EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) (No.2) REGULATIONS 2009

2009 No.

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007 No. 3538 as amended by section 88(2) of the Climate Change Act 2008 (c.28), the Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890) and the Environmental Permitting (England and Wales) Regulations 2009 (S.I. 2009/1799)) "the 2007 Regulations" in order to improve and simplify the regulatory regime for low environmental risk waste recovery and disposal operations across England and Wales.

2.2 It does this by substituting in particular Schedule 2 and Schedule 3 of the 2007 Regulations and by inserting a new Schedule 3A into those Regulations.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 It is intended that this instrument will have obtained the necessary parliamentary approval before 18 December 2009 however it will not come into force until 6th April 2010. The 2007 Regulations, including the amendments made by this instrument, will be revoked and remade in a consolidating instrument (The Environmental Permitting (England and Wales) Regulations 2010 ("the 2010 Regulations").

3.2 The 2010 Regulations will revoke and remake many of the provisions of the 2007 Regulations, as well as widen the scope of those Regulations. The 2010 Regulations are expected to be laid in early January 2010 and, subject to the obtaining parliamentary approval, will come into force on 6th April 2010 immediately after this instrument comes into force. The reason for laying this instrument and seeking its approval in advance of the 2010 Regulations is to ensure that Parliament has the opportunity to fully consider the provisions of this instrument and the specific amendments it makes to the regulation of low risk waste operations.

4. Legislative Context

4.1 The instrument is made in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

4.2 The main purpose of the instrument is to amend existing national legislation set out in the 2007 Regulations to proportionately regulate low risk waste recovery and disposal activities in accordance with the Waste Framework Directive[1] "the Directive". The key objective of the Directive is to ensure that:-

".....waste is recovered or disposed of without endangering human health and without using processes or methods which could cause harm to the environment, and in particular without risk to water, air, soil, plants and animals and without causing nuisance through noise and odours....."

[1] Originally adopted as Directive 75/442/EEC and codified as Directive 2006/12/EC – and which will be repealed and replaced with effect from 12 December 2010 by Directive 2008/98/EC.

4.3 Articles 9 and 10 of the Directive require any establishment or undertaking carrying out specified waste recovery or disposal operations to obtain a permit from the competent authority.

4.4 Article 11 of the Directive gives Member States a discretion to provide exemptions from the permit requirements of Articles 9 and 10 for those establishments or undertakings (a) carrying out their own disposal of waste at the place of production and (b) those carrying out waste recovery operations if:

"competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements: and if the types of quantities of waste and methods of disposal and recovery are such that the conditions imposed in Article 4 are complied with."

Article 11 also requires any establishment or undertaking carrying out an exempt waste recovery or disposal operation to register with the competent authority.

4.5 The instrument is being introduced principally to amend the existing waste exemptions by replacing Schedule 3 to the 2007 Regulations to provide new and revised descriptions and conditions for exempt waste operations so that operators recover or dispose of waste in a manner that poses a low environmental risk without needing to obtain a permit. The instrument also amends some of the provisions relating to the registration of exemptions by replacing Schedule 2 to the 2007 Regulations.

4.6 The instrument also amends the provisions in the 2007 Regulations relating to waste operations that are not covered by the permitting requirements of the Waste Framework Directive (because they are not disposal or recovery operations) but which may, nonetheless, still require an environmental permit under 33(1)(a) of the Environmental Protection Act 1990 to the extent that they involve the deposit of waste. The 2007 Regulations provide that certain of these operations do not require an environmental permit provided that certain conditions are met. These operations are not subject to a registration requirement. This instrument continues to provide for this but in a revised form with the revisions set out in Schedule 3A, inserted by Schedule 2 to the instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. Separate systems cover waste management licensing and pollution prevention and control in Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 Dan Norris MP, Minister for Farming and the Environment has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2009 are compatible with the Convention rights"

7. Policy background

7.1 As indicated in paragraphs 4.1-4.5, the objective of the Directive is to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.

7.2 The 2007 Regulations provided for exemptions from environmental permitting for various waste management operations that were considered to present a sufficiently low environmental risk. The majority of exemptions have been in place since 1994 with little amendment. The most significant change made during that time was in 2005 which resulted in a two-tier system of

'simple' exemptions and more complex 'notifiable' exemptions that are subject to registration charges, annual renewal requirements and additional requirements prior to registration.

7.3 In October 2006, the Department, the Welsh Assembly Government and the Environment Agency began a major project to review the current scheme of exemptions. The project is in line with the aims of the Environmental Permitting Programme, which is implemented through the 2007 Regulations, in seeking a risk based and proportionate approach to permitting, including all waste recovery and disposal activities.

7.4 This instrument delivers a revised suite of exemptions which allow for waste management operators to register exempt waste exemptions to carry out waste disposal or recovery operations without the need for an environmental permit.

7.5 The instrument introduces a new requirement for operators to re-register exemptions every three years. It also provides transitional provisions for operators that were registered in relation to exempt waste operations under the 2007 Regulations immediately before this instrument comes into force.

- ***Consolidation***

7.6 The Department intends to revoke and replace the 2007 Regulations with a consolidated set of Environmental Permitting Regulations with effect from 6th April 2010 when it brings forward separate proposals to widen the scope of the 2007 Regulations.

8. Consultation outcome

8.1 Over a thousand representatives from a broad range of industry, regulators and other stakeholders have been consulted. The stakeholders included public bodies (both national and local government, and other Government bodies); a wide range of businesses (small, medium and large); trade associations across many business areas; the third sector; and individuals.

8.2 A first informal consultation on policy ran from March to June 2007. Seventy-seven responses were received. In conjunction with the Welsh Assembly Government, and the Environment Agency, the Department initiated a second three month public consultation on proposals to revise the exemptions from environmental permitting systems across England and Wales by means of amendments to the 2007 Regulations. A draft of this instrument, which is now the subject of this Explanatory Memorandum, was included in the consultation paper. The consultation ran for 12 weeks from 31 July to 23 October 2008; and 285 unique responses were received from a broad cross section of stakeholders.

8.3 The Summary of consultation responses and the Government's Response on the proposed amendments to the waste exemptions system across England and Wales can be found at http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm.

8.4 Eleven of the 13 proposals in the second consultation gained significant support from respondents. The two proposals which were not supported concerned charging businesses for the registration of exemptions and the proposal not to introduce a formal appeals system.

8.5 The Government concluded that the consultation responses did not provide sufficient evidence to cause it to change its view on the preferred option to amend the 2007 Regulations to reflect the outcome of the review of waste exemptions and so regulate waste recovery and disposal activities in a risk based, proportionate way.

8.6 However, the Government has decided not to charge businesses for the registration of exemptions. The exception to this is the current arrangement for the exemption for the treatment of Waste Electrical and Electronic Equipment (WEEE) which is already subject to a registration

fee to recover the costs of the mandatory inspection and audit requirements under the WEEE Directive, 2002/96/EC.

8.7 The Government has not changed its view on the proposal not to introduce a formal appeals system. However, because there is some uncertainty over what matters might be raised under the new system of exemptions, it is intended to keep this issue under review and should it subsequently be found that such a mechanism would be beneficial, then a formal independent appeal system could be adopted following the end of the transitional period.

8.8 A further separate consultation was started in February 2009 by the Environmental Permitting Programme aimed at bringing other (non-waste) environmental permitting and compliance systems under the single environmental permitting system contained within the 2007 Regulations. This consultation ended on the 11 May 2009. The summary of consultation responses and the Government's Response on this consultation can be found at http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm.

9. Guidance

9.1 A consultation on Government Guidance to accompany the amendments made by the instrument was published in October 2009. A copy of this consultation can be found at (http://www.defra.gov.uk/corporate/consult/waste-exemption-review-guidance/index.htm)

10. Impact

10.1 The impact on business, charities or voluntary bodies is £0.7m to cover obligations under the instrument.

10.2 The impact on the public sector is about £5.3m per annum to cover the costs of enforcing the instrument.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the impact on small firms is small and costs are site specific.

11.3 The basis for the final decision on what action to take to assist small business was based on talking to representative organisations including those for small business, asking them their views and identifying what areas they faced challenging issues as a result of the instrument. The instrument is laid following extensive engagement with the industry.

12. Monitoring & review

12.1 Although lead responsibility for implementation and monitoring remains with the Department and the Welsh Assembly the day to day operational administering of waste exemptions will remain with the Environment Agency and, in certain circumstances, Local Authorities.

12.2 The Government, in conjunction with the Welsh Assembly Government and the Environment Agency, is committed to introducing a system to regularly review and amend the exempt waste operations in the future. A proposed way forward is outlined in Chapter 14 of the Draft Environmental Permitting Guidance – Exempt Waste Operations which was published as part of the consultation on guidance to accompany the amendments made by the exemptions

review referred to in paragraph 9.1. The reviews will involve local authority and/or industry representation where it is considered appropriate or necessary.

12.3 The system will provide the opportunity for the existing exempt waste operations to be assessed on how well they are working and for relevant changes to be made and also for new exempt waste operations to be provided where suitable. By basing the review on the environmental principles and criteria that have been developed during consultation consistent levels of risk assessment should continue.

12.4 The recommendations from the reviews will be made in the form of a written report on what exempt waste operation amendments are to be made or additional exempt waste operations to be included and the legislation may be amended accordingly.

12.5 The first opportunity for a review will be after the transitional provisions end on 1 October 2013.

13. Contact

13.1 Jason King at the Department for Environment, Food and Rural Affairs Tel: 020 7238 1519 or email: Jason.king@defra.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
Defra	**Impact Assessment of revised exemptions from environmental permitting**	
Stage: Final	**Version:** 1	**Date: 27** October 2009
Related Publications: Consultation at: www.defra.gov.uk/environment/waste/management/exemptions/index.htm		

Available to view or download at: http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm

Contact for enquiries: Jason King **Telephone:** 020 7238 1519

What is the problem under consideration? Why is government intervention necessary?

The recovery and disposal of waste has the potential to harm the environment and human health if unregulated. The European Waste Framework Directive (WFD) requires establishments and undertakings carrying out waste recovery or disposal activities to hold a permit. This requirement is implemented in England and Wales through the Environmental Permitting regime.

Given this legal framework, which places an obligation on the Government to intervene, the Government wishes to set in place a more cost-effective system of permits and exemptions that adequately protects the environment and human health, thereby maximising the net benefit to society.

The current system has become too complex: it has two tiers of exemption with different registration requirements and overly complex rules for some of these exemptions. It has also not kept up with the changes that have taken place in waste management over the years since the permitting regime was put in place. New low risk waste management activities have been developed but are not reflected in the provision of an exemption.

Therefore, the system is in need of review to ensure it is fully compliant with the WFD and that the level of regulation is appropriate and effective at protecting the environment and human health.

What are the policy objectives and the intended effects?

To create a new, cost-effective system of exemptions that will:

- be simple;
- be enforceable and encourage compliance;
- deliver risk based regulation where the level of regulatory control is, as far as is practicable, proportionate to the risks posed by the operation;
- develop a system of regular review and amendment; and
- continue to protect the environment and human health while simplifying the regulation and keeping administrative burdens to a minimum.

What policy options have been considered? Please justify any preferred option.

The following options have been considered:

1) Do nothing legislatively - new activities will need to be brought within the existing framework, i.e. would require a permit under the regulations;

2) Continue with simple exemptions and notifiable exemptions. Re-appraise the degree of exemption required for existing activities and create new exemptions to incorporate the new activities;

3) Amend and simplifty the current regulatory system, create a single category of exemptions and use it for as wide a range as possible of low risk operations. For higher risk activities (currently covered by notifiable exemptions and permits), use a range of permits, with the frequency of inspections reflecting the degree of risk associated with each permitted activity;

4) Remove exemptions entirely and rely solely on a range of waste permits, with the frequency of inspections reflecting the degree of risk associated with each permitted activity.

Option 3 is preferred. Many low risk waste management activities currently require an environmental permit. This is disproportionate to the risk posed by these activities, with the total economic costs associated with permitting outweighing the benefits. The regulation of higher risk activities by exemptions has also become quite complex and does not sufficiently protect the environment or human health.

Option 1 has been used as a baseline.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed within 4 years of commencement. A commitment to regularly review the legislation will be made in the Government guidance accompanying the legislation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: 2	Description: Continue with simple exemptions and notifiable exemptions but develop new exemptions to take account of new activities

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£18.4m to £31.7m	3

Average Annual Cost (excluding one-off) after 3 yr transition

£14.7m to £16.0m	7

Description and scale of **key monetised costs** by 'main affected groups'

The main additional costs are for:

a) 207,724 newly regulated activities paying the costs associated with an exemption: £11m to £52m;

b) 2,088 exempt activities that will need a permit and pay the higher costs of registration, inspection and technical competence: £29m;

c) 150,528 activities that must pay the costs associated with a simple exemption: £97m to £102m

Total Cost (PV) **£ 137m to £183m**

Other **key non-monetised costs** by 'main affected groups'

Where activities are moved from notifiable to simple exemptions, the risk of environmental damage will increase.

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£49.9m to £69.6m	3

Average Annual Benefit (excluding one-off) after 3 yr transition

£ 27.1m to £42.8m	7

Description and scale of **key monetised benefits** by 'main affected groups'

Cost savings are greatest for:

a) 207,724 newly regulated activities that would avoid the costs of alternative means of waste disposal: £11m to £52m;

b) 23,495 low risk positions that would require a permit under option 1 but a simple exemption under this option – they would save the costs associated with a permit: £267m to £373m;

c) 1,260 activities switching from notifiable to simple exemptions, i.e. save costs associated with a notifiable exemption: £17m;

d) Others: £4m

Total Benefit (PV) **£ 299m to £446m**

Other **key non-monetised benefits** by 'main affected groups'

Will increase the number of low risk activities able to benefit from an exemption. This should allow more low risk activities and therefore less displacement of waste to non-recovery options such as landfill.

Where higher risk activities are moved from simple to notifiable exemptions, there will be greater regulatory oversight and reduced risk of environmental damage.

Key Assumptions/Sensitivities/Risks

1) Range in costs and benefits reflects the upper and lower end of the range for current Low-Risk Positions (61,579 to 231,189 activities);
2) Assumes operators will spend on average £201.40 on consultants when registering a simple exemption although a sensitivity analysis has been carried out at £402.80 (the estimated current level of costs as derived by RPS Ltd).
3) In the absence of data, assume a conservative estimate for the avoided costs of disposal of waste for Low Risk Positions. Given that operators have requested that the Environment Agency provide exemptions for their activities, we have assumed that the costs they would bear from charges levied by waste management companies would be at least as much as the administrative burden that they would face in registering for an exemption. .
4) Estimates provided by RPS Ltd for the Environment Agency have been used as the basis for the calculation of the administrative burdens, some direct costs and some populations.

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) **£ 162m to £263m**	**NET BENEFIT** (NPV Best estimate) **£ 212m**

What is the geographic coverage of the policy/option?			England and Wales	
On what date will the policy be implemented?			06/04/2010	
Which organisation(s) will enforce the policy?			EA and LAs	
What is the total annual cost of enforcement for these organisations?			£ 5m	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ Negligable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 0.5m Decrease of £ m **Net Impact** **£** 0.5m

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Summary: Analysis & Evidence

Policy Option: 3	Description: Increase the use of exemptions for as wide a range as possible of low risk operations whilst removing or restricting the extent of the exemptions for higher risk operations

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition)	**Yrs**	The main additional costs are for:
£22.8m to 36.1m	3	a) 207,724 newly regulated activities paying the costs associated with an exemption: £11m to £52m;
		b) 3,564 exempt activities that will need a permit and pay the higher costs of registration, inspection and technical competence: £62m;
		c) 150,528 activities that must pay the costs associated with a simple exemption: £97m to £102m;
Average Annual Cost (excluding one-off) after 3 yr transition		
£18.2m to £19.5m	7	**Total Cost** (PV) **£ 170m to £216m**

Other **key non-monetised costs** by 'main affected groups' Where activities are moved from permits to exemptions, the risk of environmental damage will increase.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'
One-off	**Yrs**	Cost savings are greatest for:
£ 58.7m to £78.5m	3	a) 207,724 newly regulated activities that would avoid the costs of alternative means of waste disposal: £11m to £52m; b) 23,495 low risk positions that would require a permit under option 1 but a simple exemption under this option – they would save the costs associated with a permit: £267m to £373m; c) 2,736 activities switching from notifiable to simple exemptions, i.e. save costs associated with a notifiable exemption: £36m; d) 1,417 activities save costs by being treated as mobile plant: £19m; e) Others: £4m;
		Additional savings to regulator and permit holders: a) Previously exempt activities will pay a lower permit charge reflecting lower levels of inspection by the regulator: £30m b) Better risk targeting is expected to reduce regulatory enforcement costs by at least £8m.
Average Annual Benefit (excluding one-off) after 3 yr transition		
£ 35.9m to £51.7m	7	**Total Benefit** (PV) **£ 375m to £522m**

Other **key non-monetised benefits** by 'main affected groups'

Will increase the number of low risk activities able to benefit from an exemption. This should allow more low risk activities and therefore less displacement of waste to non-recovery options such as landfill.

Where higher risk activities are moved from simple to permits, there will be greater regulatory oversight and reduced risk of environmental damage.

Key Assumptions/Sensitivities/Risks

1) Range in costs and benefits reflects the upper and lower end of the range for current Low-Risk Positions (61,579 to 231,189 activities);

2) Assumes operators will spend on average £201.40 on consultants when registering a simple exemption although a sensitivity analysis has been carried out at £402.80 (the estimated current level of costs as derived by RPS Ltd).

3) In the absence of data, assume a conservative estimate for the avoided costs of disposal of waste for Low Risk Positions. Given that operators have requested that the Environment Agency provide exemptions for their activities, we have assumed that the costs they would bear from charges levied by waste management companies would be at least as much as the administrative burden that they would face in registering for an exemption.

. 4) Estimates provided by RPS Ltd for the Environment Agency have been used as the basis for the calculation of the administrative burdens, some direct costs and some populations.

5) The calculation of permit application and subsistence charges are based on the charging proposals for 2010/11. The Environment Agency has stated it intends to discuss with industry the need for a wider range of standard permits. The development of additional standard permits provides opportunity to save an estimated further £3.5 million per annum in subsistence charges.

6) The Environment Agency may only grant environmental permits for waste operations where relevant planning permission is in place. The Government acknowledges that some operators moving into the permitting regime might incur additional costs due to the need to comply with this requirement. However, as any costs incurred in either obtaining the necessary planning permission or a certificate of lawful use is only regularising a position whereby an operator was previously operating outside of the planning controls under the Town and Country Planning Act 1990 these have not been included within this assessment[2].

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) **£205m to £306m**	**NET BENEFIT** (NPV Best estimate) **£ 255m**

What is the geographic coverage of the policy/option?			England and Wales	
On what date will the policy be implemented?			01/10/2009	
Which organisation(s) will enforce the policy?			EA and LAs	
What is the total annual cost of enforcement for these organisations?			£ 5.3m	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ Negligable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 0.7m Decrease of £ m **Net Impact** **£**0.7m

[2] The Environment Agency may only grant environmental permits for waste operations where relevant planning permission is in place. The Government has listened to concerns raised by industry about the planning status of many metal recycling sites and wishes to 'regularise' the planning status of the sector so as to encourage the bona fide operator and marginalize the unlawful operator.

Accordingly the Government will continue to work with the Environment Agency and waste management industry representatives to identify the scale of any potential impact and introduce a range of measures that will assist those legitimate operators to establish their planning status for the purposes of obtaining an environmental permit. For example, the Environment Agency have agreed to provide evidence to operators, where such evidence is held by the regulator, of the period of continuous waste management operation. This is likely to include information relating to the inspection, annual re-registration and payment of fee of existing exemption registrations. It is envisaged that operators would use this information as part of their application to the appropriate local planning authority for a Certificate of Lawful Use.

Summary: Analysis & Evidence

Policy Option: 4	Description: Remove exemptions entirely

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition)	**Yrs**	The main additional costs are almost all for the large shift in activities to permits.
£295m to £307.5m	3	
Average Annual Cost (excluding one-off) after 3 yr transition		
£278m to £283m	7	**Total Cost** (PV) — £ 2.443bn to £2.509bn

Other **key non-monetised costs** by 'main affected groups' For many activities it may be felt the level of control given by a permit is disproportionate to the level of risk posed by the activity.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Cost Savings.
One-off	**Yrs**	Savings relate mostly to some savings in cost related charging.
£ 65.5m	3	
Average Annual Benefit (excluding one-off) after 3 yr transition		
£ 125m	7	**Total Benefit** (PV) — **£904m**

Other **key non-monetised benefits** by 'main affected groups'

Should provide additional protection to the environment but in many instances, likely to be disproportionate to costs of regulation. It may also discourage small scale recovery operations, increasing the amount of waste going to landfill.

Key Assumptions/Sensitivities/Risks

1) Range in costs and benefits reflects the upper and lower end of the range for current Low-Risk Positions (61,579 to 231,189 activities);

2) Assumes operators will spend on average £201.40 on consultants when registering a simple exemption although a sensitivity analysis has been carried out at £402.80 (the estimated current level of costs as derived by RPS Ltd).

3) In the absence of data, assume a conservative estimate for the avoided costs of disposal of waste for Low Risk Positions. Given that operators have requested that the Environment Agency provide exemptions for their activities, we have assumed that the costs they would bear from charges levied by waste management companies would be at least as much as the administrative burden that they would face in registering for an exemption.

4) Estimates provided by RPS Ltd for the Environment Agency have been used as the basis for the calculation of the administrative burdens, some direct costs and some populations.

5)The calculation of permit application and subsistence charges are based on the charging proposals for 2010/11. The Environment Agency has stated it intends to discuss with industry the need for a wider range of standard permits. The development of additional standard permits provides opportunity to save an estimated further £120 million per annum in subsistence charges.

6) The Environment Agency may only grant environmental permits for waste operations where relevant planning permission is in place. The Government acknowledges that some operators moving into the permitting regime might incur additional costs due to the need to comply with this requirement. However, as any costs incurred in either obtaining the necessary planning permission or a certificate of lawful use is only regularising a position whereby an operator was previously operating outside of the planning controls under the Town and Country Planning Act 1990 these have not been included within this assessment.[3]

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) **£ -£1.539bn to -£1.605bn**	**NET BENEFIT** (NPV Best estimate) **£ -£1.572bn**

What is the geographic coverage of the policy/option?			England and Wales	
On what date will the policy be implemented?			06/04/2010	
Which organisation(s) will enforce the policy?			EA and LAs	
What is the total annual cost of enforcement for these organisations?			£ 121m	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ Negligable	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 4m Decrease of £ **Net Impact** **£** 4m

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[3] The Environment Agency may only grant environmental permits for waste operations where relevant planning permission is in place. The Government has listened to concerns raised by industry about the planning status of many metal recycling sites and wishes to 'regularise' the planning status of the sector so as to encourage the bona fide operator and marginalize the unlawful operator.

Accordingly the Government will continue to work with the Environment Agency and waste management industry representatives to identify the scale of any potential impact and introduce a range of measures that will assist those legitimate operators to establish their planning status for the purposes of obtaining an environmental permit. For example, the Environment Agency have agreed to provide evidence to operators, where such evidence is held by the regulator, of the period of continuous waste management operation. This is likely to include information relating to the inspection, annual re-registration and payment of fee of existing exemption registrations. It is envisaged that operators would use this information as part of their application to the appropriate local planning authority for a Certificate of Lawful Use.

Evidence Base (for summary sheets)

1. Background

1.1. The European Waste Framework Directive (2006/12/EC) – WFD - requires establishments and undertakings carrying out waste recovery or disposal activities to hold a permit. This requirement is implemented in England and Wales through the Environmental Permitting regime.

1.2. Member States have the discretion to adopt general rules to provide exemptions from the need for a permit for either recovery operations, or the disposal of non-hazardous waste at the place of production. The WFD requires that in exercising this discretion, Member States must ensure that their exemptions have general rules - in England and Wales these are set out in Schedule 3 to the Environmental Permitting (England and Wales) Regulations 2007 for **51 different activities**. Those activities not specified in Schedule 3 may only be carried out under a permit.

1.3. The WFD requires the operators of the exempt activities to be registered with the competent authority. In the main, the Environment Agency is the competent authority for exemptions in England and Wales although Local Authorities and Animal Health are the regulators for certain exempt operations.

Waste exemptions from Environmental Permitting

1.4. There are two main types of waste exemptions in England and Wales – simple and notifiable:

- Simple exemptions are used in the majority of cases and require the operator to provide the Environment Agency with their name, address, the activity that is being carried out and where it is taking place. The activities covered by these types of exemption range from very low risk operations such as bottle banks, to low risk shredding of plant waste and the composting of limited amounts of biodegradable waste.
- Notifiable exemptions require more information to be submitted on registration – e.g. The activity of spreading waste to land is currently regulated through a notifiable exemption and includes the requirement to provide a risk assessment and to demonstrate benefit to agriculture or ecological improvement[4]. Notifiable exemptions also attract an annual registration and re-registration fee and have more detailed rules than simple exemptions.

1.5. In addition to these waste exemptions from Environmental Permitting, there are two other categories of activities that are non-permitted. These are (a) non-WFD exemptions, and (b) 'low risk positions'. Each is explained in turn below.

Non-Waste Framework Directive exemptions

1.6. There is an additional set of exemptions in UK legislation that account for the temporary storage of waste. Storage at the place of production is not a recovery or disposal operation within the meaning of the WFD and consequently is not subject to the WFD requirement for a permit. However, UK domestic legislation provides for an offence for the 'deposit' of waste other than in accordance with an environmental permit. This provision could give rise to the temporary storage of waste at the place of production constituting an offence. In order to avoid that situation, the UK legislation provides an exemption for the storage of waste at the place of production. These exemptions are termed non-Waste Framework Directive exemptions, for which there are minimal compliance obligations and negligible costs in line

[4] Under Option 3, this is the type of activity that might be better regulated under a permit.

with the very low environmental and health risk of these actions.

New activities temporarily outside the permitting system and treated as low risk positions

1.7. Finally, a number of new waste activities have been developed since 1994[5]. Though they are not captured within the 51 activities covered by the general rules for exemption, they are equally low risk. Currently, the Environment Agency has adopted an interim measure (pending the outcome of this consultation) of not pressing for an environmental permit in these situations - it considers to do so would be disproportionate and not in the public interest. These situations are known as "low risk positions".

1.8. Under the 'do-nothing' base case, these low risk positions would need to be brought within the existing legislation as it stands. Hence, these low risk activities would require a permit. It is likely that, when faced with the costs and inconvenience of requiring a permit, many of these low risk positions (for which the waste activity is non-core to the business) would cease their activity (see Section 4 below).

1.9. More information on the legislative background can be found in Annex B.

2. Why is government intervention necessary?

2.1. Given this legal framework, which places an obligation on the Government to intervene, the Government wishes to set in place a cost-effective system of permits and exemptions that adequately protects the environment and human health, minimising the impact on businesses, and thereby maximising the net benefit to society.

2.2. The current system is sub-optimal and has not kept up with the changes that have taken place in waste management over the years since it was put in place. Some of the exempt waste operations are subject to levels of assessment comparable to higher risk permitted operations. The system is in need of review to ensure it is fully compliant with the WFD, resolves existing anomalies, and helps ensure that the level of regulation is appropriate and effective at protecting the environment and human health.

3. What are the policy objectives and intended effects?

3.1. The policy objective is to continue to protect the environment and human health from the potential hazards of waste recovery and disposal, but to do so in a more cost-effective way. This is to be achieved by applying a level of regulation which is proportionate to the level of environmental risk posed by each activity.

3.2. It is expected that in most instances, this will involve lower regulation and lower costs. However, for exempt activities, there will be an increased requirement to re-register every 3 years although the cost per activity is low (around £13 per site).

3.3. The England Waste Strategy promotes a move away from disposal to the reuse or recovery of waste where it cannot be reduced in the first place. The Government wants to encourage recovery and treatment prior to reuse by keeping the level of regulation and administrative burdens to a minimum.

4. Adjusting the 'do nothing' option for low risk positions

4.1. This is an important first step in the appraisal from which the majority of teh benefits derives. As set out above, new activities that do not match the prescribed set of exemptions would require a permit. The Environment Agency has temporarily taken a number of low risk positions on these new activities where it would not normally prosecute for an environmental permit not being in place. It does not consider it in the public interest to do otherwise. The affected activities are often small and non-core to the main line of business (see Annex C for a list of the types of activities). By their very nature, the precise number of low-risk positions

[5] The last time exemptions were reviewed and amended.

is difficult to ascertain. Work commissioned from RPS Ltd.[6] identified that between 61,579 to 231,189 activities are currently within this category.

4.2. Under the 'do-nothing' option, these activities can no longer be treated as they currently are. Instead, they would have to come within the existing regulatory framework and be regulated by the use of permits. However, because of their small commercial value, faced with the cost and disruption of applying and maintaining a permit, many of these activities would most likely cease to operate.

4.3. Reviewing these activities, the EA has identified between 16,811 and 23,465 activities that it expects would apply for a permit when required to do so under the current legislation (see Annex C). For the remainder (44,768 to 207,724 activities), the waste material would be treated using the next best alternative method. The baseline, 'do-nothing' option has been adjusted accordingly from the current position (see Table 1 below).

5. What policy options have been considered?

5.1. A number of options for taking the changes forward were set out in the exemptions review discussion document[7]. We have updated the options to reflect improvements and revisions to the underlying data set on costs and the 'populations' of activities within each element of the current regulatory framework (e.g. exemptions, permits or low risk activities).

5.2. The options are:

- Option 1: Do nothing – there would continue to be a two-tiered system of exemptions (simple and notifiable) alongside environmental permits. The baseline has been adjusted to reflect the uplift for those 16,811 to 23,465 activities that are currently managed as low-risk activities but ought to be permitted.

- Option 2: Maintain the current system (and the list of 51 activities that can be treated as exempt), continue with a two-tiered system of exemptions (simple and notifiable) but re-appraise the *degree of exemption* required for existing activities and incorporate new activities within the current regulations.

- Option 3 - **the recommended option**: Amend and simplify the current regulatory system using a formal risk-based methodology; create a single category of simple exemptions, remove notifiable exemptions completely and make more effective use of permits. This will fully address anomalies of misclassification within categories. Permits will continue to apply to higher risk operations where the costs and additional regulatory burdens are justified by the associated benefits of reduced risks to the environment and human health[8].

- Option 4: Remove exemptions entirely and rely purely on the existing permitting system.

5.3. Table 1 below sets out the regulatory treatment of the affected waste management activities for each of the options.

Table 1: Number of waste management activities and how they are regulated under the different options

Starting position and description of change in regulatory requirements	Outcome/ new form of	Current	Option 1*	Option 2	Option 3	Option 4

[6] 'Research into Low Risk Positions', October 2007
[7] www.defra.gov.uk/environment/waste/management/exemptions/index.htm
[8] With permits covering a broader range of activities and thereby a broader range of compliance needs, the EA plans variable charges that are cost reflective.

	regulation					
Current low risk positions**		231,219				
Low risk positions that would cease their waste management activity if a permit were enforced	Cease activity		207,724			207,724
Those low risk positions that would cease activity under the base case (Option 1), but would obtain a simple exemption under Options 2 and 3	Obtain simple exemption			207,724	207,724	
Low risk positions that would continue their waste management activity if a permit were enforced **	Obtain permit		23,495			23,495
'Would be' permit holders under Option 1 that only require a simple exemption under Options 2 and 3	Obtain simple exemption			23,495	23,495	
Simple exemptions		140,205	140,205	125,773	125,773	
Simple exemptions require a permit under Option 4	Obtain permit					140,205
Higher risk, simple-exemption activities would require a notifiable exemption under Option 2	Obtain notifiable exemption			2,088		
Higher risk, simple-exemption activities would require a permit under Option 3	Obtain permit				2,088	
Simple exemptions that can be treated as non-WFD activities under Options 2 and 3	Treated as non-WFD activities			12,344	12,344	
Notifiable exemptions		4,153	4,153	2,893		
Notifiable exemptions require a permit under Option 4	Obtain permit					4,153
Low risk, notifiable exemptions can be treated as simple exemptions under Options 2 and 3	Obtain simple exemption			1,260	1,260	
High risk, notifiable exemptions would require a permit under Option 3	Obtain permit				1,476	
Some notifiable exemptions can be treated as mobile plant under Option 3	Treated as mobile plant				1,417	
Permits		8,060	8,060	8,056	8,056	8,060
Some low risk permit activities would obtain simple exemptions under Options 2 and 3	Obtain simple exemption			4	4	
Total		**383,637**	**383,637**	**383,637**	**383,637**	**383,637**

*Adjusted baseline incorporates low risk positions within the regulatory framework.
** Including 30 activities associated with dredging lagoons.

Outcome - end totals	**Current**	**Option 1**	**Option 2**	**Option 3**	**Option 4**
Low risk positions	231,219				
Activities that would cease if a permit were enforced		207,724	-		207,724
Mobile Plant				1,417	
Simple exemptions	140,205	140,205	358,256	358,256	140,205
Simple: non-WFD			12,344	12,344	
Notifiable exemptions			4,981	-	-

	4,153	4,153			
Permits	8,060	31,555	8,056	11,620	35,708
Total	**383,637**	**383,637**	**383,637**	**383,637**	**383,637**

5.4. Diagrams 1 and 2 indicate the current level of risk posed by the activity against the level of regulatory control for the options proposed. Horizontal lines represent a fixed level of regulation and diagonal lines indicate where the level of regulation can be varied within the regulatory tool.

Diagram 1: Current risk/control relationship for Options 1 and 2

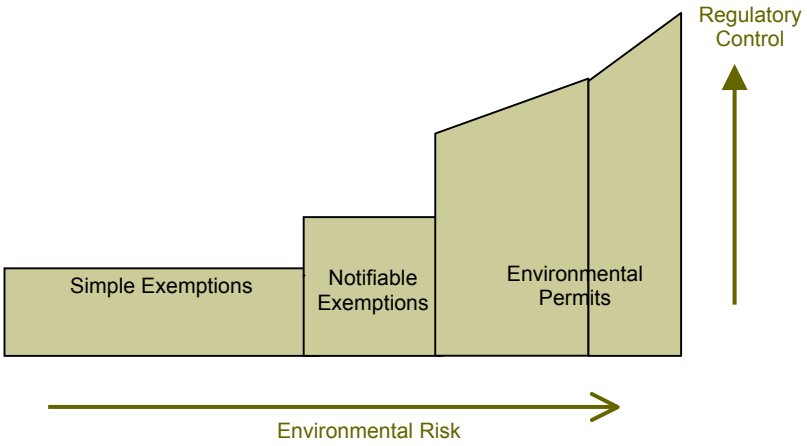
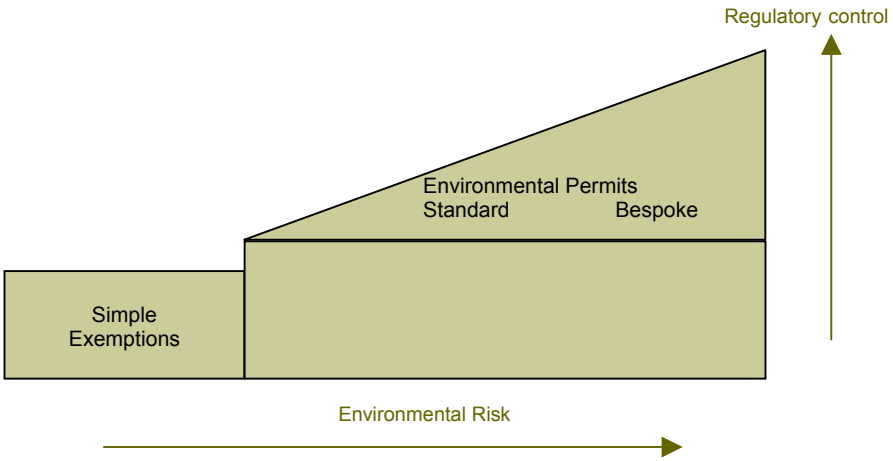


Diagram 2: Risk/control relationship for Option 3



6. Overview of risks

6.1. The main drivers behind this review are the need to provide simplified regulation that is proportionate to risk, and the need to encourage genuine low risk recycling and recovery operations whilst making abuse more difficult.

6.2. In formulating our proposals we have used a number of principles and other criteria (which were agreed during the consultation) to determine the risk posed by an activity and thus the threshold below which it should be regulated under a simple exemption and above which it should be regulated via an environmental permit.

6.3. Under a permit, an activity would need to demonstrate the higher requirements of technical competence and at least an annual inspection. Higher risk activities, as assessed by the EA's risk screening tool (OPRA) would be subject to more frequent inspections.

6.4. Following analysis of the consultation responses, Government decided to pursue proposals to increase the use of exemptions for as wide a range of low risk operations as possible, whilst removing the current two-tier system of notifiable and simple exemptions by restricting the extent of exemptions for higher risk operations (Option 3).

6.5. This would result in regulation of higher risk activities through one or more standard permits that can better take account of variation in the risk posed for a given size and scale of activity and thus would be in line with the objective of proportionate risk-based regulation. The underlying risk for each permitted activity will be reflected in the degree of regulatory inspection – less inspection and lower costs for lower risk activities (i.e. formerly simple and notifiable exempt activities that would in future require a permit).

6.6. The Table below shows how the existing regulatory risk-based assessment will change under the preferred Option 3. In 95% of cases the risk treatment remains unchanged from the current position. For 13,608 activities, the risk-based oversight will be reduced, whereas for 3,564 activities, the degree of oversight will increase to reflect the greater underlying risk of these activities.

Table 2: Relative degree of risk

Category	**Population**	**Current treatment**	**Treatment under Option 3**
(1) Low risk positions	231,219	Low risk	Low risk
(2) Simple exemptions	125,773	Low risk	Low risk
	2,088	Regulated as low risk, but in fact high risk	High risk
	12,344	Low risk	Very low risk
(3) Notifiable exemptions	1,260	Low/medium risk, but in fact low risk	Low risk
	1417	Part of the 1476 activities below (multiple registrations can be conducted under a single mobile plant permit)	
	1476	Medium risk treatment, but high risk	High risk
(4) Permits	8056	High risk	High risk
	4	High risk but should be low risk	Low risk
Total	**383,637**		

Change in risk treatment	**Population**	**Change in treatment expressed as a % of total**
(a) % of current activities whose risk treatment remains unchanged	365,048	95.2%
(b) % of current activities whose risk treatment increases	3,564	0.9%

(c) % of current activities whose risk treatment reduces	13,608	3.5%
(d) Mobile plant that only requires single, rather than multiple, registration - a pragmatic 'regulatory efficiency' measure	1,417	0.4%
Total	**383,637**	**100%**

6.7. The Government is committed to introducing a system to regularly review and amend the exempt waste operations in the future. A proposed way forward is outlined in Chapter 14 of the Draft Environmental Permitting Guidance – Exempt Waste Operations which was published as part of the wider consultation on guidance to accompany the amendments made by the exemptions review (http://www.defra.gov.uk/corporate/consult/waste-exemption-review-guidance/index.htm).

6.8. The system will provide the opportunity for the existing exempt waste operations to be assessed on how well they are working and for relevant changes to be made and also for new exempt waste operations to be provided where suitable. By basing the review on the environmental principles and criteria that have been developed during consultation consistent levels of risk assessment should continue.

7. Overview of costs

7.1. The Environment Agency has drawn on work by PriceWaterhouseCooper in late 2005, work it commissioned from RPS Ltd. and its own information to determine the administrative and regulatory burdens associated with operating under a permits and exemptions system. This work makes use of the standard cost model to calculate the administrative burden (in complying with the legislation and meeting information requirements) for each of the options.

7.2. A list of the types of administration and direct costs that would be incurred for a simple exemption, notifiable exemption or permit is set out in Table 3 below. More detail on the breakdown of these costs, split between the initial transitional period and ongoing annual costs, is provided in Annex D.

Table 3: Categories of costs incurred

	Simple Exemption	**Notifiable Exemption**	**Permit**
Direct costs- what's included	Costs of engaging consultants to advise on/assist with registration EA regulatory costs – registration	Costs of engaging consultants to advise on/assist with registration EA regulatory costs – registration and renewal	Costs of engaging consultants to advise on/assist with permit application EA regulatory costs – permit application and subsistence charges Direct cost of demonstrating technical competence (initially and ongoing)

Admin burden - what's included	Internal staff time on registration and maintaining exemption Internal staff time in complying with inspections	Internal staff time on registration Internal staff time in complying with inspections	Internal staff time on obtaining and maintaining a permit Internal staff time in complying with inspections Internal staff time associated with demonstrating technical competence

7.3. Using these costs and the 'populations' for the activities set out in Table1, the total administration and direct costs for each of the options has been calculated. The Summary table below sets out the changes in costs and cost savings for each of the Options 2-4 compared with the baseline (Option 1).

7.4. Schedule 9 of the Environmental Permitting (England and Wales) Regulations 2007 No. 3538 states that 'the regulator must not grant an environmental permit in relation to a relevant waste operation if use of the site for carrying on that operation requires a planning permission and no such permission is in force'. Operators moving into the permitting regime might incur additional direct and administration costs due to the need to comply with Schedule 9.

7.5. However, as any costs incurred in either obtaining the necessary planning permission or a certificate of lawful use is only regularising a position whereby an operator was previously operating outside of the planning controls under the Town and Country Planning Act 1990 these have not been included within this assessment.

Table 4: Present value change in costs/cost savings relative to base case

Discounted over 10 years

£m	Incremental costs	Incremental cost savings, i.e. benefits	Net total
Transitional			
Option 2	92	(202)	**(110)**
Option 3	105	(227)	**(122)**
Option 4	892	(191)	**701**
Ongoing			
Option 2	91	(244)	**(153)**
Option 3	111	(295)	**(184)**
Option 4	1,617	(714)	**903**
Total			
Option 2	183	(446)	**(263)**
Option 3	216	(522)	**(306)**
Option 4	2,509	(905)	**1,604**

Table 5: Net Present Values for central case and sensitivities

Discounted over 10 years

£m	Central case	Sensitivities	
	High end of range for low risk positions	Higher consultancy costs for simple exemptions	Assuming bottom of range for low risk positions
Option 2	263	176	162
Option 3	306	219	205
Option 4	1,604	N/A	1,539

8. Overview of benefits – measuring the gains from more cost-effective risk management

Cost savings from reducing the regulatory burden where it is currently too high

8.1. The benefits from the proposed changes to simplify the regulatory framework are mostly 'cost-effectiveness' gains. For example:

- A large number of new (and existing) activities currently require a permit purely because of the outdated, existing legislation, but ought to be exempt (based on the evidence of low environmental and health risks). Under Options 2 and 3, these low risk activities would be exempt – the cost burden for an exemption is lower than that for a permit. Being low risk, there is unlikely to be any offsetting effect on the risk of damage to the environment or human health as a result of the less burdensome regulatory oversight.
- Similarly, reductions in regulatory costs are obtained by regulating 'low-risk' notifiable exemption activities as simple exemptions; and reducing compliance costs for activities that can be treated as non-WFD exemptions but currently incur the costs of a simple exemption. Once more, the risk of increased environmental or health disbenefits associated with these changes are negligible.

Reducing costs to the regulator of ensuring compliance

8.2. When considering the options, we developed principles and criteria to determine the appropriate level of regulation for the activities being assessed – these were discussed in our consultation document.

8.3. Case studies have identified some evidence that some exemptions are not currently providing an appropriate level of regulation to protect the environment and human health in all cases. A summary of the issues that arise in these case studies is:

- Inadequate controls over soil being imported into sites – resulting in soil contaminated with asbestos, oil and metal
- Oil leaking into the ground as a result of insufficient infrastructure and controls
- Permanent changes to the landscape as a result of large scale landscaping (several metres high in some cases and involving millions of tonnes of inert waste, akin to a reasonable sized inert landfill site)
- Mud on the road with the potential for road accidents[9]
- Bio-aerosols from composting near to sensitive receptors
- Poor quality materials being produced from the waste which are inappropriate for the use they are intended. These products themselves may result in pollution of the environment.

8.4. It has not been possible to directly quantify the cost these effects have on the environment and human health and therefore the benefits that changing the system will have

[9] http://www.hse.gov.uk/press/2004/e04067.htm

on the environment (although the benefits will be equivalent between Options 2 and 3 and not affect their relative ranking).

8.5. However, it has been possible to measure the additional enforcement costs of addressing those incidences of abuse of the exemption system whereby operators holding exemptions have been reported to the EA (or identified by the EA) for failing to manage their waste appropriately, e.g. at a scrap metal site, an operator was found to be operating outside the requirements of this exemption resulting in oily components from non-depolluted vehicles leaking into the ground.

8.6. The Environment Agency has taken a "snapshot" survey of the problem exempt sites that it is currently experiences. These results show the level of resource that the Environment Agency is currently putting into these problem exempt facilities. The total costs being £948,191 **(**an average cost per site of £12,314) - see Table 6 below.

8.7. In calculating the additional costs a distinction has to be made between simple exemptions and notifiable exemptions (to allow for the costs to be taken account of in the various sub-options in Option 3 and 4). For the 29 sites covered by simple exemptions (paragraphs 12 and 13), the additional cost to the EA is £357,111 per annum (i.e. 29 sites multiplied by c.£12,314). For the notifiable exemptions, the EA faces additional costs of £591,080 (i.e. 48 sites multiplied by c.£12,314).

Table 6: Snapshot of 'problem' exempt sites

Exemption ref	**Sites investigated**	**Activity required (at £90/hour per FTE*)**	**Cost of ensuring compliance**
Para 19	18	Average of 16.2 FTE days work on each site at an average cost of £10,789	**£194,202**
Para 12	8	Average of 15.5 days work on each site at an average cost of £10,323	**£82,584**
Para 13	21	Average of 25 days work on each site at an average cost of £16,650	**£349,650**
Para 9	15	Average of 23.3 days work on each site at an average cost of £15,517	**£232,755**
Para 7	8	Two detailed case studies - Aldwark and Simpro - £11,125 per case	**£89,000**
Para 6	4	No returns of incidents	
Para 45	3	No returns of incidents	
Total	**77**		**£948,191**
Ave cost per site			***£12,314***

* Full-Time Equivalent employee working day

8.8. Under Options 3 and 4, these operations would be regulated under a permit and require greater compliance requirements and inspections. This greater, risk-related regulation should counter the difficulties posed by these sites.

9. Analysis of options

9.1. **Option 1:** do nothing legislatively and leave the system as it is with two-tiered exemptions (notifiable and simple). This would result in a change for some stakeholders as any organisation currently undertaking an activity covered by an EA low risk position would have to obtain an Environment Permit to continue that activity.

9.2. As explained earlier, there is relatively little information on how many sites/organisations benefit from low risk positions, but the Environment Agency engaged RPS Ltd to estimate these site numbers, which range from 61,579 to 231,189. This IA uses the figure at the top end of this range to be consistent with the IA at the consultation stage. However, we have also carried out a sensitivity (see below) which looks at the impact on the NPV of using the figure at the bottom of the range.

9.3. For the purposes of modelling this counterfactual position, we assume that those organisations that would have to apply and obtain an Environmental Permit would already have done so and, therefore, would bear the costs of maintaining those permits. Other organisations would not choose to bear the costs of applying, obtaining and maintaining permits such that the waste would be handled using the next best alternative.

9.4. Based on these assumptions, the EA has estimated that between 16,811 and 23,465 organisations would most likely seek a permit (see Annex C for the estimation of the 23,465 figure).

9.5. It is assumed that those operators who would not choose to hold a permit would bear costs associated with the alternative management of their waste. We have taken a conservative approach to valuing these costs since we do not have data on the tonnages involved. Given that operators have requested that the Environment Agency provide exemptions for their activities, we have assumed that the costs they would bear from charges levied by waste management companies would be at least as much as the administrative burden that they would face in registering for an exemption. This is around £6.1m on an annual equivalent basis and means that the administrative cost of registering for a simple exemption in Options 2 and 3 is exactly offset by the cost savings made on payments to waste management companies in the baseline, Option 1.

9.6. Finally, the cost of regulating simple exemptions and all exemptions for agricultural waste is not currently recovered through registration charges but through grant-in-aid (GiA) provided by the Government (Option 1 – baseline). The current GiA is taken into account in the baseline calculations (Option 1). Where there is a charging scheme in place, s41 of the Environment Act 1995 requires the charges reflect the cost to the regulator of regulating the site.

9.7. The additional costs associated with Option 1 are summarised in Table 7.

Table 7: Option 1 - Incremental baseline costs

	Populations (i.e. activities) affected	**Obtaining a permit (£m)**		**Alternative waste disposal (£m)**
		Transitonal (3 years)	**Annual cost following transition period**	**Annual**
Admin. costs	23,465	£37.3	£0.3	
Direct costs:				
- technical competence	23,465	£8.0	£1.3	
- inspection	23,465	£0.3	£0.1	
- charges	23,465	£136.3	£32.9	
Estimated additional cost of waste disposal for those not seeking a permit (per	207,724			£6.1

annum)				
Total		**£181.9**	**£34.6**	**£6.1**
Present value (transition period)		**£175.8**		
Present value (years 4-10)			**£197.6**	
Present value (years 1-10)				**£52.5**

9.8. This base case includes a set of activities that are low risk but would now require a permit. This is an incremental regulatory cost (£181.9k for the 3 year transitional period, and £34.6k per annum thereafter) for these low risk operations with little or no associated environmental benefit.

9.9. In requiring all low risk operators to hold a permit, many operators will cease their current waste recovery operations, and seek to dispose of their waste using the next best alternative method.

9.10. **Option 2**: keep the current two tier exemption system (simple and notifiable exemptions) but modify it to take account of the level of environmental risk posed by each of the waste management operations. The main changes in this option are:

- an increase in the number of simple exemptions for new activities that would otherwise require a permit (i.e. 23,465 activities),
- 12,344 activities that will be treated as non-WFD,
- a more proportionate level of regulation for some of the activities currently regulated through notifiable exemptions.

9.11. This option results in £263 million lower costs in net present value terms over 10 years against the baseline (Option 1). Table 8 measures (i) the additional costs that each activity must bear under Option 2, and (ii) the avoided costs related to the current form of regulation (the do nothing option). For instance, 1,260 activities shift from notifiable exemptions to simple exemptions, paying costs of £0.3m to obtain a simple exemption, but saving costs of £5.8m associated with a notifiable exemption.

9.12. NB By bringing new activities within the scope of simple exemptions, there are savings in permit costs (£181.9m) and avoided costs of alternative means of disposal – see Option 1.

Table 8: Option 2 - changes in transitional costs (first 3 years)

Change in activity	**Population affected**	**Additional costs (£m)**			**Cost savings (£m)**		
		Admin.	**Direct**	**Total**	**Admin.**	**Direct**	**Total**
New requests for exemptions	207,724	48.8		48.8			
Avoid costs of alternative methods of disposal	207,724				18.3		18.3
Permit holders to simple exemptions	34					0.1	0.1
From simple exemptions to notifiable exemptions	2,088	7.5	3.4	10.9			
From notifiable exemptions to simple exemptions	1,260	0.3		0.3	3.9	1.9	5.8

Simple exemptions remaining exempt	125,773	29.5	0.1	29.6			
Permit holders to simple exemptions	23,495	5.5		5.5	37.3	144.5	181.8
From simple exemptions to non-WFD exemptions	12,344				2.9		2.9
Total		**91.7**	**3.5**	**95.2**	**62.4**	**146.5**	**208.9**
Present Value		**88.6**	**3.3**	**92.0**	**60.3**	**141.6**	**201.9**

Table 9: Option 2 - changes in annual costs

Change in activity	**Population affected**	**Additional costs (£m)**			**Cost savings (£m)**		
		Admin.	**Direct**	**Total**	**Admin.**	**Direct**	**Total**
New requests for exemptions	207,724	0.9		0.9			
Avoid costs of alternative methods of disposal	207,724				6.1		6.1
Permit holders to simple exemptions	34						
From simple exemptions to notifiable exemptions	2,088	2.1	1.1	3.2			
From notifiable exemptions to simple exemptions	1,260	0.1		0.1	1.3	0.6	1.9
Simple exemptions remaining exempt	125,773	9.9		9.9			
Permit holders to simple exemptions	23,495	1.8		1.8	0.3	34.3	34.6
From simple exemptions to non-WFD exemptions	12,344	-	-	-	0.1		0.1
Total		**14.8**	**1.1**	**15.9**	**7.8**	**35.0**	**42.8**
NPV (years 4-10)		**84.8**	**6.4**	**91.2**	**44.6**	**199.8**	**244.4**

9.13. Pros:

- Would go some way to providing risk based regulation.
- Some of the simple exemptions with which there are issues could be treated as notifiable exemptions.

9.14. Cons:

- The notifiable exemptions would remain for higher risk activities which are difficult for both the regulated operator and regulator to understand and work with.
- Experience indicates that the general rules for some exemptions have become overly complicated and give rise to anomalies. Some of the exempt waste operations are subject to levels of assessment comparable to permitted operations and have similar

compliance assessment requirements. Some of these exemptions can also be more complicated than a permit.

- Where anomalies in waste types or general rules/permit conditions are detected, exemptions are slower to change than a permit would be as permit conditions can be changed more quickly than the statutory legislation that supports an exemption.
- Operator performance cannot be taken into account in charges as with permits (OPRA[10],) so the better performing operators are not able to benefit from a reduced fee to take account of their positive compliance.

Option 3: remove the two tier system, moving activities currently regulated through notifiable exemptions to standard permits or simple exemptions.

9.15. This is the preferred option. It would ensure European requirements are fully met and the environment and human health remain sufficiently protected whilst keeping burdens on operators to a minimum.

9.16. The main changes from the baseline in this option are that:

- the increase in the number of simple exemptions for new activities (i.e. 23,465 activities),
- 12,344 activities that will be treated as non-WFD,
- 3,564 higher risk, currently exempt (both simple and notifiable) activities, would move to permitting.
- Lower risk activities covered by notifiable exemptions would move to simple exemptions, or be regulated as non-WFD mobile plant[11].

9.17. This option would increase the use of exemptions for as wide a range as possible of low risk operations whilst removing or restricting the extent of the exemptions for higher risk operations. This would lead to a narrowing of the environmental risk range covered by exemptions and allow a single tier of 'simple exemptions', for which simple, general rules would apply.

9.18. This option would exempt most of those operators relying on an Environment Agency low risk position from the need for a permit, whilst requiring those exempt activities which pose higher risk (in particular notifiable exemptions) to have a permit. A move to permitting does not necessarily mean a move to a greater level of regulation than the current notifiable exemptions - if it is felt that the current level of regulation provided by a notifiable exemption is appropriate, it is likely that this level of regulation will continue if the activity were to move to permitting. Any new standard permits developed under the environmental permitting system would be consulted upon by the Environment Agency.

9.19. The increased level of scrutiny provided by an environmental permit should more adequately provide the level of protection needed whilst being flexible enough for the level of regulation to remain proportionate to the level of risk posed by the activity. The increased

[10] OPRA is a risk screening tool the EA uses in regulating operators under the Environmental Permitting (England and Wales) Regulations 2007. It takes into account operators performance and their compliance with their permit conditions amongst other considerations. An operator with a higher risk has a higher charge to cover the extra resources the EA needs to assess the risk and to ensure they are being properly managed. Conversely, an operator with a lower risk has a lower charge to reflect the lower regulatory effort needed. More information on OPRA can be found at http://www.environment-agency.gov.uk/business/1745440/444671/466170/411964/

[11] There are some cases where activities covered by Part B permitting are determined to be 'trivial' within the meaning of paragraph 6(3) of Part 1 of Schedule 1 to the Environmental Permitting (England and Wales) Regulations 2007 and the regulator will not require a Part B environmental permit to be in place. In these cases the recovery activity would not fall to be regulated under WFD requirements. To overcome that eventuality an exemption has been provided for certain waste operations where a Part B permit is not required, i.e. for crushing and screening mobile plant should be issued around the same time as this consultation.

level of scrutiny may be achieved via a number of ways such as a requirement for the operator of the site to be technically competent or through an increased amount of compliance inspection.

9.20. This option results in a £306 million net cost saving compared against the baseline (Option 1) in present value terms, discounted over 10 years. Within that change there will be operators whose costs reduce when they move from a permit to an exemption as well as those whose costs may increase when they move from an exemption to a permit.

9.21. Pros:

- Would provide a single, simple suite of exemptions.
- Would allow more a more appropriate level of regulation which could more flexibly be applied to higher risk, currently exempt, operations.
- Would provide exemptions for a wide range of low risk activities which should keeps down the amount of waste sent for disposal.
- Would allow full cost recovery for the regulatory effort that is being put into some of the higher risk operations. The application of OPRA through permitting will allow the EA to take account of the operator's performance when setting the permit charge. Under OPRA, good performing operators benefit from a discounted subsistence charge.
- Improved environmental performance for the higher risk activities through improved technical competence.
- Any anomalies can be rectified quicker using permits rather than exemptions.
- Should result in an exemptions system that can be more quickly amended as a result of simpler general rules set out in exemptions (Current five notifiable exemptions took six years to develop).
- Will be a reduction in burden for some operators moving from notifiable exemption to simple exemption.
- The calculation of permit application and subsistence charges is based on the charging proposals for 2010/11. The Environment Agency has stated it intends to discuss with industry the need for a wider range of standard permits. The development of additional standard permits will allow the EA to reduce the number of inspections for low risk (previously exempt) activity and keep costs of regulation down. This will reduce costs by an estimated £3.5 million per annum in subsistence charges.

9.22. Table 10 provides a summary of costs and cost savings associated with Option 3. The format of the tables is similar to that used in explaining the net benefits of Option 2.

Table 10: Option 3 - changes in transitional costs (first 3 years)

Change in activity	Population affected	Additional costs (£m)			Cost savings (£m)		
		Admin.	Direct	Total	Admin.	Direct	Total
New requests for exemptions	207,724	48.8		48.8			
Avoid costs of alternative methods of disposal	207,724				18.3		18.3
Permit holders to simple exemptions	34					0.1	0.1
Permit holders to simple exemptions	23,495	5.5		5.5	37.3	144.5	181.8

From notifiable exemptions to permits	1,476	5.3	8.9	14.2	4.5	2.1	6.6
From notifiable exemptions to simple exemptions	1,260	0.3		0.3	3.9	1.9	5.8
From simple exemptions to permits	2,088	3.3	6.6	9.9			
From simple exemptions to non-WFD exemptions	12,344				2.9		2.9
Reduction in some permit charges to reflect lower costs for lower risk activities	11,620					10.5	10.5
Simple exemptions remaining exempt	125,773	29.6		29.6			
Notifiable exemptions to mobile plant	1,417				4.3	2.3	6.6
Reduced costs of enforcement (see Section 7 above)						2.7	2.7
Total		**92.8**	**15.6**	**108.4**	**71.2**	**164.2**	**235.4**
Present value (years 1-3)		**89.7**	**15.1**	**104.8**	**68.9**	**158.6**	**227.5**

Table 11: Option 3 - changes in annual costs

Change in activity	**Population affected**	**Additional costs (£m)**			**Cost savings (£m)**		
		Admin.	**Direct**	**Total**	**Admin.**	**Direct**	**Total**
New requests for exemptions	207,724	0.9		0.9			
Avoid costs of alternative methods of disposal					6.1		6.1
Permit holders to simple exemptions	34						
Permit holders to simple exemptions	23,495	1.8		1.8	0.3	34.3	34.6
From notifiable exemptions to permits	1,476	1.5	2.1	3.6	1.5	0.7	2.2
From notifiable exemptions to simple exemptions	1,260	0.1		0.1	1.3	0.6	1.9
From simple exemptions to permits	2,088		3.1	3.1			
From simple exemptions to non-WFD exemptions	12,344				0.1		0.1
Reduction in some permit charges to reflect lower costs for lower risk activities	11,620					3.5	3.5

Simple exemptions remaining exempt	125,773	9.9		9.9			
Notifiable exemptions to mobile plant	1,417				1.4	0.8	2.2
Reduced costs of enforcement (see Section 7 above)						0.9	0.9
Total		**14.2**	**5.2**	**19.5**	**10.8**	**40.9**	**51.6**
NPV (years 4-10)		**81.3**	**29.9**	**111.2**	**61.4**	**233.3**	**294.7**

9.23. **Option 4**: Remove registerable exemptions and regulate all waste management operations through permits.

9.24. It is known that very few Member States have provided exemptions from the WFD permitting requirement, relying instead on the grant of permits for the entire range of waste recovery and disposal operations. It may be felt that other Member States' systems of regulation work better, and therefore consideration should be given to decreasing or doing away with the use of exemptions in favour of permits.

9.25. Permits allow more flexibility in the regulatory system but could be considered to be disproportionate to the level of environmental risk posed by many low risk waste management operations. The assessment of the impact made here is based on the currently available environmental permits. Were this option required to be taken forward, it would require a fundamental re-think of environmental permitting to accommodate a much wider range of risk, size and scale of activity than is currently the case.

Looking at the central figures, with direct costs/savings and the administrative burden/savings added together, this option results in a £2.3 billion increase over the baseline (Option 1) discounted over 10 years. Within that change most operators are likely to experience an increase in costs with the move to permits from exemptions. Summary of costs of option 4 are set out in Tables 12 and 13 below.

Pros:

- Would allow a more appropriate level of regulation which could more flexibly be applied to higher risk, currently exempt, operations
- Would allow full cost recovery for the regulatory effort that is being put into some of the higher risk operations

Cons:

- Would add what is considered to be a disproportionate cost of applying for and holding a permit, with little or no environmental gain, to the numerous operators carrying out low risk waste operations.
- In requiring these operators to hold a permit or stop carrying out the activity, the amount of waste these operators send for disposal may increase.
- Disincentive to small scale waste recovery and recycling.

Table 12: Option 4 - changes in transitional costs (first 3 years)

Change in activity	**Population affected**	**Additional costs (£m)**			**Cost savings (£m)**		
		Admin.	**Direct**	**Total**	**Admin.**	**Direct**	**Total**

From simple exemptions to permits	140,205	224.5	463.2	687.7			
From notifiable exemptions to permits	4,153	14.9	29.8	44.7	26.4	3.1	29.5
From permit to simple	23,495	37.6	152.5	190.1			
Reduction in some permit charges to reflect lower costs for lower risk activities	35,708					164.2	164.2
Reduced costs of enforcement (see Section 7 above)						2.7	2.7
Total		**277.0**	**645.5**	**922.5**	**26.4**	**170.2**	**196.5**
NPV		**267.8**	**623.9**	**891.7**	**25.5**	**164.5**	**190.9**

Table 13: Option 4 - changes in ongoing costs

Change in activity	**Population affected**	**Additional costs (£m)**			**Cost savings (£m)**		
		Admin.	**Direct**	**Total**	**Admin.**	**Direct**	**Total**
From simple exemptions to permits	140,205	1.7	230.3	232.0			
From notifiable exemptions to permits	4,153	4.2	11.1	15.3	4.2	1.0	5.3
From permit to simple	23,495	0.3	35.7	36.0			
Reduction in some permit charges to reflect lower costs for lower risk activities	35,708					118.8	118.8
Reduced costs of enforcement (see Section 7 above)						1.0	1.0
Total		**6.2**	**277.1**	**283.3**	**4.2**	**120.8**	**125.0**
NPV (4-10 years)		**35.4**	**1,581.6**	**1,617.0**	**24.2**	**689.5**	**713.7**

Sensitivities

9.26. We carried out 2 sensitivities:

a) a major one reflecting the uncertainty in the number of activities with low risk positions, taking the data at the lower end of the range; and

b) a sensitivity reflecting the impact of potentially under stating the amount spent on consultancy for simple exemptions.

a) Low risk positions

9.27. There is relatively little information on how many sites/organisations benefit from low risk positions, but the Environment Agency engaged RPS Ltd to estimate these site numbers, which range from 61,579 to 231,189. For the reasons explained earlier, under the counterfactual, we anticipate that, under the existing permit regulations, between 16,811 and 23,465 organisations would seek a permit.

9.28. To be consistent with the IA at the consultation stage, the main analysis in this IA is based on the high end of this uncertain range. However, given the uncertainty, this sensitivity looks at the effect on costs, benefits and the NPV of the low risk positions being at the low end of the range.

9.29. The impact is significant in terms of its magnitude but does not affect the ranking of the options, with the impact being proportionate to options 2 and 3.

9.30. The summary of the impact in net present value terms is summarised in Table 14 below which shows that the NPV for the preferred Option 3 would decrease from £306m to £206m. This is because the number of those low risk positions transferred into the counterfactual as requiring a permit is reduced from 23,465 to 16,811. Consequently, when these permit holders switch to simple exemptions in Option 3, the number of activities benefitting by switching from a permit to simple exemption is much reduced.

Table 14: Change in costs/cost savings relative to base case

Discounted over 10 years

£m	Incremental costs	Incremental cost savings (benefits)	Net total
Transitional			
Option 2	53.5	(144.7)	**(91.2)**
Option 3	66.2	170.4	**(104.2)**
Option 4	855.2	(190.0)	**665.2**
Ongoing			
Option 2	84.0	(154.8)	**(70.8)**
Option 3	104.0	(205.4)	**(101.4)**
Option 4	1,587.3	(713.7)	**873.6**

Total			NPV
Option 2	137.5	(299.5)	**(162.0)**
Option 3	170.2	(375.8)	**(205.6)**
Option 4	2,442.5	(903.7)	**(1538.8)**

b) Consultancy costs for simple exemptions

9.31. The RPS Ltd report shows that companies spend on average £402.80 on consultancy services when registering a simple exemption, some of which represent the cost of employing consultants to interpret the legislation. The simplification and clarification as a result of this exemptions review should make the system simpler and clearer to understand. It is unlikely companies will need to employ consultants following the review but some may wish to, perhaps to advise on their waste management options, even if the requirements are simple to understand. We consider that the amount spent will range from nothing up to the full £402.80. In the absence of any other information, 50% of this figure (£201.40) has been used in calculations.

9.32. In the IA for the consultation stage, a sensitivity analysis was carried out at 25% and 75% of £402.80 being spent on consultants under the new system to assess the effect of different amounts of consultancy time being used. This did not have a material effect on the calculations overall and did not affect the ranking of the options.

9.33. As a result of consultation responses, given some concern that consultancy costs may be understated, we have run a sensitivity assuming the current levels of spend on consultants (i.e. £402.80).

9.34. The effect is a significant one in terms of the costs of obtaining a simple exemption, reducing the present value of the net benefits from £306.3m to £219.3m for Option 3, and by a similar order of magnitude for Option 2 (reducing net benefits from £263.1m to £176.1m. See Table 5.

10. Main Affected Groups

10.1. The key groups that will be affected by this measure are those who are required to register an exemption from environmental permitting, those it is proposed move from being regulated through exemptions to permits and those currently operating under low risk positions. Those that will regulate the system will also be affected. In the main the regulator is the Environment Agency but local authorities and Animal Health also have a role in regulation.

10.2. The exemption users are made up of a **v**ery wide range of business sectors, third sector organisations and cover a very wide range of business sizes. The stakeholders have been split into a number of groups, separated by the likely impact of the preferred option, option 3. These are:

- Organisations whose activities are currently regulated through notifiable exemptions who may no longer be exempt and organisations will need environmental permits. This category includes the construction industry, land spreaders and metals recyclers.
- Organisations whose activities are currently regulated through notifiable exemptions who may in future be regulated through simple exemptions. This category includes the construction industry, land spreaders, farmers, metals recyclers and WEEE repair and refurbishment.
- Organisations whose activities are currently regulated through simple exemptions who may in future be regulated through environmental permits. This category includes aggregates producers, composters, farmers and soil manufacturers.
- Organisations who are currently regulated through simple exemptions who are likely to remain regulated through a simple exemption. There are changes proposed though in that their exemption is currently free to register for life but the consultation is proposing should in future attract a charge for registration and be subject to period re-registration. This category includes nearly all business sectors, including farmers.
- Organisations who currently operate under low risk position but are likely to need to register an exemption if future. This covers a wide range of organisations which have not previously been subject to waste regulation. It is likely that this category will also cover nearly all business sectors.
- Organisations not currently regulated at all but may need an environmental permit in future. These are currently benefiting from an Environment Agency low risk position which, as a result of new evidence or assessment, it is proposed should not move to an exemption. This category includes tyre balers and users of those tyre bales, and tomato growers.
- Organisations who currently operate low risk permitted activities may be able to register a simple exemption in future. This category is likely to include community sector recycling operations and toner cartridge recyclers.
- Organisations who currently operate under registerable simple exemptions are likely to move to non-registerable non-WFD exemptions for activities such as in store take back schemes. This is likely to affect a wide range of sectors but be particularly beneficial for pharmacies, community organisations collecting recyclates and small shops taking back waste goods or other recyclates.

11. Specific Impact Tests

a) Competition Assessment

11.1. The changes proposed by the exemptions review are not expected to impact on competition. The changes may help provide a level playing field in some instances - there is evidence that quarry operators in particular are unable to source enough inert material to restore quarries due to the current legislative system. The current level of regulation of inert waste deposits ranges from the highly regulated disposal of characterised waste in engineered landfills to the spreading of waste on land with a lower level of active regulatory control. The disposal of inert waste in a permitted landfill costs significantly more (including, in some cases, landfill tax) than the spreading of waste on land under an exemption. The cumulative impact of differences in the level of regulation, waste characterisation and associated costs could lead to undesirable environmental and business outcomes. More information can be found on this in the Review of Inert Waste Regulation[12]

b) Small Firms Impact Test

11.2. The regulations do apply to and affect small businesses and it is estimated that a large proportion of exemption users are small businesses. The Enterprise Strategy includes a commitment to examine whether small businesses (i.e. those with less than 20 FTEs) can be exempted from new regulatory requirements or be subject to simplification of enforcement. However, where activities fall within the WFD's definition of waste recovery or disposal there is no scope for the activities to be excluded from regulation entirely. Establishments and undertakings are required to hold a permit or a registered exemption from the need for a permit. Exemptions from the need for a permit are the lightest touch form of regulation allowed under the WFD and Government aims to make wide use of them where the level of regulation they provide is appropriate to the level of environmental risk posed by the activity. Many small businesses already and will continue to benefit from these exemptions. In addition, the aim of simplifying the legislation and the supporting guidance should aid small businesses in complying with the legislation.

11.3. The Environment Agency is planning to develop sector specific guidance for the exemptions to help small businesses understand their specific requirements. Sector specific guidance for farmers has already been developed. Farmers make up around half of exemption users and the vast majority are micro or small businesses. Defra's Farm Business survey indicates the running of 96% of English farms involves less than 5 FTEs[13]. The remaining 4% involve 5 or more FTEs and it is likely that only a handful of these involve more than 50 employees. Business sizes in Wales are very similar although with even fewer, if any medium sized businesses. The guidance for farmers was produced in consultation with the agricultural sector and has been very well accepted. The Environment Agency also has an integrated inspection system for farmers covering all of the environmental aspects they are regulator for.

11.4. Early discussion has taken place on the proposals with a number of trade organisations, many of which have SMEs amongst their members. The effects of the proposals on all sizes of organisation have been discussed at these groups. During the informal consultation in 2007, workshops were held that were specifically targeted as SME exemption holders who were not likely to be a member of a trade organisation. These workshops allowed early thoughts on the proposals to be discussed with SMEs and were well accepted and attended. A number of workshops are also planned for this consultation, some of which will specifically focus on SMEs, in order to give these smaller organisations an opportunity to provide comment on the proposals and how they will affect their businesses.

11.5. It is assumed that the majority of exemption users are small businesses. It could therefore be assumed that the businesses surveyed to provide information on the administrative burden posed by exemptions will, in the main, have been small businesses. As a result, the figures used in this impact assessment are likely to represent the burdens placed on small

[12] www.defra.gov.uk/environment/waste/topics/index.htm#inertwaste
[13] Reference Defra's Farm Business Survey – England http://statistics.defra.gov.uk/esg/asd/fbs/sub/farm_size.htm

businesses. The burden on the different sized businesses has not been represented in the summary sheets as a result of the number of different sub options. The costs of each sub-option to each operator can be found in the more detailed tables in each option.

c) Sustainable Development

11.6. The revised exemptions aim to promote sustainable development by addressing the five key components – the economy, the environment, society, good governance and based on sound science.

11.7. Living within environmental means – The review aims to ensure that waste management activities are regulated at an appropriate level to the level of risk posed by the activity. By putting in place a number of new exemptions for low risk recovery activities, the amount of waste going for disposal should reduce.

11.8. Ensuring a strong, healthy and just society – A balance needs to be struck between the safeguards needed to protect the environment and human health, whilst having penalties in place for those who act outside the law. The regulator also needs to resourced to be able to ensure those safeguards are met.

11.9. Achieving a sustainable economy – The revised exemptions promote low risk waste recovery in all sectors as part of good commercial/industrial practice. Low risk waste recovery is promoted within existing commercial markets.

11.10. Promoting good governance – The regimen behind the risk based approach to assessing the waste management activities should ensure a consistent approach is taken in future. Government is also committing to review the legislation on a regular basis.

11.11. Using sound science responsibly – The proposals are based on an independent environmental risk assessment commissioned to inform the decision making for the review. This also underwent a good level of scrutiny by the regulator's technical experts.

d) Other Economic Issues

11.12. The regulation of simple exemptions which do not currently attract a direct charge are funded through grant in aid transferred from Defra and WAG to the Environment Agency.

e) Environmental Assessment

11.13. The main body of the impact assessment considers the impact of the changes on the environment and in particular the financial costs and environmental and health impacts of waste management. The other environmental considerations have all formed part of the environmental risk assessment involved in developing the policy changes.

f) Health Assessment

11.14. Consideration of the effect of the activities being regulated on human health has been considered as part of the risk assessment involved in developing the policy changes. This considered the impact on the health of both the operators of the activity and those living close to where activities are carried out. It is unlikely there will be a significant impact on any of the lifestyle relates variables or significant demand on health and social care services.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	Yes	No
Carbon Assessment	No	Yes
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Annex A

Specific Impact Tests

Legal Aid

The exemptions review does not change or introduce any new criminal sanctions or civic penalties. The proposals should therefore not have an impact on legal aid in England and Wales.

Carbon Assessment

It is expected the changes will have a negligible effect on the emission of greenhouse gases.

Equality Assessment

It is not expected that the proposals will have an impact, negative or positive, on any of the equality target groups.

Human Rights

It is not expected that the policy will create any human rights issues.

Rural Proofing

The policy is unlikely to have a different impact in rural areas.

Background on the Provision of Exemptions

1.1. The Waste Framework Directive (WFD) aims to protect the environment from the recovery and disposal of waste.

1.2. Article 4 of the WFD sets out its objectives:

"to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:
- without risk to water, air or soil, or to plants or animals,
- without causing a nuisance through noise or odours,
- without adversely affecting the countryside or places of special interest."

1.3. The WFD aims to achieve these objectives by requiring establishments and undertakings[14] carrying out the disposal or recovery of waste to be permitted (Articles 9 and 10).

1.4. However, Article 11 does allow for exemptions to this general permitting rule to be adopted by Member States. However, those exemptions can only relate to:

(a) the disposal of non-hazardous waste at the place of its production; or,
(b) the recovery of waste.

1.5. In addition, operations may only be exempted if:

- the competent authority adopts general rules for each exemption laying down the types and quantities of waste and the conditions under which that activity may be exempted from the need to have a permit; and
- the types and quantities of waste and the methods of disposal and recovery are such that the exempted activity does not breach Article 4 of the WFD.

1.6. In large part the UK has chosen to transpose the permitting requirements of the WFD through the Environmental Permitting (England and Wales) Regulations 2007[15]. The 2007 Regulations require anyone operating a regulated facility to do so under an environmental permit. Waste operations are included within the definition of a regulated facility. This gives effect to the permit requirements of the WFD (Articles 9 and 10).

1.7. The 2007 Regulations exclude exempt waste operations from the definition of a regulated facility where they are specified in Schedule 3 to the Regulations. The majority of these exemptions are designed to be Article 11 exemptions and as such they can only be carried out in accordance with the requirements of that Article.

1.8. The WFD also requires that establishments or undertakings that are carrying out activities that are exempt from permitting by virtue of Article 11 are registered (Article 11(3)). This requirement is directly transposed for exemptions though regulation 3(1)(a) of the 2007 Regulations.

1.9. Schedule 3 to the 2007 Regulations also contains exemptions that are not Article 11 exemptions, namely paragraphs 49, 50, 51 and 52. These are operations to which section 33(1)(a) of the Environmental Protection Act 1990 does not apply and are known

[14] An establishment or undertaking includes any organisation, whether a company, partnership, authority, society, trust club charity or other organisation but not private individuals. (see para 1.42 DoE Circular 11/94 (Welsh Circular 26/94) of 19 April 1994.
[15] SI 2007/3538

as “domestic exemptions.” This is because storage at the place of production or temporary storage which is incidental to its collection or transport does not constitute recovery or disposal within the meaning of the WFD and is not subject to the permitting controls and therefore an exemption isn’t needed under the WFD. Consequently these exempt waste operations do not have to be registered under the terms of the WFD either.

1.10. However, current UK law (section 33 of the 1990 Act) also requires a permit or exemption for any ‘deposit’ of waste. Deposit could include the deposit at the place of production or the temporary storage of waste incidental to its collection and therefore exemptions have been provided in these cases. Environmental Permitting only requires a permit for the recovery or disposal of waste as defined in the WFD. However, section 33 of the 1990 Act offence for the unlawful deposit of waste is being retained to combat fly-tipping and therefore it is also necessary to continue to provide ‘domestic’ exemptions in order to prevent these operations constituting an unlawful deposit of waste.

1.11. Other storage (i.e. other than at the place of production or the temporary storage incidental to its collection and transport) does constitute recovery or disposal and requires a permit unless an Article 11 exemption is provided. It should also be noted that the Landfill Directive (1999/31/EC) limits the period that waste may be stored for no more than one year prior to disposal and three years prior to recovery, before the activity is considered a landfill and the provisions apply.

1.12. In addition to the controls set out in the WFD, Article 3 of the Hazardous Waste Directive (HWD) (91/689/EEC as amended) states that Member States may provide for exemptions involving hazardous waste so long as Member States adopt general rules listing the type and quantity of waste and lay down specific conditions for:

- the limit values for the content of hazardous substances in the waste,
- emission limit values and the type of activity allowed, and
- any other necessary requirements for the different forms of recovery.

1.13. In addition the HWD (Article 3) requires that any exemption involving hazardous waste must be agreed with the EU Commission and other Member States before it is adopted.

1.14. The End of Life Vehicle (ELV) Directive (2000/53/EC) also places restrictions on the operations that can be exempt. Article 6(2) of the ELV Directive limits exemptions to recovery operations only after the vehicles have been depolluted.

1.15. The Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC) adds to the inspection requirement of the WFD by requiring an inspection to be carried out by the competent authority before registration of an exemption. This is to ensure compliance with the Article 4 objectives and specifically to verify the type and quantities of waste to be treated; the general technical requirements to be complied with; and the safety precautions to be taken. The inspection is required to be repeated annually.

1.16. The WEEE Directive also requires establishments and undertakings carrying out treatment operations to use best available treatment, recovery and recycling techniques and to store and treat WEEE in compliance with the technical requirements set out in Annex III of the Directive.

1.17. The WEEE Directive also requires establishments and undertakings carrying out treatment operations to store and treat WEEE in compliance with the treatment requirements set out in Article 3 of the Directive.

Annex C

Summary of low risk positions and those likely to apply for a permit under current regulatory environment

Low risk position	Estimate	Behavioural Change?	Revised estimate
LRW2 The treatment by laboratory Autoclave of containment level 1-3 microbiological laboratory waste on the premises it is produced.	10,000	No This is central to the operation of a laboratory.	10,000
LRW3 The secure storage of up to 5000 litres of waste cooking oil (purified fat of plant or animal origin) destined for recovery. The secure storage of waste derived biodiesel (a fuel derived from the treatment of waste cooking oil or animal fat). The recovery of waste derived biodiesel as a fuel in motor vehicles. The treatment of up to 250 litres at anytime of waste cooking oil to produce biodiesel.	145000	Yes. Imposition of a permit would effectively stop this activity	0
LRW7 The secure storage and manual sorting of waste toner (printer and ink) cartridges destined for recovery.	2930	No. Return of cartridges is central to the service provided by this sector	2930
LRW8 The secure storage and manual sorting of waste footwear destined for recovery.	15,000	Yes. This activity would cease if a permit was imposed	0
LRW011 The storage of waste bricks to be subjected to manual cleaning destined for reuse. The manual cleaning of waste bricks destined for reuse.	80	Yes This activity would cease if a permit were imposed	0
LRW12 LRW13 Secure storage of sewage effluent from portable conveniences by their supplier.	400	Yes This is a difficult assessment to make because it would be possible to operate such a	200

		business without operating a site. However, such a site could offer significant benefits to an operator that could outweigh the cost of an environmental permit. As such, a brad estimate of a 50% behavioural change has been taken	
LRW028 The secure storage, manual sorting, dismantling and/or repair of waste wooden pallets destined for recovery.	600	Yes This operation This activity would cease if a permit were imposed	0
LRW037 Secure storage of waste samples that have been subjected to testing or analysis.	500	No This activity is central to the operation of a laboratory	500
LRW059 The storage and sale of uncontaminated wood-chip waste/bark and soil at garden centres. Use of uncontaminated woodchip waste/bark and soil in domestic gardens and public open spaces.	2180	Yes This activity would cease if a permit were imposed	0
LRW079 The storage, repair, and manual sorting and segregation into their constituent parts, of waste furniture.	7,739	Yes This activity would cease if a permit were imposed	0
LRW144 The storage of waste oil filters in a secure container with a capacity not exceeding 3 cubic metres.	600	Yes This activity would cease if a permit were imposed	0
LRW150 The use of waste timbers, metals, plastics, paper, card and bricks by the entertainment industry or educational establishments, for building sets, demonstrations and educational installations. Any waste should be recycled or disposed of	35,725	Yes This activity would cease if a permit were imposed	0

appropriately at the end of use.			
LRW155 The use, on the site where they are produced, of up to 150 tonnes of crushed concrete bricks, soil and stone that have been crushed using a minicrusher.	5835	No This activity is central to the use of the concrete etc	5835
LRW156 Storage of used single-use cameras pending recovery.	4000	No This activity is central to the operation of the photo-labs.	4000
LRW190 Crushing of vehicle oil filters pending recovery, at the site where they are produced, provided the crushing is undertaken on an impermeable surface.	600	Yes This activity would cease if a permit were imposed	0
	231,189		23,465

Cost used in calculating the Impact Assessment

Below is a breakdown of the average, annual costs for permits, simple exemptions and notifiable exemptions or the 3 year transitional period and the ongoing period thereafter. .

Transitional

Standard permit	% time	Time (hrs)	Rate (£/hr)	Overhead - ratio	Direct charge	Total (per activity)
Obtain permit - Internal time		8.59	18.66	1.3		208.38
Obtain permit - External cost					1356.32	1356.32
Maintain permit - internal time (annual cost for 2 years)		0.5	18.66	1.3		12.13
Technical competence - internal	25%	14.8	18.66	1.3		89.75
Technical competence - external	25%				1000	250
Inspection (annual) - internal		0.25	11.62	1.3		3.78
Permit - charge (1 year)					1600	1600
Subsistence charge (annual for next 2 years)					1400	1400

Simple exemption	% time	Time (hrs)	Rate (£/hr)	Overhead - ratio	Direct charge	Total (per activity)
Register - internal effort		1.25	20.63	1.3		33.52
Register - external consultant					201.4	201.4
Inspection (every 50 years) - internal	2%	0.25	11.62	1.3		0.08

Notifiable exemption	% time/ split	Time (hrs)	Rate (£/hr)	Overhead - ratio	Direct charge	Total (per activity)
Register - internal effort		8.59	18.66	1.3		208.38
Register - external consultant					1356.32	1356.32
Re-register (next 2 years)	65%	8.59	18.66	1.3		135.44
Re-register - external consultant (next 2 years)	65%				1356.32	881.608
Renewal (next 2 years)	35%	0.5	18.66	1.3		4.25
Inspection (annual) - internal		0.25	11.62	1.3		3.78
Charge - registration					575	575
Charge - re-register	65%				575	373.75
Charge - renewal	35%				434	151.9

Ongoing

Standard permit	% time	Time (hrs)	Rate (£/hr)	Overhead - ratio	Direct charge	Total (per activity)
Maintain permit		0.5	18.66	1.3		12.13
Tech - internal	25%	7.4	18.66	1.3		44.88
Tech - external	25%				50	12.5
Inspection (annual) - internal		0.25	11.62	1.3		3.78
Subsistence - annual charge					1400	1400

Simple exemption	% time	Time (hrs)	Rate (£/hr)	Overhead - ratio	Direct charge	Total (per activity)
Maintain exemption (every 3 years)	33%	0.5	20.63	1.3		4.47
Inspection (every 50 years) - internal	2%	0.25	11.62	1.3		0.08

Notifiable exemption	% time	Time (hrs)	Rate (£/hr)	Overhead - ratio	Direct charge	Total (per activity)
Re-register	65%	8.59	18.66	1.3		135.44
Re-register - external	65%				1356.32	881.608
Renewal	35%	0.5	18.66	1.3		4.25
Inspection (annual) - internal		0.25	11.62	1.3		3.78
Charge - re-register	65%				575	373.75
Charge - renewal	35%				434	151.9

11.15. Generally, permitted sites are required to be managed by a technically competent manager. This is relevant to options 3 and 4. The coverage needed on site depends on the activity. Companies operating more than one site in a similar area may be able to share a technically competent manager between sites. Based on information from EA, 50% coverage of sites of technically competent managers has been used in the calculations as a best estimate. This represents one technically competent manager being able to cover two sites.