

Paragraph 19 exempt activities: “drainage” and “land reclamation”

Legal Framework

Under Regulation 19 of the Waste Management Licensing (Scotland) Regulations 2011¹ notice requires to be given to SEPA of exempt activities falling under paragraph 19 of Schedule 1 (amongst others).

In order to be able to constitute an “exempt activity” under paragraph 19 of Schedule 1 (the use of waste for specified ‘relevant work’), the type and quantity of waste used and the methods of recovery must meet the relevant objectives set out in paragraph 6 of Schedule 4. The amount used must not be more than the minimum amount needed to complete the work.

The “relevant work” referred to in paragraph 19 can include the use of waste for drainage but cannot include work involving land reclamation. Any notification in respect of paragraph 19 activities should therefore be refused if any of the following apply:

- the relevant objectives are not met,
- the proposal includes the use of excessive amounts of material or the material proposed is unsuitable, or
- the “relevant work” includes land reclamation.

Background

Due to the absence of any specific definition of “drainage” and “land reclamation” within the regulations or associated guidance, SEPA has been required to consider the definition of drainage and land reclamation on a site specific basis. To avoid inconsistencies, this guidance has been produced to assist officers.

Guidance: drainage

Drainage is in reference to drainage works as per the Land Drainage (Scotland) Act 1958: “drainage works” means any works for the purpose of draining land or preventing or mitigating 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 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.” ‘Drainage’ does not include flood prevention works.

SEPA expects “drainage works” to redirect surface or ground water away from an area e.g. using perforated pipes laid in gravel trenches. Any notification of a paragraph 19 activity should include a diagram/plan of the pipework system or drainage layer, details of the angle of fall and the destination of the surplus water. In addition it must demonstrate that the water is not directed to an area already at risk of flooding and will not negatively affect a protected wetland.

Drainage does not include the use of waste to raise the level of land to above the existing water table. This is land reclamation and is not permitted under paragraph 19. Nor does “drainage” include filling an existing void such that water no longer ponds in a location and rather runs off utilising contours of the made ground.

Guidance: land reclamation

In the absence of a statutory definition of “land reclamation”, the dictionary definition of “reclamation” is “to bring (waste land or land formerly under water) under cultivation.” In the context of paragraph 19, it is considered reasonable for SEPA to consider reclamation may be for uses other than cultivation.

¹ Waste Management Licensing (Scotland) Regulations 2011 <http://www.legislation.gov.uk/ssi/2011/228/contents/made>
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Deposits of waste into water (including onto land that becomes flooded or waterlogged during wet weather), insofar as they fall to be regulated under the WML regime, are regarded as land reclamation and are unlikely to fall within an exemption

Examples



Figure 1- Deposit of waste onto waterlogged land is not permitted under the terms of an exempt activity.



Figure 2- Formation of a pier using land reclamation



Figure 3- deposit of waste into water is land reclamation and is not permitted under the terms of an exempt activity



Figure 5- installation of a pipe and gravel drainage system may be an exempt activity



Figure 6- Preparing a rural field for tile draining

Any renewals relating to drainage activities will be reconsidered in light of this guidance on a case by case basis. Where they are allowed to continue, this may be subject to restrictions or reductions on the type and amount of material to be used. Queries should be referred to the National Operations Waste Unit as early as possible in the determination period with a clear deadline for response to ensure that statutory timescales are complied with.

This guidance applies only in Scotland. The terms of this guidance may be subject to periodical review and be changed or withdrawn in light of technological or scientific developments, regulatory or legislative changes, future government guidance or experience of its use. SEPA reserves its discretion to depart from the guidance outlined here and to take appropriate action to avoid any risk of pollution or harm to human health or the environment.