

Consultation on revised guidance regarding provision and assessment of technically competent management at licensed waste management facilities

October 2020

Every day SEPA works to protect and enhance Scotland's environment, helping communities and businesses thrive within the resources of our planet.



We call this **One Planet Prosperity**

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www.sepa.org.uk

Strathallan House, Castle Business Park, Stirling, FK9 4TZ

Overview

The Scottish Environment Protection Agency (SEPA) proposes to alter the existing guidance document, [WST-G-002 Provision and assessment of technically competent management at licensed waste management facilities](#). The changes reflect the fact that SEPA will now assess technical competence on the basis of any known previous compliance history as well as on approved qualifications held or bespoke assessment undertaken, rather than focusing only on the latter as was the case previously. This change has been contemplated for some time to reflect SEPA's view that compliance is non-negotiable and is underpinned by our One Planet Prosperity regulatory strategy.

Why we are consulting

The requirement for a licence holder to provide technically competent management of the activities authorised by the waste management licence is part of the test of whether an applicant is a "fit and proper person" to hold a waste management licence. The term "fit and proper person" is defined in [section 74](#) of the Environmental Protection Act 1990.

Section 74(3)(b) of the 1990 Act deals with technical competence. It provides that a person shall be treated as not being fit and proper to hold a waste management licence if it appears to SEPA that "the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person". From this, it is clear that the technically competent person has to be in a position to manage the day-to-day activities authorised by the licence.

It is the responsibility of the applicant or licence holder to demonstrate to SEPA's satisfaction how the particular nature of their management structure and control mechanisms satisfies the requirement to have technically competent management. SEPA must ensure that the provision of technical competence at waste management facilities is not compromised as the result of regular non-compliance. A 2018 [appeal](#) was supportive of the fact that the assessment of non-compliance is a relevant consideration in determining suitable technical provision at waste management facilities.

For clarification the changes to the existing guidance are highlighted in **bold text** and we're seeking responses to the 10 questions on these changes.

How to respond

You can respond to this consultation [online](#). As our offices are currently closed, please do not mail your response. You can email your responses on the proposal to nationalwaste@sepa.org.uk

Responses should be submitted to us by 27 November 2020.

Q1. What is your name? (optional)

Q2. What is your email address? (optional)

Q3. What is your interest in our consultation? (optional)

Introduction

The guidance, [WST-G-002 Provision and assessment of technically competent management at licensed waste management facilities](#), applies only to the assessment of technical competence of operators of sites applying for, or holding, a waste management licence (either a site licence or a mobile plant licence). It is not applicable to sites permitted under Pollution Prevention and Control (PPC). Further guidance on the provision of a fit and proper person at a PPC installation can be found in [IED-PPC-TG4 - Pollution Prevention and Control \(PPC\) Technical Guidance: A practical guide for Part A activities](#).

The requirement for a licence holder to provide technically competent management of the activities authorised by the waste management licence is part of the test of whether an applicant is a “fit and proper person” to hold a waste management licence. The term “fit and proper person” is defined in section 74 of the Environmental Protection Act 1990 (“the 1990 Act”).

Section 74(3)(b) of the 1990 Act deals with technical competence. It provides that a person shall be treated as not being fit and proper to hold a waste management licence if it appears to SEPA that “the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person”. From this it is clear that the technically competent person has to be in a position to manage the day-to-day activities authorised by the licence.

It is up to the applicant or licence holder (“the operator”) to demonstrate to SEPA’s satisfaction how the particular nature of their management structure and control mechanisms satisfies the requirement to have technically competent management.

Technically competent management of a licensed site may be provided by more than one person. Therefore operators can provide control of day-to-day activities through a group of technically competent staff so that the requirement for onsite presence of a technically competent person may be shared.

Alternatively, the operator’s structure may mean that day-to-day management is not delegated down to the site but is exercised at a higher level. This could mean that more than one site is under the day-to-day control of the same individual or group of individuals.

Each person identified by the operator as providing technically competent management for the activities at the site will need to be able demonstrate their competence to SEPA .

Whatever the approach adopted, a technically competent person should be present on site for an appropriate period of time to ensure that the site is operated effectively and in compliance with licence conditions. SEPA considers that in most cases the minimum period of time a technically competent person should be on site is 25% of its operating hours **per week. A technically competent person should record the hours they spend on any site.** A site would be considered operational whenever it is either accepting or removing waste, or undertaking any process involving waste other than its storage.

For small scale civic amenity sites (those accepting less than 5000 tonnes of waste per year) or other small facilities the operator may be able to demonstrate, to SEPA's satisfaction, that the technically competent person is not required on site for at least 25 % of the operating hours per week if adequate alternative management controls are provided.

Q4. Do you agree that a technically competent person should record the hours they spend on site?

When can SEPA check for technical competence?

SEPA will check for technical competence when:

- a new licence application is received.
- the management of the licensed activities comes into the hands of a different person.
- an application to significantly modify the licence (which could mean that the site had ceased to be in the hands of technically competent persons) is received. **Changes to the type and or quantities of waste, or introduction of treatment may be a few examples of significant modification.**
- **a site is routinely reported by SEPA to be poorly run and there are regular non compliances with licence conditions.**
- **when it is brought to our attention that a technically competent person is not or is not able to be on each site for which they are responsible during at least 25 % of its weekly operating hours .**
- an application for a full or partial transfer of a licence is received.
- determinations of fit and proper status may also be made in connection with the possible full or partial revocation or suspension of a licence under section 38 of the 1990 Act. In particular, where the holder of a licence has ceased to be a fit and proper person by reason of the management of the activities having ceased to be in the hands of a technically competent person the licence may be suspended or revoked, in both cases in full or in part. **For example if a site is routinely reported by SEPA to be poorly run and there are regular non compliances with licence conditions that may be an indication that the management of the activities is no longer in the hands of a technically competent person .**

If a site was deemed to have technically competent management previously then that should continue to be the case, provided that none of the scenarios described above apply.

Q5. Do you agree with the changes we are proposing to make, to when we can check for technical competence?

How will SEPA assess technical competence?

Approved qualification

In the majority of cases, waste management facility managers will be expected to hold the relevant COTC, SVQ, NVQ or equivalent certification from another approved scheme.

(Although it should be noted that these qualifications on their own will not be sufficient where the certificate holder has been overseeing the operation of a licensed site, exempt facility or mobile plant, which has regular non compliances.)

SEPA will continue to recognise certificates of technical competence (COTC) issued by WAMITAB as evidence of technical competence and the Technical Competence Management (TCM) scheme run by WAMITAB as evidence of technical competence.

SEPA will recognise the relevant vocational certificates (SVQ and NVQ) required to obtain a COTC as being evidence of technical competence.

SEPA will recognise the Competency Management Scheme (CMS) administered by Energy Utilities Skills as evidence of technical competence.

Providers of alternative vocational training schemes may also seek approval from SEPA for completion of their schemes to be accepted as sufficient evidence of technical competence. Such schemes need not be limited to assessing individual managers' competence but could also involve assessment of an organisation's technical competence across all their waste management licensed facilities.

Operators should be technically competent to operate their facility. The operator's wider management system should contain mechanisms for assessing and maintaining technical competence. The competence of individuals (or the organisation) should form part of those management systems.

All assessments will, where applicable, include the quality of all supporting application documentation, for example a poor working plan or management plan is unlikely to be produced by a technically competent person.

The development of industry led competence schemes is also encouraged. All schemes should be based predominantly on qualifications accredited by the Scottish Qualifications Authority, or other relevant accreditation body. The criteria on which SEPA will assess

these alternative schemes will build upon current standards. Any schemes developed in addition must be:

- effective in developing and demonstrating technical competence across a sector or sectors and provide equivalent competence with other schemes approved for the sectors(s).
- risk-based and proportionate.
- based on good operational practice and appropriate legislative requirements.
- able to provide mechanisms for demonstration and assessment of individual or corporate competence or both.
- based consistently on National Occupational Standards where these exist.
- able to develop the skills required to deliver the objectives of Scotland's Zero Waste Plan and associated legislation.
- applicable to waste management operations, or clearly state the sectors for which the scheme is designed.
- inclusive, and must not prevent new entrants from developing necessary competences in the workplace.

For all assessments of technical competence previous compliance will be considered and evidence from other sites/mobile plant for which the person has been designated the technically competent person, had a role in managing, or exempt sites they have operated may be utilised. For example, a site which is routinely reported by SEPA to be poorly run and which has regular non compliance issues with licence conditions is unlikely to be run by a technically competent person, even if they have the relevant vocational qualifications or are covered by a technical competence management system.

Q6. Do you agree that we should consider the quality of the supporting information we receive as part of an application, when considering a TC?

Q7. Do you agree that we should also look at previous compliance and evidence for other sites/mobile plant, when considering TC?

Bespoke SEPA assessment of technical competence

In exceptional cases where the designated technically competent person cannot provide evidence of an appropriate qualification, SEPA may make a bespoke assessment of technical competence based on other factors. SEPA's bespoke assessment will be limited to operators who wish to hold a single site licence only. It does not apply to mobile plant or multiple site licence applicants/holders).

The assessment will consider both the knowledge and experience of the proposed technically competent person in respect of general waste management law and practice, and in respect of the specific facility as described in more detail below. It will focus on the specific issues relating to managing a single site, small-scale facility.

Assessments made this way apply only to the site for which the assessment was made.

SEPA's assessment will be based on evidence provided by the applicant or licensee in support of their claim that the management of the activities will be in the hands of a technically competent person. In assessing such submissions SEPA will take into account the scale and type of operation and the nature of the wastes involved.

SEPA's assessment will, where applicable, include an assessment of the proposed technically competent person's compliance with waste legislation. A person who is named as the sites technically competent person at a site which has routinely been reported by SEPA to be operating poorly, or which has had regular noncompliance issues may not be technically competent. Compliance with the appropriate legislation or a site licence is non-negotiable.

SEPA's bespoke assessment will, where applicable, include the quality of all supporting application documentation, for example a poor working plan or management plan is unlikely to be produced by a technically competent person.

Knowledge may be demonstrated through evidence of practical application of the legislation to waste management activities, in particular the licensing requirements and the Duty of Care or trans-frontier shipment obligations.

As part of a bespoke assessment a person will normally be required to demonstrate that they have not less than two years of relevant experience in waste management at a supervisory level (i.e. supervision of either the waste management activities themselves or

of other individuals carrying out those activities). Evidence of this should be presented in a statement of relevant experience. This statement should provide details of the individual's employment record, including the location of all posts held that are relevant to their application, the dates between which they were employed, the duties they undertook, and details of their supervisory role. The applicant should also supply details of the operations undertaken at each of the facilities at which they have worked. An example of the format and information expected to be included in such a Statement of Experience is presented in Appendix 1.

Additionally two referees must be provided to support the details set out in the Statement of Experience i.e. referees who are in a position to vouch for the contents of the Statement.

Where an applicant is considered to be not technically competent based on their submission they will be invited for an interview to assess the merits of their application. This interview will be chaired by a member of SEPA's National Waste Team. **The interview would normally be in person at a SEPA office but can be arranged for other locations or by remote video conferencing providing all parties are in agreement to the location or video conferencing system to be used.**

Q8. Do you agree that the assessment of a technical competent person should review previous compliance history?

Q9. Do you agree with our options for interviews?

Monitoring for continuing technical competence

SEPA will keep under review the extent to which management of waste activities on sites remains in the hands of a technically competent person as part of their general monitoring and inspections of activities carried out under the licences for those sites.

The licence holder should provide a list of the technically competent persons who are involved in the management of each licensed site and the hours they are on site for. This information should be kept and updated as appropriate.

SEPA may ask for this information as part of continual assessment of technical competence and, if necessary, we may also require it by means of a licence condition.

SEPA may take enforcement action if it decides the management of the activities authorised by the licence are no longer in the hands of a technically competent person.

Q10. Do you have any other thoughts on the changes we are proposing to our guidance?

Appendix 1 - Example layout for statement of experience

Name

Date of Birth

Address

Contact Details

Description of site to be managed

Provide a description of the activities for which you wish to be assessed as a technically competent manager

Qualifications / Training Relevant to Application

Detail qualifications and formal training relevant to the specific operations of the site in question and / or waste management in general and the date achieved.

Work Experience

Detail relevant work experience; including dates of employment, details of the operations undertaken at each of the facilities at which you have worked, your main duties and any supervisory or management experience.

Identify aspects of your work experience that are relevant to the operation of the site you wish to manage.

Provide details of any experience or responsibility for compliance with the terms applicable to an activity exempt from waste management licensing, waste management licence conditions or Duty of Care obligations.

Additional Information

Provide any additional information you wish to be considered in respect of your application (e.g.) professional memberships

Referees

Provide contact details for two referees able to confirm the details given in your statement of experience.