

# GUIDANCE REGARDING PROVISION AND ASSESSMENT OF TECHNICALLY COMPETENT MANAGEMENT AT WASTE MANAGEMENT FACILITIES

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## Introduction

This guidance, *WST-G-002 Provision and assessment of technically competent management at licensed waste management facilities*, applies to the assessment of technical competence when a person (in this guidance called “the operator”) applies for, or holds, a waste management licence for a site or mobile plant or a PPC permit for an installation or mobile plant carrying on a specified waste management activity.

In this Guidance a reference to a “waste management licence” or “licence” is also a reference to a “PPC permit” when appropriate.

The requirement to provide technically competent management of the activities authorised by the waste management licence or PPC permit is part of the test of whether an applicant for or holder of a licence or permit is a “fit and proper person” to hold the licence or permit. The term “fit and proper person” is defined in section 74 of the Environmental Protection Act 1990 (“the 1990 Act”) and in Regulation 18 of the Pollution Prevention and Control (Scotland) Regulations 2012 (“the 2012 Regulations”).

Section 74(3)(b) of the 1990 Act and Regulation 18 (4) (d) of the 2012 Regulations deal with technical competence. A person shall be treated as not being fit and proper to hold a waste management licence or PPC permit if it appears to the Scottish Environment Protection Agency (SEPA) that the management of the activities which are or are to be authorised by the licence/permit are not or will not be in the hands of a technically competent person. From this it is clear that the technically competent person has to be in a position to manage the day-to-day activities authorised by the licence or permit.

When applying for a licence or permit it is up to the operator to demonstrate to SEPA’s satisfaction how their management structure and control mechanisms satisfy the requirement that the waste management activities will be in the hands of a technically competent person.

Technically competent management may be provided by more than one individual. Therefore, operators can provide control of day-to-day activities through a group of technically competent staff so that the requirement for onsite presence of a technically competent person may be shared.

Alternatively, the operator's structure may mean that day-to-day management is not delegated down to the site but is exercised at a higher level. This could mean that more than one site is under the day-to-day control of the same individual or group of individuals.

Each individual identified by the operator as providing technically competent management for the activities will need to be able to demonstrate their competence to SEPA.

Whatever the approach adopted, a technically competent person should be present on site for an appropriate period of time to ensure that the site or mobile plant is operated effectively and in compliance with licence conditions. SEPA considers that in most cases the minimum period of time a technically competent person should be on site is 25% of its operating hours per week. A technically competent person should record the hours they spend on any site. A site would be considered operational whenever it is either accepting or removing waste, or undertaking any process involving waste other than its storage.

For small scale civic amenity sites (those accepting less than 5000 tonnes of waste per year) or other small facilities the operator may be able to demonstrate, to SEPA's satisfaction, that the technically competent person is not required on site for at least 25% of the operating hours per week if adequate alternative management controls are provided.

## When can SEPA assess for technical competence?

SEPA will assess for technical competence when:

- a new licence/permit application is received.
- an application to transfer a licence/permit is received.
- an application to significantly modify the licence/permit is received. Changes to the type and or quantities of waste, or introduction of a new form of treatment are examples of significant modification which may lead to a requirement for a new or additional technically competent person to manage the licensed activities.
- there is a change of designated technically competent person managing the authorised activities (including when technical competence is no longer delivered under a CMS scheme).
- a site is regularly recorded by SEPA as non-compliant with licence conditions. This could include an assessment of whether an operator has given the technically competent person sufficient power and authority to manage the activities and address the compliance issues at the site.
- we become aware that a technically competent person is not or is not able to be on each site for which they are responsible during at least 25% of its weekly operating hours.
- determinations of fit and proper status shall also be made in connection with the possible full or partial revocation or suspension of a licence/permit under the 1990 Act or the 2012 Regulations. In particular, where the holder of a licence/permit 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/permit may be suspended or revoked, in both cases in full or in part. For example, if a site is routinely reported or persistently recorded by SEPA as non-compliant with licence conditions that may be an indication that the management of the activities is no longer in the hands of a technically competent person.

Once an operator has been deemed to have provided technically competent management then that should continue to be the case, provided that none of the scenarios described above apply.

## How will SEPA assess technical competence?

In the majority of cases, an individual nominated as technically competent person will be expected to hold the relevant certificate of technical competence (COTC), Scottish vocational qualification (SVQ), national vocational qualification (NVQ) or equivalent certification from another approved scheme. Qualifications on their own will not be sufficient where the certificate holder has overseen the operation of a licensed site or mobile plant or the carrying on an exempt activity where SEPA has recorded regular non-compliance with the relevant conditions.

SEPA will continue to recognise certificates of technical competence (COTC) issued by [WAMITAB](#) as evidence of technical competence and the Technical Competence Management (TCM) scheme run by WAMITAB as evidence of technical competence.

SEPA will recognise the relevant vocational certificates (SVQ and NVQ) required to obtain a COTC as being evidence of technical competence. Generally, parts of courses or several units from a course will not, in SEPA's view, be sufficient to demonstrate technical competence, although these may be considered as part of a bespoke assessment as outlined below. The Environmental Permitting Operators Certificate, (EPOC), course available in England and Wales, or similar basic courses, will not, in SEPA's view, be sufficient to demonstrate technical competence but may be helpful for some to gain knowledge and expertise prior to completing a full certificate or seeking a bespoke assessment.

SEPA recognises the Competency Management Scheme (CMS) administered by Energy Utilities Skills as evidence of technical competence. When the CMS is utilised by an operator SEPA accept that an individual technically competent person is not required to be identified to manage the licensed activities. The CMS requires the organisation (operator) to identify the competences needed to maintain compliance and to define the process for assigning competences for each role. Whilst senior management shall appoint a specific person to ensure the CMS is established, implemented and maintained, their role is to make sure competence is delivered across the organisation to achieve compliance. The organisation shall inform SEPA of the person responsible for ensuring that the CMS is established, implemented and maintained and of any changes to the personnel responsible. It is therefore not a requirement for a specified individual to be on site for 25% of the time when an accredited CMS is in place. However, should an organisation lose CMS accreditation or stop utilising such a scheme then a technically competent person must be assigned to the satisfaction of SEPA and in accordance with this guidance.

Providers of alternative vocational training schemes may also seek approval from SEPA for completion of their schemes to be accepted as sufficient evidence of technical competence. Such schemes need not be limited to assessing individual managers' competence but could also involve assessment of an organisation's technical competence across all their waste management licensed facilities. Operators should be technically competent to operate their facility. The operator's wider management system should contain mechanisms for assessing and maintaining technical competence. The competence of individuals (or the organisation) should form part of those management systems.

All assessments will, where applicable, include consideration of the quality of all supporting application documentation. A poor quality working plan may be an indication of a lack of technical competence.

The technically competent person or person responsible for an operator's competency management scheme shall approve the working plan, all supporting documentation and any subsequent amendments.

The development of industry led competence schemes is also encouraged. All schemes should be based on qualifications accredited by the Scottish Qualifications Authority, or other relevant accreditation body. The criteria on which SEPA will assess these alternative schemes will build upon current standards. Any schemes developed in addition must be:

- effective in developing and demonstrating technical competence across a sector or sectors and provide equivalent competence with other schemes approved for the sectors(s).
- risk-based and proportionate.
- based on good operational practice and appropriate legislative requirements.
- able to provide mechanisms for demonstration and assessment of individual or corporate competence or both.
- based consistently on National Occupational Standards where these exist.
- able to develop the skills required to deliver the objectives of Scotland's Zero Waste Plan and associated legislation.
- applicable to waste management operations, or clearly state the sectors for which the scheme is designed.
- inclusive, and must not prevent new entrants from developing necessary competences in the workplace.



For all assessments of technical competence previous compliance will be considered. Evidence from other sites, mobile plant, or exempt activities for which the nominated person is or was a designated technically competent person or had a management role, may also be utilised by SEPA in assessing technical competence. For example, a site where SEPA has recorded regular non-compliance with the relevant conditions may not have been run by a technically competent person, even if they have the relevant vocational qualifications or where the operator is covered by a technical competence management system. Where SEPA has concerns regarding the technical competence of an individual nominated as the technically competent person, both the individual and the operator will be given the opportunity to respond to our concerns prior to a decision on technical competence being made. Any decision on an individual's competence shall only be based on evidence of compliance within the last five years. Evidence of improvements in compliance/changes in behaviour within that five-year period will be considered to ensure that no individual will be deemed unable to be a technically competent person for an indefinite period.

It should be noted that where a person is considered technically competent SEPA must also be satisfied that they will be in a position to manage the day-to-day activities on the site. This could include an assessment of whether the operator has, in the past, given a technically competent person sufficient power and authority to manage the activities and address the compliance issues either at the site or at another site operated by them. It could also include an assessment of the history of compliance at other sites (whether in Scotland or not) where any person who is a director, manager or similar of the operator or who has significant control over it has exercised power or control. When carrying out such an assessment SEPA may consider compliance at relevant sites over an extended period greater than five years.

## Closed sites

Sites which have a licence for a closed facility will not have to provide technical competence provision for 25% of time. Instead, they will provide technical competence provision as agreed by SEPA on a site per site basis.

## Bespoke SEPA Assessment of Technical Competence

SEPA generally expect all technically competent persons to have a formal qualification. In exceptional cases where the designated technically competent person cannot provide evidence of an appropriate qualification, SEPA may make a bespoke assessment of technical competence based on other factors, such as experience. SEPA's bespoke assessment will only be available to operators who wish to hold a single site licence for a small-scale facility. It does not apply to mobile plant licences or where the operator already holds a site licence or licences. Bespoke assessments are site specific and non-transferable, so somebody who has been deemed technically competent for one site by means of a bespoke assessment cannot be a technically competent person at another site on the basis of that assessment. We therefore recommend that all technically competent persons eventually obtain formal qualifications to develop learning, expertise and have transferable skills. The bespoke assessment will consider both the knowledge and experience of the proposed technically competent person in respect of general waste management law and practice, and in respect of the specific facility as described in more detail below. It will focus on the specific issues relating to managing a single site, small-scale facility. Any person seeking to obtain a bespoke assessment should, as a minimum, be able to demonstrate detailed knowledge of key topics such as:

- the waste legislation relevant to their facility.
- the documentation required to transfer waste to and from their site, (locally, nationally and internationally where appropriate).
- the duty of care.
- what a licence/permit and working plan are for.
- how to control and minimise all potential pollutants from their site.
- how to deal with non-conforming waste loads including special waste.
- the infrastructure and technical provisions required for their facility.
- the reporting requirements to SEPA.

Assessments made this way apply only to the site for which the assessment was made and are non-transferrable.

SEPA's bespoke assessment will be based on evidence provided by operator in support of their claim that the management of the activities will be in the hands of a technically competent person. In assessing such submissions SEPA will consider the scale and type of operation and the nature of the wastes involved.

SEPA's assessment will, where applicable, include an assessment of the proposed technically competent person's compliance with waste legislation. A person who has been the technically competent person at another site where SEPA has recorded regular non-compliance with the relevant conditions may not be technically competent. Compliance with the appropriate legislation or a site licence is non-negotiable.

SEPA's bespoke assessment will, where applicable, include consideration of the quality of all supporting application documentation. For example, a poor quality or incomplete working plan may be an indication of a lack of technical competence.

Knowledge may be demonstrated through evidence of practical application of the legislation to waste management activities, in particular the licensing requirements and the Duty of Care or trans-frontier shipment obligations.

As part of a bespoke assessment a person will normally be required to demonstrate that they have not less than two years of relevant experience in waste management at a supervisory level (i.e., supervision of either the waste management activities themselves or of other individuals carrying out those activities). Evidence of this should be presented in a statement of relevant experience. This statement should provide details of the individual's employment record, including the location of all posts held that are relevant to their application, the dates between which they were employed, the duties they undertook, and details of their supervisory role. The applicant should also supply details of the operations undertaken at each of the facilities at which they have worked. An example of the format and information expected to be included in such a Statement of Experience is presented in Appendix 1.

Additionally, two referees must be provided to support the details set out in the Statement of Experience i.e., referees who are able to vouch for the contents of the Statement.

Where proposed technically competent person is considered to be not technically competent based on their submission, they will be invited for an interview. This interview will be chaired by a member of SEPA's National Waste Team to ensure consistency. The National Waste Team consists of experienced competent waste specialists and routinely carries out bespoke assessment throughout Scotland to ensure a fair open transparent assessment. **The interview would normally be by remote video conferencing providing all parties agree to the location or video conferencing system to be used, or in person at a SEPA office but can be arranged for other locations if required.**

## Monitoring for continuing Technical Competence

SEPA will keep under review the extent to which the management of waste activities remains in the hands of a technically competent person, as part of general compliance monitoring and inspections of activities carried out under the licence/permit. The licence holder should provide a list of the technically competent persons who are involved in the management of each licensed site and the hours they are on site for. This information should be kept and updated as appropriate.

SEPA may ask for this information as part of continual assessment of technical competence and, if necessary, we may also require it by means of a licence condition.

**SEPA may take enforcement action if it decides the management of the activities authorised by the licence/permit are no longer in the hands of a technically competent person.**

## Appendix 1 - Example Layout for Statement of Experience

### **Name**

### **Date of Birth**

### **Address**

### **Contact Details**

### **Description of site to be managed**

*Provide a description of the activities for which you wish to be assessed as a technically competent manager*

### **Qualifications / Training Relevant to Application**

*Detail qualifications and formal training relevant to the specific operations of the site/mobile plant in question and / or waste management in general and the date achieved.*

### **Work Experience**

*Detail relevant work experience: including dates of employment, details of the operations undertaken at each of the facilities at which you have worked, your main duties and any supervisory or management experience.*

*Identify aspects of your work experience that are relevant to the operation of the sit/mobile plant you wish to manage.*

*Provide details of any experience or responsibility for compliance with the terms applicable to an activity exempt from waste management licensing, waste management licence/PPC permit conditions or Duty of Care obligations.*

### **Additional Information**

*Provide any additional information you wish to be considered in respect of your application (e.g.) professional memberships*

### **Referees**

*Provide contact details for two referees able to confirm the details given in your statement of experience.*