

Amendment to Section 57 (Power to require waste to be accepted, treated, disposed or delivered) of the Environmental Protection Act 1990: Consultation

Consultation on extending the power of Scottish Ministers to direct the holder of a permit issued under the Pollution Prevention and Control (Scotland) Regulations 2012 to accept and keep, or accept and treat or dispose of, controlled waste at specified places and on specified terms.

Environmental Quality and Circular Economy
Zero Waste

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Scottish Government
Riaghaltas na h-Alba
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Background

The version of section 57 of the Environmental Protection Act 1990 (EPA 1990) that applies in Scotland enables Scottish Ministers to, by notice in writing, direct the holder of any waste management licence to accept and keep, or accept and treat or dispose of, controlled waste at specified places, and on specified terms. It also enables Ministers to direct a person keeping controlled waste to deliver that waste to a specified person, and for the waste holder to pay reasonable costs to the specified person for the treatment or disposal of the waste. If the costs are not paid, there is a discretion to Ministers to pay them. Section 58 of that Act enables Ministers to direct local authorities to accept and treat or dispose of waste.

Sections 57 and 58 have not been substantially amended since they came into force. The current provisions which apply in Scotland are set out in full in the Annex to this consultation. They are of the nature of a failsafe power to ensure that waste is appropriately treated or disposed of in circumstances where the normal regulatory powers fall short or have been exhausted.

We have no record of the current provisions being exercised since devolution as the regulatory and enforcement powers of the Scottish Environment Protection Agency (SEPA) have been relied on to deal with any issues arising.

Current Context

As part of our work on EU Exit contingency planning it has become apparent that, while section 58 is still fit for purpose, section 57 has not been updated to take account of holders of permits issued under the Pollution Prevention and Control (Scotland) Regulations 2012 (PPC)

These Regulations transpose and implement Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions into Scots law. They are used to regulate larger industrial installations, and those with greater potential environmental impact, including waste incinerators, landfills and larger waste treatment facilities. In addition, section 57 does not extend to operators relying on exemptions from the waste management licensing regime. The parallel powers of direction in England and Wales apply to those operating under exemptions from the waste management licensing regime, as well as those holding waste management licences, and PPC permits. .

Article 13 of the Waste Framework Directive requires Member States to take the necessary measures to ensure that waste management is carried out without endangering human health, and without harming the environment. That requirement is met through the various waste regulatory regimes. In relatively rare circumstances, such as cases of abandonment of sites or bankruptcy of operators, normal regulatory provisions can be inadequate to remedy situations where waste presents an immediate danger to human health or harm to the environment.

The power in section 57 enables Ministers to prevent or mitigate a particular danger or harm by directing a waste management licence holder to take appropriate steps in respect of specified waste. If the necessary steps can only be taken by the holder of a PPC permit or someone operating under an exemption from the waste management licensing regime (WML), then that option is not currently available to Ministers. We consider that, in order to fully meet the requirements of Article 13, the power of direction should apply to those operating under WML exemptions and to PPC permit holders.

Why are we consulting?

If the power is broadened as suggested above, it would affect a broader range of operators than is the case presently. The power will continue to be a failsafe for use if normal regulatory action is not available. We intend to make it explicit in the provisions that the extended power of direction may only be exercised for the purpose of preventing damage to human health or harm to the environment. The existing cost recovery provisions enable the operator receiving waste as a result of a direction made by Scottish Ministers to recover its reasonable costs from the person which held that waste. The full provisions may be found at section 57(4) and (7) in the Annex. These will apply to the wider provisions.

Question

Do you agree that the proposed Extension of the Power of Direction in Section 57 of EPA is;

- (A) Necessary to ensure full compliance with EU obligations, and**
- (B) Appropriate to prevent damage to human health and harm to the environment in circumstances where no other mechanism is available.**

Impact Assessments

As noted above, the current Direction-making power has not, to our knowledge, been used since devolution. This makes clear the relative rarity with which circumstances which may require use of the power are likely to arise.

As this new power would only be used under extreme circumstances (i.e. in an emergency situation when there is a threat to the environment and/or human health) it is not considered that an Equality Impact Assessment or Business Regulatory Impact Assessment would be meaningful. By definition, it is difficult to set out all the circumstances in which a backstop power is likely to be used; the potential circumstances which have been identified – abandonment and liquidation – are not likely to result in costs to business or significant equalities impacts.

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Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>

If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

EQCE – Zero Waste Unit
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ANNEX

The Environmental Protection Act 1990

57.— Power of Secretary of State(a) to require waste to be accepted, treated, disposed of or delivered.

(1) The Secretary of State may, by notice in writing, direct the holder of any waste management licence to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms.

(2) The Secretary of State may, by notice in writing, direct any person who is keeping controlled waste on any land to deliver the waste to a specified person on specified terms with a view to its being treated or disposed of by that other person.

(3) A direction under this section may impose a requirement as respects waste of any specified kind or as respects any specified consignment of waste.

(4) A direction under subsection (2) above may require the person who is directed to deliver the waste to pay to the specified person his reasonable costs of treating or disposing of the waste.

(5) A person who fails, without reasonable excuse, to comply with a direction under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person shall not be guilty of an offence under any other enactment prescribed by the Secretary of State by regulations made for the purposes of this subsection by reason only of anything necessarily done or omitted in order to comply with a direction under this section.

(7) The Secretary of State may, where the costs of the treatment or disposal of waste are not paid or not fully paid in pursuance of subsection (4) above to the person treating or disposing of the waste, pay the costs or the unpaid costs, as the case may be, to that person.

[(7A) In subsection (6) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]¹

(8) In this section “specified” means specified in a direction under this section.

58. Power of Secretary of State (a) to require waste to be accepted, treated, disposed of or delivered: Scotland.

In relation to Scotland, the Secretary of State may give directions to a waste disposal authority to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms; and it shall be the duty of the authority to give effect to the directions.

(a) The powers of the Secretary of State in this section devolved to the Scottish Ministers in accordance with the Scotland Act 1998.



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