this will provide new opportunities for the waste and resources industry to work with other industries to reduce waste and improve circularity.

Fit and proper person (FPP)

- 6.3.6 The FPP test is a crucial part of the waste regime. As described in the main document, changes to the test are proposed so that the test will be improved to support more preventative action against those who engage in waste crime. These changes are described in paragraphs 3.5.14 to 3.5.26.

Determination periods

- 6.3.7 It is proposed that the time for determining a registration will be 28 days. This is seven days longer than the 21 days provided in WML 2011 for 'complex' exemptions from waste management licensing. The maximum time for determining a permit is proposed to be four months as it currently is in EPA 1990, unless extended by agreement.

Public participation

- 6.3.8 Permit determinations will include an appropriate consultation with the public and relevant stakeholders and it is proposed these arrangements will be set out in a public participation statement published by SEPA. The WML regime currently limits consultation to Local Authorities, Scottish Natural Heritage and the Health and Safety Executive with no provision for wider public engagement. The proposal is to make SEPA's approach to consultation more flexible. For example, the risk from fires at some waste management facilities can be considerable and we propose for SEPA to be able to consult with the operators of strategic infrastructure such as airports, motorways, railways and power supply where appropriate before making a final determination.
- 6.3.9 For applications which SEPA considers to be in the public interest, a public consultation process will be established. This will be limited to permit-level activities and further detail will be set out in SEPA's public participation statement.

Enforcement notices

6.3.10 Currently, enforcement notices can only be used to enforce compliance for waste activities covered by Waste Management licences and PPC permits but not activities exempt from licensing, despite them often being a focus for enforcement action. The grounds for serving notices and the offence provisions are also different across the two regimes. The integrated authorisation framework will provide a single enforcement notice for use with all regulated waste activities regardless of the type of authorisation and where an activity has not been authorised (e.g. illegal storage).

6.3.11 The current WML Section 42 enforcement notice is unusual in that failure to comply is not an offence. Under the integrated authorisation framework it will be an offence to fail to comply with an enforcement notice.

6.3.12 A particular improvement provided by this approach is the replacing of the function of Section 59 of EPA 1990. S.59 notices are routinely used to require the removal of waste from a site, either because it is not authorised to be there or carries a risk of harm. However, its effectiveness is limited and it is proposed that the following issues will be addressed by the new enforcement notice provisions:

- SEPA can only serve a S.59 notice on the occupier of the land, even if that person did not deposit the waste and the person who did is known. The new notice can be served on either the person who carried out or is carrying out the activity (the person who deposited the waste) or any owner or occupier of the land whichever is the most appropriate. This will better enable SEPA to take the right action against the right person;
- The S.59 notice cannot require removal of the waste until 21 days from the service of the notice, even where waste is causing significant nuisance or harm. It is proposed that this strict limit will be removed and replaced with a more flexible provision. This will allow SEPA to have waste removed sooner, where appropriate, and this early intervention can benefit communities affected by nuisance or harm and prevent non-compliance becoming entrenched; and
- The S.59 notice can only require the removal of waste which was unlawfully deposited. In some circumstances waste is deposited legally under an authorisation which is subsequently revoked. The revocation or enforcement notice, under the integrated authorisation framework, will be able to require the full clearance of the waste and any necessary remedial works in these circumstances. This will enable SEPA to take action to benefit communities affected by historic waste problems in circumstances where SEPA is currently unable to intervene, and will help create a level playing field for waste operators who manage waste in compliance with their authorisations.

6.4 Proposals for allocation of activities to tiers

Introduction

- 6.4.1 It is necessary to allocate the various waste management activities to the appropriate tiers of the integrated authorisation framework in order to create a proportionate, risk-based system. As a general rule, the higher an activity is placed in the hierarchy, the more assessment and consultation is carried out on the application and the more scope there is for bespoke conditions in the final authorisation.
- 6.4.2 A clear policy objective of the Better Environmental Regulation Programme has been to put regulation on a strong, risk-based footing and as is so often the case with waste management, there is a wide range of factors to take into account. Factors which affect the appropriate authorisation type for a given activity can include European Directive requirements, risk of environmental harm, vulnerability to waste crime, financial risk, process complexity and public interest.
- 6.4.3 In particular, the transition of the WML 'exemptions' system to the new tiers of the integrated authorisation framework is a challenge which requires input from across the industry. In this section, we set out a number of high level proposals and seek feedback on them to inform a further, more detailed, consultation.

General binding rules (GBRs)

- 6.4.4 GBRs authorise an activity automatically without any prior contact with or agreement from SEPA. They have been shown in other areas to work well for common, low-risk activities which, provided the responsible person complies with the rules, are unlikely to result in environmental harm. As described previously, the WFD requirement for SEPA to hold a register effectively limits the ability for SEPA to place waste activities in the GBR tier to the following area.

Storage prior to collection

- 6.4.5 There are many ways in which waste can enter the management system for recovery or disposal. It is proposed that these activities will be broken down into three separate GBR authorisations; storage at the place of production, storage at another place controlled by the producer and storage at a collection point:
- Temporary storage of waste at the place of production occurs at almost every business premises in Scotland. The GBR will include shared services where a number of co-located businesses share waste receptacles in, for example, business parks or industrial estates.

- In many cases waste is produced at a remote place and brought back to the producer's premises for temporary storage prior to collection. For example, medical practitioners or vets will produce waste during home visits. In these cases they would return any waste to their surgery or practice. Other examples include tradesmen who generate small amount of waste and return it to a storage yard to place in designated skips, roadside recovery companies who return car tyres or batteries back to their central base or supermarkets which back-haul cardboard to a central facility prior to collection;
- We also consider waste collection schemes which are not conducted on a professional basis can benefit from a GBR. For example, battery boxes in offices, needle exchanges, returning out of date medicines to pharmacies, take-back schemes in shops for consumer goods, bring-banks at schools or supermarkets, oil banks in rural garages and collection hubs for farm plastics at auction marts.

6.4.6 This approach supports emerging innovative methods of collecting waste and removes any administrative issues associated with getting recyclable and other specialist materials into the formal waste management system. The GBRs will replace a number of existing registrable exemptions and result in hundreds fewer activities needing to be registered.

Notifications

6.4.7 Notifications will operate in a similar manner to the current 'simple exemption' process. They will be used for low risk activities where SEPA does not need to determine whether to grant or refuse. As discussed above, we consider many of these activities are actually suitable for the GBR tier but the WFD requirement to maintain a register limits our ability to do this.

6.4.8 A key difference from the existing system is proposed in that operators would only notify SEPA of an activity once, regardless of the number of places the activity will be carried out. For example, a construction firm will have to notify SEPA they intend to dispose of plant matter by burning at a project site but this would be sufficient to cover all their projects, wherever situated in Scotland, for the duration of that notification.

Low risk recovery and disposal activities on the site of production

6.4.9 Low risk activities which take place on the site where the waste was first produced do not involve the formal waste management industry and are often ad-hoc in nature. Examples include open burning of brash from grounds maintenance and composting organic waste at a school or hotel. A notification would be used in this situation.

Low risk activities involving waste being put to a final use

6.4.10 Notifications can also be used to provide authorised end-markets for certain low risk waste streams which may be unable to reach the 'gold standard' of an

end-of-waste position. An example could include using coarse bricks, tiles and concrete to maintain existing infrastructure such as private roads.

Preparation for Reuse

6.4.11 Preparation for reuse activities, where wastes are sorted, repaired and resold for their original purpose, tend to be low risk. We consider that most such activities can be authorised using a Notification although, some larger operations or those where only a small proportion of waste is reused may be suitable for Registration or Permit.

Registrations

6.4.12 In addition to a range of low risk activities (now suitable for GBR and notification level as described above), the current 'exemption' arrangements require SEPA to register some very substantial waste activities regardless of environmental convictions or the past compliance history of the operator. This has made it very difficult for SEPA to prevent certain operators from registering waste exemptions to enter the waste industry and manage other persons' waste even where it is not in the interests of the environment, communities or the wider waste industry.

6.4.13 A key feature of the registration and permit tiers is the ability for SEPA to screen authorised persons and other relevant persons and determine whether they are a FPP to hold an authorisation. This may include consultation with other relevant agencies where necessary. In seeking to take a preventative approach to waste crime, we consider that, in general, where waste is being managed on another person's behalf after collection (i.e. working in the waste industry) it is appropriate for SEPA to take the history of the authorised person and other relevant persons into account when deciding whether to grant or refuse an authorisation (as opposed to, for example, farmers managing their own waste, or a hotel composting their own kitchen waste).

6.4.14 This change means that some activities which were previously automatically registered as 'simple exemptions' (particularly some activities within Paragraphs 5, 11, 13, 14, 17 & 18 of WML 2011) would go through a proportionate assessment process and may be subject to an appropriate charge. We have thought carefully about which 'simple exemptions' should be brought into the registration and permit tiers and which can move to notification or GBRs. We estimate that fewer than 5% of existing registered 'simple exemptions' will become registrations or permits.

6.4.15 In addition to these storage and treatment sites we consider some activities currently registered under Paragraph 7, 8(2), 9, 12, 19 and 51 exemptions from licensing to be suitable for the registration and permit tiers. These already have a determination period built in to the process. See the activity specific table (Figure 6 (p16)) for more details.

Permits

6.4.16 Permits are the highest level of authorisation in the integrated authorisation framework. They will operate in a very similar manner to the existing waste management licences and PPC permits. They are intended for higher risk, or non-standard, activities which benefit from detailed or site specific assessment, formal financial provision, bespoke conditions or a public consultation process.

6.4.17 Some activities in the permit categories will also be activities under the IED. An example of this might be open windrow composting where a permit is required when the site operates above the IED threshold. For these activities the permit application process will have to take account of PPD and stricter requirements around Site Condition Reports.

6.4.18 It is proposed that the existing 1,400 Waste Management licences and PPC Part A waste permits will be 'deemed' to be permits under the integrated authorisation framework. Existing licence and permit holders would not be required to reapply for their authorisations.

Categories of waste activity

6.4.19 It is proposed that the allocation of waste activities to the tiers of authorisation will be set out in guidance in much the same way as the CAR Practical Guide works today. This will be much more straightforward than navigating the existing system of different sets of regulations and lists of waste exemptions. We propose to split the main waste management activities into the following 13 categories to make navigation more straightforward:

- Storage prior to collection;
- Landfill;
- Incineration & co-incineration;
- Composting
- Anaerobic digestion;
- Other waste storage and treatment sites;
- Application of waste to land for benefit of soils;
- Use of waste in construction and the restoration, reclamation and improvement of land;
- Treatment of contaminated material for the purpose of land remediation (mobile plant);
- Other uses of waste (recovery);
- Disposal at the place of production;
- Waste carriers; and
- Brokers and dealers.

6.4.20 Figure 6 (p16) provides a high level commentary on how these activities could be split across the tiers of authorisation. We are seeking feedback on this and will look to engage with industry prior to a more detailed consultation on a draft 'Practical Guide'. The three areas which may see the most reform are categories 6, 7 and 8. Some further description of these proposed changes is provided below.

Waste storage and treatment sites

6.4.21 This category covers activities which can be broadly described as 'storage and treatment' facilities. These facilities form the backbone of the industry and are highly varied in the wastes they treat and their scale, processes and intent. Many sites are very diverse and a broad category is required to keep things simple and avoid overlaps and artificial distinctions.

6.4.22 It is clear that the current exemptions from WML do not reflect risk well and lead to some illogical outcomes. For example, because a Civic Amenity (CA) site handles mixed municipal waste, it must always have a WML even when it is extremely small. Indeed, some CA sites handle less than 25 tonnes at any one time. On the other hand, WML Paragraph 17 exemptions allow the storage of thousands of tonnes of waste at any one time without the possibility of any checks on the operator, or proposal, in advance.

6.4.23 Those who do operate under a WML exemption are also limited in the waste types they can accept. This stifles diversification and innovation and leads SEPA into taking multiple regulatory positions or very broad interpretations of terms such as 'textile', or 'rubber' in order to facilitate genuinely lower risk activities. We also want to move away from the position today where multiple exemptions are registered on the same site to cover a wider range of activities. The proposed approach to storage and treatment sites marks a significant departure from current practice. It seeks to address the inflexible and inconsistent nature of the exemptions.

6.4.24 A matrix style approach is proposed so that a registration is required unless the activity (by waste type, treatment process or scale) is described as requiring a permit.

6.4.25 The registration level authorisation aims to encourage legitimate, small-scale operators into the sector and help to achieve Scotland's ambitious recycling targets. Registrations will be issued within 28 days of receipt and charges will generally be lower, but applications will be screened prior making a determination. Registration applicants will have to be a FPP, provide a site boundary plan and confirmation of land ownership (or secure the consent of the landowner). This is a significant shift for those who previously operated under exemption and will provide SEPA with the means of preventing rogue operators from gaining authorisations to run even smaller-scale waste facilities.

6.4.26 We consider low value or problematic waste streams, such as tyres and residual municipal waste should be managed through permitted sites by waste operators who are subject to more detailed and robust scrutiny, including being made subject to an appropriate demonstration of financial provision.

6.4.27 The following indicative matrix (Figure 6 (p16)) sets out how storage and treatment facilities will be split between the registration and permit tiers of authorisation. The left column provides an absolute list (if the activity consists of one or more of these activities, it will need a permit) while the right column provides a threshold list (if the activity is proposed to take place at a scale above one or more of the thresholds, it will need a permit). If the activity does not trigger either qualifying factor, it will need a registration.

6.4.28 We have not included tonnage thresholds in this consultation; we are seeking early views on the general approach before conducting a more detailed consultation on thresholds.

Figure 6 – How storage and treatment facilities will be split between the registration and permit tiers of authorisation

Waste Storage and Treatment	
Absolute List	Threshold List
<p>Prescribed IED activity.</p> <p>Treatment* of hazardous waste (including ELV de-pollution but excluding repair of WEEE).</p> <p>Treatment* of sewage sludge (not at a STW).</p> <p>MRF Code of Practice Sites.</p> <p>Storage and/or production of refuse derived fuel from mixed municipal waste.</p> <p>Storage and/or treatment of hazardous soils and other hazardous excavation wastes.</p>	<p>Storage of more than x tonnes of hazardous waste at any one time.</p> <p>Storage and/or treatment of more than x m³ of non-hazardous liquid waste at any one time.</p> <p>Storage and/or treatment of more than x tonnes of any other non-hazardous solid waste at any one time.</p> <p>Storage and/or treatment of x tonnes of segregated glass, paper, cardboard and plastic for recycling at any one time.</p> <p>Storage and/or treatment of more than x tonnes of wood at any one time.</p> <p>Storage and/or treatment of more than x tonnes of inert waste and non-hazardous soil at any one time.</p> <p>Storage and/or treatment of more than x tonnes of scrap metal (maximum 100 de-polluted vehicles) at any one time.</p> <p>Storage and/or treatment of more than x tyres at any one time.</p>
<p>None of the above applies:</p> <ul style="list-style-type: none"> • To landfill, incineration, composting or anaerobic digestion; • To the use of waste for construction, restoration and reclamation or improvement of land or applications of waste to land for the benefit of soil; • Where storage is prior to collection or otherwise authorised under a GBR; and • Where waste is used as a feedstock in a process already authorised under the integrated authorisation framework (e.g. road planings used at a roadstone coating plant). <p>*Treatment includes, but is not limited to, shredding, sorting, drying, washing and crushing. It does not including bulking or compaction for transport for the purpose of this matrix.</p>	

Application of waste to land for benefit of existing soils

- 6.4.29 The Scottish Government published a "[Review of the Storage and Spreading of Sewage Sludge on Land in Scotland](#)" ("the Sludge Review") in February 2016. The integrated authorisation framework takes forward a number of the recommendations summarised overleaf, in particular Recommendation 8 which calls for the creation of an integrated approach to applying sludge and other wastes to land for benefit. This brings together the Sludge (Use in Agriculture) Regulations 1989 and Paragraph 7 and 8 of Schedule 1 to WML 2011 streamlining the legislative landscape.
- 6.4.30 In line with Recommendation 3 of the Sludge Review, we propose an 'operator-based' registration to authorise the application of waste to land for benefit. The registration will authorise spreading activities in multiple locations and cover applications of sewage sludge and other wastes for benefit to agricultural and non-agricultural land.
- 6.4.31 The authorised person will be able to contract out parts of the activity but will be required to demonstrate they have overall control of the operation, will be subject to the FPP test and will have ultimate responsibility for compliance. Authorised persons will be required to report their activities to SEPA on an annual basis; but in areas of higher risk pre-notification and prior approval may be required (e.g. sites in close proximity to sensitive receptors or soil with low pH or already elevated PTE levels). This approach removes the need for hundreds of Paragraph 7 WML exemptions to be maintained and renewed annually and allows contractors to manage a land bank and report on their activities. The data in the reports will be used to target SEPA's audit programme and soil sampling and monitoring programme.
- 6.4.32 In line with Recommendations 1, 6 & 9 a set of technical regulations will provide a series of prohibitions and restrictions to ensure adequate environmental protection, implement the Sludge Directive and put the Safe Sludge Matrix on a statutory basis (e.g. a prohibition on the application of untreated sludge to land). Further, where possible, we propose to integrate the soil protection measures in the Sludge (Use in Agriculture) Regulations 1989.
- 6.4.33 A number of requirements of the 1989 regulations will apply across all waste types (e.g. the heavy metal limits in soils and the prohibition on applying waste to soil with a pH of less than 5 unless it has its own liming value).
- 6.4.34 The registration will not, however, authorise the restoration of former industrial land (e.g. opencast coal sites). Restoration projects will be covered by site-based authorisations to enable better long term planning and regulation as set out in Recommendation 4 the Sludge Review.

6.4.35 The proposed enforcement notice provisions of the integrated authorisation framework can be applied to enforce the standard rules and protect the environment from these activities in a way which is not possible for the existing legislation. In particular, the enforcement notice will be able to require the removal of sludge from a site more quickly than the current 21 days.

6.4.36 Further consultation on the detail of these proposals, including the draft technical regulations will take place later this year.

Relevant Sludge Review Recommendations	
1	The requirements of the Safe Sludge Matrix should be incorporated into law in Scotland.
3	An operator's licence including a "fit and proper person" test should be introduced for all operators who are involved in the handling, storage, transportation and spreading of material on agricultural land.
4	"Whole project life" licences for long-term site restoration projects (replacing the current exemptions) should be introduced, to enable effective long-term planning of projects and tighter, closer, more resource-efficient regulation of these projects.
5	SEPA should have the power to have an "exempt" activity, such as storage of sewage sludge, stopped immediately and the sludge removed, whilst ensuring that an operator's right of appeal is not lost.
6	SG officials and SEPA should investigate the practicalities of reducing the on-site agricultural use storage time limit for sewage sludge from 6 months, with a view to introducing risk-based case by case variance of time limits. The issue of material (sewage sludge) quality should be part of any such risk-based case, with proximity to dwellings also being taken into account where this is an issue.
8	Establish one regulatory system for organic waste to land, including the agricultural and non-agricultural application of sludge.
9	Review land type definitions of "use in agriculture" and "non-agricultural land", in order to clarify the legal duties of landowners, farmers and operators in relation to the use of sewage sludge on different types of land.

Use of waste in construction and the restoration, reclamation or improvement of land

6.4.37 Paragraph 9 and 19 exemptions are an important means of recovering suitable waste types in construction, restoration and reclamation projects. In simple tonnage terms, this represents the largest waste recovery outlet in Scotland, fluctuating with the strength of the construction industry. However, the economic and regulatory reality means that paragraph 9 and 19 exemptions can be an attractive option for illegal disposal, rather than the intended purpose of recovery. While most of these activities proceed to completion without incident, SEPA increasingly has to intervene where the use is not genuine, the material is not suitable or greater quantities are being used than is necessary for the project.

6.4.38 SEPA does not currently have discretion to refuse to register paragraph 9 and 19 exemptions where operators have relevant convictions or have had other, similar, authorisations withdrawn due to poor compliance. This makes it difficult for SEPA to prevent rogue operators from registering exemptions to manage soils and other construction and demolition wastes and opens up further opportunity for abuse.

6.4.39 At the same time, these exemptions cover an extremely wide range of scale and risk (from importing a single load of coarse rubble to shore-up gate access or repair private roads, to the use of hundreds of thousands of tonnes of soil from multiple locations). It is clear these exemptions should be brought together and replaced with a range of more proportionate and targeted authorisations. We propose to allocate activities across notifications, registrations and permits on a risk basis. Note however, the exclusion from the scope of the WFD relating to the use of natural, uncontaminated material in construction on the same site will still apply and the use of recycled aggregate which has been processed to European Aggregates Standards and Specifications and milled road planings in-line with SEPA's end-of-waste positions will not require an authorisation.

Use of waste in maintenance of existing infrastructure

6.4.40 It is proposed to require a notification for the import, and use, of coarse crushed brick, tiles and concrete to maintain existing infrastructure such as private roads, hardstanding areas and field gate access. Limited on-site storage will be included to enable stockpiling of waste for ongoing maintenance works. This accounts for around 10% of all paragraph 19 exemptions.

Use of waste in construction, restoration, reclamation and improvement of land

6.4.41 Registrations are proposed for activities where waste is imported for use in a new construction project and in the restoration, reclamation or improvement of land. This is similar to the existing paragraph 9 and 19 exemptions. We intend to define construction, reclamation, restoration and improvement broadly. This provides scope for applicants to justify the need for their project on a case-by-case basis through a recovery plan and not artificially limit the scope of the registration category.

6.4.42 We do not propose to set an upper limit in terms of waste tonnage or volume at registration level but waste types will be restricted to lower risk wastes. The registration process would have the following features:

- The necessary FPP tests can be applied. This would provide SEPA with discretion to refuse applications based on relevant convictions and past compliance history;

- Applications would be accompanied by a waste recovery plan which demonstrates the need for the project, the choice of waste types and quantity and how they will be placed;
- Clear waste acceptance procedures would be in place including evidence that waste is appropriate both chemically and physically and restriction of waste types to inert and non-hazardous wastes. For example, soils contaminated above certain thresholds would not be suitable for use under a registration. Detailed site-specific risk assessments are not appropriate for the registration tier so we consider that where contaminated soils are proposed to be used, more scrutiny and consultation is required and the permit process is appropriate; and
- Rather than annual renewals, the authorisation would remain in place until the project is completed and the authorisation surrendered. This removes the need for annual renewals but still ensures that projects achieve their stated outcomes.

These proposals aim to produce a more flexible approach to using wastes in these types of project whilst providing greater ability to prevent sham or criminal recovery operations in the first place.

Backfilling of quarries and the use of higher risk wastes in other restoration projects

6.4.43 We are proposing that the backfilling of quarries will require a permit, regardless of whether it is a recovery or disposal activity. This activity typically uses large quantities of construction wastes over a considerable length of time, yet the level of scrutiny and environmental protection available is lower (e.g. no FPP test, no surrender provisions) currently.

6.4.44 Other restoration projects, such as those for opencast coal sites, use organic wastes such as sewage sludge to create new soils and bring land back into productive use. Sewage sludge will not be included in the list of acceptable waste types in the registration tier and these restoration projects will also fall into the permit tier of authorisation.

6.4.45 A permit would be specifically tailored to the particular site(s) and operator, and would allow the involvement of a number of stakeholders from the outset, including the landowner, relevant authorities, neighbours, etc. It would take a 'whole-life' approach whereby the site is thoroughly assessed prior to commencement of the activity and for a period after the waste storage and application activity has ceased.

6.4.46 Figure 7 below illustrates the proposed tiers of authorisation for particular waste management activities.

Figure 7 – Proposed Waste Activities

Activity	Comment
1. Storage prior to collection	<ul style="list-style-type: none"> • Three proposed GBRs authorising storage prior to collection – storage at the place of production, storage at a place controlled by the producer and storage at a collection point. • Also authorise basic treatment activities which facilitate storage, transport and onward recovery (shredding, baling, crushing, etc). • Replaces Paragraph 36, 39, 40, 41 and 17 (partially) exemptions. • Supports innovative means of collecting waste for recovery.
2. Landfill	<ul style="list-style-type: none"> • Operational landfills will always be authorised as a permit activity. • Landfill permits will give effect to the landfill technical requirements. • Landfills falling into IED description will be subject to additional general IED requirements. • Existing WMLs for closed landfills will be deemed to be permits.
3. Incineration and co-incineration	<ul style="list-style-type: none"> • With the exception of waste biomass plants, all incinerations plants will require a Permit which gives effect to the incineration technical requirements (inc Chapter IV of the IED). • Incineration plants above IED threshold will be subject to additional general IED provisions. • Pet crematoria proposed to move to notification level and be removed from charging and routine inspections.
4. Composting	<ul style="list-style-type: none"> • Composting own waste at the site of production proposed to be a notification activity. • Composting other persons' waste proposed to require a registration or permit. • Composting facilities falling into IED description will be subject to additional general IED requirements.

Activity	Comment
5. Anaerobic digestion	<ul style="list-style-type: none"> • AD facilities >10 tonnes/day animal waste or >100 tonnes/day other waste will require a Permit and will be subject to additional general IED requirements. • AD facilities for agricultural wastes only up to IED threshold will only require Registration. • Small-scale and micro AD is proposed to only require notification.
6. Other waste storage and treatment sites	<ul style="list-style-type: none"> • See activity specific section above
7. Application of waste to land for benefit of soil	<ul style="list-style-type: none"> • See activity specific section above
8. Use of waste in construction, restoration and reclamation	<ul style="list-style-type: none"> • See activity specific section above
9. Other use of waste (recovery)	<ul style="list-style-type: none"> • A number of notification level activities proposed to replace existing simple exemptions. • Notification level activities include, for example, crushing and use of inert waste on the site of production (e.g. construction site) and small scale 'up-cycling' activities.
10. Disposal at the place of production	<ul style="list-style-type: none"> • A number of notifications will be created to replace the current exemptions from licensing. • Activities include – burning plant matter in the open etc

Activity	Comment
11. Treatment of contaminated material for remediation of land	<ul style="list-style-type: none"> • This is to carry over the 'Mobile Plant Licence' provision of the current regime. • Registration proposed to allow remediation contractors to carry out soil treatment at multiple remediation sites under a single authorisation. • Registration would not authorise establishing a permanent third party 'hub' site.
12. Waste carriers	<ul style="list-style-type: none"> • Simplify and remove reference to confusing phrase 'professional collector'. • Tier 1 – those who carry other persons waste – registration - FPP check. • Tier 2 – those who only carry their own waste – notification.
13. Brokers and dealers	<ul style="list-style-type: none"> • Proposed to carry over existing provisions as a registration-level authorisation.

6.5 Implementation of technical requirements

6.5.1 The various Directives contain specific requirements which must be transposed into domestic law and implemented through SEPA authorisations. Specific requirements exist in legislation for the following nine waste management activities:

- Landfill;
- Incineration and co-incineration;
- ELV storage and treatment;
- WEEE storage and treatment;
- Batteries storage and treatment;
- Waste oil management;
- Hazardous waste management;
- Zero Waste – recyclate management and MRF operation; and
- Application of waste to land for benefit (including sewage sludge).

The implementation of these standards presents a complex situation for SEPA and waste operators, as:

- The standards are currently spread across numerous pieces of legislation;
- Some standards are transposed from Directives, others from national policy; and
- Some have direct effect on operators and failure to comply is an offence; while others must be implemented through permits and licences in order to have effect.

6.5.2 This reform of legislation provides an opportunity to create a streamlined set of specific requirements within the integrated authorisation framework. It is proposed that the standards will be framed in such a way as to place a duty on SEPA to implement them through the relevant authorisations and will not have direct effect. The purpose of this is to make it as simple as possible for operators who will only have to refer to their authorisation to understand what is required of them.