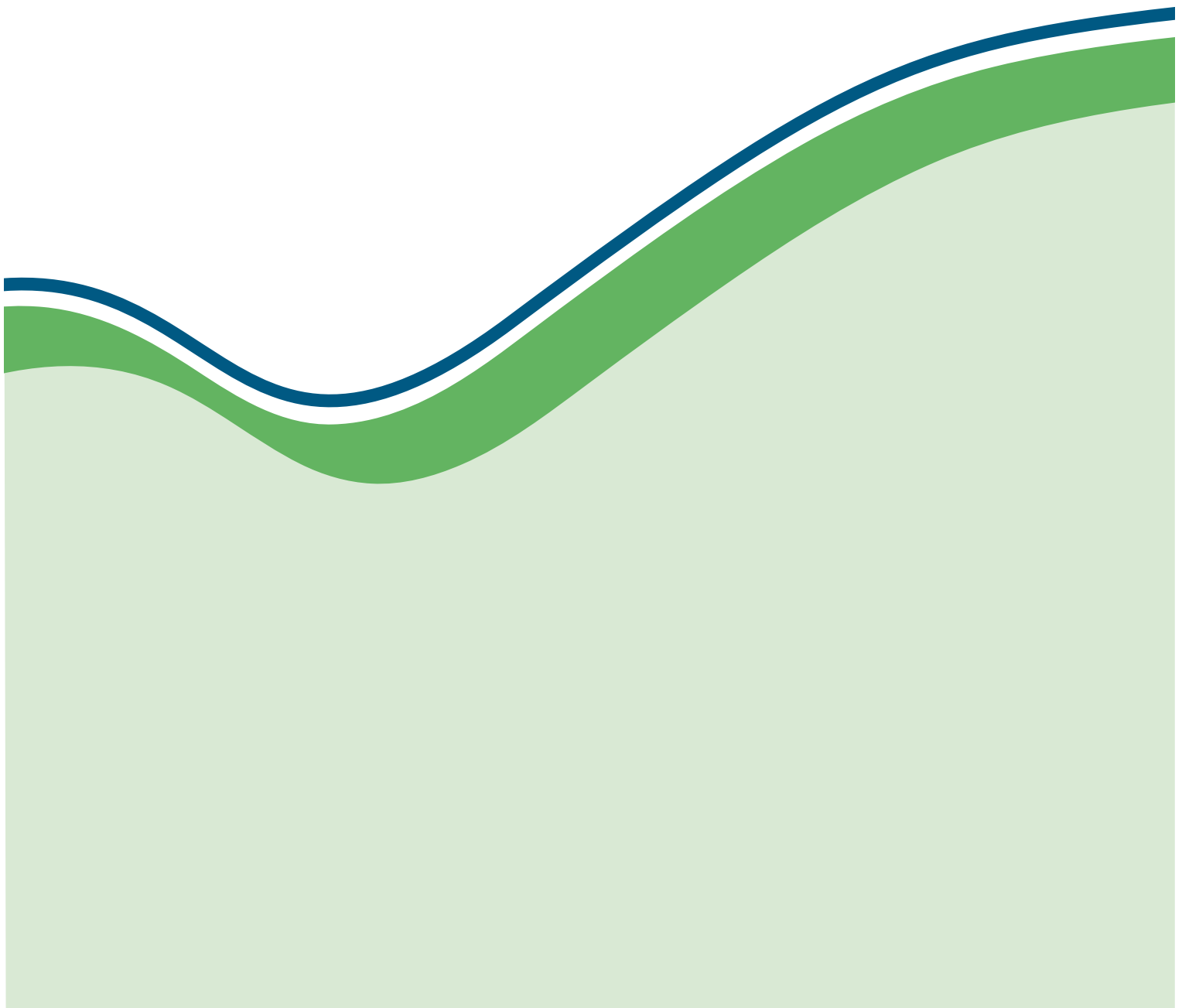




BETTER WASTE REGULATION  
**Action Programme**



# Introduction

Managing waste through modern and effective regulation is essential to Scotland's success both now and for the future. Scotland needs a system of controls over waste that the people and businesses can trust and respect and which will achieve the best possible outcomes for the Scottish environment, wider society and the economy. Economic growth and sustainable production and consumption can go hand in hand but changes need to be made now to the way these controls are applied.

The situation is complex as there are local, regional, national and global issues to consider. We want to help to create an attractive place to do business whilst getting the maximum value and enjoyment from our natural and built environment. This is extremely challenging.

In recent years we have successfully reduced our dependency on landfill disposal by increasing the availability of recycling services and more sustainable treatment technologies. This will continue but much remains to be done if we are to fully realise the benefits. A modern and effective approach to regulation is required to reduce waste production but also to significantly increase the reuse, recycling and sustainable treatment of waste in Scotland.

Investment in new technology and services will help to create the conditions for success, and new jobs and business opportunities will flow from this. A key aspect of this will be to ensure that the legislative system keeps pace and deals with the potential environmental hazards in a proportionate, targeted and customer-focused way.

Legislation on waste was written at a time when Scotland's principal means of dealing with waste was to landfill it. New policies, practices and technologies have emerged in recent years which mean that the legislative controls could be improved to encourage innovation and ensure that the aims and requirements of the Waste Framework Directive are delivered in their modern context. The Scottish Government and the Scottish Environment Protection Agency (SEPA) wish to simplify the system yet safeguard the high levels of environmental and human health protection.

The Scottish Government and SEPA remain committed to the principles of better regulation. A regime designed around better regulatory principles should:

- eliminate outdated or unnecessary provisions in legislation;
- consolidate, streamline or merge regulatory regimes where possible;
- base regulatory permitting, inspection and enforcement on sound risk principles;
- ensure where companies break the law that enforcement can be swift and effective;
- minimise the administrative burdens on companies and regulators wherever possible;
- empower regulators to enforce regulations in a fair, consistent and proportionate manner;
- promote best practice and advice to regulated companies wherever possible.

To this end the Scottish Government and SEPA jointly issued a consultation paper titled 'Better Waste Regulation' which closed on 22 June 2007. Its purpose was to seek views on the current regulatory and legislative system that surrounds waste with regard to how and where it can be further improved. This process provided a platform for a very positive and constructive dialogue between the Scottish Government, SEPA and the waste management industry on specific actions to improve waste legislation.

On 24 January 2008 the Scottish Government and SEPA published the 'Better Waste Regulation Consultation Report'. This report was a consolidation of the responses received during the consultation.

It is apparent from the consultation responses that frustrations about certain administrative and regulatory requirements of waste management legislation are shared between the industry and those with responsibility for regulation. This has resulted in clear areas for action that will be of enormous benefit to the industry as a whole and will equip it well for its immediate and future challenges.

The Waste Framework Directive underpins waste legislation in Scotland and is currently under revision at EU level. This will determine what change is necessary or desirable in Scotland. At present the final form and timing of the new directive remains unclear. However, we believe there are things which may be done regardless and this action programme details the main areas of work that will take the principles of better waste regulation forward.

# Programme of actions

## 1. Consolidation of Waste Management Regulations 1994

To be effective, the Waste Management Licensing Regulations must be able to be communicated clearly and effectively. They should also be readily accessible and simple to use. Since their introduction in 1994, the Waste Management Licensing Regulations have been amended 19 times. This has added unnecessary complexity for those trying to navigate the regulatory requirements. Scottish Government and SEPA regard this as an area where a consolidation of the regulations would reduce the burden for businesses and waste regulators alike.

The Scottish Government will move accordingly to consolidate the Scottish Waste Management Licensing Regulations 1994 and all of the associated amendments. Working closely with SEPA, the Government intends to use the consolidation as a platform to incorporate the delivery of several other key aspects of the Better Waste Regulation Action Programme. These further steps would be the subject of further consultation.

Consolidation of other pieces of Scottish waste legislation will also be considered.

## 2. Exemptions

A system for the online registration of simple exemptions has already been developed and launched by SEPA.

The Scottish Government will consider a revised system for delivering new exemptions from the requirement to obtain a waste management licence. This reflects a wish to see a fast-track arrangement for introducing new recovery activities and to allow regulation to keep pace with changes in waste management practice. Giving SEPA new powers to draft new exemptions will be considered as part of this.

The opportunity will also be taken to review the current list of exemptions to improve them and seek suggestions for new exemptions or revisions.

## 3. Mobile plant

The Scottish Government will consider the feasibility of an amendment to relevant legislation to give SEPA a new power to add to the list of specified activities that benefit from mobile plant licensing. This reflects a wish to add flexibility to the licensing system to accommodate new techniques for treating waste, eg in remote rural or island communities where a permanent site is not economically viable.

Should changes be possible and desirable, a consultation would be held and views sought on what types of activities might benefit immediately from this change.

## 4. Licence boundary flexibility

SEPA will work with Scottish Government to improve the flexibility for waste management licence holders wishing to increase or decrease the area of site covered by their waste management licence.

Scottish case law clarifies that SEPA cannot modify site boundaries using the existing provisions of The Environmental Protection Act 1990 (EPA 1990). However, SEPA and Scottish Government are looking at ways to resolve this so that, for example, site boundary increases can be carried out through a simple modification of the licence, and reductions in site size can be done under a partial surrender of the licence. This would probably require an amendment to the EPA 1990.

## 5. Changes to fit and proper persons

There are three elements to the Fit and Proper Persons (FAPP) test, two of which will be targeted for a particular action.

### Financial provision

The current test applied by SEPA for waste management licences will be retained and no action is planned with respect to this element of FAPP.

### Certificates of Technical Competence (COTC)

Responses to the Better Waste Regulation consultation questions about the retention of COTC were mixed. Scottish Government believes COTC to be unnecessary gold-plating and intends to consult on the removal of the COTC requirement for all waste management licences.

### Relevant convictions

SEPA will prepare proposals to improve the use of the relevant convictions test. Potential amendments to legislation will be discussed with Scottish Government.

## 6. End of waste criteria

SEPA and Scottish Government wish to simplify the way forward on end of waste wherever it is reasonable and possible to do so. This work was very much started in the UK with the use of the BSI PAS 100 compost specification in Scotland in 2002. SEPA and Scottish Government are keen to ensure a Scottish focus to any work that is undertaken.

To take this forward, SEPA will engage with industry waste managers and end users of waste to ensure a common focus. In the meantime, SEPA has begun targeted work on end of waste guidance for specific waste streams, including uncontaminated waste wood, road planings and greenfield soils. Scottish Government and SEPA are also considering how other EU Member States deal with end of waste and are following with interest the end of waste work being carried on at EU level in conjunction with the revision of the Waste Framework Directive.

Since consulting on Better Waste Regulation, SEPA has also prepared further guidance setting out how it assesses individual end of waste cases for waste oils. Although the guidance focuses on waste oils, the principles of the approach can be applied to most wastes.

## **7. Licensing and inspections**

SEPA will review and revise its inspection training for officers to promote the quality of inspections, the consistency of inspections, and to improve communication with customers.

Reflecting responses to the Better Waste Regulation consultation, SEPA will continue to target inspections using a risk based inspection strategy. Work is ongoing to develop a new tool to improve the assessment of licensed operator performance and to help target SEPA inspections more effectively. The need to balance inspection of licensed facilities against the targeting of illegal, often unlicensed, operations is recognised and further work will be undertaken to ensure this is taken into account when considering the deployment of regulatory resources.

SEPA will review and improve its library of template waste management licences in light of the principles of Better Waste Regulation.

Following the review, SEPA will make the licence templates available on the SEPA website.

## **8. Enforcement, sanctions and penalties**

SEPA will review and revise communications and training for staff to improve enforcement consistency.

SEPA will review how it targets illegal waste operators with the aim of improving the targeting and effectiveness of regulatory resources for dealing with illegal activity.

SEPA will review the potential for the use of administrative penalties and fixed penalty notices in waste regulation.

## **9. Charging scheme review**

SEPA will review the Waste Management Licensing Charging Scheme. The review will assess the potential for a simplification of the charging scheme, the improvement of the risk basis and improved charging bands.

SEPA will consider the possibility of including a provision in the charging scheme to reward good licensed operators with lower charges and penalise poorly performing operators with higher charges.

## **10. Improve forms, guidance and data collection**

SEPA will undertake a programmed review of the forms used for waste management licensing as changes to legislation permit. Opportunities to simplify the processes for registering exemptions or applying for licences will be considered.

As the changes outlined above are made, SEPA will undertake a programmed review of existing guidance and the mechanisms for the provision of advice to its officers and external customers on waste matters. The objective will be to improve the quality, consistency and effectiveness of advice, for example, through an improved internet site on the SEPA website, and more direct engagement with those affected by particular pieces of guidance as they are being drafted.

SEPA will review the collection of waste data. The aim will be to look for opportunities to simplify and improve data collection.

## 11. Investing in SEPA staff

SEPA will invest in structured training programmes for its waste regulators to ensure they have the necessary skills to keep abreast of the changing waste management industry and their regulatory/advisory role.

SEPA's internal support structures and communications will be reviewed to ensure they are focused on delivering better waste regulation.

## 12. Special waste review

Several respondents to the Better Waste Regulation Consultation suggested improvements to the Special Waste Regulations. Scottish Government and SEPA will review the current regulations and their implementation with a view to making improvements in line with the principles of Better Waste Regulation. This will include consideration of a consolidated version of the regulations and an assessment of options for a simplification of the bureaucracy and administration associated with the consignment note system.

## 13. Other areas for action

### Duty of Care and Registration of Waste Carriers

Respondents to the Better Waste Regulation Consultation were keen to see better use made of the Duty of Care regime to tackle illegal activities. Given the implications, Scottish Government will consider this once the revised EU Waste Framework Directive has been agreed.

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