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# Consultation Response

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

September 2019



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation on *Amendment to Section 57 (Power to require waste to be accepted, treated, disposed or delivered) of the Environmental Protection Act 1990*<sup>1</sup>. We have the following comments to put forward for consideration.

## General comments

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We consider that the proposed amendment to section 57 of the Environmental Protection Act 1990 appears to be a legitimate extension. When the legislation was introduced, there were no Pollution Prevention and Control permits to which it could have been applied. This therefore appears to be a sensible measure to ensure that the legislation fits with changes in the related legal structures and to ensure that the legislation is fit for purpose by providing a practical response to an environmental problem.

We suggest that it would be prudent for the extension to make reference to the new form of integrated authorisations<sup>2</sup> which will eventually replace the existing Waste Management Licenses, Pollution Prevention and Control permits and exemptions once brought into force.

We do not consider that we are in a position to comment on whether the extension is fully appropriate until such time as we have sight of the proposed wording for the legislative amendment stating the basis on which these directions should be used (i.e. as a failsafe).

<sup>1</sup> <https://www.gov.scot/publications/amendment-section-57-power-require-waste-accepted-treated-disposed-delivered-environmental-protection-act-1990/>

<sup>2</sup> <https://www.sepa.org.uk/regulations/how-we-regulate/environmental-authorisations-scotland-regulations-2018/>

We note that there is not currently an appeal mechanism provided against directions. Exercise of the powers under the legislation could result in a substantial imposition on the recipient of the direction. We suggest that such a provision be included in the amending legislation.

We note that there are two further matters upon which Scottish Ministers may wish to seek further input from the Scottish Environment Protection Agency (SEPA) and others:

1. Where there is financial provision in place for a waste site in the form of a remediation trust arrangement, the wording of the arrangements may need to be checked by SEPA to ensure there is no unintended outcome from the proposed change, particularly to ensure that a direction does not cause difficulties with the release of money from a trust fund; and
2. Given the wide range of facilities which PPC permits and WML exemptions can cover, we suggest consideration is given as to whether there is a need for the Ministers' direction to be to an "appropriate" site and a need for impact upon the outputs of that site (with associated process and compliance costs) to be considered, or otherwise temporary concessions to conditions granted by SEPA to facilitate compliance with a direction from Ministers.

**For further information, please contact:**

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

[AlisonMcNab@lawscot.org.uk](mailto:AlisonMcNab@lawscot.org.uk)