

Stay compliant with char

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Back in January 2018, Defra and the Welsh Government consulted on crime and poor performance in the waste sector. A big part of that consultation was around the future of exemptions.

In February 2023, the Government published its long-awaited response to that consultation and, as some of us expected, it heralds the death of exemptions at permitted sites. It may also mark the end of free exemptions, with charges for exemptions likely to form part of a further consultation.

At some point this year or next, permitted sites using exemptions for waste-related activities will no longer be able to do so. Operators will need to either apply for permit variations for previously exempt activities or cease the exempt activity. The dates for these changes have not yet been announced, but they are coming.

Exemptions will also be prohibited at 'direct link' sites, which include land adjacent to a permitted site controlled by the permit operator, or where an exempt site uses the staff, equipment or infrastructure of a permitted site to carry out the exempt activities.

Once regulations come in, expect

lively debate about what amounts to a direct link site.

The consultation response also marks the end of three existing exemptions considered to be most open to misuse. Those currently using U16 (depolluting end-of-life vehicles), T8 (treating waste tyres) and T9 (scrap metal recovery) will no longer be able to do so without an environmental permit.

This could see hefty fines for operators who use exemptions which no longer apply. The Environment Agency (EA) and Natural Resources Wales (NRW) regard a breach of an exemption as unlawfully carrying out the waste activity rather than operating in breach of a condition. Unauthorised waste activities attract unlimited fines under both the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2016.

Convictions can also affect an operator's fitness to hold a permit. Deliberate offences carry the highest fines, and enforcement undertakings – a less serious penalty – are not available where the operator has committed a deliberate breach.

Another interesting change involves multiple exemptions registered at the same site. No limit has been imposed on the number of exemptions which can be registered at the same site, but the storage limit for each waste type will be the

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lowest limit in the exemptions registered. This is to stop operators from combining limits to increase the scale of their operations.

Operators will have to think carefully about the exemptions they require. Registering an exemption with a smaller waste storage capacity is likely to affect financial viability.

Some of the old favourite exemptions are also changing, such as:

- U1 exemptions will be restricted to the construction and maintenance of surfaces and barriers.
- T4, T6 and T12 exemptions will have additional conditions attached to reduce stockpiling and fire risk. Storage limits for T4 and T6 will reduce.
- D7 exemptions will be restricted to burning waste at the place of production and additional conditions will be applied.

Transitional provisions will apply, so an operator who makes a valid application for an environmental permit during the transitional period should be allowed to continue the exempt activity until the permit is granted. Transitional periods range from three to 12 months and operators will need to check time limits for each exemption carefully.

Those operators who miss the transitional deadline will not be able to operate under the exemption at the end of that period. During the transition, the terms of existing exemptions will apply. For example, there is a proposed six-month transition period for the use of exemptions at permitted sites. This will allow six months for an operator to cease operating under an exemption



Challenges ahead: Those operating under exemptions should already be considering how the changes will affect them

Changes to exemption rules



Additional costs: Many sites will need to improve infrastructure to meet permit conditions

or to vary an existing permit to include the previously exempt operation.

Since the pandemic, standard rule and bespoke permit applications are taking many months to be determined, with an ongoing backlog of applications still in the queue. Many operators have had to wait more than a year for their permit to be issued. Anyone caught out by the changes to exemptions will have a long wait for their permit and no 'grandfather rights' in that period.

From April 2023, the EA has 127,932 exemptions registered in England. A large number of these will be required to go through some form of transition under the new regime.

The changes raise difficult questions for exempt sites which are not at permitted site standards. Many will need to improve infrastructure to meet permit conditions, such as an impermeable surface; have approved and implement management systems, including a fire prevention plan if dealing with combustible waste; and appoint a technically competent manager, which for some operators will require staff training and gaining relevant qualifications internally in order to achieve this.

Such additional costs, alongside application and subsistence fees, may make it difficult for some exempt operations to continue.

Additional changes will apply immediately, such as the requirement for operators to keep records in an electronic format, a compulsory requirement for operators to make records available upon request and changes to waste codes within exemptions.

The exemption changes also raise interesting questions about enforcement. The EA and NRW are already under-resourced and stretched. Many exempt sites will not ever have received compliance visits. Regulators will not be able to visit all exempt sites straight away and will have to prioritise their limited resources. It could be some time before non-compliant exempt sites have an enforcement visit.

It is likely that compliance efforts will initially focus on permitted sites which have traditionally had exemptions. Assessment reports will note non-compliance with exemptions as a breach of the permit which, in turn, will impact on Operational Risk Appraisal Scheme scores and subsistence fees.

Although the finer detail has not been released and time limits are not yet ticking, this is a huge change that operators cannot afford to ignore. Those who are operating under exemptions should already be considering how the changes will affect them, and what needs to be done to stay compliant. ♻️

CASE STUDIES

THE RULES IN ACTION

CASE STUDY 1

Site A has a standard rule environmental permit for a waste transfer station. It has an S2 exemption for the storage of wood on a parcel of land within the site boundary (outside of the permit boundary).

The adjacent sites are under the control of the same operator and use the same staff, equipment and infrastructure.

As the permitted area and the exempt area would be classed as adjacent sites with a direct link, the exempt activity will have six months to cease operation.

The operator will apply to vary its standard rule permit to include the land previously covered by the S2 permit. Land previously outside the permit is likely to require infrastructure upgrades as part of that application.

CASE STUDY 2

Site B has been operating a small metal recycling operation under a T9 exemption for nine years on a hardcore surfaced industrial site. The exempt activity will have three months to cease operation.

The operator will need to apply for a SR2015 No.16 standard rule permit for metal recycling within that three-month period to allow previously exempt activities to continue.

The permit requires the site to have an environmental management system, technically competent manager, fire prevention plan including the associated infrastructure for fire detection and suppression, and the installation of an impermeable surface with sealed drainage.