

Explanatory Memorandum to The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Hannah Blythyn AM
Minister for Environment

26 November 2018

PART 1

1. Description

This Statutory Instrument make a number of amendments to two enactments, the Environmental Permitting (England and Wales) Regulations 2016 (“EPR”) and the Environmental Protection Act 1990 (“the 1990 Act”). Amendments to the 1990 Act take effect in relation to England only.

This instrument amends the EPR to improve operator competence at permitted waste sites by introducing requirements for written management systems and requiring the operator to notify the regulator of their compliance with a technical competence scheme. The EPRs are amended to require all:

- regulated facilities which operate under a permit granted before 6 April 2008 that undertake waste operations (excluding at an installation or by means of a Part B mobile plant) to be managed and operated in accordance with a written management system which identifies and minimises the risks of pollution arising from the waste operation;
- waste operators to provide to the regulator information relating to their Technical Competence Management (TCM) arrangements at their waste site that demonstrates compliance (or not) with one of two Government approved schemes i) the CIWM/WAMITAB Operator Competence Scheme¹, or ii) the EU Skills Competence Management System².

To allow the pre-2008 permit holders time to produce and implement a written management system or to modify an existing one so as to comply with the new requirement and to allow the regulator time to ensure internal procedures are in place the operator competence requirements will not be commenced until 7 April 2019.

This instrument also fixes an unintended consequence resulting from amendments to the EPR made by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018, it removes the need to consult a Radioactive Waste Advisor (RWA) on public protection matters in relation to any aspect of radioactive substances activities that concern radioactive waste that is a sealed source.

This instrument also makes changes to one of the exempt flood risk activities and to one of the excluded flood risk activities in the EPR.

This instrument amends the 1990 Act introducing a power for the English waste authorities to issue a fixed penalty notice for failure to comply (in England) with the household waste duty of care, which is set out in Section 34(2A) of the 1990 Act.

¹ The CIWM/WAMITAB Operator Competence Scheme was approved by the Secretary of State and the Welsh Government on 22nd December 2008. Information about the Scheme and compliance can be seen at wamitab.org.uk.

² The Competence Management System was approved by the Secretary of State, the Welsh Government and the Environment Agency on 8th July 2009. Information about the Scheme and compliance can be seen at euskills.co.uk.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument makes amendments to existing enactments and is being made on a composite basis by the Welsh Ministers (in relation to Wales) and by the Secretary of State (in relation to England). As this composite instrument is subject to scrutiny by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

There is no difference in policy on these proposals between England and Wales apart from the provision for fixed penalty notices for failing to comply with the duty relating to the transfer of household waste, which is made for England only.

3. Legislative background

The powers to make to make regulations to amend the Environmental Permitting (England and Wales) Regulations 2016 are:

- in relation to the regulation of waste and radioactive substances activities, section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the 1999 Act”); and
- in relation to flood risk activities, section 61(1) of, and paragraphs 3 and 14 of Schedule 8 to, the Water Act 2014.

Functions under section 2 of the 1999 Act were, in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Secretary of State is also using the power in section 2(2) of the European Communities Act 1972 to make provision in relation to powers of English waste authorities to issue fixed penalty notices for failures to comply with the duty of care relating to household waste placed on occupiers of domestic property by section 34(2A) of the Environmental Protection Act 1990.

This Instrument follows the negative procedure.

4. Purpose and intended effect of the legislation (Wales only)

Environmental permitting - waste operations – operator competence.

Waste sites operating under an Environmental Permit play a critical role in ensuring wastes are managed safely and under controlled conditions. Sites that

are not operated in accordance with the conditions of their permit, can cause serious pollution to the natural environment and nuisance to nearby communities in the form of odour, litter, dust, vermin, fly infestations and fires.

The overall policy objective is to improve operator compliance with the conditions of permits to reduce their impact on the environment and local communities and to reduce the potential for sites to be abandoned.

These Regulations focus on two elements of operator competence: 1) written management systems and 2) technical competence.

1. Written Management System Condition

The Regulations seek to improve operator competence at permitted wastes sites by inserting into Schedule 9 (waste operations and materials facilities) of the EPR a requirement for certain permitted sites to produce and review a written management system where their permit does not already contain a condition for them to do so. Written management systems are an important and effective means of ensuring waste is managed without endangering human health or the environment and minimising the risk of fire. The majority of permits issued or varied since April 2008 already contain a condition which requires a written management system. However, it is not a legal requirement for those operations whose permit does not contain the relevant condition before this date. The regulators are aware of approximately 2,000 sites in England and Wales potentially operating without a written management system in place, which can be a significant contributory factor in poor performance.

A well-written and implemented written management system identifies how day-to-day activities need to be carried out in order to minimise the risk of pollution and impact on the local community. These regulations will increase levels of compliance at the specified permitted sites by requiring those permitted waste operators to manage and operate in accordance with a written management system.

2. Technical Competence Notification

An appropriate standard of technical competence across the waste sector is essential to ensure that waste sites are being operated in a way that does not result in poor performance. There is, however, potentially a gap in the level of technical competence in the waste sector. There is some evidence that TCM may be providing cover at many waste sites and not spending the appropriate length of time at a site. Whilst the regulators are clear that waste sites need to demonstrate technical competence, currently there is no clear express requirement in the EPR that a waste site has to demonstrate their technical competence through a scheme approved by government.

Permits authorising waste operations (subject to certain exceptions) require a technically competent person to direct activities at the site and for that person to attend the site for a minimum period of time each week. The technically competent person can demonstrate their competence by satisfying one of the

accepted industry schemes approved by Government. There are currently two approved schemes; the CIWM/WAMITAB scheme of individual operator competence³ and the ESA/EU Skills scheme of corporate competence⁴.

This instrument will require operators of certain specified permitted waste operations to periodically give to the regulator information demonstrating compliance with one of the relevant schemes. If an operator does not comply with either scheme, they must also inform the regulator of that in their waste return.

The aim of this policy is to ensure that all relevant permitted waste operators demonstrate sufficient levels of technical competence by requiring operators to provide Natural Resources Wales (NRW) with information demonstrating compliance (or not) with one of the relevant schemes, including information as to the TCM arrangements at their waste site. This will enable NRW to build up a national list of TCMs against waste permit data and cross-reference that against data provided by WAMITAB and EU Skills. This will also enable NRW and the scheme operators to identify which sites do not have sufficient technical competence, and where TCMs are spreading themselves too thinly by providing their services at multiple sites.

Environmental permitting - Waste Radioactive Sealed Sources

The EPR set out an environmental permitting and compliance regime that applies to various activities and industries. Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations (EPR) 2018 amended the EPR to transpose the new requirements contained in the Basic Safety Standards Directive 2013/59/Euratom. However, these amendments caused an unintended consequence by requiring permit holders handling waste radioactive sealed sources to consult with a Radioactive Waste Adviser (RWA) on certain matters relating to protecting members of the public from exposure to ionising radiation. This is not what was intended or consulted upon, nor is it a requirement under the Basic Safety Standards Directive (2013/59/Euratom).

As there are no discharges to the environment from sealed sources there is no public exposure, and it is considered disproportionate and of no benefit to the environment in most circumstances to require operators handling waste sealed sources to consult an RWA on matters relating to public protection. The Ionising Radiations Regulations 2017, made under the Health and Safety at Work etc. Act 1974, require all operators to consult radiation protection advisers, so the requirements of the Basic Safety Standards Directive are satisfied.

This instrument therefore remedies this unintended consequence by removing the need to consult an RWA on public protection matters where the radioactive substances activities involve waste that is a sealed source.

³ Chartered Institution of Wastes Management / Waste Management Industry Training and Advisory Board

⁴ Environmental Services Association / Energy and Utilities Skills

Environmental permitting - Flood Risk Activities

In relation to flood risk activities there are changes one of the exempt flood risk activities, and one of the excluded flood risk activities -to make the exemption and exclusion clearer and less bureaucratic. The changes include the following:-

- Schedule 3, Part 4, paragraph 20 provides an exemption for construction of fish passage notches on an existing impoundment. This instrument removes the reference to fish passage so as to allow the exemption to cover notches more generally.
- Schedule 25, Part 2, Section 2, paragraph 5 provides an exclusion for erection and use of ladders and scaffold towers. This instrument broadens the exclusion to extend to “other similar apparatus”.

5. Consultation

Waste Operator Competence

The proposed amendments to the EPR 2016 were part of a range of proposals in a 12-week public consultation held jointly with DEFRA between the 15 January 2018 to 26 March 2018⁵.

There were 275 responses to the consultation, 42 of the responses were from Wales. The responses were broken down as follows: 26% from private businesses, 21% from trade associations, 12% from local authorities, 12% from individuals, 12% from other public bodies, 10% from NGOs and 7% from professional bodies.

The responses on improving operator competence show overall support for strengthening the regulators assessment of waste operators competence including considering their past performance, management systems, technical competence and financial provision.

18 people answered questions on the management system requirement and all agreed it would be beneficial for all waste permit holders to operate in accordance with a written management system.

20 people answered the questions on technical competence. 95% agreed that an explicit requirement in the EPR for permitted waste sites to demonstrate technical competence through a scheme approved by government would address the current gap in technical competence.

A summary of the consultation responses is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721972/waste-crime-consult-sum-resp.pdf

⁵ <https://beta.gov.wales/reducing-crime-sites-handling-waste-and-introducing-fixed-penalties-waste-duty-care>

Waste Radioactive Sealed Sources

No further consultation has been undertaken as the amendments correct unintentional provision made by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations (EPR) 2018.

Flood Risk Activities

In respect of the changes relating to flood risk activities, a joint consultation by Defra and the Welsh Government on amending some of the exemptions and exclusions was published on 11 April 2018 and ended on 20 June 2018. 14 respondents submitted comments. The majority of respondents supported the proposed changes. A summary and response to the consultation can be seen at <https://www.gov.uk/government/consultations/environmental-permitting-amending-flood-risk-exclusions-and-exemptions>

PART 2 – REGULATORY IMPACT ASSESSMENT

Strengthening the Regulators Assessment and Enforcement of Operator Competence in the Waste Sector.

6. Options

The consultation to strengthen the assessment and enforcement of operator competence considered three options, (i) do nothing, (ii) improve four elements of operator competence including, assessing an operator's past performance, operator's financial competence, requiring written management systems and technical competent management, and (iii) financial provision for all permitted waste sites.

This instrument focusses on two elements of option 2, i.e. written management systems and TCM. Further work is being undertaken on the remaining elements. We intend to consult further on financial provision options and to look at amending Government guidance to strengthen the regulators assessment of past performance. Options 1 and 2 are covered below.

Option 1: 'Do nothing' will not address the impacts to the natural environment and local communities as there will be no action taken from government.

Option 2: 'Improving operator competence' provides the best value for money for the taxpayer, whilst achieving the policy aims. The majority of respondents to the consultation (80%) favoured this option.

The two main groups that are impacted by the costs are waste site operators and regulators (Natural Resources Wales and the Environment Agency in England).

Option 1: Do Nothing

The first option is for government not to intervene in the waste sector to improve operator competence.

Description of each element

Written Management Systems — no change to requirements for operators to produce written management systems or to how the regulators enforce these management systems. All permits issued after 2008, and all pre-2008 permits that are varied after 2008, will have a permit condition for a management system. Without intervention it will take approximately 20 years for all remaining UK pre-2008 permits to come up for variation to enable a written management system requirement to be included in these permits.

Technical Competent Management — no change how the regulators enforce TCM. As with written management systems, all permits issued after 2008 permits and all pre-2008 permits that are varied after 2008 will have a permit condition requiring technical competence. However, it will take approximately

20 years for remaining pre-2008 permits to come up for variation and a technical competency requirement to be included in these permits.

Option 2: Improving operator competence

The second option is improving operator competence which would involve amending the EPR. The mechanism for amending written management systems and TCM is outlined below. The majority of respondents to the consultation agreed that guidance and legislation should be amended to achieve the policy objectives of improving operator competence. In this option, the costs for each of the elements have been set out separately, however the benefits of each element have been combined to show the total impact of the reduction in the number of poor performing sites.

Options for each element

Technically Competent Management - amend EPR legislation to strengthen the regulators' assessment and enforcement of technical competence by enabling the regulators to require operators to inform them who the TCM is at their waste site.

Written Management Systems - amend EPR legislation to strengthen the regulator's assessment and enforcement of management systems by including a requirement for all permitted waste sites to have a written management system.

7. Costs and benefits

Option 1

Costs

There are no costs from this option.

Benefits

There are no benefits from this option.

Although the Environmental Services Association suggests that the level of waste crime may be increasing, in the absence of conclusive proof of such a trend, for this analysis the conservative working assumption was adopted that the cost to the regulators and society will remain the same over the next 10 years.

Option 2

Management Systems

Costs to waste site operators

There will be a transitional cost to a proportion of waste site operators to develop a written management system or amend their current working plan to comply with the modern format. From information supplied by the regulators we estimate that 2,602 waste operators in England and Wales do not currently have any system in place. Of the 543 waste facilities with permits in Wales at least 350 have a condition in the Permit requiring a Written Management System leaving 193 permits that will need a written management system or need to modify one.

From discussions with the regulators and waste management consultants we have estimated that the average cost of revising a working plan so it complies with the modern written management system condition is £1,000 and the cost of producing a new written management system is £3,000. Based on estimates from the regulators, we assume that half of the target population has a management plan that needs to be revised, and that the other half will need an entirely new management plan. Based on the figures of 193 facilities in Wales without a modern management system, the estimated cost is £386,000 $((193 \times 0.5 \times 3000) + (193 \times 0.5 \times 1000))$. This is a transitional cost which will occur in year 1.

There will also be an ongoing cost to maintain written management systems. Only the cost of revising the written management system is attributable as any implementation costs are attributable to the operator choosing to amend their operations. Most updates will be minor and only significant change would necessitate major rewriting of the management system. The regulator estimates that such updates would take no more than 2 hours of a TCM's time per year, and we assume that 5% of the 193 operators will revise their plans every year based on the regulators experience of existing industry practice. Based on a TCM average annual salary of £30,000 to £65,000 per annum (according to National Career Service data) an hourly salary is estimated to range from £14-£31 giving an ongoing cost of £135 - £299. Where an operator already has an existing working plan this will already be maintained and so the additional cost does not arise.

Costs to regulators

The cost of checking management systems is already accounted for in the annual subsistence fee paid by a site operator to NRW for regulation of their site. A small additional workload may result in permit officers having to spend more time checking operations against the management system. This is estimated as an opportunity cost of their time that could have been spent on other activities. The regulator advises a permit officer (£90/hr) will spend an extra 15 minutes per application to assess the additional information, we estimate an opportunity cost in year 1 of £4,343 (from processing 193 applications), and an ongoing cost of £217 to process the renewals (5% of the 193 operators every year).

Technical Competence

Costs to waste site operators

There will be a minimal cost on operators to inform regulators who the TCM is at a waste site. The regulators will likely request this information through an additional field on the quarterly waste returns. It should not increase the time it takes for an operator to complete the form, as the operator already completes a waste return on a regular basis.

Costs to regulators

There will be a minimal cost to the regulator to include a TCM name field in the annual waste return and to communicate the changes and ensure their internal procedures are in place to manage the change.

Benefits

Option 2 would result in a reduction in the number of poor performing waste sites which fall into the lower bands of the regulators Operator Risk Appraisal system⁶. The management systems and technical competence proposals are expected to lead to a 20% reduction of permits in categories D, E or F (poorest performing sites) status, down from 40 to 32. The Environment Agency National Permitting Service recently audited 5 permits that fell into D,E,F status within one year of being issued. 1 in 5 (20%) had poor compliance because of insufficient management systems. We recognise that this is a small sample, however we are confident that this is a realistic representation, based on this we assume that policy approach will decrease the number of D,E,F sites by 20% (8) across Wales.

Benefits to society

The benefits to society have been calculated as the benefits per tonnes of waste that will no longer be kept at poor performing sites. From discussions with the regulators we estimated that approximately 7,500 - 10,000 tonnes of waste is kept at a poor performing (category D,E,F) site. This estimate is based on the mean volume of tonnes at a D,E,F site at a specific point in time.

Reducing D,E,F sites by 8 per year, due to site management systems and technical competence, will result in less waste (between 60,000 and 80,000 tonnes) being handled by non-compliant operators.

The latest data from Ricardo AEA's Technical Report on the Waste Crime Intervention and Evaluation Project⁷ estimates the benefits of avoided ecological / environment damage by illegal waste sites are £1.86 - £1.88 per tonne. In terms of the consequences in environmental pollution and disamenity effects, the externalities at an illegal waste site and non-complaint permitted sites are not very dissimilar.

Table 1 Externality Costs

⁶ Natural Resource Wales Operational Risk Appraisal (Opra) assessment categorises all permitted waste sites into bands from A to F. These bands are based on site performance and compliance levels in the previous year. In this categorisation Bands A, B and C constitute well run sites, which are compliant with the environmental permitting regulations. Bands D, E and F are considered poor performers and are not compliant with the regulations or the regulators' enforcement efforts.

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662841/Waste_crime_interventions_and_evaluation_-_report.pdf

Estimates £/tonne	Low	High	Central
Environmental	£1.86	£1.88	£1.87
Disamenity	£6.02	£6.18	£6.10
Total	£7.88	£8.06	£7.97

Taking these estimated costs and multiplying by the estimated central (average) tonnage of waste from the 8 fewer D,E,F sites, the central estimate of the annual cost of non compliance by site operators is approximately £560,000 (the range is £470,000 to £640,000). Since the ongoing costs to the regulator, (as identified above), are minimal, the annual costs will remain roughly the same. These represent the cost savings to society under Option 2 and hence are counted as being among its benefits.

Benefits to the regulators of dealing with fewer incidents

The benefits to the regulators of dealing with fewer incidents have been calculated on a site basis. The Environment Agency's pollution incidents 2015 evidence summary⁸ shows that 145 incidents were caused by waste sites. 72% (104) of these were caused by D,E,F sites. Meaning 22% (104 out of the 465) D,E,F sites caused category 1 and 2 incidents. This intervention will result in 8 fewer D,E,F sites in Wales. Assuming that the same incident rate (22%) applies, this suggests there may be 1-2 fewer incidents a year. The evidence summary shows that each incident generates an average cost of £24,048,⁹ so the total benefit is £24,000-£48,000 per year.

Non-monetised benefits

Certain benefits have not been possible to quantify, but have been included as non-monetised benefits. A significant non-monetised benefit is the creation of a more level playing field where non-compliant waste operators will be less able to undercut legitimate and compliant businesses. Another benefit is the reduction in criminality in the waste sector as a whole. Improving the performance at permitted waste sites will help crack down on operators that use waste permits to hide other forms of waste crime, such as, illegal waste sites, large scale illegal dumping and illegal exporting of waste.

Other non-monetised benefits include the reduction of:

- Health impacts from incidents
- Risks of surface and groundwater contamination
- Reputational damage to waste industry from publicity surrounding poor performing sites
- Reputational damage to regulators

⁸ Environment Agency: '[Pollution incidents: 2015 evidence summary](#)'.

⁹ EA Pollution incidents 2015 evidence summary; (July 2016). Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651707/Pollution_incidents_2015_evidence_summary_LIT_10487.pdf

- Greenhouse gas emissions from fires.

The intervention will deter future poor performance through a multiplier effect or scaling, however values were not sufficiently robust to accurately monetise, but could significantly increase benefit estimates of policies.

Summary of costs and benefits

A summary of the costs and benefits over 10 years are set out in Table 2. There will be some transition costs, the table shows a summary of these and regular ongoing costs per year to businesses and regulators, and benefits to the regulators and society. It has been assumed that the transition costs realised in year 1 are familiarisation costs and costs for all necessary sites to develop appropriate management systems. Ongoing regular costs incurred from year 1 through to year 10 are incurred in addition to these, and remain constant over time.

Benefits are all accounted for as regular, however those accruing in year 1 are attributed to 60% of the disamenity value and avoided sites rated DEF, and those accruing from years 2 to 10 are attributed to 100% of this disamenity. Assumptions on the time apportionment are made on the understanding that regulator and environmental benefits will not be fully realised immediately. The 60% is a reasonable assumption as there is no empirical evidence on the speed, continuation and implementation of compliance from sites.

Table 2: Costs & Benefits (undiscounted) summary tables of Option 2. Values are in £m

		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Costs											
Transition Costs	Business	0.39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Society	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual Costs	Business	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Regulator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs		0.39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Benefits											
Transition Benefits	Business	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Society	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual benefits	Regulator	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05	0.02- 0.05
	Society	0.34	0.56	0.56	0.56	0.56	0.56	0.56	0.56	0.56	0.56
Total Benefits		0.36- 0.38	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61
Net Benefit		-0.03- 0.00	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61	0.58- 0.61

Wider impacts

Small and Micro Business Assessment (SaMBA)

Regulators do not collect data on the size of individual permit holder's business as this is not relevant to the permitting process. However, based on its knowledge of the sector and an analysis of the current stock of waste permits they estimate that around 40% of waste site operators in England and Wales are considered to be Small and Micro Business (SMBs), 15% are considered small businesses and 25% are considered micro businesses. The waste industry comprises a small number of large national companies with a large network of permitted and exempt operations. Their coverage is extensive and their operations are usually large enough to require a permit rather than an exemption. At the other end of the scale there are a large number of small and micro-businesses which offer local collection and waste management services. This network of small operators typically pass their waste to larger sites, often after intermediate bulking up, sorting or other treatment. In the middle are a number of regional operators. They may be wholly independent or trading arms of one of the larger companies. Despite some consolidation within the industry in recent years, they still represent an important part of the waste sector. 15% of the costs (approximately £58,000 of the £390,000 total costs to business over the first ten years) will fall on small businesses and 25% (£97,000) on micro businesses.

If we excluded SMBs from the approach then it would significantly compromise the objectives of the policy. SMBs account for a large part of the waste sector, so excluding them would mean that the proposals would not be applied to a significant proportion of waste permits and the environmental and social benefits would not be achieved.

As such, this intervention will impose an impact on SMBs. However, mitigating this, the waste permitting regime already takes an operator's size into account. Small scale operations are able to register for a waste exemption (an exemption from a waste permit), if their waste activities are considered very low risk. Additionally, we have taken into account the size and scale of waste businesses when designing the policy to ensure that the regulators apply the appropriate level of regulation. An operator will be required to produce a management system which is proportional to its size and scale. Smaller sites will be required to complete and implement a less comprehensive system in comparison to a larger complex site, and therefore would have to commit less time and funds to do this.

In addition, an operator's size and scale will be taken into account when undertaking a technical competency qualification. The regulators' assessment of the permitting stock indicates smaller sites generally perform lower risk activities and therefore need to gain the cheaper lower risk qualifications. For example, small sites undertake basic and lower risk activities, such as, inert construction waste sorting whereas higher risk activities are performed by the larger and more complex sites. There are exceptions, for example a small site can specialise in higher risk activity such as asbestos removal, but these situations are rare.

The legislation to implement option 2 will include a suitable transition period to allow smaller sites time to develop a site management system or ensure they have correct technical competence qualifications. The regulators will

communicate the changes to all waste permit holders in advance of option 2 being implemented. This will make smaller sites aware of the changes to ensure that they are able to comply with the legislation when it comes into force.

Preferred option and implementation

After considering the cost benefit analysis, Option 2 is the preferred option to take forward because it provides the best value for money for the taxpayer while achieving the policy aims. Option 1 is not the preferred option, as the costs to the natural environment, local communities and pollution incidents are not addressed.

8. Competition Assessment

The intervention will create a level playing field in the waste sector by ensuring that all waste sites are operated to the same levels of compliance. Therefore, intervention should increase legitimate competition in the waste sector as non-compliant waste operators will be less able to undercut compliant and legitimate operators.

As existing permitted sites move out of the D,E,F categories into A,B,C, waste will continue to be managed at existing permitted sites so capacity and choice will not be diminished. Any apparent under-capacity in the market will be filled by more suitable operators. The Regulators have identified no reason to believe that waste will be diverted away from compliant sites as a result of a more effective screening of applicants. Indeed the core purpose of a permitting regime is to ensure permits are only issued to operators who are most likely to be compliant with their permit. Issuing permits to high-risk operators is the most likely way of driving waste into non-compliant sites so restricting their access to permits is an effective way of supporting good operators.

The competition filter test	
Question	Answer
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No

The competition filter test	
Question	Answer
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Specific Impacts

Officials have carried out an Integrated Impact Assessment in regard to the waste operator proposals which assessed the following-

- Welsh Language Impact Assessment (WLIA) concluded the powers would not directly impact on the Welsh Language. The regulations, being composite, will be issued in English only.
- Rights of the Child Assessment concluded no identifiable conflict with United Nations Convention on the Rights of the Child and these proposals have no negative impacts on children and young people. These proposals will bring positive action, intended to tackle illegal waste activity which harms the environment and threatens human health;
- Equalities Impact Assessment concluded no impact on Equality Act 2010 and Welsh Government engaged with the relevant stakeholders who provided no response to the consultation;
- Rural Proofing Assessment – the rural proofing screening tool concluded the powers would bring positive benefits in rural areas by reducing the numbers of poor performing and illegal waste sites with associated issues of fly infestations, odour and risk of fires;
- Privacy Impact Assessment concluded there would be no additional data protection issues arising from this regulation.

Flood Risk Activities

In respect of the changes to exemptions and exclusions in relation to flood risk activities, there is no significant impact on business given that most changes are deregulatory. The proposed changes to flood risk activity exemptions and

exclusions will primarily affect those individuals, businesses and organisations that carry out works on or near to main rivers, such as: landowners and farmers; internal drainage boards; Canal and Rivers Trust; local authorities; riparian owners and householders; and environmental groups. The changes are intended to make the regulations clearer and introduce more flexibility for individuals and businesses.

Radioactive Sealed Sources

Changes related to radioactive sealed sources remove a burden on businesses.

9. Post implementation review

The regulators will take a risk based approach to implementing the policy. When implementing technical competence the regulator will expect all sites to take a technical competent qualification within two years and will focus on DEF status sites in year 1. When implementing management systems, all operators will have completed a management system within a year.

The need for monitoring and a post implementation review have been recognised. The regulators will analyse the number of poor performing sites on a quarterly basis and publish figures on an annual basis. Data from the regulators on the number of D,E,F rated sites will be analysed on an annual basis to monitor and assess the effectiveness of the intervention. The regulators will also provide an assessment of the levels of improvement of operator competence. This data and the assessment will be used to determine the benefits of the intervention.