



Law Society
of Scotland

Consultation response

Introduction of mandatory digital waste tracking

April 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 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 respond to the joint consultation by the UK Government, Scottish Government, Welsh Government and Department of Agriculture, Environment and Rural Affairs in Northern Ireland concerning the *Introduction of mandatory digital waste tracking*¹. We have the following comments to put forward for consideration – we do not seek to answer all of the consultation questions.

General remarks

We recognise that digitisation of the regulatory system is inevitable and necessary. A mandatory system appropriately implemented together with targeted and appropriate enforcement of regulations should have the effect of creating a level playing field across the affected sectors.

We recognise that existing procedures relating to the completion and retention of waste transfer notes can be cumbersome and while some useful information or evidence can be obtained by regulators from the detail of handwritten transfer notes, this relies on these being made available and provided when asked and can be a time-consuming process. In addition, these may not give a clear picture of what has happened to the waste - written descriptions can vary, and often minimum detail is provided. It is hoped that an electronic system will enable more accurate recording of waste types and waste movement.

However, it is vital that there is as little an impact as possible on the existing systems and practices that are effective in their aims to reduce waste crime when the transition to a new system is put in place. It would also be beneficial to prevent the operational cost of compliance being significantly increased, unless easily accessible financial support is available. There may be unintended consequences of non-compliance if operational costs are significantly increased.

¹ <https://consult.defra.gov.uk/environmental-quality/waste-tracking/>

In Scotland, the affected sectors (particularly the waste industry) are much more fragmented than in other parts of the UK and there are many more SME and micro sized operators with less prevalence of larger operators. That will create more challenges for implementation of a new system in Scotland.

It is feasible that despite the scope of the consultation, some illegal waste activities could remain out of scope and that would impact on those required to comply and prevent a level playing field.

Consultation questions

Q7) Do you agree or disagree with the waste types we are proposing to be tracked?

There will be some challenges in dealing with material that ceases to be waste (such as via end of waste protocols etc) and when it needs to be tracked or not. When materials 'circle back' into the economy as a resource, they are no longer a 'waste' and so it is questionable as to whether there is justification for requiring compliance at that point (albeit the information could be useful).

Q43) Do you agree or disagree with our proposals on UK GDPR?

Given the amount of personal information that is required at every stage, there could be a number of GDPR issues to overcome relating to commercial and sensitive information being required to be recorded. This will particularly be the case where the regime makes information available to competitors dealing in similar markets that do not have the same compliance requirements – such as where waste is used to create a product or where waste materials are combined with other materials as part of an end of waste process or similar. There therefore could also be issues relating to commercial confidentiality. In addition, we note that the consultation suggests that wider public and interested parties will be able to access summary reports and while this may have benefits around providing transparency, consideration is required as to the need for legitimate safeguards on confidentiality.

Q46) Do you agree or disagree with the proposed offences and associated enforcement options as set out in Table 5?

No opinion.

We note that Table 5 sets out proposed criminal offences and the suggested level of civil sanction in the form of either a fixed monetary penalty (FMP) or variable monetary penalty (VMP). The Scottish Environment Protection Agency (SEPA) already has powers to use these measures for specified relevant offences, so we presume that the list of existing relevant offences would be amended to include the new waste tracking offences. In the interests of clarity and certainty, as well as resource implications, we favour new matters being integrated into the existing enforcement framework rather than the introduction of a new parallel regime. We note that some of the offences set out in Table 5 are restricted to FMP only, while for the more serious offences, the only option is VMP. This differs from SEPA's existing powers to issue enforcement measures where there is discretion to apply either FMP or VMP in most cases.

Q47) Do you think there should be a maximum limit for variable monetary penalties set out in legislation?

Yes, we consider that a maximum limit for VMP's should be set out in legislation. This is in line with SEPA's existing powers in relation to the amount of VMP which can be imposed (linked to maximum fines available for such offences) and provides clarity and certainty in the regime. As referred to above, we favour a single coherent regime rather than different regimes for different areas of activity.

Q53) Which approach to getting all users onto the waste tracking service do you think we should adopt?

- **option 1 – everyone must use the service from the day it goes live**
- **option 2 – voluntary use for a specified length of time, then mandatory for all**
- **option 3 – mandating some waste holders use the service or certain types of waste movement must be recorded on the service first then on-boarding others over time**
- **something else**
- **no opinion**

Option 2 or 3.

Recognising that the new regime will involve time, work and expense to establish, we consider that a phased approach would be appropriate.

For further information, please contact:

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