# POLICY NOTE

# THE WASTE MANAGEMENT LICENSING (SCOTLAND) AMENDMENT REGULATIONS 2016

## SSI No. 40

1. The above instrument was made in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999 and all other powers enabling them to do so. The instrument is subject to negative procedure.

2. These Regulations amend the Waste Management Licensing (Scotland) Regulations 2011 ("the 2011 Regulations") so as to remove exemptions from waste management licensing for activities relating to the storage and treatment of waste tyres under paragraphs 11 or 17 of Schedule 1 to the 2011 Regulations ("paragraph 11 exemptions" and "paragraph 17 exemptions"). A Paragraph 17 exemption applies to the storage of up to 1,000 waste tyres (just under 10 tonnes) on a site at any one time so long as it is registered with SEPA. Operators often also register a complementary Paragraph 11 exemption, which exempted the sorting, baling or shredding of up to 10 tonnes of waste tyres at any one time. Regulation 2 of this instrument amends The Waste Management Licensing (Scotland) Regulations 2011 so as to remove those exemptions and, as such, the activities previously covered by the exemptions will now require a waste management licence.

3. Regulation 3 of these Regulations make transitional provisions for persons who were operating under an exemption immediately before these Regulations come into force. The transitional provisions ensure that the person can operate under their existing exemption until they have gone through the process of applying for a waste management licence (as long as they apply for a licence before 30th September 2016) or, in any other case, until 30th September 2016.

## Policy Objectives

4. The objective of these Regulations is to create an environment in which more tyres move up the waste hierarchy towards recycling, and tyre fires and illegal dumping of tyres are less likely.

5. In recent years, there has been an increasing recognition, both in Scotland and internationally that our resources are finite, and that therefore these resources need to be better managed and conserved so that the maximum value can be derived from them. The Scottish Government held a consultation on a circular economy, called Making Things Last, in 2015, which included a proposal to explore the potential for schemes aimed at increasing recycling and reuse of tyres. Removal of these exemptions will ensure that waste management licences are required for the storage and treatment of waste tyres and so will make it easier for SEPA to regulate those activities. This in turn will assist in the implementation of Scottish Government policy.

## Consultation

6. A consultation on these regulations took place between 27 October 2015 and 30 November 2015. During this period the Scottish Government wrote to all holders of paragraph 11 and paragraph 17 exemptions, informing them of the proposed removal of these exemptions, and the consequent requirement to apply for a waste management licence. In addition, the Scottish Government has consulted with COSLA, Chartered Institution of Wastes Management (CIWM), Scottish Environmental Services Association (SESA), Tyre Recovery Association (TRA) and SEPA. Only 3 responses were received – from CIWM, SESA and TRA, and all of these were supportive of the removal of these exemptions.

## Policy Summary

7. Waste tyres were banned from being landfilled in Scotland in 2004 by the EU Landfill Directive (1999/31/EU). Since then, waste tyres have been a problematic waste stream with poorly developed recycling and recovery markets. However, waste management operators are still attracted to waste tyre collection by the low barriers to entry and the easy financial returns associated with collection. In many cases there has been little regard for end markets and the true costs of accessing those markets. As a result it has become easy to build up a large stockpile of waste tyres.

8. The Waste Management Licensing (Scotland) Regulations 2011 Regulations, prior to the amendments made by these Regulations, allowed operators to register a Paragraph 17 exemption to store up to 1,000 waste tyres (just under 10 tonnes) on a site at any one time, so long as they registered the exemption with SEPA. Operators often also register a complementary Paragraph 11 exemption, which allows the sorting, baling or shredding of up to 10 tonnes of waste tyres at any one time. These Regulations amend the 2011 Regulations so as remove those exemptions and, as such, the activities previously covered by the exemptions will require a waste management licence once these Regulations are in force (subject to transitional provisions).

9. SEPA's experience over the last few years shows that these exemptions were being widely abused. The exemptions have been used to deposit and stockpile large quantities of waste tyres without the prospect of end uses for the waste tyres. The storage and treatment of waste tyres under the terms of Paragraph 11 and 17 exemptions has often been associated with businesses which ignore the quantity limits in the exemptions, businesses which fail because of a lack of end markets, and fire risk and abandonment. While exemptions are an important part of the regulatory approach, we have concluded in this instance that the balance between licensed activities and exempted activities no longer reflects the practice on waste tyres, and requires updating.

10. This experience indicates that risks associated with waste tyres are best managed through waste management licences where the storage and fire risks and the financial risks associates with business failure and subsequent site clearance can be better managed and regulated. By moving waste tyre storage sites into waste management licensing, SEPA will be able to check whether operators are competent to operate waste tyre storage and treatment sites, to prevent the re-entry of previously

convicted waste tyre site operators, to better regulate the quantities stored on site, to impose conditions to reduce fire risk, and to ensure that sufficient financial provisions are in place to cover the costs of waste tyre removal in the event of business failure. Improved regulation of operators, and the removal of unlicensed operators from the market, will make it easier for the Scottish Government to encourage recycling of tyres through initiatives such as producer responsibility schemes, as part of its overall policy objective of developing a more circular economy in Scotland.

**Ensuring Awareness**

11. The Scottish Government has written to all those likely to be affected by this action, informing them of the coming change, and inviting their comments. In addition, the Waste Management Licensing (Scotland) Amendment Regulations 2016 include provisions that will allow unlicensed operators a period of 6 months from the coming into force date of the Regulations (30 March) in which to apply for a waste management licence. During this period, SEPA officials will work to provide transitional assistance to those who need it.

**Financial Effects**

12. A Business and Regulatory Impact Assessment ("BRIA") has been published in respect of this action.

**EQIA**

13. This instrument does not have a disproportionate impact on any specific sector, and on this basis it was not deemed necessary to produce an Equality Assessment .

**Scottish Government - Environmental Quality Division**
**January 2016**