



## Better Waste Regulation

June 2007

### Introduction

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing over 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to prosper.

FSB Scotland has taken a close interest in the better regulation debate in Scotland. We therefore welcome the determination of the Scottish Executive and SEPA to update waste legislation. Many of our members are covered by aspects of waste regulation, though for many this will relate to Duty of Care and waste transfer responsibilities, as opposed to the licensing regime. Subsequently we are unable to offer detailed comment on some of the more technical questions relating to the current licensing regime.

### Questions

**Q1. We are interested in views about the extent to which the proposals in the current consultation address the principles of better regulation noted above.**

There is no doubt that meeting the better regulation principles outlined will be challenging. In particular, many of the proposals relate to adjusting specific measures, either to update them or to eliminate unnecessary aspects. Consolidating and streamlining the legislation, however, with associated changes to bureaucracy, and rolling out the new regime will be a demanding task.

We perhaps need to see more detail on proposals to ensure consistency from regulators across Scotland, as well as promoting best practice and advice to business.

**Q2. If you think further action is warranted with the principles of better regulation in mind, we would be interested in specific proposals for change.**

At the root of many of the reported difficulties experienced by businesses lies the perceived lack of clarity of legislation and from that, the lack of consistent interpretation across Scotland. We would suggest that key to better regulation is clear, plain-English regulation from which the business can easily understand their responsibilities. This should be central to any tidying up of the legislation.

**Q3. Apart from those already suggested, are there any other waste streams for which protocols could usefully be developed? Please give reasons.**

Soil seems to come up frequently in our discussions on this issue.

**Q4. Would you like to see SEPA take responsibility for drafting and issuing exemptions, or would you prefer to maintain the exemptions in the legislative system? Please provide the grounds for your views and an indication of how any new system would work.**

At the most basic level we believe there should be a clear line of accountability for legislative decisions. In addition, SEPA is a regulator, not a legislator. No one wants to hinder legitimate business operations because of a bureaucratic delay however this only serves to emphasize the need for SEPA and the Scottish Executive to work closely together to identify and resolve problems quickly. The consultation suggests that the parliamentary process has become more efficient and that the most severe delays are caused by more complex situations. In such situations, surely it would also take SEPA longer to process an exemption? This is likely to require further discussion but on balance we are not yet convinced of the need for this proposal.

**Q5. Are there any activities that you think would be suitable for an exemption that are not currently exempt? You need to provide as much information as possible on the activity and the benefits of covering it with an exemption from licensing as opposed to a waste management licence.**

No suggestions to offer.

**Q6. Should some exemptions, for example, the more complex exemptions (such as those relating to composting and recovery to land and building operations in paragraphs 7, 9, 12 and 19) benefit from an appeal mechanism, with balancing consultation requirements? Please provide the supporting thoughts behind your answer.**

Yes, since the financial consequences for a business, particularly a start-up business, could be severe. It does not necessarily follow that this would involve further consultation.

**Q7. What aspects and areas of the registration system should be improved upon? It would help if you could explain why and how?**

We are unable to offer detailed comment however in general terms there must be scope to simplify and/or reduce the required information. This may include better use of information already on file.

**Q8. For which exemptions should electronic registration be considered and if so what impact would this have on you?**

While electronic registration etc may not be suitable for every business, the opportunity to complete business online should certainly be available.

**Q9. Should the requirement that SEPA inspect exemptions annually be relaxed to require 'periodic inspection' in line with the requirements of**

**the Waste Framework Directive? Please give details of how you think the Directive requirement should be enforced.**

This question cannot be considered without returning to the principles of better regulation outlined in the paper. This would suggest that, in future, inspections are carried out according to risk. It would also be useful to consider how risk assessment can be used as an incentive to assist improved compliance i.e. best practice is acknowledged or 'rewarded'.

**Q10. As a financial provision is not a Directive requirement for non-landfills, it may be possible to dis-apply the financial provision requirements of the licensing system for some activities. As SEPA's post-2004 position has already reduced the burden of the financial provision requirement on applicants, would this still be useful or necessary?**

While SEPA has made improvements in this area, it may be worth considering whether there is still a need for a financial provision for some of the lowest risk activities. An assessment of the current number and range of licenses should indicate whether this would be worthwhile.

**Q11. What sorts of activities should such dis-application apply to?**

No suggestions to offer.

**Q12. Do consultees agree that demonstration of operator technical competence is important and should be retained as a requirement of the licensing system? Please explain the reason for your view, whether in agreement or not.**

In discussions the majority favour retaining the technical competence test. Further evidence on violations of waste management licensing and pollution incidents, where technical competence was a cause of failure would help us understand better, from a better regulation perspective, whether this measure actually assists compliance and/or prevents incidents.

**Q13. Do consultees agree that the legislation should make provision for more technical competence assessor bodies? If yes, under what conditions?**

We support measures to ensure training and assessment can be carried out and accredited as flexibly as possible.

**Q14. Do consultees think that for some, or all, waste management activities, a formal, externally accredited technical competence is unnecessary? If so, please provide suggestions and justifications for the types of activities that could potentially be undertaken without technical competence qualifications.**

Again this depends upon the nature of some low-risk activities (see response to Q10). It would also be worth comparing the requirement for technical accreditation with requirements for working in other industries to ascertain whether it is overly-demanding by comparison.

**Q15. Consultees views are sought on whether they consider that continued professional development should be required, and if so, for whom, and how it could be demonstrated.**

This is primarily a matter for the individual business and it is difficult to see how this complies with better regulation.

**Q16. Do consultees agree that the relevant convictions test should be retained, and are there any areas for improvement in terms of the requirements or in its implementation? If there are alternatives, what are they?**

Again, the majority appear to favour retention of this test.

**Q17. Is there enough (or too much) guidance for businesses on waste management licensing? Is it the right sort of guidance or could it be improved? Please provide specific examples of how it could be improved. The more specific you can be in making suggestions, the better.**

Netregs is the primary source of environmental information recommended by FSB Scotland, however, awareness of Netregs remains low despite publicity. Perhaps the most important guidance for business is that given in initial contact with obvious sources of information, primarily SEPA and local authorities. This can be the point at which the business begins to perceive the legislation is unclear or difficult. It is vital to ensure front line SEPA staff are able to deliver accurate and helpful information in response to queries from business. Resources would be better spent on this, as opposed to producing leaflets etc.

**Q18. Do consultees think that SEPA could improve its template approach to licensing and, if so, how could this be achieved?**

No suggestions to offer.

**Q19. Do you think the SEPA proposal for an amendment to the law to include mobile composting units would be helpful to industries such as the shellfish producers; and who else might benefit from such a composting exemption, e.g. hoteliers, catering facilities?**

Yes, flexibility for such a fast-moving industry is welcome. We are particularly keen to help groups of small businesses work together to find waste solutions, perhaps in small rural locations or business parks and this may involve mobile plant.

**Q20. Are there any other activities/processes that might benefit from mobile plant licensing? It would help if you could say why the activities/processes might be suitable for a mobile plant licence and what the benefits would be.**

Please see response to Q19.

**Q21. Do you think that SEPA should be free to add to the categories of mobile plant that may be licensed without the need for changing Regulations?**

On balance, yes, though please see response to Q4.

**Q22. Would it be beneficial to provide a mechanism that will allow an operator to apply to change his site boundary without obtaining a new licence?**

Yes – flexibility is required to deal with certain scenarios, as described in the paper.

**Q23. Are there other licence modification issues that should be considered? Please give an indication of the possible advantages and disadvantages.**

No suggestions to offer.

**Q24. Do consultees agree that SEPA should have similar charging powers for regulator initiated modifications under waste management licensing that it already has under the PPC regime?**

No.

**Q25. Do consultees agree that there would be benefits in allowing both full and partial transfer and if so, what are those benefits? What safeguards would there need to be?**

Yes, again flexibility to deal with a range of scenarios is welcome.

**Q26. Do consultees agree that historic waste management activities should be excluded from the surrender requirement in circumstances where there is no suspected pollutant linkage to licensed activities? Is this practical and what are the advantages or disadvantages of removing this requirement?**

We support this proposal but are unable to comment on the practicalities.

**Q27. Can consultees suggest any improvements to the way licences are enforced and what benefits would those improvements bring?**

Our comments regarding more effective enforcement of environmental legislation, including changes to the penalty regime (including waste management licensing) can be found in our response to the consultation on the Way Forward for Environmental Law in Scotland.

**Q28. Do you agree that site inspections should be based on risk and operator performance? Please say why.**

Yes, please see response to Q9.

**Q29. Do you think that charging should include consideration of the potential risks associated with an activity and operator performance?**

Yes but please see response to Q9 regarding incentives for those operators demonstrating best practice.

**Q30. Do you consider that there are other areas where improvements should be considered, for example: Duty of Care; Registered Waste Carriers; or Special Waste?**

We are aware that many businesses transporting waste have often commented upon the amount of paperwork required and apparent lack of any real need for this paperwork. Businesses perceive this to be the case as a result of the 'laid back' advice they are given when asking about completing the forms correctly. Perhaps there is a need to review whether the 'paperwork in the system' is really necessary.

For further information on any of the points raised in this submission, please contact Susan Love, Policy Officer, on [susan.love@fsb.org](mailto:susan.love@fsb.org) or **0141 221 0775**.