

# A guide to waste management licensing



## Table of Contents

|  |           |
|--|-----------|
| <b>1.0 Introduction .....</b>  | <b>3</b>  |
| Background .....   | 3         |
| Principles of licensing.....   | 3         |
| About this document .....  | 3         |
| Relationship with planning legislation .....   | 4         |
| Relationship with Pollution Prevention and Control (Scotland) Regulations 2000 ..... | 5         |
| Relationship with other legislation.....   | 5         |
| Other waste management legislation.....  | 6         |
| Environmental policies and their implementation.....                                 | 6         |
| <b>2.0 Licence Applications and Licence Conditions.....</b>                          | <b>7</b>  |
| Introduction – the purpose of licence conditions .....                               | 7         |
| Applications for licences.....   | 8         |
| Preparation of the working plan .....  | 9         |
| Relationship between Licence Conditions and the Working Plan .....                   | 10        |
| Drafting Licences .....  | 11        |
| Supervising operators’ compliance .....  | 11        |
| Public Register .....  | 12        |
| <b>3.0 Fit and Proper Person.....</b>  | <b>13</b> |
| Introduction .....   | 13        |
| Conviction for a relevant offence.....   | 13        |
| Technical competence .....   | 18        |
| Financial provision .....  | 21        |
| <b>4.0 Considerations for Licensing of all Facilities.....</b>                       | <b>24</b> |
| Introduction .....   | 24        |
| Site Location .....  | 24        |
| Site preparation.....  | 24        |
| Infrastructure .....   | 24        |
| Waste Acceptance .....   | 24        |
| Security .....   | 25        |
| Weatherproof cover.....  | 25        |
| Site surfacing .....   | 25        |
| Mud .....  | 26        |
| Types of waste .....   | 26        |
| Receipt of Wastes .....  | 26        |
| Quantities of waste.....   | 26        |
| Manning and management systems .....   | 27        |
| Operations.....  | 27        |
| Plant maintenance .....  | 27        |
| Pollution control and environmental monitoring .....                                 | 28        |
| Records.....   | 29        |
| Site completion & Licence Surrender.....   | 30        |

|   |           |
|---|-----------|
| <b>5.0 Additional Considerations for Licensing Specific Types of Facilities .....</b> | <b>31</b> |
| Introduction .....  | 31        |
| Transfer Stations.....  | 31        |
| Civic Amenity Sites and Household Waste Recycling Centres .....                       | 31        |
| Waste Electrical and Electronic Equipment (WEEE) .....                                | 32        |
| Ozone Depleting Substances.....   | 32        |
| Treatment Plants.....   | 33        |
| Composting .....  | 34        |
| Scrapyards.....   | 34        |
| End of Life Vehicle Facilities (ELVS).....  | 35        |
| Oil and Solvent Recovery Facilities.....  | 36        |
| Hazardous Waste Transfer Station .....  | 36        |
| Mobile Plant .....  | 36        |
| Healthcare Waste.....   | 37        |
| <br>  |           |
| <b>6.0 Licence Modifications, Transfer &amp; Surrender.....</b>                       | <b>39</b> |
| Modifications .....   | 39        |
| Transfers .....   | 39        |
| Surrenders .....  | 39        |
| Standards for completion .....  | 40        |
| The completion report .....   | 40        |
| Assessment.....   | 42        |
| <br>  |           |
| <b>7.0 Useful Links .....</b>   | <b>43</b> |

## **1.0 Introduction**

### **1.1 Background**

This document provides guidance to SEPA staff in relation to waste management licensing.

The majority of waste management facilities are licensed by way of a Waste Management Licence issued under The Waste Management Licensing Regulations 1994. Some facilities fall to be licensed under a PPC permit (issued under The Pollution Prevention and Control (Scotland) Regulations 2000) or an exemption from the Waste Management Licensing Regulations; this document does not seek to cover these regimes.

The provision for a system of waste management licensing is set out in Sections 33, and 35-42 of the Environmental Protection Act 1990 ("The 1990 Act"). The document should be read in conjunction with the 1990 Act, and the Waste Management Licensing Regulations 1994. SEPA staff should also consult the [Waste Management Licensing Manual](#) which contains SEPA's procedures and application forms. For external users of this document please contact local SEPA teams if you wish to discuss issues in further detail.

### **1.2 Principles of licensing**

The objective of the waste management licensing system is to ensure that waste management facilities do not;

- Cause pollution of the environment
- Cause harm to human health
- Become seriously detrimental to the amenities of the locality

"Pollution" and "harm" are defined in section 29 of the 1990 Act.

In assessing pollution, SEPA should have regard to the wider environment. SEPA should, for example, consider the impacts of emissions on global climate change as well as on local air, water, soil, flora and fauna.

### **1.3 About this document**

Although waste management facilities vary widely, the fundamental consideration in licensing them is always the same. The licence seeks to prevent unacceptable emissions to land, air or water: it achieves this by specifying the management and control systems for the site or plant. The detail of the licence, however, will vary from one type of facility to another.

Most waste facilities need to be controlled by a licence to manage the waste input, storage and treatment processes to control liquid spillages, adverse waste interactions, and emissions of noise, dust and litter.

This document is structured as follows;

- Chapter 1 gives detail on the background of licensing and the relationship with planning and other legislation.
- Chapter 2 advises on the relationship between licence conditions and the working plan.
- Chapter 3 contains detail on Fit and Proper Person
- Chapter 4 gives guidance on those aspects of licence control that are applicable to all or most types of facility.
- Chapter 5 contains guidance specific to the individual types of facility: it is subdivided by type of facility.
- Chapter 6 contains guidance on surrender, transfer and modification of a licence.
- Chapter 7 provides links to useful documents and websites.

#### **1.4 Relationship with planning legislation**

Under section 28 of the Town and Country Planning (Scotland) Act 1997 subject to certain conditions, planning permission is required for the carrying out of any development of land. Therefore the appropriate planning permission should be in place prior to the development of a waste management facility.

Exceptions to this will be if an established use certificate or certificate of lawful use is in force for the land in question. This means that planning authorities and SEPA must achieve close co-ordination over proposals for developing waste management facilities.

The planning function and the licensing function should complement each other, rather than duplicating controls.

The planning system controls the development and use of land in the public interest. It therefore has an important role to play in determining the location of development – including waste management and disposal facilities.

Important issues in the context will be

- The impact of the development on local amenities
- The potential for contamination
- The prevention of nuisance
- Traffic and access considerations, and
- Matters relating to restoration after-care and after-use

If a waste facility might cause pollution, the possibility will almost certainly be a material consideration in the determination of a planning application for the facility. In particular, many waste management facilities will need to be subject to an Environmental Assessment under [The Environmental Impact Assessment \(Scotland\) Regulations 1999](#)



The Environmental Assessment must assess, among other things the facility's potential for causing environmental pollution, and the applicant's proposals for mitigating it. SEPA would expect to be consulted by those undertaking Environmental Assessment during the assessment process.

If any pollution is likely to affect land use, either at the site in question or in the surrounding area, the planning authority may need to take account of it, and may also need to consider whether anti-pollution systems and controls are compatible with, or adequate in view of, the wider planning objectives.

That said, planning controls are not an appropriate means for the detailed control of pollution from waste management facilities. This should always be done by SEPA through the licensing system. In the same way, licence conditions should not cover issues which are fundamentally about development and land use, except where there is no planning permission.

### **1.5 Relationship with Pollution Prevention and Control (Scotland) Regulations 2000**

Some waste management activities fall outwith the Waste Management Licensing Regulations (e.g. landfilling, incineration and disposal of hazardous waste) and under the Pollution Prevention & Control (PPC) regime. The Pollution Prevention & Control (Scotland) Regulations 2000 enact the IPPC Directive.

The PPC regulatory regime uses an integrated approach to the regulation of activities specified in the PPC Regulations through the permitting of the prescribed process and any directly associated activities on the same site.

For certain types of installation there are other legislative requirements, for example:

Incineration The Waste Incineration (Scotland) Regulations 2003 transpose the Waste Incineration Directive. The Waste Incineration Directive is being implemented through the PPC Permitting regime.

Landfill The Landfill (Scotland) Regulations 2003 implement the stringent operational and technical requirements of the EU Landfill Directive and detail the issues that must be conditioned in a Landfill Permit. Permitting of landfills is implemented through the PPC regime.

### **1.6 Relationship with other legislation**

#### Discharges to water

Regulation 18 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) allows for a waste management licence to be regarded as an "authorisation" for the purpose of the Controlled Activities Regulations. Therefore, cognisance must be made of the requirements of the relevant water legislation in the licensing process. This means that abstractions and discharges of surface waters and groundwaters can be licensed under a waste management licence so long as it complies with CAR.

For more information on the requirements of CAR please refer to SEPA's [Water Manual](#)

## Health, safety and welfare at work

Regulation 13 of the Waste Management Licensing Regulations 1994 provides that no licence condition shall be imposed for the purpose only of securing the health of persons at work. Requirements relating to the health, safety and welfare of persons at work are administered by the Health and Safety Executive (HSE) or Local Authorities. The inclusion in a licence of conditions which relate only to the health, safety and welfare of persons at work could interfere with enforcement of the statutory obligations of the HSE. Such conditions should therefore be avoided; control should be left to the HSE or its agents.

HSE are a statutory consultee for the licensing process under the 1990 Act.

In some areas of waste management activity (for example the storage of wastes before processing), workers' health or safety is closely linked to protection of the environment or of human health. When SEPA considers that the licence needs a condition about such activities, it should consult the HSE to establish that the condition will not conflict with the HSE's interests.

### **1.7 Other waste management legislation**

There are various other pieces of waste management legislation which may require specific consideration. For example, the End of Life Vehicle (Storage and Treatment) (Scotland) Regulations 2003 and the Waste Electrical and Electronic Equipment Directive, usually referred to as WEEE, further details can be found in Chapter 5 and in [SEPA's Waste Management Licensing Manual](#).

The Duty of Care legislation requires that all transfers of waste are appropriately recorded in order to assist in tracking movements of waste. In addition the Section 34 of the 1990 Act place additional obligations on waste producers, carriers and any person within the chain of persons handling waste to consider the manner in which they deal with the material. SEPA should ensure, through the issue of appropriate conditions in waste management licenses that duty of care will be inherently adhered to.

### **1.8 Environmental policies and their implementation**

From time to time SEPA will need to review licence conditions in the light of changed environmental knowledge and consequent changes in environmental policy.

Regulators should be aware of the need for well operated waste management facilities and for greater recovery of wastes when dealing with applications for new sites. SEPA should deal with such applications in a manner that

- is proportionate to the risks and costs
- reflects the underlying regulatory objectives, and
- does not place unwarranted burdens on those regulated.

## 2.0 Licence Applications and Licence Conditions

### 2.1 Introduction – the purpose of licence conditions

Waste management licences are intended to control relevant activities at waste management facilities. The licence should contain the conditions that SEPA considers necessary to prevent:

- Pollution of the environment
- Harm to human health
- Serious detriment to the amenities of the locality

In this chapter these are called the prime objectives of licensing.

Paragraph 6 of Schedule 4 to the Waste Management Licensing Regulations 1994 specifies the matters to be covered by environmental licences. For all facilities involving the disposal of waste the licence must include conditions to cover:

- The types and quantities of waste
- The technical requirements
- The security precautions
- The disposal site
- The treatment method

SEPA should also cover all these topics in the licence conditions for other facilities, and any other topics connected with the objectives of the licensing system. Please see Regulation 19 and Schedule 4 of the Waste Management Licensing Regulations 1994, available [here](#). For external users please use the [OPSI website](#) to get the most up-to-date version of the Regulations.

All waste management facilities must be prepared, developed, operated, and closed to appropriately high standards. SEPA will achieve this by conditions that are

- Necessary
- Enforceable
- Unambiguous
- Comprehensive

Each condition should meet all these criteria. The criterion of necessity is as important as the other three. The conditions must leave the licence holder in no doubt about the standards he must meet.

Licences should be site specific and flexible as each site and each activity will have different receptors and pathways. The overall standard however, should be consistent.

Licence conditions must reconcile two objectives:

- Allowing the operator flexibility to operate the site in the most cost effective manner
- Ensuring operation of the site does not conflict with the prime objectives.



## 2.2 Applications for licences

If SEPA is to secure the prime objectives of licensing, it will need a considerable amount of information about the site and the proposed activity. Standard application forms have been developed and are available on SEPA's website. These must be used by all applicants. It is often helpful to hold pre-application discussions where SEPA can outline the information it needs to determine the application and the applicant must have time to assemble it.

SEPA provides guidance notes to assist applicants in completing the application form, which should help the applicant to give the information SEPA needs, while avoiding wasted effort. The notes may provide different guidance for different types of facility or activity. Guidance notes on the completion of application forms are available as an appendix to the application form. Links to the various application forms produced by SEPA can be found [here](#).

All applications should include at least the following information:

All applications should include the following information:

- The location of the facility, specifying any existing development within 250 metres of the boundary of the site. 'Existing development' includes underground services where the facility is likely to cause ground disturbance, or to be a source of spillages, or to otherwise put underground services at risk.
- The location of the boundaries, specifying what identifies them on the ground.
- The ownership of the site and the applicant's own interest in the land.
- The planning status of the site, including copies of any permission, or a statement showing why none is required.
- Details of any relevant convictions, the technical competence of the licence holder and the financial provision to be made by the applicant (see Chapter 3).
- An assessment of the physical environment of the site. This will normally include the site's topography, meteorology, geology and hydrogeology. It should also include the quality of air, surface water, groundwater and soil although the scope may vary with the type of facility.
- The working plan, which should cover:
  - The infrastructure to be provided, used or converted, including the construction and location of all storage facilities.
  - Detailed descriptions of the waste management processes to be carried out on the site.
  - Full details of the pollution control measures and monitoring arrangements.

The working plan consists of detailed designs and operational statements: they explain how the facility is to be developed & operated. Such details are essential to the drafting of an effective and reasonable licence.

### 2.3 Preparation of the working plan

The working plan is the operator's document. It should be drawn up by the applicant and submitted with the application for a licence. It should show how the applicant proposes to prepare, develop & operate the facility. It will

- Provide information to SEPA to enable it to set licence conditions
- Help the operator and staff to specify how the facility should be managed.

A working plan should cover the infrastructure to be provided, including the construction and location of all storage facilities; detailed description of the waste management processes to be carried out on the site and full details of the pollution control measures and any monitoring arrangements.

The working plan should provide information of two types:

- Detailed drawings and descriptions of the development of the site and the infrastructure.
- Detailed descriptions of the way activities are to be carried out.

Under these two headings can be summarised the main information that applicants for all kinds of waste facility should provide.

#### Development of the site and the infrastructure

Although the information will be site specific, it might include:

- Engineering work to control the pollution of surface water and groundwater, or by the spillage of wastes or other materials.
- Provision of gates and fencing
- Construction of site roads and site surfacing.
- Wheel cleaner, weighbridge and control office.
- Laboratory facilities.
- Any plant to be built or storage bays to be constructed.
- Drains, interceptors, gullies and discharges to watercourses.
- Pollution control equipment and litter screens.
- Water, power, and communications.
- Bunds.

#### Activities to be carried out

The working plan should describe in sufficient detail how the facility is to be operated. It might include:

- Hours of opening and operation
- Processes and methods to be employed
- Amounts and types of waste to be processed or disposed of.
- Monitoring procedures.
- Record keeping.

- Manning levels, qualifications and experience of staff, and management systems.
- Plant to be used.
- How the operator will carry out restoration and the compatibility of the operation with the restoration conditions in the planning permission if applicable.

In general SEPA will not grant a licence until it has all the working plan details. Occasionally SEPA may decide that it will leave some details to be settled after the grant of the licence. For example

- On large, phased developments some details may be agreed at the start of each phase, rather than all at the outset of the development.

The working plan is likely to evolve as the facility develops. The working plan is referred to in the waste management licence conditions and the licence holder may vary it at any time, but some aspects that are considered environmentally critical will require SEPA's prior consent before being amended.

SEPA has developed some guidance on working plans specific to certain waste management activities. More information can be found [here](#).

## **2.4 Relationship between Licence Conditions and the Working Plan**

The licence and associated conditions and the working plan are separate documents. SEPA stipulates the licence conditions which set the performance standards to which the site must be operated. The working plan is the licence holder's document and sets out the way in which the licence holder proposes to operate the site.

The working plan may be used in discussion with the licence holder and assessment can be made regarding the need for an over-riding prescriptive condition for a particular activity/issue. If the working plan adequately covers an activity/issue, then it would be sufficient to have a condition which refers to the relevant part of the working plan. This allows the licence holder flexibility, while SEPA still retains the necessary control.

As has already been discussed, the working plan and the licence conditions have two different but specific purposes. The working plan is the licence holder's document and is used to assist SEPA in setting appropriate licence conditions.

The working plan is a working document and will require amendments as the facility evolves. Licence conditions must therefore distinguish between changes to the working plan that shall not be implemented unless SEPA has given its written consent, and those changes that can be implemented provided the licence holder has given SEPA notice.

There will be 3 types of conditions within a licence, a combination of which may be relevant for the control of a particular activity.

- Conditions which set absolute but simple requirements, such as the maximum quantity of waste permitted on site.
- Conditions which set absolute environmental performance standards but may give the operator discretion about how to meet the standards. They might, for example, be standards for the control of odour or litter.

- Conditions which require the operator to carry out an activity in the way his working plan has described it. For example, the condition may require him to provide and maintain security fencing in accordance with the details set out in his working plan.

It should be clear within the licence whether or not the licensee must seek SEPA's prior written consent for a change to a particular element of the working plan. . This should enable SEPA to consider whether the change is likely to affect environmental pollution control performance, and, if it is, to act accordingly.

## **2.5 Drafting Licences**

SEPA should decide what measures are necessary to achieve the primary objectives of licensing, and should incorporate them all in enforceable licence conditions.

In drafting conditions including those that cross-refer to the working plan, SEPA must consider the interests of the public and of the statutory consultees.

- The public must have access to amended working plans as though the modifications were part of the original licence application (or of an application for modification of the licence) as provided for in Regulation 10 of the Waste Management Licensing Regulations 1994.
- The authorities who would have been statutory consultees on a licence modification may reasonably expect SEPA to consult them if a change in the working plan is likely to have a significant effect on their interests.

SEPA has developed a range of licence templates for various waste management facilities. More information on the use of the templates can be found [here](#).

## **2.6 Supervising operators' compliance**

The 1990 Act sets out the duties of SEPA for licensing and for supervising licensed activities.

SEPA is under a duty (s.42 of the 1990 Act) to ensure that the conditions of the licence are being complied with, and that the prime objectives of the licensing system are achieved. Fulfilling this duty includes making inspections of the site, and where necessary taking enforcement action. Guidance on inspections can be found [here](#).

### Inspections

Inspections should normally be unannounced and may take place at any time, including outside the licensed operating hours. However if a specific problem or licence modification is being considered, SEPA may reasonably let the operator know in advance that a visit will be made.

When a SEPA officer arrives at the site, he should make the operator aware of his arrival, and of the purpose of his visit: in this context, the purpose is an inspection for conformance with the conditions of the waste management licence.

The findings of such inspections should be communicated to the operator as soon as possible in writing. Breach of a licence condition is an offence: SEPA should deal with it immediately.

SEPA should regularly review licences to ensure that the conditions remain appropriate and effective.

## **2.7 Public Register**

SEPA must maintain a public register of information about waste management licences (see s.64 of the 1990 Act). The particulars to be entered in the public register are specified in Regulation 10 of the Waste Management Licensing Regulations 1994: exclusions are in Regulation 11.

SEPA should ensure that it can obtain the information for the public register. The licensee must if necessary provide the information; but SEPA should so far as possible rely upon information that it obtains in the course of its regular supervision, and avoid asking for duplicate or overlapping returns of information for the public register. It should be noted that some information is excluded from the public register based on commercial confidentiality and national security issues. Further information can be found [here](#).

## 3.0 Fit and Proper Person

### 3.1 Introduction

Section 74 of the 1990 Act defines the term “fit and proper person” as it applies to the holding of a waste management licence. This section of the guidance is for the assistance of SEPA officers in making determinations of whether or not a person is “fit and proper”. In all cases, SEPA should bear in mind that determining that anyone is not a fit and proper person may seriously affect his livelihood.

#### Legislation

The provisions of section 74 apply to any function undertaken by SEPA which requires it to determine whether a person is or is not a fit and proper person to hold a waste management licence.

The relevant functions are conferred under

- Section 36(3) (grant of licences)
- Section 38(1), (2) and (6) (revocation or suspension of licences – but note that financial provision is not relevant to the revocation or suspension of licences)
- Section 40(4) (transfer of licences)

The overall effect is to provide SEPA with further grounds to refuse licences to, or revoke the licences of, persons whom SEPA determines to be not fit and proper to hold licences.

#### Fit and Proper Persons Test.

There are three components to the test of fit and proper status

- Conviction for a Relevant Offence
- Technical Competence
- Financial Provision

### 3.2 Conviction for a relevant offence

Section 74(3)(a) provides that a person shall be treated as not being a fit and proper person if it appears to SEPA that he, or another relevant person has been convicted of a relevant offence.

Section 74(4) also provides that SEPA may, if it considers it proper to do so in any particular case, treat as fit and proper a person in whose case section 74(3)(a) applies, i.e. a person who has been convicted of a relevant offence.

It is clear that the provisions are not absolute and the exercise of discretion is required. Further guidance on the assessment of relevant convictions is provided below.



### Convictions already overturned by Appeal

SEPA must not take into account a conviction that has been overturned on appeal when considering

- An application for a waste management licence
- An application for the transfer of a licence
- The revocation of a licence which is in force

### Convictions Subject to an Appeal

A conviction for a relevant offence may be disclosed in an application which would lead SEPA to the view that the applicant or proposed transferee is not a fit and proper person. Where the conviction is the subject of an appeal SEPA should;

- consider awaiting the outcome of that appeal before giving notice that they have rejected the application; and with this aim in view
- consider the use of their powers under sections 36(9) and 40(6) of the 1990 Act to agree in writing with the applicant a longer period for their consideration of the application

### Meaning of “another relevant person”

Section 74(7) of the 1990 Act defines who is “another relevant person” for the purposes of assessing relevant convictions and refers to “a director, manager, secretary or other similar officer” of a body corporate. For the purposes of assessing relevant convictions by another relevant person, the term “manager” should normally be interpreted relatively narrowly as meaning someone who has both the power and the responsibility to decide corporate policy and strategy.

### Submission of Mitigation

Where the applicant or licensee (or another relevant person) has been convicted of a relevant offence, the onus rests with that person to provide any information necessary to satisfy SEPA that he is a fit and proper person – for example

- That there were mitigating circumstances, or
- That he has taken all the steps which he reasonably can to ensure there is no repetition of the offence.

SEPA should consider any representations made by the applicant or licensee before determining that he is not to be treated as a fit and proper person.

### Three Factors for SEPA to Consider

When SEPA considers relevant offences, there are three factors to be taken into account.

- Whether it is the applicant (or licensee) or another relevant person who has been convicted of a relevant offence or offences.
- The number of relevant offences that has been committed
- the nature and gravity of the relevant offence or offences

### Relative Significance of Offences

SEPA will need to consider carefully any case where the applicant or licensee has been convicted of a relevant offence. However, there may be circumstances in which an offence committed by another relevant person is of commensurate significance. This may arise particularly in the case of a body corporate.

Section 157 of the 1990 Act provides that;

- Where an offence is committed by a body corporate and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate; proceedings may also be taken against that person, i.e. the individual and/or the body corporate can both be prosecuted
- Where a director etc is convicted of a relevant offence in such circumstances his conviction may be considered to be of commensurate significance to that of the body corporate itself.

SEPA should consider who the relevant conviction is against – see Box 3.1

#### The numbers of offences and offenders.

SEPA, should consider both the number of offences and the number of relevant persons convicted: see Box 3.2

#### The nature and gravity of the relevant offence or offences

SEPA should consider both

- The nature of the offence – see box 3.3
- The gravity of the offence – see box 3.4

#### Rehabilitation of Offenders

The terms of the Rehabilitation of Offenders Act 1974 apply to individuals convicted of these offences

- For the purpose of the fit and proper persons test, a rehabilitated person can regard himself as a person without convictions to disclose; and SEPA cannot lawfully determine that he is not a fit and proper person on the basis of such a conviction.

However, that Act applies only where “an individual” has been convicted of an offence.

- A body corporate applying for a licence must therefore provide full details of any prescribed offences for which it has been convicted, regardless of the date of the conviction.

Where the person convicted of the offence is a body corporate, SEPA should normally have regard to whether the conviction would have been spent if it had been committed by an individual.

**Box 3.1      who has been convicted?**

There are three types of person who may apply for or hold licences. These are

- (a) an individual;
- (b) a partnership, and
- (c) a body corporate. The questions which SEPA needs to consider are

**In the case of an individual**

Was the offence committed by the individual applying for or holding the licence, or by another relevant person?

If the latter, was the offence committed

- (a) by him in the course of his employment by the applicant or licence holder, or
- (b) by him in the course of the carrying on of any business by a partnership, one of the members of which was the applicant or licence holder, or
- (c) by a body corporate at a time when the applicant or licence holder was a director, manager, secretary or other similar officer of that body corporate?

**In the case of a partnership**

Was the offence committed by one of the partners applying for or holding the licence, or by another relevant person?

If the latter, was the offence committed

- (a) by him in the course of his employment by one of the partners applying for or holding the licence, or
- (b) by him in the course of the carrying on of any business by a partnership of which one of the partners applying for or holding the licence was a member,
- (c) by a body corporate at a time when one of the partners applying for or holding the licence was a director, manager, secretary or other similar officer of that body corporate?

**In the case of a body corporate**

Was the offence committed by the body corporate, or by another relevant person?

If the latter, was the offence committed

- (a) by him in the course of his employment by the applicant or licence holder, or
- (b) by a person who is a director, manager, secretary or other similar officer of the applicant or licence holder, or
- (c) by another body corporate and, at the time when the offence was committed, a director, manager, secretary or other similar officer of the applicant or licence holder held such an office in the body corporate which committed the offence?

**Box 3.2      The number of relevant offences that has been committed**

SEPA should consider both the number of offences and the number of relevant persons convicted.

**Has the applicant or licence holder been convicted of more than one relevant offence?**

An **isolated conviction** where there are mitigating circumstances should not result in the refusal of an application or the revocation of a licence. The authority may invite the applicant or licence holder to provide any information which he wishes the SEPA to take into account.

The **possible repetition of offences is a consideration**. SEPA should have regard to any action which has been taken by the applicant or licence holder within the organisation of his business or by other means to prevent the commission of further offences.

Similar considerations apply where another relevant person has been convicted of one or more relevant offences.

**Have offences been committed by more than one relevant person?**

The issue which SEPA is required to consider is whether it is desirable for the applicant or licence holder to be licensed to manage controlled waste. Therefore, where offences have been committed by more than one relevant person, it would be appropriate to have particular regard to the position held by each relevant person in the applicant's or holder's business.

**For example**, where the applicant or holder is a body corporate and more than one person who is a director, manager, secretary or other similar officer of that body corporate has been convicted of a prescribed offence then in circumstances of this kind where the relevant persons hold positions of authority in the business, **each conviction of a relevant person may be considered to be of significance commensurate with any conviction of the applicant or licence holder himself.**

**Box 3.3      The nature of the relevant offence or offences**

Each of the offences prescribed in regulation 3 of the Regulations is relevant to the purposes of the 1990 Act and the question of determining whether the applicant or licence holder is a fit and proper person. However, the effect of section 74(2) is to provide that this determination is to be made by reference to the carrying on by the applicant or licence holder of the activities which are or are to be authorised by the licence and the fulfilment of the licence's requirements. SEPA, should therefore have particular regard to offences which involved, namely:

the unlawful deposit, treatment, keeping, disposal or transport of controlled waste, and/or

the contravention of any duty of care under section 34 of the 1990 Act which the applicant, licence holder or another relevant person had in relation to such waste.

### **Box 3.4      the gravity of the relevant offence or offences**

In assessing the gravity of any offence, SEPA should have particular regard to the considerations set out below.

Particular regard should be paid to any offence which involved the unlawful treatment, keeping or disposal of special waste.

Particular regard should also be given to whether the offence caused

- Serious pollution of the environment
- Harm to human health
- Serious detriment to the amenities of the locality in which it occurred

The penalty imposed will provide an indication of the seriousness of the offence – though for the reasons given below, this is not always a reliable indication.

An admonishment in Scotland (absolute or conditional discharge in England) will include that, although the accused (the defendant in England) was convicted, the Court considered that the offence which he committed was not serious.

A fine will indicate that the offence was considered sufficiently serious for the Court to punish the offender. The fact that the level of fine imposed is high in relation to the maximum fine for that offence will provide an indication of the gravity of the offence. However, in setting the level of fine, the Court must take into account the offender's ability to pay.

It should be noted, therefore, that a fine which is low in relation to the maximum for that offence will not necessarily indicate that the Court considered that the offence was not serious.

In more serious cases, the Court may impose a community penalty such as a Community Service Order. The duration of the penalty will provide an indication of the gravity of the offence. For example, a Community Service Order may require an offender to perform unpaid work for between 40 -240 hours.

Each case must be considered on its merits. However, a conviction which is sufficiently serious to justify a prison sentence will be of particular significance in considering the desirability of licensing any person to manage controlled waste. This will be so whether the offence was committed by the applicant or licence holder or by another relevant person.

### **3.3      Technical competence**

Section 74(3)(b) of the 1990 Act deals with technical competence.

#### Meaning of 'management' in this context

Section 74(3)(b) provides that a person is not fit and proper to hold a waste management licence if "the management of the activities which are, or are to be, authorised by the licence are not, or will not be, in the hands of a technically competent person".

This wording is not the same as that in section 74(3)(a) and (7), and so the interpretation is not the same as that set out in relation to relevant convictions for the term “manager”. Rather the technically competent person has to be in a position to control the day-to-day activities authorised by the licence and carried out at the licensed site.

#### Technically competent management may rest with several people

This formulation gives a considerable element of flexibility to the applicant or licensee in arranging technically competent management. It will be up to him to demonstrate to SEPA’s satisfaction how the particular nature of his management structure and control mechanisms satisfies the requirements.

- It means, for example, that for a large and complex site where operational management may be divided functionally, several specialists can be identified as providing the technically competent management.
- Alternatively, the company structure may mean that day-to-day management is not delegated down to the site but is exercised at somewhat higher level. This could mean that more than one site was under the day-to-day control of the same individual or group of individuals.
- SEPA’s Waste Technical Guidance Note 2, Guidance on the provision of technically competent management at licensed sites, which can be accessed from the [Waste Management Licensing Manual](#) provides guidance on the minimum percentage of operational hours per week that technically competent management should be present at a licensed site.

Each individual identified by the applicant or licensee as providing technically competent management for the activities at the site will need to demonstrate his competence to SEPA .

Determinations of fit and proper status may be made in connection with possible revocation or suspension of a licence under section 38 of the 1990 Act. In particular, where the holder of a licence has ceased to be a fit and proper person by reason of the management of the activities having ceased to be in the hands of a technically competent person, the licence may be suspended or partly revoked.

#### When Can SEPA check for technical competence

SEPA may check for technical competence when either:

- a new licence application is received
- on a change of management where the management of the licensed activities comes into the hands of a different person who appears to SEPA, not to be technically competent.
- Where any significantly substantial modification to the licence could mean that the site had ceased to be in the hands of technically competent persons



### Monitoring for continuing technical competence

SEPA will need to keep under review the extent to which management remains in the hands of a technically competent person

- The simplest way of ensuring this is to ask the licensee for a list of the technically competent persons who are involved in the management of each licensed site, and for this to be kept updated as appropriate.
- If necessary, this information can be required by means of a licence condition.

### Qualifications of technically competent managers (WAMITAB certificates)

Regulation 4 of the Waste Management Licensing Regulations 1994 provides that a person is technically competent for the purposes of section 74(3)(b) of the 1990 Act if he is the holder of the relevant certificate of technical competence (COTC) awarded by the Waste Management Industry Training and Advisory Board (WAMITAB).

- The relevant certificates are specified in the Table to Regulation 4. Please see Schedule 1A of the Waste Management Licensing Regulations [here](#) for a full list of the current WAMITAB qualifications which now referenced by number and their alphabetically referenced predecessors.
- The levels referred to are those set out for the particular National (or Scottish) Vocational Qualification (N(a)VQ) which will be the qualifying condition for the issuing of each WAMITAB certificate of technical competence.
- The categories and descriptions in the table are largely self-explanatory.

### Specific SEPA assessment of technical competence

Proof of technical competence will be required by SEPA in respect of each person in whom may be vested the management of the activities authorised by the licence.

There will be two ways of providing this proof, depending on the type of site involved. These fall into two types; those covered by the WAMITAB system and those which are not so covered.

#### Sites covered by WAMITAB

For these sites SEPA need only confirm possession of the appropriate qualification, i.e. a COTC

#### Sites not covered by WAMITAB

For these sites SEPA must make its own assessment of technical competence until further certificates are available (either from WAMITAB or under any other approved scheme). This assessment should be based on these two tests:

- the appreciation and understanding of waste management law and practice,
- the type and level of experience in waste management.

Such assessments will have to be made by SEPA for

Classes of waste management activity for which the WAMITAB scheme does not cater, namely;

- carrying on business as a metal dealer;
- the treatment of WEEE;
- dismantling motor vehicles;
- small transfer stations where;
  - non-hazardous, clinical or special (hazardous) waste is dealt with and where less than 5 cubic metres of waste are kept at any time
  - or
  - inert waste is dealt with and where less than 50 cubic metres of waste are kept at any time.

These assessments should be based on evidence provided by the applicant or licensee in support of his claim that the management of the activities will be in the hands of technically competent person.

SEPA should require the same standard of operation of a site where the technically competent manager does not require a WAMITAB COTC as where he does.

A technically competent person for these activities will generally not require formal qualifications in waste management (though one of a range of available formal qualifications, or a substantial course of training leading to a recognised qualification at diploma level, would of course be good evidence of knowledge and understanding).

A relatively simple assessment should be made of whether a person is aware of and familiar with guidance and legislation relevant to their proposed activity. For example;

- Guidance such as relevant Waste Management Papers
- Waste management guidance published by SEPA
- Government Depollution of ELV guidance
- Government Treatment of WEEE guidance
- The essential legislative background for licensing

A person who can competently draft his own working plan, or explain to the satisfaction of SEPA, how he will be operating it, is likely to be of a sufficient level of understanding to be technically competent.

### **3.4 Financial provision**

Section 74(3)(c) of the 1990 Act provides that an applicant for a waste management licence shall be treated as not being a fit and proper person if it appears to SEPA that

- He has not made financial provision adequate to discharge the obligations arising from the licence; and
- either has no intention of making it, or is in no position to make it

As with other parts of the test of fit and proper status, determination is to be made by reference to

- The activities which are to be authorised by the licence, and
- The fulfilment of its requirements

Financial provision should be assessed in accordance with SEPA's guidance note ["Financial Provision for Non-Landfill Waste Management Licence Applications"](#)

SEPA will accept that an applicant is in a position to make financial provision if he can demonstrate that he has sufficient financial means to fund the requirements of the licence. There are two main aspects to this – how to demonstrate financial standing and how much is required.

#### How to demonstrate financial standing

**Credit Reference Check** – SEPA will undertake a credit reference check, (where applicable with the applicant's written permission), to assess the applicant's financial standing.

**Alternative Evidence** – where a credit reference check has been failed or is not appropriate, e.g. a new business, then credible evidence not more than 3 months old must be supplied by a third party, e.g. a bank. This evidence could include a statement of account from a financial institution (bank etc) and/or a statement that overdraft/loan facilities have been provided to an applicant by a financial institution.

#### How much Financial Provision?

SEPA has devised simple indicative formulae based on the **maximum** quantities of wastes that can be kept and/or treated at a site in terms of a waste management licence. For current unit costs please refer to the current version of the guidance on ["Financial Provision for Non-Landfill Waste Management Licence Applications"](#)

#### Is it necessary to continue to provide evidence of Financial Provision?

Financial provision is a normally a 'once-only' test, i.e. is undertaken at the application stage and is only revisited if:

- a waste management licence is modified so as to change waste types and/or increase the amount of waste kept or treated, or
- a waste management licence is transferred.

#### Where a Licence Holder Ceases to Be a 'Fit & Proper Person'

The revocation and suspension provisions of section 38 of the 1990 Act may have effect, among other circumstances, where it appears to SEPA that the holder of a licence has ceased to be a fit and proper person:

- By reason of conviction for a relevant offence, and/or
- By management of the activities ceasing to be in the hands of a technically competent person

Changes in the status of the management of a site can occur in two ways:

- If the management of the licensed activities comes into the hands of a different person who appears to SEPA not to be technically competent.
- If technical competence is outstripped by development of the operation the conditions of the licence may potentially be modified to such an extent that a significantly higher degree of technical competence is required. In that case, the

licensee should provide evidence to SEPA that technically competent management at the appropriate level is in place; if not, he will have ceased to be a fit and proper person in relation to that licence.

## **4.0 Considerations for Licensing of all Facilities**

### **4.1 Introduction**

This chapter deals with the considerations for licensing any type of waste management facility. SEPA should take into account the issues covered in this chapter when it considers licence applications and sets licence conditions.

Specific types of facility are dealt with in Chapter 5.

### **4.2 Site Location**

The nature of many waste management facilities means that they are often located close to or in urban areas. Therefore, the prime consideration for site selection is the ability to limit the potential nuisance effects that can be associated with the handling of waste. The proximity to residential and recreational areas and the need for specific site design and operating measures to prevent nuisance arising from the proposed activities must be taken into account.

### **4.3 Site preparation**

High quality site preparation is essential for good environmental control. The operator must not accept wastes until he has completed all the necessary preparatory works. These works must ensure the integrity of the facility so that it can meet its licensed performance standards for pollution control.

Preparatory works may be phased in if, for example, the site is large, or if SEPA decides it would be inappropriate to require full site development initially.

### **4.4 Infrastructure**

The licence should specify what infrastructure is required at the site. Licence conditions should adequately cover the design specifications for gates, fences, roads, notice boards, lighting, wheel cleaning, monitoring points, and other structures. They should also cover the maintenance of these items.

Conditions may reference standards set out in the working plan, or specify absolute standards, as appropriate.

Much of the infrastructure to be constructed will have to conform to planning, building, fire and health and safety regulations. SEPA should avoid conflict between its licences and these regulations.

### **4.5 Waste Acceptance**

Controlling the waste input to a waste management facility is an important matter that has a direct effect upon the pollution/nuisance potential of the facility. It is essential that

measures are introduced to ensure that only those wastes for which the facility was designed, and which are permitted by the licence, are deposited.

#### **4.6 Security**

Before the site is operated or receives wastes, the licensee should provide perimeter fencing or some other means of preventing unauthorised access. Once provided it should be maintained.

- The general standard of fencing should be appropriate to the waste types and activities undertaken at the site. For example storage of flammable wastes will require a higher standard of fencing to storage of inert wastes. Security fencing should normally surround the site, following the perimeter.
- A less stringent specification may be acceptable at sites that take only small amounts of building rubble, soil, demolition materials and similar wastes, or at some remote sites.
- If it is appropriate, the licensee may simply enclose the working area.
- For sites inside a factory curtilage, SEPA may agree to accept the main perimeter fencing or walling as an alternative to fencing the waste management site.

For some types of waste storage or treatment facilities, walling may be more appropriate than fencing. The walling should be at least 2 metres high and should be hard to climb.

SEPA and the applicant should take into account the possibility that such a structure will need planning permission.

#### **4.7 Weatherproof cover**

The storage and processing of wastes may require to be undertaken under cover, depending on the nature of the facility and the types of wastes to be accepted.

In general, the licensee of any facility that handles:

- Biodegradable waste
- Chemical waste
- Dusty waste or
- Odorous waste

Should provide covered storage and processing areas that will protect the wastes from the weather and will minimise the production of contaminated water and dust.

SEPA may make an exception for a small, or remote, facility that handles biodegradable waste, for example a small civic amenity site.

#### **4.8 Site surfacing**

All working surfaces used for the storage or processing of non-inert wastes should be impermeable and laid to falls that direct surface run-off to a purpose-designed draining system.



#### **4.9 Mud**

Waste facilities are usually operated in all weather conditions. The licensee must keep mud, wastes and other debris off the public highway. Where necessary the licensee should provide, maintain and use appropriate wheel cleaning equipment.

Where vehicles remain on surfaced roads (for example at treatment plant, and civic amenity sites), it may be enough for the operator to keep site roads and vehicle parking areas clean and their surfaces in good repair.

#### **4.10 Types of waste**

Licence conditions must clearly specify the types of waste to be permitted at a facility. There should be no confusion over what wastes are, or are not, acceptable.

- As far as is reasonably practicable, the range of wastes specified should be inclusive.
- The licence may use a waste classification system, including it as an annex to the licence.

SEPA will normally formalise an acceptable addition to the list of permitted wastes by using the licence modification procedure.

#### **4.11 Receipt of Wastes**

Where appropriate, the licensee should arrange for vehicles delivering wastes to be received in an area separate from the working area. This allows processing of documentation and inspection of loads.

- All wastes should be examined on arrival to ensure they conform with the conditions of the licence. This requirement may often be satisfied by visual inspection
- However, the operator of a site taking special wastes should make appropriate technical checks and tests.

The working plan should describe the procedures for dealing with the delivery of wastes not permitted by the licence and the discouragement of fly tipping.

#### **4.12 Quantities of waste**

The licensee must ensure that no greater than the permitted total quantity of waste is accepted at the site and that it does not exceed the permitted delivery rate. Normally SEPA should specify the permitted quantities by weight. The licensee should provide and use weighing facilities. If this is impracticable, the licensee should provide and use equivalent measurement systems.

Licence conditions about rates of waste handling or treatment should use an appropriate unit of time. This will depend on the type of facility and the operation being controlled.

SEPA may consider specifying average and maximum quantities, and regulating linked but different time-frames (for example, a maximum of 1000 tonnes per week with a daily maximum of 250 tonnes).

#### **4.13 Manning and management systems**

The Waste facility must operate only when it is adequately manned with appropriately trained and experienced staff.

Licence conditions should specify:

- A minimum staffing complement
- Any specific technical competence required on site. Chapter 3 sets out guidance on technical competence.

#### **4.14 Operations**

The working plan should detail the waste handling operations. For example, detail of the storage and segregation of different waste streams.

In many types of waste treatment processes and storage and transfer facilities, the licensee must ensure segregation of different waste types. This avoids adverse interactions under normal conditions and, especially, in emergencies (for example fire).

The working plan should set out the procedures for dealing with leaks, spillages and similar events. The licence conditions should require adherence to these procedures or set absolute requirements, where the procedures are absent or inadequate.

All parts of the facility should be regularly cleaned. The licensee should provide and use appropriate cleaning equipment. The licence and working plan should detail measures required to control dust, litter, odour, noise and vermin.

Licence conditions should specify the permitted working hours for the facility. This may also be a condition of the planning permission. Licence conditions may need to distinguish the permitted hours for the receipt of waste from the permitted hours for other operations.

The licensee should take all reasonable steps to exclude unauthorised persons from the facility and to prevent unauthorised removal (scavenging) of wastes.

#### **4.15 Plant maintenance**

The licensee should keep all plant in good working order and should be prepared to deal with the consequences of plant breakdown.

The licensee should only accept wastes up to the maximum permitted storage capacity of the site. Down-time or breakdown may last long enough for the site to become full. The licensee must refuse to accept wastes until sufficient storage capacity has been freed.

#### 4.16 Pollution control and environmental monitoring

Some waste management facilities will require environmental monitoring. At such sites, the licensee must manage the facility in a manner that ensures the data he obtains on its performance and its environmental effects can also be used for external assessment of the facility's performance. The licensee must design a specific monitoring strategy, and implement it before he begins site operations. It must be continued throughout the operational period and into the post-operational phase. Monitoring must not cease until SEPA has accepted surrender of the licence.

The monitoring arrangements at each site will vary. They will depend on the nature and scale of the operation, and sometimes on the co-existence of other authorities' regulatory powers at the site. For example employee safety protection is a matter for Health and Safety Executive (HSE) (but monitoring for employee safety may also provide useful data about environmental effects.)

At many facilities the control of dust, gas, vapours and noise will be necessary to protect the workforce and the external environment. Such control measures should form part of the working plan..

At enclosed facilities the licensee must provide a suitable ventilation system. The concentrations of gases, vapours and dust in air may need to be monitored. If so, the working plan should specify techniques and standards which would be the subject of a licence condition. If the HSE decides that the wastes are capable of causing an explosion, the licensee must adopt suitable safeguards.

Noise reduction measures may be necessary and appropriate. This is particularly so for facilities operating under certificates of lawful use. SEPA should consider jointly with the planning authority and the environmental health authority what level of noise can be accepted outside the licensed site. Licence conditions should then specify the maximum noise levels. The working plan should indicate the sources of the noise, the likely levels and the abatement measures.

Where a licence is not associated with a planning permission, the licence must of itself ensure compliance with all the relevant provisions of Schedule 4 of the Waste Management Licensing Regulations 1994. The licence should specify performance standards for noise, odour and other appropriate environmental variables.

Many facilities have the potential to give rise to a range of nuisances during operations such as noise, dust, litter and vermin. While nuisances can be controlled by careful siting and design, they should also be controlled by operational management on a day-to-day basis.

The objectives of any monitoring programme are to:

- Provide information for the assessment of a licence application or the surrender of a licence;
- Demonstrate that the environmental control measures are operating as designed;
- Demonstrate compliance with licence conditions; and
- Detect adverse environmental impacts from site activities.

Licence conditions should specify how frequently the licensee is to make returns of data and data analysis to SEPA, and what form the returns should take.

- The returns should be comprehensive and consistent, and readily capable of storage, retrieval and evaluation.
- They may include results from computer-based monitoring, remote surveillance, and telemetry.
- The operator should have the data assessed by competent persons.
- SEPA should review these assessments from time to time as a check on their adequacy and accuracy.

#### **4.17 Records**

Schedule 4 to the Waste Management Licensing Regulations 1994 requires the licensee to keep a record of the quantity, nature and origin of waste accepted at the site. Where relevant, the licensee must also keep a record of its destination, mode of transport and treatment method. The provisions to ensure that the licensee keeps relevant, appropriate and meaningful records should be embodied in licence conditions.

SEPA should decide what information about waste quantities it needs, and in what form, to enable it to fulfil its enforcement and planning responsibilities. It may require the licensee to send it returns of waste quantities, at intervals appropriate to the facility.

Records kept at a waste management facility are of three kinds:

- records of wastes entering and leaving the site
- environmental monitoring records
- records of significant events

##### Records of wastes entering and leaving the site –

The licensee should keep records of the types and quantities of waste entering and leaving the site. The content and quality of the records is an indicator of competent technical management. Good records are an important component of the Duty of Care, since they track the character of a load even when its form has been changed by transfer and treatment.

At a chemical waste facility, the records must also show what waste is present on site and where. The authorities will need to know this if there is an emergency such as a fire at the site.

##### Environmental monitoring records -

The licensee must keep records of the results of all environmental monitoring carried out at the facility.

##### Records of significant events –

The licensee must keep a site diary. In general these records should be retained for a period of at least three years. It should record significant events, with their dates. They will include the start and finish of construction works and certification; start and finish of waste management processes carried out on site; plant maintenance and breakdowns; emergencies; problems with waste received, and actions taken; sampling exercises; site inspections, their findings, and the remedial responses; dispatch of records to SEPA; weather, including severe conditions; and environmental problems and remedial actions.

#### **4.18 Site completion & Licence Surrender**

Licence conditions can apply after the facility's active operations have ceased.

- See s.35(3) of the 1990 Act

To achieve the prime objective of licensing, the licensee must

- Maintain post-operational pollution controls so as to ensure that, throughout the life of the site, and until it qualifies for a certificate of completion, the site presents no danger of pollution of the environment, harm to human health or serious detriment to the amenities of the locality.
- Collect, throughout the license period, the information that will enable the licensee and SEPA to make a confident evaluation of the facility when the licensee applies to surrender the licence.

SEPA issues a Certificate of Completion when it has accepted surrender of a licence. Before accepting surrender of the licence, SEPA must inspect the site and be satisfied that the condition of the land is unlikely to cause pollution of the environment or harm to human health.

For guidance on surrender of licences, see chapter 6 of this document.

## **5.0 Additional Considerations for Licensing Specific Types of Facilities**

### **5.1 Introduction**

This chapter gives guidance on the licensing of some specific types of treatment, storage and disposal facilities; but it is not comprehensive.

### **5.2 Transfer Stations**

SEPA should regulate waste inputs by reference to

- Storage capacity
- The need for waste segregation
- The projected throughput of the site

SEPA should specify the maximum amount of waste (by weight, or volume) that may be held in storage at any one time. The operator's records should show, among other things, the amount of waste that is currently being held in storage.

The operator should from time to time completely clear and clean any storage bays. SEPA should specify intervals that will prevent (a) nuisance from the degradation of putrescible waste, and (b) the unnecessary accumulation of waste.

### **5.3 Civic Amenity Sites and Household Waste Recycling Centres**

A household waste amenity site – under whatever name – resembles a transfer station: the licensing considerations are similar. At household waste amenity sites, however, there is an additional factor: members of the public have access to the working area, or at least part of it.

The licensee must ensure that people delivering wastes do not get access to areas where mobile plant or heavy vehicles are being used.

- The licensee should, if possible, provide segregated access for members of the public.
- Otherwise he should ensure that his operating systems including site management and supervision, enable him to exclude members of the public temporarily from any area where mobile plant or heavy vehicles are being used.

The site should be manned during opening hours. The licensee should monitor waste input, control traffic movements and maintain the site in a tidy condition.

Many household waste amenity sites accept waste motor oil. At these sites, the licensee should provide bunded storage areas to prevent the escape of bulk oils. Further detailed information on above ground oil storage can be found [here](#).

## 5.4 Waste Electrical and Electronic Equipment (WEEE)

Waste Electrical and Electronic Equipment (WEEE) is subject to specific procedures to promote its reuse, recycling and recovery. Although the basic elements of these procedures can be found in the WEEE Directive they have been expanded upon in the UK through the “Guidance on Best Available Treatment, Recovery and Recycling techniques (BATRRRT) and treatment of Waste Electrical and Electronic Equipment (WEEE)” issued by Defra in November 2006. Defra’s guidance can be found [here](#) (for external users see the [NetRegs website](#)).

It is not proposed to reproduce the guidance here except to say that critical considerations for sites storing and/or treating WEEE are the standard of surfacing and drainage. Where WEEE is to be reused, storage areas should be weatherproof. In all cases treatment techniques should meet BATRRRT.

## 5.5 Ozone Depleting Substances

As the name suggests, ozone depleting substances ‘ODS’ are substances that have an adverse impact on the ozone layer. They may be found in liquid form, e.g. the liquid refrigerants used in refrigerators and air conditioning units or as part of insulation foams, e.g. in the panels of refrigerators or steel sandwich panels used in industrial buildings.

ODS will diffuse rapidly into the atmosphere if liquids are allowed to escape and/or foam is exposed to heat or sunlight. Accordingly, the EC Council issued Regulation No. 2037/2000 requiring the collection of ODS and its destruction by incineration.

Most refrigeration and air conditioning equipment will also be WEEE (see section 5.4) and thus will have to be treated in accordance with the Council Regulation, however, steel sandwich panels and similar are not WEEE and hence are only required to have ODS removed and destroyed ‘where practicable’ – an important qualification.

Wastes containing  $\geq 0.1\%$  ODS are classified as hazardous wastes (H14 ‘Ecotoxic’) and most facilities that recover ODS will be regulated by a permit issued under the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC).

It was common practice in the past to allow the manual degassing of fridges and freezers at civic amenity and similar sites. However, it was found that the level of degassing achieved was insufficient to meet the requirements of the Council Regulation and hence this practice should no longer be allowed except in case of emergencies, such as when damaged units are delivered to the site.

The conditions of any waste management licence for the storage of ODS containing wastes should aim to ensure that such waste is carefully handled, and stored such that there is no damage to ODS containing parts of the waste and protected against sunlight if foam is exposed.

Needless to say the shredding of steel sandwich panels containing ODS using mobile shredders at demolition sites is not considered good practice and such panels should be consigned intact to specialist recovery facilities, of which there is at least one in Scotland.

## 5.6 Treatment Plants

Many treatment plants will be regulated under the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC). Please refer to [this](#) document for further information to determine if an activity falls under PPC.

Treatment in the context of a waste management licence includes

- Any physical or biological process applied to controlled waste in order to modify its physical, biological or chemical properties, excluding incineration

Treatment can include

- The physical processing of waste by sorting, compaction, pulverisation and baling
- More specialist physico-chemical and biological treatments.

The level of control required at such facilities will vary widely depending on the process being undertaken and the waste types involved. Licence conditions should reflect the design function of the individual plant and apply appropriate process and monitoring controls. The guidance in chapter 4, of this document and the guidance on transfer stations (above) will also be relevant.

Waste acceptance procedures are critical to ensuring incompatible wastes remain segregated. Licence conditions should specify the standards for receipt, assessment, storage and labelling of wastes. When waste arrives at the site, the licensee should assess them, and if appropriate take check samples.

In deciding the type and degree of waste acceptance analysis necessary SEPA should consider the waste stream's composition and potential variability. The licence, or working plan, should set out clearly the nature of any analytical checks proposed for waste acceptance, as well as any required for process control purposes.

Where a range of wastes are to be handled by a variety of processes within the same facility, it is important to prevent uncontrolled interaction between wastes. Wastes should be segregated into suitable, clearly designated and maintained storage facilities. Conditions should also specify quantity limits, and time limits for keeping delivered waste pending treatment.

Site records should specify

- The nature of the contents of all waste storage areas
- The capacities of all waste storage areas
- The labelling of tanks, reagent silos, drum storage areas
- The maximum capacities of tanks, reagent silos, drum storage areas
- Segregation arrangements

Records should also enable the reconciliation of inwards receipts of wastes (their types and amounts) with wastes stored plus process outputs.

The storage of some materials is the subject of specific control under other statutes: in particular regulations, guidance notes and approved codes of practice made under the Health and Safety at Work etc. Act 1974. Consultation with the HSE should ensure that waste management licences do not duplicate or frustrate these specific controls.



## 5.7 Composting

Please note that some composting processes may be regulated by a permit issued under the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC) whilst others are exempt from waste management licensing. For further advice and guidance please refer to paragraph 12 of Schedule 3 to the Waste Management Licensing Regulations 1994 the [Waste Management Licensing Manual](#) and the [composting pages](#) on the intranet.

In general, waste types suitable for composting range from plant matter waste to industrial sludge, sewage sludge and some household wastes.

Control should concentrate on the protection of the environment and of human health and amenity: the licence conditions should be proportional to this requirement. The following issues will require consideration.

- Avoiding the inclusion of contaminating wastes, particularly when composting wastes from household amenity sites, or collected household waste. The waste acceptance procedures should be suitably robust to ensure that only wastes that are permitted in terms of the licence are accepted on-site.
- The temperature limits and process duration required to ensure the destruction of pathogens
- Record keeping and quality control procedures including analysis of the output to determine levels of contaminants and to maintain quality (and thus obviate the risk of pollution or harm through use of the output).

Turning of windrows leads to the emission of odours, and or aerosols that may contain pathogenic microorganisms. Such emissions are particularly difficult to control. Hence, unless the site is distant from sensitive receptors, licence conditions should require the licensee to

- Enclose the windrows in a building that has a suitable air extraction and cleaning system
- Undertake background sampling for some time before operations begin
- Monitor for airborne microorganisms around the site.

Composting activities involving animal wastes will also be regulated under the Animal By-Products regulations. These regulations are enforced by Animal Health. Further information can be found [here](#).

## 5.8 Scrapyards

Recovery operations, including metal recycling facilities (scrapyards), End of Life Vehicle (ELVs) facilities and others, often differ from other waste management operations: most of their waste throughput is of value to the operator. This affects the method of operation at the site, particularly in relation to the length of storage of wastes. The types of conditions incorporated in the licence should reflect this fact.

The licence, or working plan, should indicate clearly:

- The amount and broad category of waste material to be processed
- Any treatment and recovery operations to be practised on-site
- The infrastructure, emergency procedures, plant or equipment to be provided
- The methods of preventing soil, water, air and noise pollution or the means of controlling noise
- The quantity and types of residual wastes for disposal

Waste input should be regulated by reference to the projected throughput of the site and to the amount of storage available.

Contamination of ground and surface water can derive from the storage and the processing of oily wastes, oils, batteries and other materials. To avoid pollution the licence should set clear standards for;

- Site surfacing and drainage
- The storage and bunding of batteries, oils and oil contaminated scrap metal

For example, at sites where batteries are stored or broken, or where scrap contaminated with oil is stored, the licence should require the provision of a dedicated part of the site: it should have bunding, impermeable surfacing, and facilities for collecting and storing the fluids until they are treated (on or off-site).

## **5.9 End of Life Vehicle Facilities (ELVS)**

The End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003 lays down rules governing the dismantling, recycling and disposal of ELVs by authorised treatment facilities. The Regulations define depollution in relation to a waste motor vehicle and include treatment operations such as:

- The removal of the battery or batteries;
- The removal of the liquefied gas tank
- The removal or neutralisation of all potentially explosive components (including air bags)
- The removal and separate collection and storage of all fuel, motor oil, transmission oil, gearbox oil, hydraulic oil, cooling liquids, antifreeze, brake fluids, air conditioning system fluids and any other fluid contained in the vehicle but excluding any fluid which is necessarily retained for the re-use of the part concerned
- The removal, so far as is feasible, of all components identified as containing mercury.

The regulations also specify a number of minimum standards that must be met before a site can be licensed, including an impermeable surface with a sealed drainage system for the storage of undepolluted vehicles and for the treatment area.

Guidance has been produced on what constitutes depollution and what operations should be carried out. Guidance for cars and light vehicles (produced by AEA Technology Environment and Universal Vehicle Services for the DTI and DEFRA) has now been adopted by the Scottish Government and is appended to their [formal guidance to SEPA on the End-of-Life Vehicles \(Storage and Treatment\) \(Scotland \) Regulations](#) .

A licence template for ELV sites is available [here](#).

## **5.10 Oil and Solvent Recovery Facilities**

Waste oils and most waste solvents are hazardous (special) wastes. Most facilities handling waste oils or waste solvent will be regulated under PPC. In the event that the activities fall to be licensed under waste management licensing, then it is recommended that the guidance and conditions applicable to a PPC permit should be modified for use in the waste management licence. This should ensure that the same degree of environmental protection is offered from the same potential pollutants regardless of the licensing regime.

## **5.11 Hazardous Waste Transfer Station**

Most hazardous waste transfer stations will be regulated under PPC. Where a site falls to be licensed under waste management licensing, the same standards as would be adopted under PPC should be applied, bearing in mind that there is no assessment of the use of Best Available Techniques under waste management licensing.

## **5.12 Mobile Plant**

A mobile plant licence specifies the mobile plant that can be used for the treatment and disposal of specified controlled waste. Licence conditions cover the treatment and/or disposal activities. Changes to the interpretation of the Legislation mean that a single mobile plant licence can cover several pieces of mobile plant and types of treatment on a number of different sites at the same time.

SEPA has taken the view that a mobile plant licence could cover both the treatment and the re-deposition of contaminated material where these activities are both undertaken on the site of waste production if the activity is for the purposes of recovery. This would not however be the case where:

- the waste soil needs to be encapsulated eg. in a bund;
- where technical precautions must be employed to make the waste soil fit for use eg. capping it to avoid water ingress or to prevent direct contact, or
- where residual contaminants are likely to be mobilised.

Legislation allows for a waste management licence to be regarded as an “authorisation” for the purpose of the Water Environment (Controlled Activities) (Scotland) Regulations

2005 and cognisance must be made of the requirements of the relevant water legislation in the licensing process.

When mobile plant moves from site to site, a site specific 'working plan' relating to the site of its proposed operation must be agreed with SEPA. It is at this stage that the site specific water issues need to be addressed.

The working plan needs to contain details that specifically relate to the remediation project an operator proposes to undertake and will therefore need to be amended and agreed for every project. A site specific working plan will need to be submitted to SEPA for approval.

A site specific working plan must include information on:

- The operation of the site and purpose of the project  
e.g. the specific plant and equipment necessary to facilitate the operation of the plant, the treatment process, the types and quantities of wastes to be treated including any wastes necessary for use in the treatment of the wastes
- Site infrastructure  
e.g. Security provisions, location of waste storage and treatment
- Pollution control  
e.g. procedures for dealing with pollution incidents and other emergencies, a groundwater risk assessment or justification that there is no potential for the mobilisation and/or discharge of list I or List II substances to groundwater, dust minimisation, litter control,
- Site completion  
e.g. procedures to be used to clean the Mobile Plant of all wastes and treatment chemicals before it is moved to another location.
- Monitoring  
e.g. monitoring and pollution control methods to be utilised on Site.
- Site Location Plan  
e.g. a location plan of the area where treatment is to be carried out

Where it is proposed that treatment and re-deposition is to be undertaken at the site where the contaminated material is generated, details must also be supplied about the treatment standards that are expected to be attained. The predicted maximum levels of residual contamination should be considered where re-deposition is proposed.

When waste does arise on site and that waste requires treatment, a Waste Management Licence or Exemption is required to cover the treatment activity.

Further information regarding mobile plant licensing including a licence template and site specific working plan assessment proforma can be found [here](#).

### **5.13 Healthcare Waste**

The primary aim when licensing sites handling healthcare waste is to prevent infection both directly from needle-stick injuries and indirectly from pathogenic organisms

released to the environment. Particular attention should be given to the quality of waste acceptance procedures and record keeping as healthcare waste cannot be sampled in the same manner as most other wastes.

The labelling and integrity of containers, their storage and handling is important as is the washing and disinfection of re-usable containers. Sites handling healthcare wastes should be weatherproof, equipped with impermeable surfaces and sealed drainage systems. Where waste management practices could generate airborne aerosols (which could contain micro-organisms) then consideration must be given to collecting and filtering such emissions, e.g. via mechanical ventilation connected to a HEPA filter.

Much healthcare waste is deemed to be hazardous and so sites treating this type of waste generally fall into PPC.

Clinical wastes from municipal sources, mainly hygiene waste, are deemed to be non-hazardous and may fall under waste management licensing. These waste types can be highly odorous and so adequate measures such as restrictions on storage times & quantities should be placed in any waste management licence.

## **6.0 Licence Modifications, Transfer & Surrender**

### **6.1 Modifications**

Section 37 of the Environmental Protection Act 1990, provides a mechanism for varying (modifying) the conditions of Waste Management Licenses. Either the operator (on submission of an application) or SEPA may initiate a modification to the licence.

An agreed procedure details the steps taken by SEPA staff to modify a waste management licence for both SEPA initiated modifications and Operator initiated modifications. Its use should ensure that all modifications are dealt with in a manner which is legally correct, consistent and auditable. This can be found through the [Waste Management Licensing Manual](#).

### **6.2 Transfers**

Section 40 of the Environmental Protection Act 1990 sets out the process for the transfer of a waste management licence.

An agreed procedure details the steps taken by SEPA staff to transfer a waste management licence and can be found through the [Waste Management Licensing Manual](#).

### **6.3 Surrenders**

Section 39 of the 1990 Act sets out the conditions under which SEPA may accept the surrender of a waste management licence.

The Waste Management Licensing Regulations 1994 details the information and evidence required in relation to an application for the surrender of a site licence.

Under the 1990 Act, before accepting the surrender of a licence SEPA must be satisfied that the condition of the land is unlikely to cause pollution of the environment or harm to human health.

- The harm to human health may be caused directly, when somebody gets access to the site and is exposed to contaminants or, indirectly, when contaminants are released or emitted from the site to the surroundings.
- The environment, air land and water may be harmed by emissions, discharges or other migration of contaminants in sufficient quantities from a site.

SEPA may thus accept the surrender of a licence from a site that still has contamination present, provided that the contamination is unlikely to cause harm to human health or to the environment.

#### The certificate of completion

When SEPA accepts the surrender of a licence, it must issue a certificate of completion to the applicant. SEPA certifies it is satisfied the condition of the land is unlikely to cause pollution of the environment or harm to human health.

### Limitations of the certificate

Statutory completion – acceptance of the surrender of the licence and issue of the certificate of completion only confirms that the land is unlikely to cause pollution of the environment or harm to human health in its current state it does not imply that the land is suitable for development, or for any particular use or that a subsequent use will not change this status..

#### **6.4 Standards for completion**

A site should at completion have the following attributes. It should be

- Physically stable. Contaminated material ought not to be readily capable of moving from the site (by slipping, or being windblown or washed off from the surface) so as to cause pollution. There should be no risk of harm to health from collapse of unstable ground.
- Largely free of contamination by wastes.
- Clear of deposited residues or discarded waste materials, including:
  - The contents of any tanks or vessels used for storing or keeping waste
  - Raw materials associated with the use of the site
- If the process involved the treatment of wastes then it should be free of residues resulting from the treatment process or reaction products resulting from the treatment process.
- Free of continuing discharges that require active site management (for example surface water control or the abatement of odour, dust, litter, gas).

#### **6.5 The completion report**

When the licensee applies to surrender his licence, he should include with his application certain information about the site. See Regulation 2 and Schedule 1 to the Waste Management Licensing Regulations 1994.

The licensee should compile the information into a completion report: the report provides the basis for SEPA to consider the evidence and make its own inspection.

The amount and detail of the information SEPA will need to assess the site will vary greatly.

SEPA should ask for information proportional to the likely pollution risks. For example a scrap yard operating for 25 years will have a higher likelihood of pollution risks compared to a civic amenity site with skips on concrete.

The completion report should cover at least the main topics of:

- The history and use of the site
- the presence of contaminants

### History and use of the site

This part of the report should cover

- The activities – ie those concerned with the keeping or treatment of waste – that took place during the lifetime of the site
- The nature of the waste dealt with, and when it was dealt with
- The estimated total quantities
- The locations where particular operations were carried out. A map or plan of suitable scale should be used. Planning permissions can be a useful source of information.

Some activities in the history of the site may not have been carried out under the licence, but may nevertheless have involved the treatment, keeping or disposal of waste. Such activities should also be covered.

SEPA will find it helpful if the applicant can provide information about activities on the site that did not involve waste, but may have resulted in contamination, This is because SEPA, so far as it can, must exclude any such contamination from its assessment.

### Presence of contaminants

In this part of the report the applicant should briefly state the kinds of contaminants likely to be present on the site as a result of the treatment, keeping or disposal of waste.

### Sampling

Under Schedule 1 to the Waste Management Licensing Regulations 1994, the applicant must include a report of actual contamination. Sampling will often be necessary.

- The sampling programme should be appropriate to the site.
- The applicant should analyse sufficient samples to indicate reliably where contaminants are likely to be present in high concentrations.

This requirement, is applicable to sites based partly or wholly on water and soil or soil-like material; the applicant need not provide analytical data on the condition of material unlikely to cause pollution, for example, a concrete slab, unless there are particular or unique contamination issues.

Care will be needed in designing the sampling programme. This is because contaminants at most of these sites are likely to be unevenly distributed, and concentrated where storage or particular activities took place.

The number and location of sampling points should therefore depend on the size of the site, and on its history.

SEPA should seek to reduce its requirements for sampling and analysis to the minimum consistent with gaining a reasonably reliable picture of any residual contamination.

It must be borne in mind that, where facilities have the potential to give rise to contamination, monitoring should have been required by SEPA during the operating life of the facility, so that a good understanding of the condition of the site should already be



available. The completion report should be the culmination of that monitoring, rather than an isolated event.

## **6.6 Assessment**

SEPA must establish

- That all the activities controlled by the licence have ceased
- That some of the consequent environmental control measures will not be needed again

To do this, SEPA will need to compare the condition of the site with the requirements of the licence.

## **6.7 Plant and equipment: restarting the site after surrender**

If the applicant (a) fulfils the requirements of other authorities and (b) removes all wastes and residues from the site, he may leave plant and equipment on site after surrender of the licence.

SEPA should, however, remind the applicant of s.39(9) of the 1990 Act: once SEPA accepts surrender of his licence, the licence ceases to have effect.

Anybody may of course consider restarting the site in order to keep, treat, or dispose of controlled waste, but unless the project is specifically exempted in regulations, he must apply for a new licence.

## 7.0 Useful Links

|                               |  |
|-------------------------------|--|
| Legislation                   | <a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a><br><a href="http://www.netregs.gov.uk">www.netregs.gov.uk</a>   |
| General Guidance              | <a href="http://www.sepa.org.uk">www.sepa.org.uk</a><br><a href="http://www.environment-agency.gov.uk/">www.environment-agency.gov.uk/</a><br><a href="http://www.defra.gov.uk/">www.defra.gov.uk/</a><br><a href="http://www.defra.gov.uk/animalhealth/">www.defra.gov.uk/animalhealth/</a>   |
| Internal Links for SEPA staff | *<br><a href="#">End of Life Vehicle Site</a><br><a href="#">Special / Hazardous Waste Site</a><br><a href="#">Clinical Waste Site</a><br><a href="#">Agricultural Waste Site</a><br><a href="#">Waste Electrical Equipment Site</a><br><a href="#">Composting Site</a><br><a href="#">Waste Management Licensing Manual</a><br><a href="#">Current Charging Scheme</a><br><a href="#">Application forms</a> |

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External users of this document who wish to discuss these issues in further detail should contact their [local SEPA team](#).