

Paragraph 19 Exemption

Waste for construction and other “relevant work”

1 INTRODUCTION

This document provides guidance, definitions, operational policy and strategy with regard to registering a Paragraph 19 exemption for the use of waste in construction or other ‘relevant works’.

2 SEPA’S OPERATIONAL POLICY CONCERNING PARAGRAPH 19 EXEMPTIONS.

Over the years many questions have been raised concerning paragraph 19 exemptions. Here are some of the more relevant questions and answers.

2.1 **Can soils and stones excavated from construction and demolition sites (European waste Catalogue Code 17 05 04) be used for a paragraph 19 exemption?**

Yes, The Waste Management Licensing Amendment (Scotland) Regulations 2004 included 17.05.04 in Table 4B as this was a genuine omission from The Waste Management Licensing Amendment (Scotland) Regulations 2003

2.2 **What wastes can be used for a paragraph 19 exemption?**

Only wastes listed in Table 11 of Schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 (as amended) can be used for relevant work under a paragraph 19 exemption. All the allowable wastes are reproduced in full in the notification form. No other wastes may be used under this exemption.

If the waste is stored at the site where it is to be used then it may be stored for the duration of the registration, 12 months.

If the waste is not produced at the site then it cannot be stored there for more than six months.

2.3 **Can road planings, or other suitable waste material listed in Table 11, be used for the purpose of constructing road embankments?**

Providing that the waste to be used is specifically mentioned in Table 11 there is no doubt it can be used. As to whether a particular waste is suitable for infilling road embankments in an engineering sense (the relevant work) SEPA would have to defer to the views of road engineers and if an engineer can say in writing that it is suitable for that purpose then SEPA should accept that.

However, the operator should still demonstrate that the road embankments are part of the original overall construction design i.e. they are not simply constructing embankments to avoid re-using and/or disposing of the waste elsewhere. A key question to ask, would be whether they would still be constructing embankments if the waste were unavailable - essentially are the embankments necessary?

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[NOTE: Road planings can no longer be stored under a para 19 exemption at a site other than where the activity is to be carried out, e.g. road planings cannot be stored at a depot (unless covered by another exemption like a paragraph 40) and then taken to the location where the relevant work is to be carried out, they must be stored at the location of the relevant work]

2.4 When can a paragraph 19 exemption not be used?

A paragraph 19 exemption must meet the following criteria otherwise the activity is not exempt:

- Wastes containing dangerous substances cannot be involved. Dangerous substances are taken to mean those identified within The Special Waste Regulations 1996 and the subsequent amendments [The Special Waste Amendment \(Scotland\) Regulations 2004](#).
- The wastes to be used must be defined in Table 11 of schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 (as amended).
- The waste cannot be used for work involving land reclamation.
- The waste must be used for “relevant work”.

Relevant work means the use of waste:

(a) for the construction, maintenance or improvement of-

(i) a building, road, railway, airport, dock or other transport facility;

(ii) recreational facilities; or

(iii) drainage as defined by the [Land Drainage \(Scotland\) Act 1958](#); or

(b) for engineering works relating to or adjacent to any part of the water environment, but does not include work involving land reclamation;

- The waste to be used must be suitable for the relevant work proposed.
- The waste is used to a depth not exceeding the final cross sections shown on the plan submitted with the notification.

2.5 In terms of relevant work what does drainage mean?

Drainage is in reference to drainage works as per Land Drainage (Scotland) Act 1958. “drainage works” means any works for the purpose of draining land or preventing or mitigating flooding or erosion to which land is subject, and includes the construction, cleansing, scouring, deepening, widening, straightening or diverting of any watercourse or outfall for water, the construction, installation, alteration or repair of any pump, pump

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machinery or pump house, the removal of any obstruction, natural or artificial, in any watercourse, and the construction, repair, raising, lowering, widening, strengthening, altering or removal of any embankment, dam, barrier, sluice, weir, wall, culvert or groyne or of any structure or erection for the purpose of defence against water.

2.6 What must be provided by the applicant?

- At least 21 days written notice of the date on which the exempt activity is first to be carried on shall be given to SEPA.
- The payment of the appropriate fee. (This can be found on the SEPA website under the current charging scheme)
- A plan of each place at which the exempt activity is to be carried on showing-
 - (a) the boundaries of that place; and
 - (b) the locations within that place at which the exempt activity is to be carried on.
- The establishment or undertaking's name, address and telephone number and, if applicable, its fax number and email address.
- Where less than 2,500 cubic metres of waste are to be stored or used, a description of the use, the type and quantity of waste to be stored or used and the location of the use.
- Where 2,500 or more cubic metres of waste are to be used for relevant work -
 - (i) the total quantity of waste to be stored or used;
 - (ii) the type of waste to be stored or used, identified by reference to the descriptions in Table 11 of schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 (as amended);
 - (iii) the location of the land where the waste is to be stored or used, identified by reference to a map and a eight figure Ordnance Survey grid reference, including the name, address, telephone number and, if applicable, the fax number and email address of the landowner;
 - (iv) a plan of the use with cross-sections showing the proposed levels of the land affected by the use;
 - (v) the intended start and completion date of the storage or use.

2.7 What type of records does the establishment or undertaking need to keep?

Where the volume of waste used exceeds 2,500 cubic metres, records shall be kept of the quantity, nature, origin, destination and method of recovery or disposal of all waste used. The records must be kept for a period of at least 2 years and shall be made available to SEPA on request.

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2.8 Is it an offence to carry out a paragraph 19 activity by doing most of what is required but not quite everything, for example, having more than 50000 Tonnes of stored material.

Yes! - A person who carries on an exempt activity in breach of the registration obligations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

2.9 What are the main reasons a notification will be taken off the public register?

Although not exhaustive there are several principal reasons why a notification would be taken off the register. These are:

- The operator is no longer carrying out the activity;
- The activity is being carried out in breach of any of the conditions or limitations of the relevant exemption;
- The operator fails to meet the Registration Obligations; and
- The type and quantity of waste submitted to the activity, and method of recovery are not consistent with the Relevant Objectives.

Schedule 4 of the 2011 Waste Management Regulations specifies that it must be ensured that waste is recovered without endangering human health and without using processes or methods which could harm the environment and in particular without:

- Risk to water, air, soil, plants or animals; or
- Causing nuisance through noise or odours; or
- Adversely affecting the countryside or places of special interest.

An exemption is removed from the register when the activity is no longer being undertaken in accordance with the Regulations. The continuation of the activity without either a waste management license or registered exemption is an offence.

2.10 Can an exemption be registered if Planning permission is required but has not been granted?

Although SEPA does not require planning permission to be in place to register a paragraph 19 exemption, this is not an exemption from the requirement to have the correct planning approval in place before the activity commences. The planning and land use system is controlled by the local Planning Authority and you should check with them regarding the planning requirements of the proposal.

2.11 Can soil from a contaminated site be used?

Yes, but care is required to ensure that the soil is suitable for use and will not cause pollution or harm. To prove this, sufficient evidence is required to show that the soil is suitable. Waste containing dangerous substances e.g. Special waste is not allowed to be used in a paragraph 19 exemption.

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2.12 How often should a paragraph 19 exemption be inspected?

The Waste Management Licensing (Scotland) Regulations 2011 (as amended) states that:

“An initial inspection shall be carried out at the time when the exempt activity commences. Thereafter, periodic inspections shall be carried out at intervals not exceeding 12 months.” In practice this means one inspection when registered and only inspect again upon renewal or if there is a complaint or incident.

3 OTHER SOURCES OF INFORMATION AND GUIDANCE

The Waste Management Licensing (Scotland) Regulations 2011 (as amended), Statutory Instrument 2011:228

Scottish Executive Circular 10/94 – Environmental Protection Act 1990: Part II Waste management Licensing, The Framework Directive on Waste