



Department of the
Environment
www.doeni.gov.uk

Proposals for Amendments to Waste Management Licensing Exemptions Relating to Hazardous Waste

A Consultation Paper

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Chapter 1 - Introduction

Purpose

- 1.1 This consultation paper seeks comments on proposed changes to the existing waste management licensing exemptions relating to hazardous waste in Northern Ireland.
- 1.2 On 12 October 2004, the European Court of Justice declared against the United Kingdom¹ for failure to fulfil its obligations under the Hazardous Waste Directive² (“the HWD”). This consultation seeks comments on proposed changes to the regime of waste management licensing exemptions in Northern Ireland that fully meet the requirements of the HWD. Comments on the draft Waste Management Licensing Exemptions Regulations (included at Chapter 3) are invited by -

Scope of the regulations

- 1.3 Subject to comments received during this consultation exercise, the Department will make Northern Ireland regulations which amend the waste management licensing exemptions relating to hazardous waste.

Summary of Proposals

The consultation proposes the following changes to existing exemptions:

(i) Burning waste as fuel

The removal of references to use of waste oil, both as fuel and storage, so that the exemption provision relates only to non-hazardous waste. It

¹ Case C-431/02

² 91/689/EEC

also provides for more precise stipulation of the amounts of non-hazardous waste that can be burned or stored under the exemption.

(ii) Burning of waste oil as a fuel in specified types of engine

The removal of this exemption.

(iii) Storage of returned goods that are waste

The removal of this exemption.

- 1.4 The proposals summarised in this consultation document have been developed based on advice from consultants ENVIROS Consulting Ltd³ who considered the use of the exemptions by industry and the changes that might be needed to make the exemptions compliant with the HWD.
- 1.5 The proposed Regulations are set out at Chapter 3. A Partial Regulatory Impact Assessment (“RIA”) is also provided at Annex 1. The RIA aims to set out the options available for each exemption under review and detail the associated risks, costs and benefits of each option.

Equality Issues

- 1.6 Under section 75 of the Northern Ireland Act 1998⁴, public authorities have a statutory duty to promote equality of opportunity. We have completed an equality screening of the proposed Regulations and have concluded that they do not impact on equality of opportunity on any of the groups specified in section 75. The screening paper can be found at Annex 2.

³ A Review of Exemptions from the Waste Management Licensing Regulations for Hazardous Waste – A Report by Enviro Consulting Ltd for the Department for Environment, Food and Rural Affairs. <http://www.enviros.com>

⁴ 1998 c.47

1.7 The Equality Commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission might have.

Human Rights Issues

1.8 The Human Rights Act 1998⁵ implements the European Convention on Human Rights. The Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We believe that the draft Regulations are compatible with the Human Rights Act, but would welcome any views that you may have.

1.9 The Human Rights Commission will receive copies of the consultation document as part of this consultation. We will take into account any comments that the Commission might have.

Submission of Responses

1.10 Further copies of this consultation paper are available from the address below. The paper is also available on our website at www.doeni.gov.uk/hazardous_waste

⁵ 1998 c.42

1.11 Responses should be sent to: -

**Hazardous Waste Exemptions Consultation
DOE – Planning and Environmental Policy Group
Room 208
20-24 Donegall Street
BELFAST
BT1 2GP**

E-mail: wendy.cooke@doeni.gov.uk

Tel: 028 9054 4513

Fax: 028 9054 4599

Responses may also be sent via the response form on our website.

All comments should be submitted by 20 November 2008 at the latest.

1.12 Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent. Respondents are also encouraged to provide evidence, where appropriate, in support of their response.

Freedom of Information Act 2000 – Confidentiality of Consultation Responses

1.13 We may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. We can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

1.14 The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. We cannot automatically consider as confidential information supplied to us in response to a consultation. However, we do have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

1.15 This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions and it would not otherwise be provided;
- the Department should not agree to hold information received

from third parties “in confidence” which is not confidential in nature;

- its acceptance of confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

1.16 For further information about confidentiality of responses please contact the Information Commissioner’s Office⁶. For further information about this particular consultation please contact the consulting branch at the address given in paragraph 1.24.

⁶Information Commissioner’s Office, Room 101, Regus House, 33 Clarendon Dock, Belfast BT1 3BG. ☎ 028 9051 1270; Fax: 028 9051 1584; Email: ni@ico.gsi.gov.uk
Web: www.informationcommissioner.gov.uk

Chapter 2 - Proposed detailed changes and rationale

Legislative background

European context

1.17 Articles 9 and 10 of the Waste Framework Directive⁷ (“the WFD”) require establishments or undertakings carrying out waste disposal or recovery operations to obtain a permit from the competent authority. Article 11 does give Member States some discretion to provide exemptions from these requirements. However the overriding consideration is that all waste to be recovered or disposed of without endangering human health and without using processes or methods that could harm the environment.

1.18 The HWD introduces on additional conditions for exemptions relating to hazardous waste. In summary it makes the following provisions:

(i) Article 3(1) stipulates that exemptions can only relate to the recovery of hazardous waste and not disposal (recovery and disposal are expressly defined in Annex IIA and Annex IIB of the WFD).

(ii) Article 3(2) requires that more detailed rules must be drawn up for exemptions examples relating to the recovery of hazardous waste. In particular, the Directive requires rules “laying down specific conditions (limit values for the content of hazardous substances in the waste, emission limit values, type of activity) and other necessary requirements for carrying out different forms of recovery, andthe types or quantities of waste and methods of recovery are such that the conditions laid down in Article 4 of Directive 75/442/EEC are complied with”.

⁷ 75/442/EEC as amended

(iii) Any exemptions relating to the recovery of hazardous waste shall be registered with the competent authority. In Northern Ireland this is the Department's Environment and Heritage Service ("EHS"). A corresponding arrangement is in place for exemptions relating to the disposal or recovery of non-hazardous waste.

(iv) Article 3(4) of the HWD requires any exemptions involving hazardous waste to be agreed with the European Commission and other Member States. The Directive requires Member States to notify the Commission not later than 3 months before the proposed exemptions are due to come into operation. The Commission shall then consult other Member States and in the light of those consultations shall propose that the rules be finally agreed upon through the Technical Adaptation Committee under the WFD (Article 18).

(v) The type of waste for which exemption is sought must be accurately identified. The European Waste Catalogue ("EWC") provided in Commission Decision 2000/532/EC, as amended, lists hazardous and non-hazardous wastes, and is transposed in Northern Ireland through the List of Wastes Regulations (Northern Ireland) 2005⁸. This is used to identify the type of wastes that are being exempted.

Domestic context

1.19 Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997⁹ ("the 1997 Order"), provides that anyone who deposits, recovers or disposes controlled waste must do so in compliance with the conditions of a waste management licence. However, regulation 17 of the Waste Management Licensing Regulations (Northern Ireland) 2003¹⁰ ("the WML Regulations") disapplies this requirement for a number of activities as listed in Part I of Schedule 2 to the WML Regulations. These

⁸ S.R. 2005 No. 301

⁹ S.I. 1997/2778 (N.I. 19)

¹⁰ S.R. 2003 No. 493 (as amended)

listed activities are exempt from the requirement to obtain a waste management licence, provided if they comply with the terms of the exemption.

1.20 Waste management licences are the normal form of regulatory control for disposal or recovery operations (along with permits under the Pollution Prevention and Control regime). Exemptions provide some regulatory control but they do not contain the more stringent and site specific requirements of waste management licensing or PPC permits. Exemptions are a way of providing a lighter regulatory touch to encourage certain low risk waste recovery activities without polluting the environment or harming human health.

1.21 Regulation 17(3) of the WML Regulations provides that, unless otherwise stated within the terms of the exemption, none of the exemptions in Part I of Schedule 2 apply to hazardous waste. The term “special waste” which appeared in older versions of the Regulations was replaced with “hazardous waste” by consequential amendments in Schedule 10 to the Hazardous Waste Regulations (Northern Ireland) 2005.

1.22 Some of the exemptions provided in Part I of Schedule 2 to the WML Regulations are for activities which are not recovery or disposal operations under the WFD. These are required to permit the deposit of waste in such circumstances without contravention of Article 4 of the 1997 Order, which makes it an offence to deposit waste without a licence or an exemption from licensing. In practice they involve activities such as temporary storage of waste at site of production, the testing of waste or activities not carried out by “establishments or undertakings”. These exemptions are not subject to the requirements in Article 11 of the WFD or Article 3 of the HWD, although the general objectives in Article 4 of the WFD on protection of the environment and the safeguarding of human health do apply.

Burning waste as fuel

- 2.1 The WML Regulations (Schedule 2, Part 1. paragraph 5) currently exempt in certain specified circumstances the burning of certain listed waste materials as fuel from the need to have a waste management licence. Waste oil, '*including oil that is hazardous waste,*' is one of these wastes. The storage, on any premises, of waste that is intended to be burned is also exempt, subject to certain limitations.
- 2.2 The proposed change to this exemption is to:
- remove the references to use of waste oil both as fuel and storage, so that the paragraph relates only to non-hazardous waste.
 - (ii) clarify the amounts of non-hazardous wastes that can be stored and burned. The non-hazardous wastes are straw, poultry litter, wood or solid fuel which has been manufactured from waste by a process involving the application of heat. The limit is set at no more than 1 tonne per hour, and associated storage at no more than 25 tonnes of each waste stream.
- 2.3 Use of the full exemption is believed to have been relatively modest. There is no evidence that the exemption is currently used for the burning of waste oil, which in most circumstances would be an activity subject to the provisions of the Waste Incineration Directive. We therefore propose to remove the references to waste oil from the terms of the exemption.

Comments are invited on the proposed exemption.

Burning of waste oil as a fuel in specified types of engine

- 2.4 The current exemption provided by **paragraph 8** of Part I of Schedule 2 to the WML Regulations exempts the burning of waste oil as a fuel in specified types of engine and the associated storage of that oil. Waste oil is defined in regulation 1(3) of the WML Regulations as: "*any*

mineral-based lubricating or industrial oil which has become unfit for the use for which it was originally intended, and in particular, used combustion engine oil, gearbox oil, mineral lubricating oil, oil for turbines and hydraulic oil.” Note that the exemption only applies to the burning of mineral based oils.

2.5 However, the current exemption cannot apply to the burning of waste oils that are hazardous waste. This is because regulation 17(3) of the WML Regulations requires that for an exemption to apply to hazardous waste, the terms of the exemption in Part I of Schedule 2 must specify that it applies to hazardous waste. However, there is no such reference to hazardous waste or waste oil as hazardous waste in paragraph 8.

2.6 As there is no waste oil as defined in regulation 1(3) which is also non-hazardous, and there is no evidence that the exemption is used, we propose to withdraw this exemption completely.

Comments are invited on this proposal.

Storage of returned goods that are waste

2.7 **Paragraph 28** exempts the storage of returned goods that are waste by manufacturer, distributor or retailer, pending disposal or recovery. This exemption would have been used mostly for the return of WEEE, although its more recent use has been for the storage of returned needles at needle exchanges and drop in centres. It has also been used to some extent for the storage of returned batteries.

2.8 Article 11 of the WFD requires all exemptions to specify types and amounts of waste subject to the exemption and to include conditions to protect the environment and human health. The current exemption fails to include specific waste types or amounts or conditions. Given that the

storage of WEEE, batteries and sharps are subject to other exemptions, we see no further need for this broad exemption in relation to the storage of returned goods and we propose to remove it.

- 2.9 It should be noted that if the decision that a returned item is waste is made by the retailer, manufacturer or distributor, the person in the retail chain making the decision would not need a permit for the temporary storage pending disposal of any waste, including hazardous waste. This is because temporary storage pending disposal or recovery at the place of production is excluded from Annex IIA and IIB of the WFD, and is therefore not a WFD activity, requiring a waste permit under Articles 9, 10 or an exemption from permitting under Article 11 and Article 3 of the HWD.

Comments are invited on the removal of this exemption.

Minor amendments

- 2.10 Regulation 18 of the WML Regulations has been slightly amended to remove references to paragraph 8 of Part I of Schedule 2 to the WML Regulations.
- 2.11 These exemptions have been amended slightly to include a reference to hazardous waste. The references were not included in the initial WML consultation in 2003, as the wording would not have been accepted by the European Commission.

Chapter 3 – The Draft Regulations

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2008 No.

ENVIRONMENTAL PROTECTION

Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2008

Made - - - - 2008

Coming into operation- - 2008

The Department of the Environment, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the prevention, reduction and elimination of pollution of water, the prevention, reduction and elimination of pollution caused by waste, and the regulation and control of the transit, import and export of waste (including recyclable materials), in exercise of the powers conferred on it by section 2(2) of that Act and Articles 2(2), 2(3) and 4(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997(c) (having in particular had regard in exercising its power under Article 4(3) of that Order to the matters specified in Article 4(4) of that Order), hereby makes the following Regulations:

Citation, commencement and interpretation

1. —(1) These Regulations may be cited as the Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on **xxxxxx** 2008.

(2) In these Regulations, “the WML Regulations” means the Waste Management Licensing Regulations (Northern Ireland) 2003(d).

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- (a) S.I. 1989/2393, S.I. 1992/2870 and S.I. 1993/2661
 - (b) 1972 c. 68
 - (c) S.I. 1997/2778 (N.I. 19)
 - (d) S.R. 2003 No. 493 as amended by S.R. 2003 No. 496

Amendment of the Waste Management Licensing Regulations (Northern Ireland) 2003

2. The WML Regulations are amended in accordance with Regulations 3 to 7.
3. After regulation 1(4) insert—

“(5) Any six digit code used to refer to a waste in these Regulations is a reference to that waste as specified by the six-digit code in the List of Wastes Regulations (Northern Ireland) 2005(a).”.
4. In regulation 18—
 - (a) in paragraph (4) for “activities set out in paragraphs 8 and 31” substitute “activity set out in paragraph 31”;
 - (b) in paragraph (5) for “paragraph 8, 9” substitute “paragraph 9”; and
 - (c) in paragraph(12)(a) for “1-8” substitute “1-7”.
5. For paragraph 5 of Part I of Schedule 2 substitute—

“5. The carrying on of any of the following operations—

 - (a) burning as a fuel at a rate of less than one tonne per hour, under an authorisation granted under the Industrial Pollution Control Order or a permit under the 2003 Regulations, of—
 - (i) straw (02 01 03), poultry litter (02 01 06) or wood (02 01 07); or
 - (ii) solid fuel which has been manufactured from waste by a process involving the application of heat (19 12 10),

to the extent that it is or forms part of a process within Part B or Part C of any section of Schedule 1 to the 1998 Regulations, or an activity within Part B or Part C of any Section of Part 1 of Schedule 1 to the 2003 Regulations and the feeding of such waste into an appliance in which it is to be so burned;
 - (b) the secure storage on any premises of any waste mentioned in sub-paragraph (a) which is intended to be burned as mentioned in that sub-paragraph if—
 - (i) no more than 25 tonnes is stored at any one time; and
 - (ii) no waste is stored there for longer than 1 year.”.
6. Delete paragraph 8 of Part I of Schedule 2.
7. Delete paragraph 28 of Part I of Schedule 2.

(a) S.R 2005 No. 301

Sealed with the Official Seal of the Department of the Environment on



Wesley Shannon

A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Waste Management Licensing Regulations (Northern Ireland) 2003 (as amended).

They provide for exemptions for permitting for the reuse, disposal, storage and recovery of types of waste referred to in the European Waste Catalogue together with exemptions from the permitting requirements of the Waste Framework Directive (75/442/EEC) and Hazardous Waste Directive (91/689/EC).

These Regulations transpose the requirements of Articles 4 and 11 of the Waste Framework Directive and Article 3 (1) and (2) of the Hazardous Waste Directive.

Partial Regulatory Impact Assessment

Purpose and intended effect of the measure

- 4.1 These regulations amend the exemptions contained in the Waste Management Licensing Regulations (Northern Ireland) 2003, so as to achieve compliance with the requirements of the WFD and HWD. This document provides a Partial Regulatory Impact Assessment (RIA) for each exemption under review. It discusses several policy options for each exemption and aims to outline the risks, costs and benefits for each proposal. In many cases, quantification of the costs and benefits has not been entirely possible.

Background and legal basis for review

- 4.2 It is Government policy to fulfil the UK's legal obligations to transpose and implement EU Directives. Domestic legislation on waste stems from the WFD. This has been transposed into UK law mainly through the Waste and Contaminated Land (Northern Ireland) Order 1997 ("the 1997 Order") and the Waste Management Licensing Regulations (Northern Ireland) 2003 ("the WML Regulations"). Domestic legislation on hazardous waste stems from the HWD and has been transposed by the Hazardous Waste Regulations (Northern Ireland) 2005 since July 2005.

Waste Framework Directive

- 4.3 The principal objective of the WFD (as stated in Article 4) is to ensure that waste management activities do not cause harm to the environment or human health. Articles 9 and 10 require that any establishment or undertaking that carries out waste disposal or recovery operations must obtain a permit from the competent authority, i.e. the Department.

4.4 Under domestic legislation, permits (waste management licenses or Pollution Prevention and Control permits) may be granted for a specific period. These permits are renewable, and contain conditions and obligations that the operator must meet. There is, for example, a requirement for any operator to demonstrate that they are “Fit and Proper” for the purpose of managing the facilities. This includes a requirement for the operators to show that they are technically competent, lack relevant convictions and can provide adequate financial provision to cover the requirements of the licence.

4.5 Article 11 of the WFD states that establishments or undertakings carrying out waste recovery or disposal of their own waste at the place of production may be exempted from the permit requirements imposed by Articles 9 and 10. However, Article 11 states that exemptions may apply only:

- if the 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 and quantities of waste and the methods of disposal or recovery are such that the conditions imposed in Article 4 are complied with.

4.6 Any establishment or undertaking that wishes to use an exemption must be registered with the competent authority, and Member States shall inform the Commission of the general rules adopted in relation to the activities exempt from licensing.

Hazardous Waste Directive

4.7 Article 3 of the HWD further qualifies Article 11 of the WFD in respect to operations involving hazardous waste. Under Article 3(1) the

derogation, referred to in Article 11 (1) (a) of the WFD, from the permit requirement for establishments or undertakings which carry out their own waste disposal does not apply where hazardous wastes are involved.

4.8 Article 3(2) allows recovery operations involving hazardous waste to be exempt from permitting, in accordance with Article 11 (1) (b) of the WFD, subject to certain specified circumstances:

- the recovery operation complies with the requirements of Article 4 of the WFD; and
- the establishments or undertakings are registered with the competent authorities.

4.9 Regulation 17 of the WML Regulations prescribes specific exemptions from control by waste management licensing. Regulation 18 of the WML Regulations implements the WFD's requirement for registration by the competent authority.

Risk Assessment (common to all exemptions reviewed)

4.10 The risks associated with the recovery and disposal of hazardous waste are that-

- unlicensed or uncontrolled recovery and disposal takes place;
- lack of recycling facilities causes excessive quantities of recoverable household hazardous wastes to go untreated to landfill; and,
- recoverable hazardous wastes are not recovered due to prohibitive costs of waste management licensing.

4.11 Many hazardous wastes have a market value if collected in sufficient quantities. The Department's intention is to have in place a regulatory framework that encourages the existence of sufficient sites to facilitate

their collection and storage pending recovery. This review intends to maintain the benefits of existing exemptions in the light of newly hazardous wastes while making the exemptions compliant with European legislation.

Options analysis – General Comments

4.12 For each exemption under review there are a maximum of 3 options.

These are:

- (i) leaving the exemption as it is
- (ii) amending it
- (iii) removing the exemptions altogether.

4.13 In most cases the relative regulatory impact between choosing option 1 and 2 will be negligible as the principal aim of the review is to ensure continuity between the existing and revised system whilst fully meeting the requirements of the WFD and HWD. This being the case, the major costs to be considered are the costs to businesses of removing the exemptions altogether, measured against the costs of retaining them either in the existing or a revised form.

4.14 The most significant outcome of the withdrawal of all hazardous waste exemptions being withdrawn would be that those currently taking advantage of exemptions would have to apply for a waste management licence should they wish to continue the activity in question. In this scenario any operator wishing to store wastes with the intent of recycling or reuse would incur costs in preparation of a licence application. This may include costs in respect of verifying planning permission, which is required before a licence can be granted, site investigations, environmental assessments and preparation of licence applications. Operators will need to demonstrate that they are a fit and proper person including provision of a technically competent manager. It can take several months to obtain a waste management licence; this is partly

because this is a statutory requirement on the Department to consult certain bodies on the proposals. In GB, Waste Industry workshops conducted to collate information for the waste permitting review RIA produced an estimate of £5,000 for preparing a waste management licence. In addition, annual subsistence charges would be payable.

- 4.15 These costs can be compared with the minimal costs associated with registering an exemption for storage and certain prescribed requirements to ensure WFD and HWD compliance. Higher costs could potentially act as a disincentive for both existing operators and new operators .

Waste Management Licensing Regulations 2003 – Schedule 2, Part 1, Paragraph 5

Issues

- 4.16 Paragraph 5 exempts the burning of certain specified wastes as fuel and their incidental storage. The only hazardous waste listed in this exemption is waste oil. We have no information on what types of wastes are burned by those who use this exemption. We do know that in GB between 1996 and 2002 no more than 52 establishments or undertakings registered this exemption in any given year.
- 4.17 As there are at least 3,000 small waste oil burners currently in use in the UK, it is clear that there is very little take-up of this exemption for the purposes of burning waste oil. For that reason it would seem unnecessary to retain this exemption as an option for dealing with waste oil as it is little used and there are several other viable alternative recovery routes.

Options

Option 1

Do nothing. Activities will continue to be regulated under the current exemption or require a waste management licence.

Option 2

Provide a revised exemption removing all references to waste oil.

Option 3

Remove the exemption altogether and require all activities to obtain a waste management licence.

*Benefits***Option 1**

Will allow those currently using this exemption to recover waste to continue doing so.

Option 2

Will allow most of those currently using exemption to recover waste to continue doing so and satisfy requirements of European legislation. Those using it to burn waste oil as fuel can still store their own waste oil without a licence but send it elsewhere for recovery.

Option 3

Will satisfy requirements of European legislation.

*Costs***Option 1**

Will not satisfy requirements of European legislation. Will have to be revised at some stage to ensure compliance.

Option 2

Those who currently use the exemption to store and burn waste oil will

require a licence to burn waste oil, but may still be able to store oil under other exemptions. There is a potential cost for using an alternative fuel source which may or may not be a waste.

Option 3

Those who use the exemption to store and burn wastes other than waste oil will require a licence to burn such wastes but may be able to use other exemptions for their storage.

4.18 It has proved extremely difficult to frame this exemption in such a way that it would comply with the requirements of both the WFD and HWD. Even if we were to do so the regulatory burden on EHS of policing this exemption would be such that they would have to levy a charge for registration. This seems to be an unnecessary level of potential regulation for an exemption that is little used in relation to waste oil.

Question 1: Are there any other significant costs to users of this exemption that will result from the removal of waste oil that have not been identified?

Waste Management Licensing Regulations 2003 – Schedule 2, Part 1, Paragraph 8

4.19 Paragraph 8 covers the burning of waste oil as a fuel in an engine. The exemption does not cover hazardous wastes. As waste oil in the context of the WML Regulations means waste mineral oil and all waste mineral oil is hazardous then this exemption cannot legally be used.

Options

4.20 Leaving paragraph 8 as it stands is not an option as is legally unsound. We propose to withdraw the exemption as it has not been possible to draw up rules that would be WFD and HWD compliant and verifiable,

particularly in terms of setting enforceable emission limits. The regulatory impact of withdrawing the exemption will be neutral as it has no legal application.

Question 2: Are there any significant costs to users of this exemption that will result from its removal?

Paragraph 28

4.21 Paragraph 28 provides for the storage of waste consisting of goods returned to their manufacturer, distributor or retailer pending disposal or recovery. As far as we can ascertain this exemption is principally used for WEEE, waste batteries and needle exchange schemes.

4.22 Leaving the exemptions it is would fail to meet the requirements of WFD or HWD. Making it meet the requirements of WFD and HWD would require conditions similar to those which will already apply to exemption 18 and the new WEEE storage exemption. Since all the items for which we know the exemption is used can now be stored under exemption 18, or under the new WEEE storage exemptions, 28 would now appear to be superfluous. For this reason our options are to revise the exemption or withdraw it.

Options

Option 1

Provide a revised exemption with enhanced general rules specifying the types and quantities of waste allowed to be stored under the exemption.

Option 2

Remove the exemption altogether and require all activities to obtain a waste management licence or register an alternative exemption.

Benefits

Option 1

The exemption remains available to those who choose to use it and would meet the requirements of WFD and HWD.

Option 2

Alternative exemptions could be used for the storage of all the wastes for which we know this exemption is currently used. This measure removes unnecessary duplication from the exemption regime.

Costs

Option 1

Would duplicate provisions existing elsewhere within the exemption regime. The basic exemption provides storage of returned goods that are waste. Not all returned goods will be waste, and where they are waste and their storage is required e.g. for batteries and sharps, provision can be made in the relevant storage exemption (paragraph 18).

Option 2

Those that currently use the exemption would need to register under a different exemption.

4.23 Our proposal to withdraw paragraph 28 would appear to result in no significant costs to current users who would have the minor inconvenience of registering under an alternative WFD and HWD compliant exemption as appropriate.

Question 4: Are there any significant costs to current users of this exemption that will result from the proposed revisions?

Glossary of Terms

“the 1997 Order”: the Waste and Contaminated Land (Northern Ireland) Order 1997 [S.I. 1997/2778 (N.I. 19)];

“the Department”: the Department of the Environment;

“the Hazardous Waste Directive (HWD)”: means Council Directive 91/689/EEC of 31st December 1991 on hazardous waste, as amended by Council Directive 94/31/EC;

“the Waste Framework Directive (WFD)”: means Council Directive 75/442/EEC as amended by Directives 91/156/EEC, 91/692/EEC and adapted by 96/350/EEC. The Directive provides a common European definition of waste; it requires the control through licensing of waste recovery and disposal operations; and defines the circumstances under which exemptions from licensing may be made.

“waste management licence”: a licence granted by the Department under Article 6 of the 1997 Order authorising the treatment, keeping or disposal of any specified description of controlled waste in or on specified land or the treatment or disposal of any specified description of controlled waste by means of specified mobile plant.

“the WML Regulations”: the Waste Management Licensing Regulations (Northern Ireland) 2003 [S.R. 2003 No. 491];